

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:19-cv-08837-LGS

Clausen et al v. Woodbolt Distribution, LLC
Assigned to: Judge Lorna G. Schofield
Demand: \$5,000,000
Related Case: [1:20-mc-00186-LGS](#)
Cause: 28:1332 Diversity Action

Date Filed: 09/23/2019
Date Terminated: 05/22/2020
Jury Demand: Both
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

Plaintiff

Dale Clausen

*individually and on behalf of all others
similarly situated*

represented by **Andrew Obergfell**
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ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

Plaintiff

Timothy Duncan

*individually and on behalf of all others
similarly situated*

represented by **Andrew Obergfell**
(See above for address)
ATTORNEY TO BE NOTICED

Philip Lawrence Fraietta
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Woodbolt Distribution, LLC
doing business as
Nutrabolt

represented by **Judi Curry**
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Miscellaneous**GNC Corporation**

Date Filed	#	Docket Text
09/23/2019	1	COMPLAINT against Woodbolt Distribution, LLC d/b/a Nutrabolt. (Filing Fee \$ 400.00, Receipt Number BNYSDC–17649506) Document filed by Dale Clausen, Timothy Duncan. (Fraietta, Philip) (Entered: 09/23/2019)
09/23/2019	2	CIVIL COVER SHEET filed. (Fraietta, Philip) (Entered: 09/23/2019)
09/23/2019	3	FILING ERROR – DEFICIENT PLEADING – SUMMONS REQUEST PDF ERROR – REQUEST FOR ISSUANCE OF SUMMONS as to Woodbolt Distribution, LLC d/b/a Nutrabolt, re: 1 Complaint. Document filed by Dale Clausen, Timothy Duncan. (Fraietta, Philip) Modified on 9/24/2019 (dnh). (Entered: 09/23/2019)
09/24/2019	1	***NOTICE TO ATTORNEY REGARDING PARTY MODIFICATION. Notice to attorney Philip Lawrence Fraietta. The party information for the following party/parties has been modified: Woodbolt Distribution, LLC d/b/a Nutrabolt, Dale Clausen, Timothy Duncan. The information for the party/parties has been modified for the following reason/reasons: party text was omitted; alias party was entered incorrectly. (dnh) (Entered: 09/24/2019)
09/24/2019	1	CASE OPENING INITIAL ASSIGNMENT NOTICE: The above–entitled action is assigned to Judge Lorna G. Schofield. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php . (dnh) (Entered: 09/24/2019)
09/24/2019	1	Magistrate Judge Katharine H. Parker is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: http://nysd.uscourts.gov/forms.php . (dnh) (Entered: 09/24/2019)
09/24/2019	1	Case Designated ECF. (dnh) (Entered: 09/24/2019)
09/24/2019	1	***NOTICE TO ATTORNEY REGARDING DEFICIENT REQUEST FOR ISSUANCE OF SUMMONS. Notice to Attorney Philip Lawrence Fraietta to RE–FILE Document No. 3 Request for Issuance of Summons. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the issuance of summons is not correct; the attorney information was omitted from the PDF. Re–file the document using the event type Request for Issuance of Summons found under the event list Service of Process – select the correct filer/filers – and attach the correct summons form PDF. (dnh) (Entered: 09/24/2019)

09/24/2019	<u>I</u>	***NOTICE TO ATTORNEY REGARDING CIVIL. CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Philip Lawrence Fraietta. The following case opening statistical information was erroneously selected/entered: Dollar Demand 5,000,001,000. The following correction(s) have been made to your case entry: the Dollar Demand has been modified to 5,000,000. (dnh) (Entered: 09/24/2019)
09/24/2019	<u>I 4</u>	REQUEST FOR ISSUANCE OF SUMMONS as to Woodbolt Distribution, LLC d/b/a Nutrabolt, re: <u>1</u> Complaint. Document filed by Dale Clausen, Timothy Duncan. (Fraietta, Philip) (Entered: 09/24/2019)
09/25/2019	<u>I 5</u>	ELECTRONIC SUMMONS ISSUED as to Woodbolt Distribution, LLC. (dnh) (Entered: 09/25/2019)
10/07/2019	<u>I 6</u>	ORDER: Initial Conference set for 11/21/2019 at 10:40 AM in Courtroom 1106, Thurgood Marshal Courthouse, 40 Foley Square, New York, NY 10007 before Judge Lorna G. Schofield. (As further set forth in this Order.) (Signed by Judge Lorna G. Schofield on 10/7/2019) (cf) (Entered: 10/07/2019)
10/10/2019	<u>I 7</u>	NOTICE OF APPEARANCE by Judi Curry on behalf of Woodbolt Distribution, LLC. (Curry, Judi) (Entered: 10/10/2019)
10/10/2019	<u>I 8</u>	NOTICE OF APPEARANCE by Kelly Jones Howell on behalf of Woodbolt Distribution, LLC. (Howell, Kelly) (Entered: 10/10/2019)
10/10/2019	<u>I 9</u>	WAIVER OF SERVICE RETURNED EXECUTED. Woodbolt Distribution, LLC waiver sent on 10/9/2019, answer due 12/9/2019. Document filed by Dale Clausen; Timothy Duncan. (Fraietta, Philip) (Entered: 10/10/2019)
10/10/2019	<u>I 10</u>	CONSENT LETTER MOTION to Adjourn Conference addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated October 10, 2019. Document filed by Dale Clausen, Timothy Duncan.(Fraietta, Philip) (Entered: 10/10/2019)
11/04/2019	<u>I 11</u>	ORDER granting <u>10</u> Letter Motion to Adjourn Conference. Application GRANTED.The initial conference set for November 21, 2019, at 10:30 A.M. is adjourned to December 10, 2019, at 10:30 A.M. Initial Conference set for 12/10/2019 at 10:30 AM before Judge Lorna G. Schofield. (Signed by Judge Lorna G. Schofield on 11/4/2019) (cf) (Entered: 11/04/2019)
11/27/2019	<u>I 12</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Woodbolt Distribution, LLC.(Curry, Judi) (Entered: 11/27/2019)
11/27/2019	<u>I 13</u>	LETTER MOTION for Conference re: <u>1</u> Complaint addressed to Judge Lorna G. Schofield from Judi Abbott Curry dated November 27, 2019., LETTER MOTION to Adjourn Conference (<i>Initial</i>) addressed to Judge Lorna G. Schofield from Judi Abbott Curry dated November 27, 2019. Document filed by Woodbolt Distribution, LLC.(Curry, Judi) (Entered: 11/27/2019)
12/02/2019	<u>I 14</u>	ORDER granting in part and denying in part <u>13</u> Letter Motion for Conference; granting in part and denying in part <u>13</u> Letter Motion to Adjourn Conference. Application GRANTED in part and DENIED in part. The initial conference set for December 10, 2019, at 10:30 A.M. is adjourned to December 12, 2019, at 10:30 A.M. The parties shall file the pre-initial conference material by December 5, 2019. Plaintiffs shall also file a response to this letter by December 5, 2019. The letter shall comply with the Court's Individual Rules regarding pre-motion letters. The letter shall include a complete briefing schedule. The schedule may take into consideration the December holidays. (Initial Conference set for 12/12/2019 at 10:30 AM before Judge Lorna G. Schofield.) (Signed by Judge Lorna G. Schofield on 12/2/2019) (cf) (Entered: 12/02/2019)
12/02/2019	<u>I</u>	Set/Reset Deadlines: Responses due by 12/5/2019 (cf) (Entered: 12/02/2019)
12/05/2019	<u>I 15</u>	

		LETTER addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated December 5, 2019 re: Plaintiffs' Response to Defendant's November 27, 2019 Pre-Motion Letter. Document filed by Dale Clausen, Timothy Duncan.(Fraietta, Philip) (Entered: 12/05/2019)
12/05/2019	<u>16</u>	JOINT LETTER addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated December 5, 2019 re: Joint Proposed Discovery Plan. Document filed by Dale Clausen, Timothy Duncan. (Attachments: # <u>1</u> Joint Proposed Discovery Plan)(Fraietta, Philip) (Entered: 12/05/2019)
12/10/2019	<u>17</u>	ORDER: ORDERED that the initial conference is adjourned to December 12, 2019, at 5:30 P.M., (Initial Conference set for 12/12/2019 at 05:30 PM before Judge Lorna G. Schofield.) (Signed by Judge Lorna G. Schofield on 12/10/2019) (ama) (Entered: 12/10/2019)
12/12/2019	<u>1</u>	Minute Entry for proceedings held before Judge Lorna G. Schofield: Initial Pretrial Conference held on 12/12/2019. (Lewis, Barton) (Entered: 12/13/2019)
12/16/2019	<u>18</u>	ORDER: It is hereby ORDERED that, by December 20, 2019, Defendant shall file a letter stating whether it intends to file a motion to dismiss. If yes, the letter shall include a proposed briefing schedule that both parties support. The case management plan and scheduling order will issue in a separate order. (As further set forth in this Order.) (Signed by Judge Lorna G. Schofield on 12/16/2019) (cf) (Entered: 12/16/2019)
12/16/2019	<u>19</u>	CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER: All parties do not consent to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. No additional parties may be joined after January 10, 2020 without leave of Court. Amended pleadings may be filed without leave of Court until January 10, 2020 or as provided for leave as of right under Rule 15 of the Federal Rules of Civil Procedure. All fact discovery shall be completed no later than May 10, 2020. Depositions pursuant to Fed. R. Civ. P. 30, 31 shall be completed by June 15, 2020. All expert discovery shall be completed no later than June 25, 2020. This case is to be tried to a jury. On July 9, 2020 at 10:30 A.M. a pre-motion conference will be held for any anticipated dispositive motions, as further set forth in this Order. Amended Pleadings due by 1/10/2020. Joinder of Parties due by 1/10/2020. Deposition due by 6/15/2020. Fact Discovery due by 5/10/2020. Expert Discovery due by 6/25/2020. Pre-Motion Conference set for 7/9/2020 at 10:30 AM before Judge Lorna G. Schofield. (Signed by Judge Lorna G. Schofield on 12/16/2019) (cf) (Entered: 12/16/2019)
12/20/2019	<u>20</u>	LETTER addressed to Judge Lorna G. Schofield from Judi Abbott Curry dated December 20, 2019 re: Defendant Does Not Intend to File a Motion to Dismiss and will File its Answer to Plaintiffs' Complaint. Document filed by Woodbolt Distribution, LLC.(Curry, Judi) (Entered: 12/20/2019)
12/20/2019	<u>21</u>	ANSWER to <u>1</u> Complaint with JURY DEMAND. Document filed by Woodbolt Distribution, LLC.(Curry, Judi) (Entered: 12/20/2019)
02/07/2020	<u>22</u>	PROPOSED STIPULATION AND ORDER. Document filed by Dale Clausen, Timothy Duncan. (Fraietta, Philip) (Entered: 02/07/2020)
02/10/2020	<u>23</u>	AGREED-TO PROTECTIVE ORDER OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT...regarding procedures to be followed that shall govern the handling of confidential material... (As further set forth in this Order.) The Court retains unfettered discretion whether or not to afford confidential treatment to any Confidential Information or information contained therein submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or discretion by the Court. The parties are reminded to comply with the Court's Individual Rules, including the rules regarding the submission of sealed and redacted materials. Any provisions that are inconsistent with the Court's rules regarding the submission of sealed and redacted materials are hereby stricken. (Signed by Judge Lorna G. Schofield on 2/10/2020) (cf) (Entered: 02/10/2020)
02/26/2020	<u>24</u>	

		LETTER MOTION for Conference <i>unopposed request to amend protective order</i> addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated 2/26/20. Document filed by Dale Clausen, Timothy Duncan..(Oberfell, Andrew) (Entered: 02/26/2020)
02/27/2020	<u>25</u>	ORDER granting <u>24</u> Letter Motion for Conference. APPLICATION GRANTED. Parties shall file the modified protective order on the docket by March 3, 2020. (Signed by Judge Lorna G. Schofield on 2/27/2020) (cf) (Entered: 02/27/2020)
03/03/2020	<u>26</u>	PROPOSED PROTECTIVE ORDER. Document filed by Dale Clausen, Timothy Duncan..(Oberfell, Andrew) (Entered: 03/03/2020)
03/04/2020	<u>27</u>	AGREED-TO PROTECTIVE ORDER OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT...regarding procedures to be followed that shall govern the handling of confidential material...The Court retains unfettered discretion whether or not to afford confidential treatment to any Confidential Information or information contained therein submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or discretion by the Court. The parties are reminded to comply with the Court's Individual Rules, including the rules regarding the submission of sealed and redacted materials. Any provisions that are inconsistent with the Court's rules regarding the submission of sealed and redacted materials are hereby stricken. SO ORDERED. (Signed by Judge Lorna G. Schofield on 3/4/2020) (ks) (Entered: 03/04/2020)
03/10/2020	<u>28</u>	LETTER addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated 3/10/20 re: Joint Status Letter. Document filed by Dale Clausen, Timothy Duncan..(Oberfell, Andrew) (Entered: 03/10/2020)
03/11/2020	<u>29</u>	MEMO ENDORSEMENT on re: <u>28</u> Letter filed by Timothy Duncan, Dale Clausen. ENDORSEMENT: APPLICATION GRANTED. An amended case management plan will issue separately. No further extensions absent extraordinary circumstances. (Expert Discovery due by 8/8/2020., Fact Discovery due by 6/23/2020.) (Signed by Judge Lorna G. Schofield on 3/11/2020) (cf) (Entered: 03/11/2020)
03/11/2020	<u>30</u>	FIRST AMENDED CASE MANAGEMENT PLAN: All parties do not consent to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. See 28 U.S.C. § 636(c). All fact discovery shall be completed no later than 6/23/2020. Depositions pursuant to Fed. R. Civ. P. 30, 31 shall be completed by 6/15/2020. If you have identified types of experts in question 9(a), all expert discovery shall be completed no later than 8/8/2020. This case is to be tried to a jury. Counsel for the parties have conferred and their present best estimate of the length of trial is two to three weeks, subject to variations based on whether any class or subclasses are certified. On 8/20/2020 at 10:40 A.M. a pre-motion conference will be held for any anticipated dispositive motions, as further set forth in this Order. Pre-Motion Conference set for 8/20/2020 at 10:40 AM before Judge Lorna G. Schofield. (Signed by Judge Lorna G. Schofield on 3/11/2020) (cf) (Entered: 03/11/2020)
04/10/2020	<u>31</u>	STATUS REPORT. <i>JOINT</i> Document filed by Dale Clausen, Timothy Duncan..(Fraietta, Philip) (Entered: 04/10/2020)
04/10/2020	<u>32</u>	ORDER: It is hereby ORDERED that Plaintiffs and General Nutrition Corporation shall, no later than April 22, 2020, meet and confer about Plaintiffs' subpoena request. On April 22, 2020, the parties shall file a joint letter in the civil action updating the Court on progress resolving the discovery dispute. The letter shall include the parties' respective positions if any disagreement remains. The letter shall not exceed six pages, single-spaced. (Signed by Judge Lorna G. Schofield on 4/10/2020) (jca) (Entered: 04/10/2020)
04/22/2020	<u>33</u>	LETTER addressed to Judge Lorna G. Schofield from Rachel Bevans dated April 22, 2020 re: Joint Letter to Court re: Status Update. Document filed by GNC Corporation..(Bevans, Rachel) (Entered: 04/22/2020)

04/27/2020	<u>34</u>	MEMO ENDORSEMENT: on re: (11 in 1:20-mc-00186-LGS) Letter filed by General Nutrition Corporation, (33 in 1:19-cv-08837-LGS) Letter filed by GNC Corporation. ENDORSEMENT: GNC shall, by April 30, 2020, file an affidavit describing the time and expense required to search for and produce nationwide and New York total dollar and unit sales for the years of 2018 and 2019 broken down by the months. A second amended case management plan that extends the discovery deadlines shall issue separately. No further extensions will be granted absent extraordinary circumstances. The parties attention is directed to the new deadline for informing the Court of scheduled depositions. The Clerk of Court is respectfully directed to docket this endorsement in 19 Civ. 8837 and 20 Misc. 186. SO ORDERED. (Signed by Judge Lorna G. Schofield on 4/27/2020) (ama) (Entered: 04/27/2020)
04/27/2020	<u>35</u>	SECONDED AMENDED CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER: This Civil Case Management Plan is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3). All parties do not consent to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. See 28 U.S.C. § 636(c). The parties have conferred pursuant to Fed. R. Civ. P. 26(f). Settlement discussions have taken place. This case is to be tried to a jury. By April 10, 2020 and May 25, 2020 the parties shall submit a joint status letter, as outlined in Individual Rule IV.A.2. By 7/25/2020 the parties shall submit a joint status letter, as outlined in Individual Rule IV.A.2 and, in the event that they have not already been referred for settlement discussions, shall also advise the Court whether or not they request a referral for settlement discussions as provided in Paragraph 4(c) above. Deposition due by 6/15/2020. Fact Discovery due by 8/14/2020. Expert Discovery due by 9/30/2020. Pre-Motion Conference set for 10/8/2020 at 10:30 AM before Judge Lorna G. Schofield. The parties shall, by June 2, 2020, file a joint letter with the Court stating how many depositions have been completed and stating the dates for all remaining depositions. The Clerk of Court is directed to enter the dates under paragraphs 5,6,8(a), 9(b)-(c) and 13(a)-(c) into the Court's calendar. (And as further set forth herein.) SO ORDERED. (Signed by Judge Lorna G. Schofield on 4/27/2020) (jca) (Entered: 04/27/2020)
04/27/2020	<u>36</u>	LETTER MOTION for Conference <i>Re Plaintiffs' Forthcoming Motion to Amend</i> addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated April 27, 2020. Document filed by Dale Clausen, Timothy Duncan..(Fraietta, Philip) (Entered: 04/27/2020)
04/28/2020	<u>37</u>	MEMO ENDORSEMENT on re: <u>36</u> LETTER MOTION for Conference <i>Re Plaintiffs' Forthcoming Motion to Amend</i> addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated April 27, 2020. filed by Timothy Duncan, Dale Clausen. ENDORSEMENT: Defendant shall file a response to this letter by May 1, 2020, that complies with the Court's Individual Rules. (Responses due by 5/1/2020) (Signed by Judge Lorna G. Schofield on 4/28/2020) (cf) (Entered: 04/28/2020)
04/30/2020	<u>38</u>	LETTER addressed to Judge Lorna G. Schofield from Rachel Bevans dated April 30, 2020 re: Status of Order by Court. Document filed by GNC Corporation..(Bevans, Rachel) (Entered: 04/30/2020)
05/01/2020	<u>39</u>	MEMO ENDORSEMENT on re: (13 in 1:20-mc-00186-LGS) Letter filed by General Nutrition Corporation, (38 in 1:19-cv-08837-LGS) Letter filed by GNC Corporation. ENDORSEMENT: The motion to compel filed in 20 Misc. 186 is denied as moot. The Clerk of Court is respectfully directed to file this endorsement in 20 Misc. 186 and 19 Civ. 8837. The Clerk of Court is respectfully directed to close 20 Misc. 186. SO ORDERED. (Signed by Judge Lorna G. Schofield on 5/1/2020) (mml) (Entered: 05/01/2020)
05/01/2020	<u>40</u>	LETTER RESPONSE to Motion addressed to Judge Lorna G. Schofield from Judi Abbott Curry dated May 1, 2020 re: <u>36</u> LETTER MOTION for Conference <i>Re Plaintiffs' Forthcoming Motion to Amend</i> addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated April 27, 2020. . Document filed by Woodbolt Distribution, LLC..(Curry, Judi) (Entered: 05/01/2020)
05/01/2020	<u>41</u>	

		LETTER MOTION for Conference <i>Re Transfer of Venue</i> addressed to Judge Lorna G. Schofield from Judi Abbott Curry dated May 1, 2020. Document filed by Woodbolt Distribution, LLC..(Curry, Judi) (Entered: 05/01/2020)
05/04/2020	<u>42</u>	MEMO ENDORSEMENT on re: <u>41</u> LETTER MOTION for Conference <i>Re Transfer of Venue</i> addressed to Judge Lorna G. Schofield from Judi Abbott Curry dated May 1, 2020. filed by Woodbolt Distribution, LLC. ENDORSEMENT: Plaintiffs shall file a response to this letter by May 8, 2020, that complies with the Court's Individual Rules. The parties shall attend a telephonic conference on May 14, 2020, at 10:30 A.M. to discuss the letter submissions regarding Plaintiffs' request to file a motion to amend and Defendant's request to file a change of venue. The parties shall call (888) 363-4749 and use the Access Code 558-3333. (Responses due by 5/8/2020, Telephone Conference set for 5/14/2020 at 10:30 AM before Judge Lorna G. Schofield.) (Signed by Judge Lorna G. Schofield on 5/4/2020) (cf) (Entered: 05/04/2020)
05/08/2020	<u>43</u>	LETTER RESPONSE in Opposition to Motion addressed to Judge Lorna G. Schofield from Philip L. Fraietta dated May 8, 2020 re: <u>41</u> LETTER MOTION for Conference <i>Re Transfer of Venue</i> addressed to Judge Lorna G. Schofield from Judi Abbott Curry dated May 1, 2020. . Document filed by Dale Clausen, Timothy Duncan..(Fraietta, Philip) (Entered: 05/08/2020)
05/14/2020	<u>43</u>	Minute Entry for proceedings held before Judge Lorna G. Schofield: Telephone Conference held on 5/14/2020. (Court Reporter Present) (jcs) (Entered: 05/14/2020)
05/14/2020	<u>44</u>	ORDER: WHEREAS, a conference was held on May 14, 2020, regarding Defendant Woodbolt Distribution, LLC's letter requesting to file a motion to transfer under 28 U.S.C. § 1404(a). ECF 41. It is hereby ORDERED that for the reasons stated at the conference, this case is transferred to the United States District Court for the Western District of Texas. The Clerk of Court is directed to close this matter and transfer the case to the Western District of Texas. (Signed by Judge Lorna G. Schofield on 5/14/2020) (ama) (Entered: 05/14/2020)
05/14/2020	<u>44</u>	Transmission to Office of the Clerk of Court. Transmitted re: <u>44</u> Order,,, to the Office of the Clerk of Court for processing..(ama) (Entered: 05/14/2020)
05/22/2020	<u>44</u>	CASE TRANSFERRED OUT ELECTRONICALLY from the U.S.D.C. Southern District of New York to the United States District Court – Western District of Texas (ama) (Entered: 05/26/2020)