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11 *Class Counsel*

12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF CONTRA COSTA**  
14

15 NATHAN COZZITORTO, RENA  
16 COZZITORTO, AND MICHAEL  
COZZITORTO SR., individually and d/b/a/  
17 COZZ'S AUTO BODY & SERVICE INC.; on  
behalf of themselves and all others similarly  
18 situated;

19 Plaintiffs,

20 vs.

21 AMERICAN AUTOMOBILE ASSOCIATION  
OF NORTHERN CALIFORNIA, NEVADA &  
22 UTAH, a California nonprofit mutual benefit  
corporation, f/k/a CALIFORNIA STATE  
23 AUTOMOBILE ASSOCIATION; and DOES 1  
through 50.

24 Defendants.

25 AND RELATED CROSS-ACTION.  
26

Case No. C13-02656

**DECLARATION OF STEPHANIE D.  
BIEHL IN SUPPORT OF UNOPPOSED  
MOTION FOR FINAL APPROVAL  
SETTLEMENT**

Hearing Date: May 9, 2018

Time: 9:00 a.m.

Judge: Hon. Edward G. Weil

Department: 39

27  
28 **DECLARATION OF STEPHANIE D. BIEHL ISO UNOPPOSED MOTION FOR  
FINAL APPROVAL OF SETTLEMENT**; Case No. C13-02656

1 **DECLARATION OF STEPHANIE D. BIEHL**

2 I, STEPHANIE D. BIEHL, declare as follows:

3 1. I am an attorney duly admitted to practice before all courts of the State of  
4 California and am a senior associate at the law firm of Sher Edling, LLP, counsel for Plaintiffs  
5 Nathan Cozzitorto, Rena Cozzitorto, and Michael Cozzitorto, Sr. and Cozz's Auto Body and  
6 Service, Inc. (collectively "Plaintiffs") and Class Counsel. I was formerly a senior associate at  
7 Cotchett, Pitre & McCarthy, LLP, also counsel for Plaintiffs and Class Counsel. I worked on  
8 this case at CPM for the majority of the litigation. I submit this declaration in support of  
9 Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement. I have personal  
10 knowledge of the facts set forth below, and if called upon to testify, I could and would  
11 competently testify to them.

12 2. The following paragraphs include a summary of the case events relevant to  
13 Plaintiffs' motion.

14 **The Pleadings**

15 3. On December 19, 2013, Plaintiffs filed their initial Complaint, asserting class  
16 action claims against AAA NCNU on behalf of a putative class of emergency road service  
17 providers and asserted causes of action for: 1) violation of California Labor Code section 2802;  
18 and 2) violation of California Business and Professions Code section 17200 *et seq.*

19 4. On February 13, 2014, Plaintiffs filed their First Amended Complaint ("FAC") on  
20 behalf of two separate putative classes: 1) an Independent Contractor Class; and 2) a Breach of  
21 Contract Class. AAA NCNU consented to this filing before responding to the complaint. The  
22 FAC alleged the same causes of action as the original complaint and added breach of contract  
23 claims and a claim for breach of the implied covenant of good faith and fair dealing. AAA  
24 NCNU demurred to the FAC, which was overruled in part and sustained in part.

25 5. On May 9, 2014, Plaintiffs filed their operative Second Amended Complaint  
26 ("SAC") against AAA NCNU on behalf of two separate putative classes: 1) the Independent  
27 Contractor Class, defined as "All persons who currently perform, or have performed, emergency  
28 Contractor Class, defined as "All persons who currently perform, or have performed, emergency

1 road service for AAA NCNU in the State of California and who were misclassified as  
2 independent contractors by AAA NCNU”; and 2) the Breach of Contract Class, defined as “All  
3 AAA NCNU Contract Stations that were signatories to the Emergency Road Service Contract  
4 Station Agreement and that performed emergency road services for AAA NCNU in the State of  
5 California under the terms of the Emergency Road Service Contract Station Agreement.

6 6. The SAC asserts causes of action for: 1) violation of California Labor Code  
7 section 2802, on behalf of Nathan Cozzitorto<sup>1</sup>, Rena Cozzitorto, Michael Cozzitorto, Sr. and the  
8 Independent Contractor Class; 2) violation of California Business and Professions Code section  
9 17200 *et seq.*, on behalf of Plaintiffs, the Independent Contractor Class and the putative Breach  
10 of Contract Class; and 3) breach of contract, on behalf of Cozz’s Auto Body & Service Inc. and  
11 the Breach of Contract Class.

12 7. On May 9, 2014, AAA NCNU answered the SAC, denying all allegations and  
13 asserting myriad affirmative defenses. On the same day, AAA NCNU filed a cross-complaint  
14 against Plaintiff Cozz’s Auto Body & Service, Inc. (“Cozz’s”) alleging declaratory relief and  
15 breach of contract.

16 8. On July 21, 2014, AAA NCNU amended its Cross Complaint. Plaintiffs  
17 answered the Cross Complaint on September 24, 2014.

18 9. On December 1, 2015, AAA NCNU filed its operative Second Amended Answer  
19 and its operative Second Amended Cross Complaint. The Second Amended Cross Complaint  
20 alleges: 1) declaratory relief against Plaintiffs; 2) contractual indemnity against Plaintiffs; 3)  
21 equitable indemnity against Cozz’s Auto Body & Service Inc.; 4) declaratory relief under Labor  
22 Code section 2860 against Nathan Cozzitorto, Rena Cozzitorto and Michael Cozzitorto, Sr.; 5)  
23 declaratory relief under Labor Code section 2861 against Nathan Cozzitorto, Rena Cozzitorto  
24 and Michael Cozzitorto, Sr.; 6) conversion against Cozz’s Auto Body & Service Inc., Rena  
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<sup>1</sup> Plaintiffs subsequently dismissed Nathan Cozzitorto’s Lab. Code § 2802 claim.

1 Cozzitorto and Michael Cozzitorto, Sr.; and 7) violation of Business and Professions Code  
2 section 17200 *et seq.* against Plaintiffs.

3 10. Plaintiffs answered AAA NCNU's Second Amended Cross Complaint on  
4 December 20, 2015.

5 **Class Certification and Discovery**

6 11. On March 4, 2016, Plaintiffs filed their motion for class certification. After full  
7 briefing, the Court held the first of two class certification hearings, which lasted the majority of  
8 the day. The Court then ordered further briefing on class certification, and the Parties returned  
9 for the second class certification hearing on September 9, 2016.

10 12. On November 23, 2016, the Court issued its order granting Plaintiffs' class  
11 certification motion in full and certified the following classes:

12  
13 The 17200 Class: All persons from December 13, 2009 up to and  
14 through the time of judgment (the "Class Period") who performed emergency  
15 road service (as a driver, dispatcher, fleet mechanic, administrator, or  
16 manager/supervisor) for AAA NCNU in the State of California for at least an  
average of 30 hours per week or more but who were not classified as employees  
by AAA NCNU.;

17 The Owner Subclass: All persons from December 13, 2009 up to and  
18 through the time of judgment (the "Class Period") who own or owned a contract  
19 station which contracted with AAA NCNU to provide emergency road services,  
20 and who performed emergency road service (as a driver, dispatcher, fleet  
21 mechanic, administrator, or manager/supervisor) for AAA NCNU in the State of  
California for at least an average of 30 hours per week or more but who were  
not classified as employees by AAA NCNU.; and

22 The Breach of Contract Class: All contract stations in the State of  
23 California which contracted with AAA NCNU to provide emergency road  
24 service from December 13, 2009 up to and through the time of judgment.

25 13. Throughout this case, Plaintiffs and Class Counsel (i) reviewed over 135,000  
26 documents; (ii) served and responded to 1,915 written discovery requests; (iii) prepared for,  
27 conducted, and defended over 45 party and non-party depositions; and (vi) retained and  
28 consulted with organizational control, employment, benefits, and damages experts regarding the

1 information obtained in discovery.

2 14. Between January 2017 and November 2017, Plaintiffs created a notice plan, and  
3 the Court held several hearings regarding the notice plan, where the Parties submitted briefs and  
4 argument pertaining to the plan. One component of the notice plan was obtaining contact  
5 information for as many Class Members as possible. The Court ordered that contract stations  
6 were required to produce contact information for their employees (potential 17200 Class  
7 Members). Some Contract Stations and their Owners were thereafter excluded from the Class  
8 for failing to do so and for failing to respond to the Court's related order to show cause.

9 15. On November 20, 2017, the class certification notices were published and  
10 distributed to pursuant to the notice plan. The deadline to opt-out was December 20, 2017, and  
11 some Class members opted-out. Prior to December 20, 2017, some Class Members settled with  
12 AAA NCNU and released their claims in this lawsuit.

#### 13 Summary Judgment

14 16. On February 13, 2018, the Court entered its order regarding summary judgment.  
15 As to Plaintiffs' motion for summary judgment on AAA NCNU's Second Amended Cross  
16 Complaint, the Court granted summary adjudication of AAA NCNU's cross-claims for  
17 contractual indemnity and declaratory relief regarding contractual indemnity, and denied the  
18 motion in all other respects.

19 17. The Court denied AAA NCNU's motion for summary adjudication as to its  
20 Second Amended Cross Complaint, and it denied Plaintiffs' motion for summary adjudication as  
21 to AAA NCNU's Second Amended Answer.

22 18. The Court granted AAA NCNU's motion for summary adjudication as to one of  
23 three breaches of contract alleged and the Breach of Contract Class's claim for violation of  
24 California Business and Professions Code § 17200 *et seq.*, and it denied the motion in all other  
25 respects.

26 19. The Court granted AAA NCNU's motion for summary adjudication of the Owner  
27 Subclass's Labor Code § 2802 claim, mooted the Owner Subclass, and the Court otherwise  
28

1 denied the motion.

2 20. After summary judgment, additional Contract Stations and their owners were  
3 excluded for failure to provide the required employee contact information, some Contract  
4 Stations were excluded from the Breach of Contract Class because their initial contracts with  
5 AAA NCNU (commencing after the filing of this action) contained arbitration provisions, and  
6 some Class Members were excluded from their respective classes because they settled and  
7 released their claims in this case.

8 21. On August 1, 2018, the Court entered an Order adopting the Parties' Joint  
9 Stipulation to Modify Class Definitions, modifying the class definitions as follows:

11 Breach of Contract Class: All contract stations in the State of California  
12 which contracted with AAA NCNU to provide emergency road service from  
13 January 1, 2011 up to and through November 20, 2017.

14 17200 Class: All persons from December 13, 2009 up to and through  
15 November 20, 2017 (the "Class Period") who performed emergency road  
16 service (as a driver, dispatcher, fleet mechanic, administrator or  
17 manager/supervisor) for AAA NCNU in the State of California for at least an  
18 average of 30 hours per week or more but who were not classified as employees  
19 by AAA NCNU.

20 **The Settlement, Preliminary Approval, and Initial Settlement Administration**

21 22. On July 14, 2016, the Parties mediated with Mark S. Rudy, a renowned  
22 employment attorney and mediator. Before the mediation session with Mr. Rudy, Plaintiffs sent  
23 a detailed settlement demand to AAA NCNU, and the Parties prepared extensive mediation  
24 briefs. After nearly a full day with Mr. Rudy and subsequent settlement communications, the  
25 Parties were unable to resolve the case before class certification and summary judgment issued.

26 23. On October 3, 2018, the Parties mediated before the Hon. Richard Kramer (Ret.),  
27 formerly the complex division judge in the Superior Court for the State of California, County of  
28 San Francisco, and who has substantial experience presiding over complex class actions. Prior to  
the mediation, AAA NCNU produced additional documentary evidence relevant to Plaintiffs'  
remaining claims. During the 13-hour mediation, the Parties reached the basic terms of a

1 settlement, negotiated the terms of a binding Memorandum of Understanding, and agreed to  
2 prepare the formal Settlement Agreement. The Parties finalized the Settlement and submitted it  
3 for preliminary approval on December 7, 2018.

4 24. A true and correct copy of the Parties Settlement Agreement is attached hereto as  
5 **Exhibit 1.**

6 25. The Court held a preliminary approval hearing on December 13, 2018 and stated  
7 it would grant preliminary approval. The Parties then supplemented some information in the  
8 Settlement Notices, and the Court granted preliminary approval of the Settlement the next day —  
9 December 14, 2018.

10 26. A true and correct copy of the Court’s order granting preliminary approval is  
11 attached hereto as **Exhibit 2.**

12 27. A true and correct copy of the preliminary approval hearing transcript is attached  
13 hereto as **Exhibit 3.**

14 28. As discussed during the preliminary approval phase, a general description of the  
15 prominent terms of the Settlement Agreement appear in the following paragraphs.

16 29. The Settlement requires AAA NCNU to pay four million three hundred thousand  
17 dollars (\$4,300,000) cash (“Gross Settlement Amount”). Part of the Gross Settlement Amount  
18 will be used to pay the settlement administration costs and any fees and expenses approved by  
19 the Court. The remainder (“Net Settlement Amount”) will be distributed to Breach of Contract  
20 Class Members and to 17200 Class Members.

21 30. According to the Settlement, distribution to the Breach of Contract Class  
22 Members is to follow direct mail and email notice to the remaining Class Members. This notice  
23 has occurred and is discussed below and in the Declaration of Amanda Sternberg Regarding  
24 Settlement Administration (“Sternberg Decl.”), filed concurrently herewith.

25 31. Each Breach of Contract Class Member’s Settlement Share will be its pro-rata  
26 amount of 1T and On-the-Go damage events. This information (for each Class Member and the  
27 entire Breach of Contract Class) was provided by AAA NCNU pursuant to the Settlement. The  
28

1 amount in dollars of each Class Member's recovery will be the fraction of each Class Member's  
2 total events divided by the entire Class's total events, then multiplied by the Net Settlement  
3 Amount for the Breach of Contract Class. Estimates for the Breach of Contract Class Settlement  
4 Shares appear in the section below and is further detailed in the Sternberg Declaration.

5 32. As indicated in the Settlement, no claims process was necessary for the Breach of  
6 Contract Class because the Parties have identified the Class Members, informed each Class  
7 Member of their specific number of 1T and On-the-Go events that will be used to calculate its  
8 distribution, and have estimated each Class Member's share based on those numbers. Per, the  
9 Settlement, each Class Member received notice of its 1T and On-the-Go even totals and was  
10 advised that it could have disputed that number with specific documentation. According to the  
11 Settlement Administrator, no Breach of Contract Class member did so.

12 33. Per the Settlement, up to one million three hundred thousand dollars (\$1,300,000)  
13 will be allocated to the Breach of Contract Class. Further details regarding the exact amount  
14 available for distribution appears in the Sternberg Declaration.

15 34. After 180 days, any uncashed checks sent to Breach of Contract Class Members  
16 will escheat to the State of California.

17 35. According to the Settlement, 17200 Class distribution is to follow direct mail and  
18 e-mail notice to Class Members for whom the Parties have contact information as well as  
19 publication and online notice to the public, all of which has occurred. *See generally* Sternberg  
20 Decl. Each 17200 Class Member's Settlement Share is calculated based on their pro-rata portion  
21 of the Net Settlement Amount, which is determined by the number of Weeks Worked by the  
22 individual Class Member.

23 36. For purposes of the Settlement, the Parties have presumed that each Class  
24 Member worked 20 weeks during the Class Period. If the Class Member worked more than 20  
25 weeks, he or she was to further aver to that under penalty of perjury and provide additional  
26 information, including the Contract Station information, dates of employment, positions held,  
27 and number of Weeks Worked to calculate his or her pro-rata share.  
28



1           37. Per the Settlement, 17200 Class Members who will be participating in the  
2 Settlement have completed a Claim Form in order to receive a distribution. The Claim Form  
3 required the Class Member to aver under penalty of perjury that he or she is a Class Member  
4 (*i.e.*, worked an average of 30 hours per week providing AAA emergency road service but was  
5 not classified as an employee of AAA NCNU), and to the number of Weeks Worked and the  
6 additional information above if the Class Member worked more than 20 weeks.

7           38. Up to three million dollars (\$3,000,000) will be allocated to the 17200 Class. The  
8 Settlement Administrator will follow the procedures set by the State of California Department of  
9 Industrial Relations with respect to any uncashed checks distributed to 17200 Class Members.

10           39. As discussed during preliminary approval, for Class Members who have been  
11 given direct notice (individuals for whom their Contract Stations previously provided their  
12 contact information to the Settlement Administrator) but have not submitted a claim, their  
13 Settlement Shares will be distributed to *cy pres* recipients.

14           40. The determination that a *cy pres* award is necessary for the 17200 Class was a  
15 hotly-contested issue during the Parties' settlement negotiations. Many alternatives to  
16 establishing a *cy pres* distribution were considered by the Parties, including a full or partial re-  
17 distribution to Class Members who submitted claims. Ultimately, the Parties agreed to a *cy pres*  
18 in order to avoid redistribution to Class Members who will already receive their respective  
19 portions of the Settlement based on Weeks Worked. It was also not possible to locate every  
20 Class Member previously identified by the Contract Stations, as many Class Members do not  
21 work for towing companies or remain in the towing industry for very long, and many addresses  
22 were no longer valid. In negotiating the need for a *cy pres* award, the Parties further expected  
23 that despite best efforts, not all 17200 Class Members would receive direct notice, and other  
24 Class Members simply would not submit a Claim.

25           41. The Parties have agreed that the recipients of the *cy pres* will be the following  
26 non-profit organizations, subject to Court approval: Public Justice and California Rural Legal  
27 Assistance. The missions of each organization track the aims for which this action was  
28

1 originally brought. Public Justice has a very strong employment law arm, and California Rural  
2 Legal Assistance is focused on workers' rights in agricultural, day laborer, and other transient  
3 work forces, which is similar to a large portion of the class membership here. Further  
4 descriptions of the Public Justice organization and its workers' rights mission can be found  
5 online at: <https://www.publicjustice.net/what-we-do/workers-rights/>. Additional information  
6 about California Rural Legal Assistance can be found on its website: <https://www.crla.org/>. The  
7 Parties have agreed to distribute the *cy pres* award evenly between the two organizations, also  
8 subject to Court approval.

9           42. Class Counsel has previously worked with Public Justice, and several years ago,  
10 my colleague, Matt Edling, was an unpaid board member of Public Justice. Neither him nor any  
11 other member of the Class Counsel team currently has any affiliation, responsibility, financial  
12 interest, or influence related to Public Justice. Counsel for AAA NCNU, Eric Lloyd, has also  
13 informed me that the attorneys for AAA NCNU are familiar with California Rural Legal  
14 Assistance by reputation and do not, to his knowledge, have any affiliation with the organization.

15           43. The Settlement includes mutual releases of the Parties for all claims and cross-  
16 claims and includes releases from Breach of Contract Class Members and 17200 Class Members  
17 against AAA NCNU. The releases encompass all claims or causes of action that have been pled  
18 or could have been pled in any version of the Complaint based on facts or claims alleged therein.

19           44. The Settlement was the product of difficult and vigorous arm's-length  
20 negotiations between the parties, who were represented by highly-experienced attorneys.

21           45. Class Counsel has separately applied for an award of attorneys' fees of \$750,000  
22 (approximately 17% of the total Gross Settlement Amount) and up to \$530,000 in expenses.  
23 Class Counsel has also sought approval of service awards for the Class Representatives for  
24 \$7,500 per Plaintiff to be paid out of the Gross Settlement Amount.

25           46. In the event the Court approves these amounts, Class Counsel has instructed the  
26 Settlement Administrator to deduct 69.8% of the total of the above awards from the 17200 Class  
27 Gross Settlement Amount and 30.2% from the Breach of Contract Class Gross Settlement  
28

1 Amount in order to arrive at the Net Settlement Amounts for each Class. These percentages  
2 represent the proportion of each Class Settlement Amount compared to the total Class Settlement  
3 Amount (i.e., the 17200 Class Settlement is \$3,000,000; that amount divided by \$4,300,000  
4 (which is \$3,000,000 plus the 1,300,000 Breach of Contract Class) equals 69.8%). Class  
5 Counsel arrived at this allocation because it is impossible to precisely attribute the time spent by  
6 Plaintiffs and the time and expenses spent by Class Counsel to one Class or the other. However,  
7 these numbers are consistent with Class Counsel's knowledge that the vast majority of time and  
8 expenses spent in this case are attributable to the 17200 Class claims as opposed to the Breach of  
9 Contract Class claims. Counsel for AAA NCNU does not object to this allocation.

11 47. The Settlement Administrator has completed the notice process as directed by the  
12 Court and the Settlement Agreement. The Sternberg Declaration describes the precise notice that  
13 was given to Class members.

14 48. The Settlement Administrator has also completed initial distribution calculations.  
15 The estimated average shares for Breach of Contract Class Members and 17200 Class Members  
16 are \$6,692.69 and \$288.92 respectively but are further detailed in the Sternberg Declaration. The  
17 ranges for each class are \$4.02 - \$78,418.86 (Breach of Contract Class) and \$12.73 - \$2,634.30  
18 (17200 Class) and are also further described in the Sternberg Declaration.

19 49. Notice of final judgment will be posted to the Class Action website, subject to  
20 approval by the Court.

21 **Assessment of the Settlement in Light of the Claims and Defenses Asserted**

22 50. As the Court previously found during class certification and noted during the  
23 preliminary approval phase, Class Counsel is competent and experienced in complex, class  
24 action litigation. True and correct copies of Class Counsel's firm resumes (Cotchett, Pitre &  
25 McCarthy LLP and Sher Edling LLP) were attached as Exhibits 3 and 4 to my declaration in  
26 support of preliminary approval. For the Court's convenience and given its familiarity with  
27 Class Counsel, I have not re-attached the firm resumes here, but Class Counsel is happy to  
28 provide additional copies to the Court at its request. Also as noted by the Court during class

1 certification and preliminary approval, Class Counsel has vigorously prosecuted this case on  
2 behalf of Class Members.

3           51. Class Counsel has concluded that the Settlement is well-advised and in the best  
4 interests of Class Members. In reaching this determination, Class Counsel engaged in substantial  
5 investigation, analysis, and prosecution of the claims and defenses asserted in the Action,  
6 including: (i) analyzing and drafting complaints against AAA NCNU; (ii) engaging in extensive  
7 motion practice (briefing over 40 motions), including successfully defeating AAA NCNU's  
8 demurrers, class certification challenges, and motions for summary judgment; (iii) reviewing  
9 over 135,000 documents; (iv) serving and responding to 1,915 written discovery requests; (v)  
10 conducting and defending over 45 party and non-party depositions; (vi) retaining and consulting  
11 with organizational control, employment, employee benefits, and damages experts; and (vii)  
12 participating in comprehensive, arm's-length negotiations with Defendants and their  
13 representatives.

14           52. The Settlement was also reached after years of extensive litigation, two separate  
15 mediations, and comprehensive settlement communications following Plaintiffs' review of the  
16 entire documentary record in the Action and depositions of key witnesses and various Class  
17 Members.

18           53. During the litigation, AAA NCNU vigorously defended the claims with the  
19 assistance of experienced employment and class action counsel.

20           54. While Plaintiffs continue to believe their claims have merit, Plaintiffs also  
21 recognize that further litigation, trial, and guaranteed appeal of the complex issues presented  
22 would be accompanied by great expense, delay, and uncertainty for the Parties and Class  
23 Members. Also, while Plaintiffs would have preferred a different result, they and Class Counsel  
24 are not blinded to the fact that this case now has substantially less value than it did when  
25 originally brought. This is principally due to the loss of Plaintiffs' largest monetary claim at  
26 summary judgment and to AAA NCNU's settling with a number of Class Members before the  
27 Classes were certified.  
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55. Without the settlement achieved here, continued litigation and trial would involve complex legal and factual issues and would extend over months, if not years, as each party would certainly appeal the judgment. Even if Plaintiffs were successful and prevailed at trial, complex legal issues regarding preservation of the class (to which a motion for decertification was pending before settlement), the legal test for employment in California (which is currently in flux), and the myriad issues that could be appealed would sit idly awaiting determination and would further delay final resolution of this action. Likewise, this would cause all parties to incur additional expense, time, and uncertainty. In light of the complexity of the legal issues and the duration of the trial and appellate process, there was also a risk that the action would result in judgment for AAA NCNU, and Class Members might never have obtained any recovery.

56. Since preliminary approval of the Settlement, Class Counsel has received many calls from Class Members expressing gratitude for obtaining the Settlement. I and my colleagues at CPM have both received and responded to these calls.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on April 17, 2019 in San Francisco, California.



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STEPHANIE D. BIEHL