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BUICK GMC SDNC, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

ARNOLDO CORONADO in a
 Representative capacity only, and on behalf
 of other members of the general public
 similarly situated,

Plaintiff,

v.

BUICK GMC SDNC, LLC, a Delaware
 Limited Liability Company, and DOES 1-
 10, inclusive,

Defendants.

CASE NO.: 37-2020-00032403-CU-OE-CTL

**JOINT SETTLEMENT AND RELEASE OF
 CLAIMS**

[IMAGED FILE]

Dept.: C 72
 Judge: Hon. Timothy Taylor
 Filed: September 15, 2020
 Trial: February 18, 2022

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SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

Plaintiff ARNOLDO CORONADO, individually and in his capacity as representatives of the State of California on behalf of other aggrieved employees, and Defendant BUICK GMC SDNC, LLC. hereby enter into this Settlement Agreement and Release of Private Attorneys General Act of 2004 Claims ("Settlement") as follows:

I. DEFINITIONS

As used in this Settlement, the following terms shall have the following meanings:

1. "Action" shall mean the civil action entitled *Coronado v. Buick GMC SDNC, LLC*, filed on September 15, 2020, in the Superior Court for the County of San Diego and designated as Case No. 37-2020-00032403-CU-OE-CTL.
2. "Defendant" shall mean at Defendant BUICK GMC SDNC, LLC.
3. "Defense Counsel" shall mean Shannon R. Finley and Rachel E. Albert of Pettit Kohn Ingrassia Lutz & Dolin PC.
4. "Effective Date" refers to the date upon which both of the following have occurred:
(i) approval of the Settlement is granted by the Superior Court of California for the County of San Diego, or other court assuming jurisdiction of this matter, and (ii) the Court's Judgment approving the Settlement becomes Final. If there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court shall be the date the Settlement is Final. If there is an intervenor, but no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment shall be the date the Settlement is Final. If there is no intervenor in the action, the date the Court enters an order approving this Settlement shall be the date the Settlement is Final.
5. "LWDA" refers to the California Labor & Workforce Development Agency.
6. "PAGA" refers to the Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*
7. "PAGA Period" shall mean July 9, 2019, through the date of entry of an order by the Court in this Action approving this Settlement.
8. "PAGA Settlement Members" shall mean all persons employed by Defendant at as non-

1 exempt employees in California at any time during the PAGA Period. For purposes of this Settlement
2 only, and not otherwise as an admission of any misconduct or wrongdoing by Defendant or any of the
3 defendants, Defendant and Plaintiffs stipulate that all PAGA Settlement Members are aggrieved
4 employees pursuant to PAGA.

5 9. "PAGA Fund" shall mean the Total Settlement Payment, less Plaintiff's Counsel
6 Payment, and the Settlement Administrative Costs.

7 10. "Plaintiff" refers to Arnoldo Coronado, individually and in his capacity as representative
8 of the State of California on behalf of other aggrieved employees.

9 11. "Plaintiff's Counsel" collectively refers to Williams B. Sullivan and Eric K. Yaeckel of
10 Sullivan & Yaeckel Law Group, APC.

11 12. "Parties" collectively refers to Plaintiff and Defendant.

12 13. "Released Claims" shall mean any and all claims, whether known or unknown, to recover
13 civil penalties pursuant to PAGA for any violations alleged in the Action, or that could have been alleged
14 in the Action, that are based on the alleged meal and rest break, minimum wage, overtime compensation,
15 wage statement, unreimbursed business expenses and final pay violations, and any resulting claim for
16 penalties under PAGA alleged to have been violated in the Action during the PAGA Period. Released
17 Claims include, but are not limited to, alleged violations by Defendant of the California Labor Code
18 sections 201-209, 212, 213, 221-227.3, 231, 233, 238-238.5, 246, 351, 353, 403, 450, 510-513, 550, 558,
19 1174, 1194, 1197-1198, 2699, 2802, and the related applicable IWC Wage Order provisions for the
20 PAGA Period.

21 14. "Released Parties" shall mean Defendant, and all of its subsidiary companies, affiliates,
22 holding companies, successors, partners, owners, shareholders, insurers, legal representatives, assigns,
23 employees, officers, directors, attorneys, and agents.

24 15. "Settlement Administrator" refers to a qualified, third-party settlement administrator
25 agreed to by the Parties to administer the terms of the Settlement.

26 **II. RECITALS**

27 16. On July 9, 2020, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff, in
28 compliance with California Labor Code section 2699.3. Plaintiff seeks to represent himself and all

1 PAGA Settlement Members. More than 65 days passed after the letter was sent to the LWDA, and the
2 LWDA has not indicated that it intends to investigate the alleged violations referenced in the letter.

3 17. On September 15, 2020, Plaintiff filed a Complaint in San Diego Superior Court, Case
4 No. 37-2020-00032403-CU-OE-CTL.

5 18. Counsel for all Parties have thoroughly investigated the facts relating to the claims
6 alleged in the operative complaint and have made a thorough study of the legal principles applicable to
7 the claims asserted against Defendant. Based on their investigation and evaluation of this case,
8 Plaintiff's Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all
9 known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings
10 regarding liability, and numerous potential appellate issues.

11 19. Defendant denies, and continues to deny, each and every claim and contention alleged in
12 the Action, and has always maintained that it never engaged in any unlawful acts regarding any of the
13 matters alleged in the Action.

14 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and conditions set
15 forth, the Parties agree as follows:

16 **III. NON-ADMISSION OF LIABILITY**

17 20. Based on the factual and legal issues involved, the expense and time necessary to
18 prosecute the Action through trial, the risks, uncertainty and costs of further prosecution, the difficulty of
19 proof necessary to establish a class for purposes of liability, and the relative benefits to the PAGA
20 Settlement Members of an expeditious resolution to the Action, the Parties have concluded that the terms
21 set forth in this Settlement are fair, reasonable, adequate and in the best interests of the PAGA Settlement
22 Members.

23 21. By entering into this Settlement, Defendant denies any liability for any of the claims in
24 the Action, as well as any other potential or unknown claims based on wage and hour violations under
25 state or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor
26 any action taken to carry out this Settlement, is, may be construed as, or may be used as, an admission,
27 concession, or indication by or against any defendant in this Action of any unlawful conduct, fault,
28 wrongdoing or liability whatsoever. Defendant specifically denies that it has engaged in any unlawful or

wrongful conduct against Plaintiff or the PAGA Settlement Members.

IV. TERMS OF THE PAGA SETTLEMENT

A. The Total Settlement Payment

22. Defendant shall pay a settlement payment in a total amount not to exceed \$105,000 (the "Total Settlement Payment"). The Total Settlement Payment shall include settlement administrative fees and costs and the PAGA Fund. The Total Settlement Fund will be paid pursuant to a payment plan as set forth in section V(A) para. 32, below. It is the parties intention that the funds will be dispersed on a rolling basis. The first items to be funded will be any costs awarded to Plaintiff's counsel, and the settlement administration costs. Next, the PAGA Payment shall be distributed to the LWDA and aggrieved employees upon receipt of sufficient payments to cover those amounts. The attorney's fees awarded to Plaintiff's counsel will paid last. Defendant represents that there are approximately 96 PAGA Settlement Members through August 20, 2021.

B. Plaintiff's Counsel Payment of Attorneys' Fees and Costs

23. Plaintiff's Counsel will apply to the Court for an award of attorneys' fees not to exceed thirty-three and one-third percent (33 1/3%) of the Total Settlement Payment, and Plaintiff's Counsel will also seek reimbursement of reasonable litigation costs not to exceed \$12,000 (attorneys' fees and reasonable litigation costs are referred to as "Plaintiff's Counsel Payment"). Plaintiff's Counsel will be responsible for submitting all documents and/or briefs to support their request for attorneys' fees. Attorneys' fees shall not exceed thirty-three and one-third percent (33 1/3%) of the Total Settlement Payment. Plaintiff's Counsel will submit documentation for reimbursement of reasonable litigation costs.

24. Defendant will not oppose or object to Plaintiff's Counsel's application for attorneys' fees, not to exceed thirty-three and one-third percent (33 1/3%) of the Total Settlement Payment plus all documented and reasonable litigation costs and expenses.

25. In the event that the Court does not approve an award of attorneys' fees equal to the requested amount, or the Court alters the payment methodology described herein, Plaintiff's Counsel agrees not to seek additional review of the Court's decision regarding attorneys' fees, and this Settlement will be enforceable, except that, if the Court awards less than 25% of the Total Settlement Payment, Plaintiff's Counsel reserves the right to seek appellate review of such an award.

26. The Plaintiff's Counsel Payment shall be paid from the Total Settlement Payment. Any reductions by the Court of Plaintiff's Counsel's request for attorneys' fees or costs shall revert to the PAGA Fund, subject to the reservation of right regarding an award that is less than 25% of the Total Settlement Payment.

C. Settlement Administration Fees and Costs

27. Settlement administration shall be done by a qualified, third-party settlement administrator agreed to by the Parties and approved by the Court ("Settlement Administrator"). The Parties agree that the Settlement Administrative Costs shall be paid from the Total Settlement Payment. This includes all fees and costs for postage, envelopes, and computer searches to locate addresses; and expenses of the Settlement Administrator to implement and complete the settlement process according to the terms of this Settlement, to calculate payments to individual PAGA Settlement Members, any cost associated with the escheatment process for any uncashed or undeliverable settlement checks, to prepare any necessary tax documents for PAGA Settlement Members, and any other related fees and costs (the "Settlement Administrative Costs").

28. The Settlement Administrative Costs should not exceed more than \$3,500 (three thousand five hundred dollars). The settlement administration fees and costs shall be paid from the Total Settlement Payment. Any reductions by the Court or any unused amount shall revert to the PAGA Fund.

D. PAGA Fund

29. After deducting the Plaintiff's Counsel Payment and Settlement Administration Costs, the remainder of the Total Settlement Payment (the "PAGA Fund") shall be allocated toward payment to the Labor & Workforce Development Agency and PAGA Settlement Members.

30. Seventy-five percent (75%) of the PAGA Fund will be sent to the LWDA and twenty-five percent (25%) of the PAGA Fund will be allocated among the PAGA Settlement Members, based on each member's proportionate share of the weeks worked during the PAGA Period.

V. COMPUTATION AND DISTRIBUTION OF TOTAL SETTLEMENT FUND

A. Deposit of Total Settlement Payment

31. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The

Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID Number and calculate all settlement checks and withholdings required under law based on information that will be confidentially furnished by Defendant. There are no payroll deductions to be calculated under this Settlement, since no part of the Settlement will be classified as wages.

32. Within thirty (30) calendar days after the Effective Date, Defendant shall deposit the first monthly installment of \$15,000 with the Settlement Administrator. Defendant shall then deposit a monthly installment of \$18,000 every thirty (30) days until the Total Settlement Payment is deposited.

B. Formula for Calculating Share of PAGA Fund

33. The portion of the PAGA Fund that is paid to each PAGA Settlement Member shall be determined based on the following formula:

- (a) The payment to PAGA Settlement Members will be based on the number of weeks worked by each PAGA Settlement Member during the PAGA Period. Partial weeks will be counted as full work weeks.
- (b) The amount to be paid per week worked by a PAGA Settlement Member will be calculated by dividing the value of the portion of the PAGA Fund that will be paid to PAGA Settlement Members by the total number of weeks worked by all PAGA Settlement Members during the PAGA Period.
- (c) Defendant's records shall be determinative for purposes of calculating the number of weeks worked and any payments to PAGA Settlement Members.

C. Distribution of PAGA Fund

34. Defendant shall provide the Settlement Administrator with a list of the names and addresses of the PAGA Settlement Members, to be furnished within seven (7) days after the Court issues an Order approving the Settlement. The contact information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the PAGA Settlement Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement.

35. Within seven (7) days after receipt of the necessary funding, the Settlement

1 Administrator shall distribute to the Plaintiff's Counsel their court-approved litigation costs either via
2 wire transfer payment or check, as specified by Plaintiff's Counsel. At that time the Settlement
3 Administrator is also authorized to disperse to itself the amount of court-approved Settlement
4 Administration fees.

5 36. Within seven (7) days after the receipt of necessary funding, the Settlement
6 Administrator shall pay to the LWDA an amount equivalent to the court-approved seventy-five percent
7 (75%) of the PAGA Fund.

8 37. Within seven (7) days after the receipt of necessary funding, the Settlement
9 Administrator shall distribute to PAGA Settlement Members their court-approved individual portion of
10 the PAGA Fund (the "Individual Payment"), or as otherwise directed by the Court.

11 38. Within seven (7) days after the receipt of necessary funding, the Settlement
12 Administrator shall distribute to the Plaintiff's Counsel their court-approved attorneys' fees, either via
13 wire transfer payment or check, as specified by Plaintiff's Counsel.

14 39. The Settlement Administrator will send the Individual Payment to the PAGA Settlement
15 Members by postmarked First Class U.S. Mail.

16 40. To provide the best notice and delivery of Individual Payments practicable, any
17 Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by post-
18 marked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address
19 is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator
20 shall use the best available technology accessible (e.g. skip tracing, address verification, etc.) to the
21 Settlement Administrator or other mutually agreeable method to locate PAGA Settlement Members and
22 will then mail the Individual Payment to the address identified by the best available technology
23 accessible to the Settlement Administrator or other mutually agreeable method. If no current address is
24 located, the Individual Payment for that individual will be deemed undeliverable. If any PAGA
25 Settlement Members cannot be located within two attempts at mailings by the Settlement Administrator,
26 the Individual Payment for that individual will be deemed undeliverable.

27 41. The Settlement Administrator shall maintain a list of the postmark date for the original
28 mailing of the Individual Payment to the PAGA Settlement Members, the postmark date of any

subsequent mailing to any PAGA Settlement Members, and a list of PAGA Settlement Members who did not receive the Individual Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

42. All settlement checks will remain valid and negotiable for 180 days from the date of their mailing by the Settlement Administrator. After 180 days from the date of their mailing by the Settlement Administrator, any uncashed checks will be void and escheat to the California State Controller's Office in the name of the employee who did not cash his or her check, pursuant to California's unclaimed property laws.

43. No later than January 31 of the year following payment of their individual portion of the PAGA Fund, the Settlement Administrator will prepare and issue an IRS Form 1099 to PAGA Settlement Members who received a payment.

VI. CLAIMS RELEASED BY PAGA SETTLEMENT MEMBERS

A. Claims Released by the LWDA and All PAGA Settlement Members

44. Upon the date of entry of an order by the Court in this Action approving this Settlement, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims. As a result of this release, the PAGA Settlement Members will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

B. Tax Treatment and Tax Indemnification

45. PAGA Settlement Members will assume any tax obligations or consequences which may arise from this Settlement. PAGA Settlement Members release any and all claims that they have or may have against Defendant for any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made under this Settlement or any compensation provided at any time by Defendant or any of the Released Parties. If any state or federal taxing authority contacts, investigates, or pursues any action against any PAGA Settlement Members for their individual share of taxes related to any payments made under this Settlement or any compensation provided at any time by Defendant or any of the Released Parties, each

PAGA Settlement Member shall be responsible for their own defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the PAGA Settlement Member's share of any state or federal tax obligation. If a PAGA Settlement Member has questions about any liability to any state or federal taxing authority, they shall contact the Settlement Administrator. The PAGA Settlement Members shall not contact Defendant, any of the Released Parties, or Defense Counsel.

VII. MISCELLANEOUS PROVISIONS

A. Voiding the Settlement

46. A failure of the Court to approve any material condition of this Settlement shall render the entire Settlement voidable and unenforceable as to Plaintiff and Defendant, at the option of Plaintiff or Defendant. Each party may exercise its option to void this Settlement as provided above by giving notice, in writing, to the other, and to the Court within fifteen (15) days after the Order denying approval of the Settlement has been received by the party seeking to void the Settlement.

B. Mutual Full Cooperation

47. Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's Counsel agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement.

C. Parties' Authority

48. The signatories hereto represent that they are fully authorized to enter into this Settlement.

D. Binding Nature of the Settlement

49. This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. Plaintiff represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, any claim, demand, action, cause of action or rights released in the Released Claims in this Settlement. This Settlement also shall be binding upon Plaintiff and the PAGA Settlement Members.

1 50. This Settlement may be amended or modified only by a written instrument signed by
2 Plaintiff's Counsel and Plaintiff, as well as Defendant's Counsel and Defendant in this Action. No rights
3 under this Settlement may be waived except in writing.

4 51. This Settlement and any attached exhibits constitute the entire agreement between
5 Plaintiff and Defendant in this Action relating to the terms contained herein. All prior or
6 contemporaneous agreements, understandings and statements, whether oral or written, whether express
7 or implied, and whether by a party or its counsel, concerning this Settlement are merged herein. No oral
8 or written representations, warranties or inducements have been made to any party concerning this
9 Settlement or its exhibits other than the representations, warranties and covenants contained and
10 memorialized in such documents.

11 52. Paragraph titles or captions contained herein are inserted as a matter of convenience and
12 for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its
13 provisions. Each term of this Settlement is intended to be contractual and not merely a recital.

14 **E. Joint Drafting of Settlement Documents**

15 53. Plaintiff's Counsel and Defendant's Counsel have arrived at this Settlement as a result of
16 a series of arm's-length negotiations, taking into account all relevant factors, present and potential.

17 54. This Settlement has been drafted jointly by Plaintiff's Counsel and Defendant's Counsel
18 and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed
19 against any of the Parties.

20 55. Plaintiff and Plaintiff's Counsel agree that none of the documents provided to them by
21 the Defendant in this Action shall be used for any purpose other than the settlement of this Action.
22 Specifically, none of the documents provided shall be used to pursue any subsequent claims or litigation
23 against Defendant or the Released Parties.

24 **F. Execution of the Settlement**

25 56. This Settlement may be executed in one or more counterparts and by facsimile. All
26 executed copies of this Settlement and photocopies thereof shall have the same force and effect and shall
27 be as legally binding and enforceable as the original.
28

1 **G. No Press Release or Publicity Regarding the Terms Of Settlement**

2 57. Plaintiff and Plaintiff's Counsel, as well as Defendant and Defendant's Counsel, agree
3 that they will not issue any media or press release, initiate any contact with the media or the press,
4 respond to any media or press inquiry or have any communications with the media or the press about the
5 fact, amount or terms of this Settlement. Plaintiff and Plaintiff's Counsel shall not publicize or refer to
6 the fact or amount of the Settlement, on their websites, social media, any other marketing materials, or
7 legal publication. Plaintiff and Plaintiff's Counsel will not state on their websites, social media, any
8 other marketing materials, or legal publications, that Defendant engaged in any act contrary to California
9 law, or denied payment owed to employees, or otherwise disparage Defendant, or otherwise identify
10 Defendant. Plaintiff and Plaintiff's counsel agree to keep the terms of the Settlement Agreement
11 confidential, except as reasonably necessary to obtain judicial approval of the Settlement Agreement. To
12 the extent limited public disclosures are required to effectuate the Settlement Agreement or to notify
13 courts or parties, such limited and necessary details may be revealed with the consent of all Parties.
14 However, any such disclosures shall not constitute a waiver of confidentiality with respect to any
15 information not publicly disclosed. Defendant shall be allowed to report the Settlement or results of this
16 lawsuit if required to do so by public disclosure regulatory requirements or with respect to any financial
17 or other disclosures which in their judgment are necessary.

18 **H. Continuing Jurisdiction of the Court**

19 58. Pursuant to California Code of Civil Procedure section 664.6, the Parties agree that the
20 Court shall retain jurisdiction over the Parties, and over this Settlement, in order to: (i) monitor and
21 enforce compliance of Settlement, and/or (ii) resolve any disputes over this Settlement or the
22 administration of the benefits of this Settlement.

23 **I. Representations by Plaintiff**

24 59. Plaintiff acknowledges the following:

- 25 (a) Plaintiff has carefully read and fully understands all of the provisions of this
26 Settlement;
27 (b) Plaintiff knowingly and voluntarily agrees to all of the terms set forth in this
28 Settlement and has not been coerced, threatened, or intimidated into executing

1 this Settlement;

2 (c) Plaintiff was advised, and hereby is advised in writing, to consider the terms of
3 this Settlement and consult with his attorney before signing this Settlement.

4 (d) Other than the fees and costs awarded pursuant to the terms of this Settlement,
5 Plaintiff acknowledges that all parties shall bear their own fees and costs through
6 the conclusion of this action.

7 **J. Representations by Defendant**

8 60. Defendant acknowledges the following:

9 (a) Released Parties have carefully read and fully understand all of the provisions of
10 this Settlement;

11 (b) Released Parties knowingly and voluntarily agree to all of the terms set forth in
12 this Settlement and have not been coerced, threatened, or intimidated into
13 executing this Settlement;

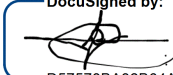
14 (c) Released Parties were advised, and hereby are advised in writing, to consider the
15 terms of this Settlement and consult with their attorney before signing this
16 Settlement.

17 (d) Other than the fees and costs awarded pursuant to the terms of this Settlement,
18 Released Parties acknowledge that all parties shall bear their own fees and costs
19 through the conclusion of this action.
20

21 AGREED TO BY PLAINTIFF:

22 DATED: September , 2021
23 10/5/2021

ARNOLDO CORONADO, individually and on
behalf of other aggrieved employees

DocuSigned by:

D57578BA32B64AC

1 AGREED TO BY DEFENDANT:

2 DATED: September , 2021

BUICK GMC SDNC, LLC.

3
4
5 Title

6 AGREED TO BY PLAINTIFF'S COUNSEL:

7
8 **SULLIVAN & YAECKEL LAW GROUP, APC**

9 DATED: September , 2021

10 William B. Sullivan, Esq.
11 Eric K. Yaeckel, Esq.

12 AGREED TO BY DEFENDANTS' COUNSEL:

13 **PETTIT KOHN INGRASSIA LUTZ & DOLIN**
14 **PC**

15 DATED: September , 2021

16 Shannon R. Finley, Esq.
17 Rachel E. Albert, Esq.
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