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7 Attorneys for Plaintiffs ETHAN STARR and
DAVID PATTERSON, and the putative class

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

11 DAVID PATTERSON,

12 Plaintiff,

13 v.

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15 SCHELL & KAMPETER, INC., and DOES 1-10,
inclusive,

16 Defendants.

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ETHAN STARR, individually and on behalf of all
others similarly situated,

20 Plaintiff,

21 v.

22 SCHELL & KAMPETER, INC., and DOES 1-10,
23 inclusive,

24 Defendants.

Lead Case No: STK-CV-UOE-2020-9296
Case No.: STK-CV-UOE-2021-4585

DECLARATION OF VLADIMIR J.
KOZINA IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: _____, 2022
Time: 9:00 a.m.
Dept: 10D
Judge: Hon. Barbara Kronlund

1 I, Vladimir J. Kozina, declare:

2 1. I am an attorney duly licensed to practice before all the courts of this state and am a
3 shareholder of Mayall Hurley P.C., counsel for Plaintiffs Ethan Starr and David Patterson
4 (“Plaintiffs”).

5 2. I have personal knowledge of the matters set forth herein and, if called upon to do so,
6 could and would competently testify thereto under oath.

7 **Procedural History**

8 3. Plaintiff Patterson filed a putative class action complaint on November 3, 2020 in this
9 Court, Case No. STK-CV-UOE-2020-9296, alleging a cause of action for failure to furnish accurate
10 itemized wage statements.

11 4. On November 3, 2020, Plaintiff Patterson sent written notice to the LWDA and S&K of
12 alleged violations of Labor Code sections 226(a)(8), 226(b), 432, and 1198.5.

13 5. On January 8, 2021, Plaintiff Patterson filed a First Amended Complaint, asserting the
14 same claims and allegations and adding claims under PAGA alleging violations of Labor Code
15 sections 226(a)(8), 226(b), 432, and 1198.5.

16 6. On April 2, 2021, Plaintiff Starr sent written notice to the LWDA and S&K of alleged
17 violations of the Labor Code, specifically that S&K failed to pay overtime, failed to pay sick pay at the
18 regular rate of pay, failed to furnish meal periods, failed to pay all wages at cessation of employment
19 and failed to furnish accurate itemized wage statements, in violation of Labor Code sections 201, 202,
20 203, 204, 218, 226(a), 233, 246, 510, 512, and 1198.

21 7. Plaintiff Ethan Starr filed a putative class action complaint in this Court, Case No.
22 STK-CV-UOE-2021-4585 on May 17, 2021, alleging: 1) failure to pay overtime; 2) failure to pay sick
23 pay at the regular rate of pay; 3) failure to pay all wages at cessation of employment; 4) failure to
24 furnish accurate itemized wage statements; 5) unfair business practices. On August 13, 2021, Plaintiff
25 filed a First Amended Complaint adding the above-stated PAGA claims.

26 8. On September 1, 2021, the Court consolidated the Starr and Patterson actions.

27 9. On March 28, 2022, Plaintiff Starr sent an amended PAGA notice to the LWDA and
28 S&K, adding additional allegations of failure to pay minimum wage and overtime, failure to pay meal

1 period premiums at the regular rate of pay, failure to meal and rest periods, and failure to furnish
2 records.

3 10. On June 8, 2022, Plaintiff Starr filed a Second Amended Complaint, adding claims for
4 failure to pay minimum wage and overtime based on the allegations of shaving time from employee
5 time records, a claim for failure to pay meal period premiums at the regular rate of pay, failure to
6 provide meal and rest periods, and PAGA claims based on Plaintiff Starr's March 28, 2022 PAGA
7 notice.

8 11. On January 18, 2022, the parties engaged in a full-day mediation with Brandon
9 McKelvey, Esq. The parties reached a preliminary agreement to resolve this matter, the terms of which
10 are set forth in the Settlement Agreement.

11 **Investigation, Discovery**

12 12. Through independent inquiry, research, formal and informal discovery, Class Counsel
13 thoroughly and diligently investigated and pursued the claims asserted in this Action.

14 13. This process included, but was not limited to, (1) obtaining and reviewing Plaintiffs'
15 personnel files, payroll records, and time records; (2) researching Defendant, its organization and
16 operations within California; (3) researching the existence of other pending actions; (4) identifying,
17 researching, and pleading the appropriate claims; (5) exhausting administrative remedies; (6)
18 identifying, requesting, securing, and reviewing pertinent policies, practices, and procedures; (7)
19 identifying, requesting, and securing a representative sampling of time and payroll documents and
20 wage statements for the class; (8) creating a reliable damages model; and (9) participating in a full-day
21 mediation.

22 **Settlement Negotiations and Mediation**

23 14. At all times, the Parties' negotiations were adversarial, non-collusive, and at arms'
24 length. At all times the negotiations were supervised and facilitated by a mediator with substantial
25 experience in wage and hour class actions.

26 15. Prior to mediation, Defendant provided Plaintiffs' counsel with hundreds of documents
27 relating to its employment policies, practices, and procedures; data relating to the class size, number of
28 workweeks at issue, and number of wage statements at issue; and a sampling of the time and payroll

1 data for 50 class members. Plaintiffs' counsel provided the data to an economic expert for analysis
2 and developed a damages model. On January 18, 2022, the Parties engaged in a full day mediation
3 with Brandon McKelvey, Esq., where a settlement in principle was reached and a Memorandum of
4 Understanding was executed. A long form settlement agreement was prepared and executed by the
5 Parties on or about April 20, 2022, a true and correct, fully executed copy of which is attached as
6 **Exhibit 1** hereto.

7 16. Pursuant to the Settlement, the Defendant is to remit \$765,000.00 – the Gross
8 Settlement Amount (“GSA”) – on an all-in, non-reversionary basis to resolve the claims to be released
9 by Participating Class Members.

10 17. Participating Class Members are expected to receive an average payout of
11 approximately \$845.

12 18. Class claims are asserted/resolved on behalf of a Class consisting of all persons who
13 have been employed by S&K as non-exempt employees in the State of California at any time from
14 November 3, 2016, through the date of preliminary approval of the settlement.

15 19. There are approximately 500 members of the Class.

16 **Class Counsel’s Damages Analysis and Valuation of the Class Claims**

17 20. The Settlement Agreement represents a compromise of highly disputed claims.
18 Defendant vigorously denies Plaintiff’s allegations in their entirety, denies that certification of the
19 class is appropriate (except for settlement purposes), contends that it has complied with the law, and
20 asserts numerous affirmative defenses, both legal and factual.

21 21. This Settlement has and will result in substantial benefits to all Class Members.
22

23 **Maximum Potential Class Damages**

24 22. Plaintiffs have asserted class claims for: 1) failure to pay overtime at the correct rate
25 and to pay for all overtime worked, 2) failure to pay minimum wage, 3) failure to pay sick time at the
26 regular rate of pay, 4) failure to pay meal period premiums at the regular rate of pay, 5) failure to
27 provide meal and rest periods, 6) failure to pay all wages at cessation of employment; 7) failure to
28 furnish accurate itemized wage statements; and 8) unfair business practices based on the foregoing.

1 23. Based on the documentation and data provided to Class Counsel by Defendant, Class
2 Counsel was able to develop a model setting forth the maximum damages recoverable by the class.
3 Defendant provided Class Counsel with the approximate size of the class, the number of workweeks
4 and pay periods at issue, and a sampling of approximately 50 employees' time and payroll records.
5 Class Counsel engaged the services of an expert economist to prepare a damages model based on this
6 information.

7 24. With respect to the overtime claims, Class Counsel's expert determined that there was a
8 maximum of approximately \$125,192 in unpaid overtime and double time wages.

9 25. With respect to underpaid sick pay, our expert determined that there was a maximum of
10 approximately \$37,593 in underpayment.

11 26. Regarding underpaid meal period premiums, our expert determined that there was a
12 maximum of approximately \$3,001 in unpaid wages.

13 27. Based on the information provided by Defendant, there were approximately 117 former
14 employees who are members of the class, and Defendant was calculated to owe a maximum of
15 approximately \$570,586 in waiting time penalties to these class members for the above underpaid
16 wages.

17 28. With respect to the claim for failure to furnish accurate itemized wage statements, Class
18 Counsel's expert determined a maximum potential liability of \$1,655,670 in wage statement penalties
19 based on all theories asserted by Plaintiffs.

20 29. Our expert was unable to calculate the exact amount of alleged underpaid minimum
21 wages based on alleged modified punches (which Defendant alleged was the result of a neutral
22 rounding policy). However, given the relatively small magnitude of the discrepancies (very small
23 fractions of an hour) found, the additional liability derived from the minimum wage violations would
24 not appreciably change the maximum potential liability faced by Defendant.

25 30. In total, Class Counsel determined that Defendant faced a maximum classwide
26 potential exposure of approximately \$2,392,042, with the significant majority of this potential amount
27 being attributable to alleged waiting time and wage statement penalties. The Maximum Settlement
28

1 Amount of \$765,000 represents 31.9% of the overall estimated maximum potential liability faced by
2 Defendant.

3 **Defendant's Defenses and Realistic Liability**

4 31. Defendant raised several defenses against the class claims having the potential to
5 substantially reduce or eliminate its potential exposure. At the very least, the defenses would have
6 delayed any recovery on behalf of the Class substantially, potentially years.

7 32. For example, Defendant contended that its bonuses were discretionary, that the bonus
8 payments themselves already accounted for retroactive overtime, that any discrepancies in the time
9 records was the result of a neutral rounding policy employed by Defendant, that to the extent
10 Defendant underpaid any employees, such underpayment was not willful such that former employees
11 would not be entitled to waiting time penalties, that Defendant substantially complied with its meal
12 and rest period obligations and that any variation from that was the result of individualized issues, that
13 Defendant's use of a dba on its wage statements complied with Labor Code section 226(a)(8), and that
14 Defendant was not liable for derivative wage statement penalties as a matter of law.

15 33. Taking these risks into account, Class Counsel came up with a more reasonable,
16 realistic potential recovery to the class that: 1) reduced the exposure on the overtime claims by 50% to
17 account for the contention that certain of the bonuses were either discretionary or that overtime was
18 already incorporated into the payments made to employees; 2) reduced the exposure on the waiting
19 time penalties claim by 25% to account for Defendant's argument that the underpayments were not
20 willful, especially with respect to the meal premium underpayment, which until recently could be paid
21 at the employee's base rate; and 3) reduced the wage statement penalties by 75% to account for the
22 difficulties in establishing liability on a derivative wage statement theory and Defendant's contention
23 that its dba complied with Labor Code section 226(a)(8), as the dba was properly and timely registered
24 with appropriate local and state agencies. After making those adjustments, Class Counsel determined
25 that Defendant's more realistic potential exposure was \$945,047, of which the \$765,000 settlement
26 amount represents 80.9%.

27 34. Considering all of the circumstances, and the inherent risks in further litigation that
28 would undoubtedly have included multi-pronged legal attacks on the Class Claims, and a necessarily

1 protracted litigation process of uncertain outcome, which is expected to provide an approximate
2 average net recovery of \$845 (\$422,500/500) to each Class Member, provides timely, guaranteed and
3 cognizable monetary relief that is objectively fair, adequate, and reasonable.

4 35. While I am confident that certification could have been attained on all class claims,
5 continued litigation was guaranteed to be costly, time consuming, and risky. Appellate proceedings
6 would only further delay and jeopardize recovery by Class Members. By contrast, the proposed
7 Settlement ensures timely relief and substantial recovery for the Class and is superior to other recently
8 approved settlements raising similar claims.

9 36. The Released Class Claims, defined in Sections I.GG and I.HH of the Settlement, were
10 narrowly tailored to track the factual allegations underlying the claims advanced on behalf the Class
11 and do not include a Civil Code section 1542 waiver.

12 **PAGA Penalty Payment**

13 37. The Settlement allocates \$50,000 to resolution of claims for PAGA civil penalties
14 arising out of the alleged violations of the Labor Code committed against the Class. The Parties
15 negotiated this amount in good faith, intending to serve the punitive and deterrent purposes of the
16 PAGA.

17 38. This is an appropriate resolution under the circumstances because the punitive and
18 deterrent purposes of the PAGA are being served. *Jennings v. Open Door Marketing, LLC* (N.D. Cal.
19 2018) 2018 WL 4773057 *8-9 (approving PAGA recovery of 0.6% of maximum); *Ahmed v. Beverly*
20 *Health & Rehabilitation Svcs., Inc.* (ED. Cal. 2018) 2018 WL 746393 *10.

21 39. I transmitted the Settlement Agreement to the LWDA on June 14, 2022 in compliance
22 with Labor Code § 2699(1)(2). See **Exhibit 2**.

25 **The Class Notice Complies with Rule 23 and Satisfies Due Process**

26 40. Attached as **Exhibit A** to the Settlement Agreement is true and correct copy of the
27 proposed Notice of Class Action Settlement and Final Approval Hearing (the “Class Notice”) which
28 has been reviewed and approved by the Parties.

1 41. The Class Notice meets all of the requirements of procedural due process and Rule
2 23(e) by identifying the Plaintiffs and Defendant and describing the claims and the Class Action in a
3 straightforward manner; succinctly describing the essential terms of the proposed Settlement,
4 including the Class Representatives' proposed Service Payments and the amount Class Counsel will
5 request for attorney's fees and costs; identifying the claims that are being released by the Classes;
6 identifying all parties against whom claims are being released; providing Class Members with
7 information on how to participate in, exclude themselves from, or object to the Settlement; clearly
8 providing all applicable deadlines for such action; informing Class Members of the consequences if
9 they decide to exclude themselves from the Settlement; and advising them that, if they choose to
10 participate and the Settlement is approved, they will be bound by the resulting judgment, including
11 informing them that this may affect their ability to participate in other pending litigation. Further, the
12 Class Notice clearly explains the manner in which Class Members can obtain further information (e.g.,
13 through the Court's website and the administrator's website) and that the Final Approval Hearing may
14 be moved without further notice.

15 42. Because all Class Members are current or former employees of Defendant, for whom
16 Defendant has current or last known addresses as well as SSNs, notice here is simpler and more
17 reliable than in other types of class actions that require published notice to reach unidentifiable class
18 members.

19 **Atticus Administration, LLC Should be Approved as Claims Administrator**

20 43. The Parties have selected Atticus Administration, LLC ("Atticus") to serve as
21 Administrator.

22 44. Class Counsel has experience with Atticus and have found their fees fair and
23 competitive amongst other administrators in the industry. I believe the estimated costs of
24 administration of \$15,000 is reasonable in relation to a class of this size, the work to be performed, and
25 as compared to estimates received from other administrators.

26 **Plaintiffs Have Served and Will Serve the Class Well**

27 45. Plaintiffs' interests in prosecuting this Class Action and obtaining the most beneficial
28 recovery possible fully comport with the collective best interests of the Class Members. Plaintiffs

1 understand the claims and theories that are being advanced, have been involved through the litigation
2 and have no conflicts with the other members of the Class whom they seek to represent. Plaintiffs
3 were subjected to the same unlawful policies, practices, and procedures, specifically failure to pay
4 overtime, failure to pay minimum wage, failure to pay sick time at the regular rate, failure to pay meal
5 premiums at the regular rate, failure to pay all wages at cessation of employment, failure to provide
6 meal and rest periods, and failure to furnish accurate itemizes wage statements. Were Plaintiffs not
7 serving as Class Representatives, they would be Class Members.

8 46. Plaintiffs have to date and are prepared to continue adequately representing the interests
9 of the Class Members. Plaintiffs have demonstrated their commitment to prosecuting this Class
10 Action on behalf of the Class Members by, amongst other things, locating and retaining attorneys,
11 participating in discovery and investigation, filing their lawsuits and willingly exposing their names
12 and reputations to scrutiny from prospective and/or future employers, participating in discovery,
13 helping to facilitate the Settlement for which approval is now sought, and being willing to testify at
14 trial.

15 47. Plaintiffs, who have worked diligently with Class Counsel throughout this entire
16 litigation, including taking numerous calls with Class Counsel, participating in the Parties' information
17 exchange, and participating in the mediation and settlement negotiations, should be rewarded for
18 taking the initiative to pursue these claims on behalf of their coworkers, and for their role in reaching a
19 substantial settlement providing for valuable monetary relief to the Class.

20 48. Plaintiffs will apply for a Service Payment in the amount \$10,000 each in consideration
21 for their service as Class Representatives. I believe this to be fair, reasonable, and appropriate.

22 49. Class Members will be apprised of Plaintiffs' request as well as their ability to review
23 the moving papers on the Court's website, and to object to the request if they so desire.

24 **Experience of Class Counsel**

25 50. I obtained a B.S. degree in Molecular Biology from the University of California, San
26 Diego in 2001. I subsequently obtained a M.S. degree from the University of the Pacific in Biological
27 Sciences in 2005.

1 51. I attended the Laurence Drivon School of Law from 2008 through 2012, graduating as
2 Valedictorian. I earned my J.D. and became a member of the California Bar in 2012.

3 52. The vast majority of my practice is devoted to plaintiff's employment matters,
4 including employment discrimination and wage-and-hour actions. My practice also includes
5 employment defense, personal injury, and contract actions. I have substantial involvement in complex
6 litigation like the instant case, and have worked on or am currently working on several wage and hour
7 class action cases with Mayall Hurley, P.C. Currently, the majority of my practice is devoted to
8 complex litigation similar to the instant action. My law firm, Mayall Hurley P.C., primarily through
9 attorneys William J. Gorham, III and me, has pursued this action aggressively, and many other similar
10 class, collective, and representative actions. For instance, Mayall Hurley P.C. has recently been
11 approved as class counsel in *Flores v. Dart Container Corp., et al*, Eastern District of California Case
12 No. 2:19-cv-00083-WBS-EFB; *Rodriguez v. J-M Manufacturing, Inc.*, San Joaquin County Superior
13 Court Case No. STK-CV-UOE-2019-6065; *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County
14 Superior Court Case No. STK-CV-UOE-2020-1774; *Modica v. Iron Mountain Information*
15 *Management Svcs., Inc.*, United States District Court, Eastern District of California Case No. 2:19-cv-
16 00370-TLN-JDP; *Magee v. Thyssenkrupp Materials, N.A., et al.*, Alameda County Superior Court
17 Case No. RG19027231; *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior
18 Court Case No. 37-2018-00004296-CU-OE-CTL; *Pacheco v. Bushfire Grill, Inc., et al*, United States
19 District Court, Southern District of California, Case No. 3:18-cv-01696-JAH-WVG; *Wise v. ULTA*
20 *Salon, Cosmetics & Fragrance, Inc.*, United States District Court, Eastern District of California, Case
21 No. 1:17-cv-00853-DAD-EPG; *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County
22 Superior Court, Case No. RG18906875; *Mansur v. Owens-Brockway Glass Container, Inc.*, San
23 Joaquin County Superior Court, Case No. STK-CV-UOW-2018-14631; *Alderson v. Alameda County*
24 *Agricultural Fair Association*, Alameda County Superior Court, Case No. RG18912654; *Terry v.*
25 *Mare Island Dry Dock, LLC*, Solano County Superior Court, Case No. FCS051650; *Mettler, Bender,*
26 *and Rojas v. Les Schwab Tire Centers of California, Inc.*, San Joaquin County Superior Court, Case
27 No. STK-CV-UOE-2018-476; *Escalera v. La Tapatia Mexican Market, Inc.*, San Joaquin County
28 Superior Court, Case No., ST-CV-UOE-2017-5296; *Garcia, et al. v. HMS Host USA, Inc.*, United

1 States District Court, Northern District of California, Case No. 17-cv-03069-RS; *Ali v. Sutter Valley*
2 *Medical Foundation, Inc.*, Sacramento County Superior Court, Case No. 34-2017-00217486; *Grady, et*
3 *al. v. People 2.0 dba The Hire Source, et al.*, San Joaquin County Case No. STK-CV-UOE-2017-
4 13867; *Kumar v. Forty Niners Stadium Management Company*, Santa Clara County Superior Court,
5 Case No. 17CV3121427; *Gast v. Flooring Liquidators, Inc.*, Stanislaus County Superior Court, Case
6 No. 2026223; *Russell v. KeHe Distributors, Inc.*, United States District Court, Eastern District of
7 California, Case No. 2:17-at-00592; *Smith v. Wal-Mart Stores, Inc. et al.*, United States District Court,
8 Northern District of California, Case No. 3:16-cv-02832-JD; *Titus v. The Martin-Brower, LLC*, United
9 States District Court, Eastern District of California, Case No. 2:17-cv-00558-JAM-GGH; *Hugues v.*
10 *The Morning Star Trucking Company, LLC, et al.*, Yolo County Superior Court Case No. CV16-1215;
11 *Ahmed v. Beverly Health and Rehabilitation Services, Inc., et al.*, United States District Court, Eastern
12 District of California, Case No. 2:16-cv-01747-WBS-KJN; *Guzman-Padilla, et al. v. Gerard Van De*
13 *Pol, et al.*, United States District Court, Eastern District of California, Case No. 2:17-cv-00196-JAM-
14 KJN; *Jaime v. Walt Disney Parks and Resorts U.S., Inc.*, United States District Court, Central District
15 of California, Case No. SACV 15-01618-CJC(DFMx); *Stevens v. Suncrest Solar, Inc.*, Fresno County
16 Superior Court, Case No. 16CECG03355; *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda
17 County Superior Court Case No. RG17866256; *Maasrani v. Waterton Hospitality Management*, San
18 Mateo County Superior Court, Case No. 17CIV05470; *Huynh v. Parker-Hannifin Corporation*,
19 Stanislaus County Superior Court, Case No. 2022325; *Moser v. O'Connor Woods Housing*
20 *Corporation*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2014-0009861; *Bastami v.*
21 *Semiconductor Components Industries, LLC*, Santa Clara County Superior Court, Case No.
22 16cv297447; *Davis v. Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court, Case
23 No. BC592580; *Van Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District Court,
24 Eastern District of California, Case No. 1-16-cv-00066-SKO; *Clark v. Arrow Sign Co.*, San Joaquin
25 County Superior Court, Case No. STK-CV-UOE-2016-6457; *Moreno v. B.R. Funsten & Co.*, Solano
26 County Superior Court Case No. FCS046149; *Taylor v. Meadowbrook Meat Company, Inc.*, United
27 States District Court, Northern District of California, Case No. 3:15-cv-00132-LB, and *Perez et al. v.*
28 *Abbate Family Farms Limited Partnership et al.*, San Joaquin County Superior Court, Case No. 39-

1 2012-00288653-CU-OE-STK, all wage-and-hour class actions with claims similar to the instant
2 matter. Not including this matter, we have several other wage-and-hour class actions currently
3 pending final approval in which we have been preliminarily approved as class counsel. My law firm
4 and I have also represented plaintiffs in numerous representative employment actions, settlements in
5 which have been approved by multiple California and federal courts, and are currently prosecuting
6 dozens more.

7 53. Mayall Hurley, P.C. has also obtained class and/or conditional certification in a number
8 of contested cases, including *Liu v. QNAP, Inc.*, Los Angeles County Superior Court Case No.
9 19PSCV00668; *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No. STK-
10 CU-UOE-2016-1264; *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin
11 County Superior Court, Case No. 39-2012-00288653-CU-OE-STK, *Wilk v. Skechers U.S.A., Inc.*,
12 United States District court, Central District of California, Case No. 5-18-CV-01921-JGB-SP; *Titus v.*
13 *Paramount Equity Mortgage, LLC*, United States District Court, Eastern District of California, Case
14 No. 2:17-cv-00349-MCE-KJN; and *Solati v. RPM Mortgage, LLC*, Solano County Superior Court
15 Case No. FCS048401.

16 I declare under penalty of perjury under the laws of the State of California and the United
17 States of America that the foregoing is true and correct. Executed on this 14th day of June, 2022, in
18 Stockton, California.

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VLADIMIR J. KOZINA