IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

GAVIN NEWSOM, in his official capacity as Governor of the State of California, Petitioner, **v.** **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SUTTER,** Respondent, **JAMES GALLAGHER and KEVIN KILEY**, Real Parties in Interest.	Case No. C093006

Sutter County Superior Court, Case No. CVCS20-0912
Honorable Sarah Heckman, Judge (Civil Dept.: (530) 822-3304)

PRELIMINARY OPPOSITION OF REAL PARTIES IN INTEREST, JAMES GALLAGHER AND KEVIN KILEY, TO PETITION FOR EXTRAORDINARY WRIT OF MANDATE, PROHIBITION, OR CERTIORARI; APPLICATION FOR TEMPORARY STAY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Executive Orders

Other Authorities

INTRODUCTION

The very business day following the trial court's final Statement of Decision, Petitioner has sprung on Real Parties in Interest and Respondent Superior Court a battery of new evidence[1] and legal arguments – replete with false statements and mischaracterizations – that were not introduced at the trial or in hundreds of pages of briefing. Such sandbagging should not be rewarded with the extraordinary remedy of writ relief, which Petitioner seeks to abuse as a vehicle to re-try the case.

The petition is defective on its face for two reasons. First, no judgment has been entered in the proceedings below. Once it has (in a matter of days), Petitioner has a right to appeal and could attempt a petition for a writ of supersedeas for a stay at that time. Second, Petitioner makes no showing of irreparable harm. There are no additional executive orders that have been challenged pursuant to the injunction issued by the lower court, and nowhere in his lengthy filing does Petitioner identify any contemplated executive action that seeks to amend, alter, or change a statute in a way proscribed by the trial court's injunction. Speculation of harm from a judgment that has not yet been entered and can be

[1] Petitioner's Appendix includes Tabs 6 and 60 which were not part of the evidence submitted to the trial court, though Petitioner had a full and fair opportunity to introduce such evidence at that time. He is now requesting this Court take judicial notice for the purposes of his argument herein. They certainly cannot be used to show any abuse of discretion by the trial court.

appealed does not establish the urgency necessary to support a writ petition.

At such time that a judgment is entered and an appeal filed, Real Parties would agree to an expedited briefing schedule. Real Parties have waited months to prove their case in court, and after a full and fair trial in which Petitioner had every opportunity to make his defense, were successful in obtaining the relief sought from the outset of the litigation: a declaration of rights as between the parties and an injunction prohibiting the Petitioner from unconstitutional conduct. Withholding that relief before Real Parties or Respondent have an opportunity to counter Petitioner's radically re-invented legal defense would defy basic notions of fairness. Worse, it would be taken by Petitioner as a green light to continue amending and creating statutory law, something no California court has ever countenanced. This Court should not, for the first time in our state's history, give a nod of judicial approval to unilateral executive lawmaking.

Petitioner is asking this Court to take sides in a conflict between two branches of our government after only hearing from one of them, to delay a remedy meant to preserve the constitutional status quo, and to deal yet another blow to our civic institutions. The requested stay would work an injustice against Real Parties, their legislative colleagues,[2] and millions of

[2] The Governor's usurpation of legislative power has led to repeated conflicts with the Legislature. For instance, Senator Holly Mitchell (D-Los Angeles), Chair of the Joint Legislative Budget Committee, stated the "Legislature has repeatedly called for the Executive Branch to collaborate on COVID-19 response.

Californians who have for eight months been deprived of a representative process on policy matters of profound importance to their health and well-being.

ARGUMENT

The Real Parties in Interest intend to provide a more thorough opposition and return to the Petitioner's Application for Writ, but in the interests of time and to avoid an unnecessary and unjust stay of the Superior Court's valid Statement of Decision and judgment, we request that this Court consider the following:

A. The Petition Contains Many False Statements Regarding the Evidence and Record in the Lower Court

In an attempt to sew confusion over the trial court's ruling, Petitioner makes numerous false claims that are contradicted by the evidentiary record. Consider just a few examples on the single issue of mootness:

But time and again, the Legislature has been put in the position of simply giving a yes or no answer to the Governor's priorities." Assemblyman Phil Ting (D-San Francisco) decried the Executive Branch's "huge overreach of authority" and its "disdain to properly communicate with the Legislature," observing that "[t]he governor does not have complete authority to do whatever he wants to fight . . . diseases." (*Available at* https://calmatters.org/wp-content/uploads/2020/10/FINAL-JLBC-to-DOF-Section-11.90-Homekey-10-7-2020.pdf and https://apnews.com/article/4d7c6095fd96840f534914ab6d220d04).

1. That SB 423 "superseded the remaining operative provisions of Executive Order N-67-20 and rendered the case moot." (Pet. at 42). This is factually incorrect as it was established that the order remained in effect to exempt Voters Choice Act Counites from holding public meetings with voting rights groups regarding the conduct of the election. (*See* Trial Transcript, III Tab 51 pp. 594-595, Sec. of State Memo, II Tab 38 p. 332). The Respondent court made this finding in its Statement of Decision, which was one of the bases for determining that the case was not moot. (III Tab 56 pp. 703-704).

2. That the ballot-tracking provisions of the Executive Order and the legislation were "functionally identical" (Pet. at p. 27). Evidence was submitted that AB 860 contains no requirement to utilize Intelligent Mail Barcodes (IMb), and further provides for counties to utilize a ballot tracking system different from that of the Secretary of State. Executive Order N-67-20 instead requires the use of both IMb and the Secretary of State's system. (*See* AB 860 (I Tab 21, pp. 150) and Executive Order, Sec. 2, (I Tab 14 p. 75).). Yet even after the passage of AB 860 the Secretary of State continued to require counties to utilize IMb on its mail ballot envelopes throughout the election. (*See* Trial Transcript (III Tab 51, pp. 592-594) and Sec. of State Memo #20151 dated July 14, 2020 (I Tab 24, p. 164) ["Executive Order N-67-20 provides that all county elections officials are required to use Intelligent Mail barcodes (IMb) on vote-by-mail envelopes."] [emphasis added].). Petitioner produced no evidence that IMb is a necessary component for use of the Secretary of State's, or any

other system for that matter. The factual point is clear: the provisions are in fact different and there is no evidence that they were "functionally identical."

3. That the Legislature "opted not to address" the rights of persons with disabilities and language barriers to partake in election planning. (Pet. at 27). The Legislature has expressly put that right into statute, specifically in Elections Code section 4005(a)(10), and SB 423 omitted making any change to that statute. (*See* SB 423, SEC. 1601 (I Tab 27 p. 183).). The Petitioner's statement that it was "possibly because such plans had already been made" (Pet. at 27) is pure speculation and has no support in the evidentiary record. The provisions of SB 423 and the Executive Order were in fact different and the Executive Order continued to control on this point throughout the election. (*See* Sec. of State Memo (II Tab 38, p. 332).).

4. That Petitioner "formally rescinded Executive Orders N-64-20 and N-67-20." (Pet. at p. 28). The Respondent court found that he had never "formally rescinded" Executive Order N-67-20. (*See* III Tab 56, p. 703). Petitioner, prior to the initiation of this litigation, stated that his Order was "on firm legal ground" and that subsequent legislation was not "strictly necessary." (I Tab 20, p. 143). During the litigation, Petitioner's *attorneys* made arguments in briefing that the Orders had been "superseded" by the legislation. Petitioner finally expressed an opinion on September 30, 2020 (over three months after AB 860 had been enacted, nearly two months after SB 423 was enacted, and three weeks before the trial) that the bills "superseded" his Executive

Orders. (II Tab 37, pp. 323-324.) This statement was not a "rescission" and was also factually incorrect based on the evidence.[3]

5. That the Executive Order did not "in any way control the administration of the November election" (Pet. at p. 44). Again, the Secretary of State cited the Executive Order as authority for the requirement that all mail ballot envelopes must contain IMb. (I Tab 24). It then continued to require this and to exempt VCA counties from public meetings with voting rights groups in its subsequent memo issued on October 2, 2020. (*See* II Tab 38, pp. 332 and 337). The Order did in fact control procedures of the election.

6. That the Secretary of State "corrected" this statement "long before the election" (Pet. at p. 44-45, n.8). First, the statement was not "corrected." In a footnote in small font it states that "AB 860 and SB 423 superseded Executive Orders N-64-20 and N-67–20 . . . ." (II Tab 38, p. 330). However, the memo goes on to exempt public meetings with voting rights groups and require use of Intelligent Mail barcode. (*See* II Tab 38, pp. 332 and 337.) The only basis of authority for these directives is the Executive Order. Second, the memo was issued two days before

[3] Petitioner attempts to insert new evidence (also not submitted at trial) that he had made a statement with regard to a different lawsuit that a different Executive Order (N-64-20) was "superseded" by AB 860. (Pet. at p. 42.) Again, this is not a statement of "rescission" and has no relevance to the Executive Order in this case.

ballots were mailed (not "long before the election") and only after the issue of conflicting provisions was raised in this litigation.

7. The statement that "SB 423 could not actually be enacted until mid-August" (Pet. at p. 66). There is no evidence in the record that (at the time of the issuance of the Executive Order in June of 2020) the bill could not be passed earlier in time. In fact, at the time the Order was issued the Senate had already passed SB 423 and it was in the Assembly Elections & Redistricting Committee. (*See* Legislative History, IV Tab 57, p.725). The bill was ultimately enacted on August 6, and the Legislature had already passed AB 860 on June 18, 2020 (p. 724).

These inaccuracies illustrate why the Court should not summarily vitiate the trial court's carefully considered decision on the basis of Petitioner's inaccurate statements of the record and new material that it seeks to introduce before Real Parties or Respondent have an opportunity to fully respond.

B. A Review of the Actual Evidentiary Record, Trial Briefs and Statement of Decision Shows that the Decision of the Lower Court is Legally Sound.

After a full and fair trial (in which the parties stipulated to the agreed-upon documentary evidence to be submitted to the Court, *see* II Tab 46) the Respondent Superior Court ruled in favor of Real Parties. This ruling preserves the constitutional authority of the State Legislature to exercise its legislative powers and prevents Petitioner from further usurping legislative authority not granted to him under the California Constitution or the California Emergency Services Act ("CESA") (Cal. Gov. Code §8550 et seq.).

Superior Court Judge Sarah Heckman's thorough Statement of Decision correctly applies the law to the facts that were presented in evidence at the trial court level. Before making any decision on a temporary stay, Real Parties request that the Court fully review the Statement of Decision (III Tab 56), the evidence that was submitted to the lower court (*see* Tabs 1-5, 7-8, 10-17, 20-22, 24, 27-28, 33, 37-38, 57-59; at trial Defendant's Exhibits 1-2, 4-16, 18 and 19 and Plaintiff's Exhibits A-J), and the respective trial briefs (II Tabs 47 and 48) of the parties. This will provide a full picture of the legal arguments and the factual evidence that were before that court. Once the Court reviews the complete record, Real Parties are confident that it will find that the decision of the Superior Court is correct as a matter of law.

C. A Stay of the Decision and Judgment in the Lower Court Would Work an Injustice By Permitting the Ongoing Conduct of Petitioner Which Has Been Found to Violate Constitutional Principles of Separation of Powers.

It would be the utmost injustice to stay the enforcement of a judgment that is essential to preserve the careful balance of power behind the State's constitutional design. "The separation of powers doctrine articulates a basic philosophy of our constitutional system of government; it establishes a system of checks and balances to protect any one branch against the overreaching of any other branch." *Bixby v. Pierno* (1971) 4 Cal.3d 130, 141, 481. Critically, the doctrine "limits the authority of one of the three branches of government to arrogate to itself the core functions of another

branch." *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 297.

The underlying litigation focuses on the Governor exceeding his constitutional and statutory authority to usurp legislative powers. Real Parties are elected state legislators. While they sought that relief in court, the evidence shows that the Governor's Executive Order regarding elections was allowed to control aspects of the election (despite duly enacted legislation to the contrary), and the Governor has continued to amend statutory law. Real Parties have now obtained declaratory relief that the Governor's actions violated the California Constitution and an injunction restraining him from taking such actions in the future. Now he seeks a stay from this Court that would allow the Governor to continue to exceed his constitutional authority and violate the clear terms and plain limitations of the Emergency Services Act.

The Court should not enter a stay based solely upon Petitioner's own new arguments and inaccurate description of the facts. This would work a grave injustice on Real Parties, who have sought after and obtained this relief to provide a check on the Governor's abuse of power in the interests of not just themselves, but all Californians.

D. The Decision is Consistent with This Court's Previous Stay and Writ of Mandate Issued in the Case

Respondent's decision is not at all inconsistent with the Court's previous writ of mandate in this case. The stay of Respondent's temporary restraining order in June of this year did

not preclude the court "from conducting further proceedings relating to the merits of this case." (I Tab 19 p. 136). This Court's ruling there only addressed the temporary restraining order and did not (nor could it) make any determination regarding the merits or the mootness of the case. The Court did not assess the trial court's judgment that the Governor had acted in violation of the California Constitution, nor did it otherwise "weigh in on the scope or breadth of the Governor's emergency powers." *Newsom v. Superior Court of Sutter County* (2020) 51 Cal.App.5th 1093, 1094. While stating that the passage of SB 423 – a different bill then than the one ultimately enacted (I Tab 12 and 27; IV Tab 57, p.725) – "may" render the case moot, the Court made no determinations of mootness and further stated: "If, for some reason, a substantive conflict does arise between the Governor's emergency powers and the Legislature, that could present issues requiring careful consideration and ultimate resolution by the courts." *Newsom*, *supra*, at p. 1094.

Consistent with that ruling, the lower court has now considered the underlying merits (including the Petitioner's arguments regarding mootness) and has found in favor of Real Parties. Real Parties briefed the mootness issue extensively in their opposition to Petitioner's motion for judgment on the pleadings. (*See* I Tab 31). We would invite the Court to review these arguments. There Real Parties showed that the case was not moot because the Order was still in effect and being implemented even after the legislation was passed (I Tab 31, pp. 221-225) and showed how the cases cited by Petitioner (cited again

herein) were factually inapposite or inapplicable to the case at bar (pp. 226-229). But even assuming *arguendo* that the case was factually moot because of events occurring subsequent to the filing of the suit, a lower court still retains the "inherent discretion to resolve the issue" where it involves a case of great public concern likely to re-cur. *In re William M.* (1970) 3 Cal.3d 16, 23-24. The Respondent court cited *William M.* in its ruling and exercised its discretion to do just that, on a matter that all sides agree is of great public interest. (III Tab 56 p. 704.) The court's judgment and discretion in this matter must be given due deference and weight.

E. The Case is Not Moot and the Lower Court Correctly Reached the Merits.

Petitioner's argument as to mootness is wrong for three distinct reasons. *First*, the case was not made moot by the passage of legislation. The trial court found that Executive Order N-67-20, notwithstanding the passage of subsequent legislation, "remained in effect" and included "provisions controlling the elections process for the November 3, 2020, General Election." (See III Tab 56, p. 703). The court referenced the substantive evidence in its ruling and its finding of fact on this issue is entitled to deference.

Second, the court found that the case presented a "legal controversy" not limited only to the Executive Order itself. That "broader" controversy was "specifically whether the Governor has the authority under . . . [the Emergency Services Act] to exercise legislative powers by unilaterally amending, altering, or

changing existing statutory law or making new statutory law." *Id*. The court went on to state that the positions of the parties are diametrically opposed on this point. By Petitioner's own description, in this case "the merits . . . implicate the validity of a vast range of emergency-response measures." (Pet. at 50.). Both sides appear to agree with the court below that the controversy – whether the Emergency Services Act does or constitutionally could give the Governor legislative powers – is one of ongoing importance.

Finally, this is clearly the type of controversy that is "likely to re-cur" especially in these times: a pandemic that has no apparent end in sight. This is where the multiplicity of executive orders came into play in the evidentiary record. There have been three separate executive orders regarding elections this year alone. (I Tabs 8, 11, and 14). The likelihood of a special election on the horizon was extremely likely. At trial, Real Parties presented evidence that a special election has occurred with within months of every General Election over the last 15 years. (IV Tab 59). That event is now certain with a vacancy recently created in the 26th Senate District. Finally, the evidence showed that the Governor has issued over 50 executive orders (IV Tab 58) many of which amend or alter statutory law and continues to issue executive orders that rely on incorrect interpretations of sections 8627, 8567, and 8571 of the Government Code to establish legislative policy. (II Tab 56, p. 169.) All of this evidence supported the determination that this controversy is likely to re-cur.

F. Petitioner's Writ If Successful Threatens the Constitutionality of the California Emergency Services Act Itself, Posing an Even Greater Threat to Responding to Future Emergencies.

Petitioner's writ calls into question the constitutionality of the Emergency Services Act. In the proceedings below, Petitioner argued the Act "centralizes the State's powers in the hands of the Governor" (I Tab 35, p. 282), entitling him to create new elections policy without any elections-related statutory authorization from the Legislature (*id.* at pp. 288-89.). Section 8627, he argued, is a "catchall" that provides the Governor authority to create alternate policy without subject-matter-specific statutory authorization. (II Tab 48, pp. 208-209; *see also* Trial Transcript (III Tab 57, pp. 86-87 ["[T]here might be something that the Governor needs to do that is not within those enumerated powers [of the Act], and that's why it included the catchall in 8627".]). Petitioner argues that again here. (Pet. at 53-54.) Correctly discerning that such a roving authorization would render the Act an unconstitutional delegation of legislative authority, the Respondent court invoked the canon of constitutional avoidance to avoid striking down the entire Act (III Tab 56, p.171),[4] thus

[4] It is beyond dispute that Petitioner's interpretation of the Act, at the very least, raises constitutional *doubts* – which is the predicate for invoking the avoidance canon. (*People v. Amore* (1974) 12 Cal.3d 20, 30.) Petitioner himself states that the merits of the case "raise complex constitutional questions" (Pet. at pp. 50-51.), and the Michigan Supreme Court has just invalidated an emergency powers statute whose breadth matches that which Petitioner's "catchall" interpretation of section 8627 gives to California's law. (*In re Certified Questions from U.S. Dist. Court*,

leaving intact the emergency authority the Legislature has given the Governor and which Governors have used to combat emergencies of every kind for 50 years.

This Court should not, without careful review, cast doubt on the trial court's statutory interpretation in a way that could lead to the invalidation of the entire Emergency Services Act.

G. The Provisions of the Injunction Issued by the Respondent Court are Clear and Constitute No Burden Upon the Petitioner other Than a Respect for the Separation of Powers.

The trial court's injunction, far from creating an "inadministrable" standard (Pet. at p. 61), is based on the fundamental distinction between legislative and executive power that is set forth in the State Constitution and which the California Supreme Court has had no trouble identifying with clarity: "Unless permitted by the Constitution, the Governor may not exercise legislative powers." *Harbor v. Deukmejian* (1987) 43 Cal. 3d 1078, 1084. The California Supreme Court has a tried-and-true framework, refined over decades, for distinguishing executive actions that impermissibly make new policy from those that properly implement statutory law. *See, e.g.*, *Yamaha Corporation v. Board. of Equalization* (1998) 19 Cal.4th 1. To the

---

No. 161492, 2020 WL 5877599 (Mich. Oct. 2, 2020).) For a detailed discussion of how Petitioner's interpretation of the Emergency Services Act puts it on par with the Michigan statute, rendering the Act unconstitutional under California's stricter unlawful delegation standard, see Plaintiffs' Trial Brief. (Tab 47, Section I.)

extent there is an added question of "distinguishing between . . . permissible suspensions and supplementations of existing law" (Pet. at 14), the need to assess that distinction arises from the text of section 8571 in the Act itself, not the trial court's order. No court has ever held that the Act gives the Governor authority to amend, change, or create statutory law.

Nor is Petitioner prejudiced or "hamstrung" by the lower court's decision. He may continue to take all actions authorized under the California Emergency Services Act and under the power vested in him under the California Constitution with respect to the COVID-19 State of Emergency. Those powers are admittedly great and many. The Respondent Superior Court's decision makes clear that he can suspend certain statutes as provided in section 8571 and exercise all powers expressly authorized by the Act. The decision simply states what is clear from a plain reading of the Act: he cannot amend, alter, or change statutory law or enact new statutory law or legislative policy. No court has ever held differently. It is a fundamental point of law that such power is reserved to the Legislature alone. The evidence clearly shows that the Legislature is fully capable of utilizing its separate power to respond to emergencies, including the current crisis wherein it passed AB 860 and SB 423 with urgency and months before the General Election. Our system of separate powers is no bar to effective emergency response.

Finally, contrary to Petitioner's assertion, other executive orders issued by the Governor are not in fact struck down by the lower court's decision. They are of course subject to challenge,

but any challenge would need to proceed in accordance with applicable judicial procedures.

H. The Exclusion of Petitioner's Evidence at Trial Was Proper and Had No Effect on the Outcome of the Case.

Finally, the trial court properly excluded certain materials (a letter from Senator Umberg and Assembly Member Berman, and a Senate Floor Analysis) because such documents are not subject to judicial notice as "official acts" of the Legislature. *See* Cal. Evid. Code, § 452(c) and Real Parties Motion in Limine (II Tab 49). They are also not proper legislative history materials for the purposes of determining legislative intent, specifically herein to determine the intent of the Legislature in passing AB 860 and SB 423. *See, e.g.*, *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30 ["in order to be cognizable, legislative history must shed light on the collegial view of the Legislature as a whole"]; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal. 4th 26, 45–46, n.9 (1998) ["the views of individual legislators as to the meaning of a statute rarely, if ever, are relevant"]; *Quintano v. Mercury Cas. Co.*, 11 Cal. 4th 1049, 1062 (1995) ["statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation."]).[5]

[5] It should be noted that nowhere in the official Legislative Intent language of both bills (which is substantial) is there any statement that legislation was intended to ratify or confirm the Governor's Order. (*See* SB 423 (I Tab 12, pp. 62-64) and See AB

This is exactly what Petitioner was attempting to do with this evidence: to show that the overall intent of the passage of these bills was consistent with what was stated in one letter signed by two legislators, namely a cooperative framework with the Governor.

But even if these materials were admitted, they would not affect the outcome of the case because as the lower court determined: (1) the Governor did not have constitutional or statutory authority to unilaterally amend the Elections Code in the first place and such documents could not change the analysis at to whether he acted pursuant to lawful authority; and (2) the "cooperation" narrative concocted by the Governor's attorneys was undermined by the clear evidence from the Governor's own public statements, prior the initiation of this litigation, that legislation was not "strictly necessary." (I Tab 20, p. 143.) Again, the trial court determined that the Governor's subsequent statement (II Tab 37, pp. 323-324) that Executive Order N-67-20 had been "superseded" by the legislation was not a formal "rescinding" or "withdrawal" of the Order and that it was an incorrect statement because the legislation was not actually fully superseded by the legislation. Plaintiffs also pointed out that the statement was not made until September 30, 2020, months after he had already

860 (I Tab 13, p. 69.) In fact, the Governor's Order is not mentioned at all. Finally, it was simply not relevant. The statement of two legislators and a legislative analysis prepared by legislative staff cannot be evidence that the Legislature "as a whole" worked cooperatively in conjunction with the Governor, and that this was all part of a cooperative approach to the election.

signed the applicable legislation, and thus is a suspiciously self-serving statement made only made for the purposes of this litigation (*See* Trial Transcript, III Tab 51 pp. 591-592; 641-642).

CONCLUSION

The Constitution's protections and the rule of law are most urgent and necessary during the time of an emergency. Although the Governor is granted considerable powers, these powers still have limits. The Governor cannot rely on the exigencies of the pandemic to remake our constitutional system of government in an autocratic mold. And when the Governor exceeds the limits of both his constitutional authority and the statutory authority conferred upon the office by the Legislature, it is the judiciary's duty to ensure that the State's balance of power is preserved.

That is what has happened here. The Respondent trial court determined that the Governor exceeded his authority and restored to the Legislature its exclusive authority to make law. Staying the trial court's judgment would enable the Governor to evade that check. As an unprecedented judicial decision to allow the executive to legislate, it could only lead to a further erosion of our separation of powers. Real Parties respectfully ask that Petitioner's request for a stay be denied.

Dated: November 20, 2020

Respectfully submitted,

/s/ James Gallagher
JAMES GALLAGHER

/s/ Kevin Kiley
KEVIN KILEY
Real Parties in Interest

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the text of this Opposition, including the Table of Contents and Authorities, Memorandum of Points and Authorities, and this Certificate, is proportionately spaced, uses a typeface of 13 points, and consists of 5,228 words.