Case No. S271501

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

LARRY QUISHENBERRY,
Plaintiff and Appellant,

vs.

UNITED HEALTH CARE, INC., UNITED HEALTH GROUP, INC., UNITED HEALTH CARE - CALIFORNIA, UHC-CALIFORNIA, UNITED HEALTHCARE INSURANCE, INC., UNITED HEALTHCARE SERVICES, INC., HEALTHCARE PARTNERS AFFILIATES MEDICAL GROUP, AND HEALTHCARE PARTNERS MEDICAL GROUP,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION SEVEN, CASE NO. B303451; LOS ANGLES COUNTY SUPERIOR COURT, CASE NO. BC631077, THE HONORABLE RALPH HOFER, JUDGE.

AMICUS CURIAE BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA IN SUPPORT OF DEFENDANTS AND RESPONDENTS

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INTRODUCTION: IMPORTANCE OF ISSUE AND INTEREST OF AMICUS

The Civil Justice Association of California (CJAC) welcomes the opportunity to address as amicus curiae[1] the key issue this case presents:

> **Are patients enrolled under the Medicare Advantage Act federally preempted from asserting California state law claims for negligence, elder abuse and wrongful death in state court lawsuits against participating Medicare health maintenance plans concerning the medical care they received?**

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[1] By separate application accompanying the lodging of this brief, CJAC asks the Court that it be accepted for filing.

CJAC agrees with the judgment of the trial court, affirmed by the Court of Appeal, that plaintiff's common law and state statutory claims are and should be preempted. Two types of preemption apply here and have the same end result—*express* and *field* (also known as *implied* and *obstacle*) preemption. The former is self-explanatory; the latter occurs "when Congress intends federal law to 'occupy the field.'" *Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 372. CJAC confines our brief solely to express preemption because we believe, as a matter of law, its scope is sufficient and more clearly applies to its cognate of field preemption.

Defendants are United Healthcare entities that provided medical treatment to then 85-year-old Eugene Quishenberry pursuant to his enrollment in a Medicare Advantage (MA) Health Maintenance plan. Eugene was admitted to a nursing home affiliated with United Healthcare for treatment of pressure sores on his feet. He was treated there for 24 days, then discharged for home treatment before using the full 100 days of Medicare benefits for nursing home care. He died several months later; and his son then sued various health care defendants affiliated with United Healthcare for violating Eugene's rights under California tort and statutory law.

All parties agree the preemption issue presented here, arising as it does on demurrer, is purely one of law; and that, however decided, its resolution portends significant consequences for patients, health service plans and the public. A decision on this issue is especially important to CJAC because it affects our principal purpose—to assure that our civil liability laws are "fair, economical, uniform and certain." Our membership of businesses, professional associations and financial institutions will be adversely impacted by a decision that *averts* federal preemption for litigation claims against health care providers whose patients receive care from MA health maintenance plans. That adverse impact will come from increased lawsuits against health plans, higher costs for medical treatment and a boost to spiraling inflation, results directly counter to the text and purpose animating Part C benefits for Medicare patients enrolled in health maintenance plans.

Federal preemption of state tort law for MA enrollees is essential to achieve national uniformity and agency expertise in administering federal regulatory standards. A single set of rules or requirements for MA liability streamlines the legal system, reduces the regulatory burdens on health plans and helps create a unified national marketplace for MA services. Preemption ensures that legal rules governing complex areas

of health care delivery under MA are formulated by expert regulators with a broad national perspective and needed medical and technical expertise rather than by decision makers – such as state judges and juries – who may have a far more parochial perspective and limited set of information.

ANALYSIS

I. STATE LAW CLAIMS BY PLAINTIFFS FOR NEGLIGENCE, ELDER ABUSE AND WRONGFUL DEATH AGAINST DEFENDANT HEALTH CARE MAINTENANCE PLANS ARE BARRED BY MEDICARE PART C's EXPRESS PREEMPTION CLAUSE.

A. The Medicare Act and the MA Program are Created and Governed by Federal Law.

This case involves benefits under a MA plan governed by Part C of Title XVIII of the Social Security Act (SSA), popularly known as the Medicare Act. The Medicare Act establishes a federally subsidized health insurance program for elderly and disabled persons administered by the Department of Health and Human Services (Department). 42 U.S.C. § 1395c. The Department's Secretary delegates administration of the Medicare Act to the Centers for Medicare and Medicaid Services (CMS), an agency housed within the Department. In 1997, Congress enacted the Medicare Modernization Act, which included Part C and created the MA program. 42 U.S.C. §§ 1395w-21-29. Under

Part C, beneficiaries can enroll in a MA plan and receive Medicare benefits through private MA organizations instead of the government. *Id*.

That 1997 MA enactment provided for preemption in two paragraphs. The first stated that federal standards would *supersede state law and regulations* with respect to MA plans "to the extent such law or regulation is inconsistent with such standards." 42 U.S.C. § 1395w-26(b)(3)(A). The second paragraph identified four standards specifically superseded, irrespective of inconsistency, including "[r]equirements relating to inclusion or treatment of providers;" and "[r]equirements relating to marketing materials and summaries and schedules of benefits regarding a [Medicare Advantage] plan." 42 U.S.C. § 1395w-26(b)(3)(B)(ii),(iv).

But in 2003, Part C of the Medicare Act was amended to replace the previous two-part provision with a "simplified, single paragraph, [that is a] *stronger* preemption provision"[2]:

> The standards established under this part shall supersede *any* State law or regulation (other than State licensing laws or State laws relating to plan solvency) *with respect to* MA plans which are

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[2] *Medicare Act Preempts False Advertising Claims Against Medicare Advantage Plan* (2016) 28 No. 7 Cal. Ins. & Reg. Rep. NL 4; italics added.

> offered by MA organizations under this part. 42 U.S.C. § 1395w-26(b)(3); italics added.

"Congress may displace state law through express preemption provisions." *Do Sung Uhm v. Humana, Inc.* (9th Cir. 2010) 620 F.3d 1134, 1148 (citing *Altria Grp., Inc. v. Good* (2008) 555 U.S. 70, 76). The plain language of the 2003 preemption provision provides then, that in order to determine whether a claim is preempted, courts must identify whether there are pertinent "standards established under [Part C]" that apply to and have preemptive effect. This application requires courts to examine the Secretary's "established standards [that] set forth the requirements, limitations, and procedures for Medicare services furnished, or paid for, by MA organizations through MA plans." 42 C.F.R. § 422.1(b).

These regulatory standards include CMS's approval of the network of MA providers "to ensure that all applicable requirements are met, including *access and availability*, service area, and *quality*." 42 C.F.R. § 422.4(a)(1)(I); italics added. CMS also set standards governing provider "selection and credentialing" for MA plans (42 C.F.R. § 422.204); requirements relating to "an ongoing quality improvement program" for each MA plan (42 C.F.R. § 422.152(a)); and the requirement that "[f]or each plan, the organization must

correct all problems that come to its attention through internal surveillance, complaints, or other mechanisms." 42 C.F.R. § 422.152(f)(3). Moreover, the MA organization must consult with physicians who provide services under the MA plan regarding the MA organization's "medical policy, quality improvement programs and medical management procedures" and ensure the physicians' "[d]ecisions with respect to *utilization management*, enrollee education, *coverage of services*, and other areas in which the guidelines apply are consistent with the guidelines." 42 C.F.R. § 422.202(b)(3); italics added.

Finally, CMS has adopted regulations requiring MA organizations to provide services "covered by Part A and Part B (if the enrollee is entitled to benefits under both parts)" and to comply with "CMS's national coverage determinations," "[g]eneral coverage guidelines," and "[w]ritten coverage decisions of local Medicare contractors with jurisdiction for claims in the area in which services are covered under the MA plan." 42 C.F.R. § 422.101 (b)(1-3). Under Part A, Medicare benefits include coverage of "post-hospital extended care services for up to 100 days during any spell of illness." 42 U.S.C. § 1395d(a)(2)(A). These regulations require a MA organization to provide coverage of post-hospital extended care services at a skilled nursing facility if an enrollee has

been an inpatient in a qualifying hospital for at least three (3) consecutive calendar days, not including the day of the discharge, and must have been discharged in or after the month he or she became eligible for Medicare. 42 C.F.R. § 409.30(a).

Petitioner's common-law negligence and statutory elder abuse and wrongful death claims against defendants are premised on the premature discharge of Eugene from a skilled nursing facility (SNF) acting as an agent of United Healthcare without adequately treating his pressure sores or providing sufficient physical therapy. The complaint alleges Eugene Quishenberry stayed for 24 days at the SNF, but under Medicare he was entitled to stay an additional 76 days to receive daily physical therapy and care for his pressure sores. It also alleges that United Healthcare defendants knew he was not receiving necessary care at the SNF, but nonetheless "acquiesced to, encouraged, directed, aided and abetted" Eugene's discharge in violation of Medicare rules requiring that he remain at [the SNF] for more intense attention to his health care needs." These allegations require a determination of the amount of allowable Medicare benefits for skilled nursing care, an area regulated by standards established by CMS; thus, plaintiff's claims are preempted. See 42 C.F.R. § 422.101 [MA plan must provide services

covered by Parts A and B]; 42 C.F.R. §§ 409.30 & 409.31 [setting eligibility requirements for SNF benefits].

B. The Plain Text of the Medicare Acts's Part C Preemption Clause Applies to Plaintiff's State Common Law, Statutory and Regulatory Claims Because the Federal Agency Adopted Standards That Cover and Supersede What Plaintiff's State Law Claims Assert.

When Congress amended and expanded the MA exemption clause in 2003 it was not writing on a blank slate. Indeed, the most recent 2003 amended MA Plan Part C preemption clause closely tracks the one Congress enacted decades earlier for the Employee Retirement Income Security Act (ERISA). That preemption clause states: "Except as [otherwise provided][3] . . . the provisions of this subchapter and subchapter III *shall supersede any and all State laws* insofar as they may now or hereafter *relate to any* employee benefit plan described [herein]." 28 U.S.C. § 1144; italics added. This language is strikingly similar to and parallels that of Part C in the Medicare Modernization Act, which states that "standards established under this part shall *supersede any* State law or regulation (other than State licensing laws or State laws relating to plan solvency) *with*

[3] The exceptions listed are not relevant here to the scope of the clause as limned by its operative language.

respect to MA plans which are offered by MA organizations under this part. 42 U.S.C. § 1395w-26(b)(3); italics added.

And just as ERISA's express preemption clause expansively "supersedes any and all state laws" that "*relate to any* employee benefit plan" (*Aetna Health Inc. v. Davila* (2004) 542 U.S. 200, 214; italics added), so too does the highly similar express language of Part C preempt any state common-law and tort law claims asserted against a MA health plan. Both preemption clauses state they "supersede" "any" "state law" that "relates to" or is "with respect to" the subject that each federal law comprehensively covers and controls. The *MERRIAM-WEBSTER DICTIONARY* defines "preemption" and "preempt" in the legal sense as "to replace or *supersede* (a law) or *bar* (an action) by the doctrine of preemption" or "to prevent from happening or taking place."[4] Thus, to "preempt" "any state law" is, in the ordinary or common meaning of the word, to "supersede" it. And the adjective "any" means "every – used to indicate one selected without restriction."[5] "In the search for statutory meaning,

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[4] *MERRIAM-WEBSTER DICTIONARY*, https://www.merriam-webster.com/dictionary/preemption & preempt (last visited June 3, 2022).

[5] *Id.* for "any."

[courts] give nontechnical words and phrases their ordinary meaning." *Smith v. U.S.* (1993) 508 U.S. 223, 228.

What laws do these parallel express preemption clauses supersede? In the case of ERISA, "any and all state laws" that "relate to any employee benefit plan;" and for MA health plans, "any state laws" "with respect to" those plans. As the respondents here point out, "The phrase 'with respect to' [in Part C's exemption provision]" is "synonymous with the phrases 'with reference to,' 'relating to,' 'in connection with,' and associated with.'" Answer Brief on the Merits, p. 32, quoting from *Huffington v. T.C. Grp., LLC* (1st Cir. 2011) 637 F.3d 18, 22.

Petitioner's argument that "state laws and regulations" preempted by Part C do not include "state common-law, tort and generally applicable statutory law," ignores the text of the clause. A fair reading of its plain language makes no such distinctions, but instead simply refers to "any state law or regulation," an encompassing phrase that includes all that petitioner asks the Court to exclude from its ambit. To read the text in that manner, however, is to edit it and amend the statute.

Nor does the "presumption against preemption" canon of statutory construction apply here given the text of explicit

preemption. That text should be given its fair meaning rather than one narrowed by the presumption against preemption. While it is theoretically possible for Congress to preempt some state law enacted by statute or regulation, but not to preempt state common law applied by juries and the courts, such a disposition makes so little sense that it would take the clearest of language to adopt it. The relevant question is whether the preemption statute for a comprehensive federal program furthers a national standard. It does here: "The purpose of a regulatory scheme such as Medicare is to provide *uniform rules* by which *all* participants may be treated *equally*." *Maximum Home Health Care, Inc. v. Shalala* (6th Cir. 2001) 272 F.3d 318, 321; italics added.

Accordingly, state departures from that standard by common-law adjudication are just as disruptive to that program as departures by state statute or regulation. They are even more disruptive, since case-by-case jury determinations of "negligence" are not only unpredictable and inconsistent, but also usually uninformed regarding the benefits (as opposed to the costs) of the federal program. If, as here, a statute expressly barring state liability requirements (other than for plan solvency and licensing) from those put forth in the MA program is not meant to establish and further a national, uniform standard, it is

difficult to imagine what it is meant to do.

C. The Trend of Federal Court Opinions Makes Clear that the Presumption against Preemption Carries No Weight when Applying an Express Preemption Clause.

Federal decisions confirm that the "presumption against preemption" upon which petitioner heavily relies, "has waned in the express preemption context." *Altria Grp.*, *supra*, 555 U.S. at 99 (Thomas, J., dissenting). Thus, in *Puerto Rico v. Franklin California Tax-Free Trust* (2016) 579 U.S. 115, the Court stated that, where, as here, a federal "statute 'contains an express preemption clause,' we do *not invoke any presumption against preemption* but instead 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'" *Id.* at 125 (italics added), quoting *Chamber of Commerce of the United States v. Whiting* (2011) 563 U.S. 582, 594. Indeed, text is more than "evidence" of Congressional intent: "[I]t is the *text's* meaning, and not the content of anyone's expectations or intentions, that binds us as law." Laurence H. Tribe, "Comment," in *Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law* 65, 66 (1997). After all, "[A] law is the best expositor of itself." *Pennington v. Coxe* (1804) 6 U.S. (2 Cranch) 33, 52 (per Marshall, C.J.).

Riegel v. Medtronic, Inc. (2008) 552 U.S. 312, for instance, did not mention the presumption against preemption in holding that the Medical Device Amendments (MDA) to the Federal Food, Drug and Cosmetic Act explicitly preempted the plaintiff's state law claims despite the dissent's invocation of the presumption. *Id.* at 334 (Ginsberg, J., dissenting). Notably, *Riegel* also recognized that reference in the MDA's express preemption clause to a state's "requirements" includes state common law duties:

> Congress is entitled to know what meaning this Court will assign to terms regularly used in its enactments. Absent other indication, reference to a State's 'requirements' includes state common-law duties. . . [C]ommon-law liability is premised on the existence of a legal duty, and a tort judgment therefore establishes that the defendant has violated a state-law obligation. And while the common-law remedy is limited to damages, a liability award can be, indeed is designed to be, a potent method of governing conduct and controlling policy.

Id. at 324, quoting from *Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504.

Similarly, *Gobeille v. Liberty Mutual Insurance Co.* (2016) 577 U.S. 312 also holds certain Vermont health-care reporting requirements invalid under ERISA's express preemption clause, explaining that the scope of ERISA

preemption rests on normal tools of statutory construction, without reference to any presumption that preemptive language should be read narrowly. *Id*. at 326. Instead, the Court concluded that "any presumption against preemption, whatever its force in other instances, cannot validate a state law that enters a fundamental area of ERISA regulation and thereby counters the federal purpose in the way this state law does." *Ibid.* And in *Bruesewitz v. Wyeth LLC* (2011) 562 U.S. 223, 243, the majority opinion invoked only "the traditional tools of statutory interpretation" in concluding that the express preemption provision of the National Childhood Vaccine Injury Act barred state law design-defect claims against vaccine manufacturers – again despite the dissent's invocation of the presumption against preemption. *Id*. at 267, n.15 (Sotomayor, J., dissenting). Other decisions have likewise interpreted express preemption provisions without reliance upon the presumption against preemption.[6]

All of the aforementioned authorities align with the Conference report accompanying the enactment of Medicare

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[6] See, *e.g.*, *Cuomo v. The Clearing House Ass'n. L.L.C.* (2009) 557 U.S. 519, 534 (explicitly declining to "invoke [] the presumption against preemption" in interpreting the scope of the Comptroller of the Currency's authority under express preemption clause of the National Bank Act).

Part C, which explains that "the MA program is a federal program operated under Federal rules" and that "[s]tate laws, do not, and should not apply" except with respect to licensing and solvency. H.R. Conf. Rep. No. 108-391, 1st Sess., p. 557 (2003).

D. Conflicting Intermediate State Appellate Opinions on the Scope and Application of MA Federal Preemption Should be Harmonized to Comport with the Better Reasoned *Roberts v. United Healthcare Services* and the Instant Opinion.

The petition for review stressed the conflict this appellate opinion and its analogue authority of *Roberts v. United Healthcare Services, Inc.* (2016) 2 Cal.App.5th 132 (*Roberts*) presents with *Cotton v. StarCare Medical Group, Inc.* (2010) 183 Cal.App.4th 437 (*Cotton*) and *Yarick v. PacifiCare of California* (2009) 179 Cal.App.4th 1158 (*Yarick*). Petition for Review (PFR), pp. 7-9. True enough, but amicus contends this split of authority should be resolved to make the law uniform in favor of the reasoning by *Roberts* and the intermediate appellate opinion in this case.

Yarick holds, consistent with what petitioner here argues, that the phrase "any State law or regulation" in Part C's express preemption clause only reaches (1) "positive state enactments" such as "laws and administrative regulations,

but not the common law," and (2) common-law rights grounded solely in duties created by positive state law. *Cotton* also holds that Part C's preemption clause was limited to positive state enactments, but goes one step further to interpret the clause's mandate that Medicare standards "shall supersede any state law or regulation . . . with respect to [MA] plans" to mean the "state law or regulation" must be "with respect to" the plans, and excludes laws that are general in application. Thus, according to *Cotton*, Part C's preemption clause reaches only state statutes or regulations that are targeted at MA plans; common law rights and all generally applicable statutes and regulations are not preempted. *Cotton*, *supra*, 183 Cal.App.4th at 150.

Roberts soundly rejected the reasoning of both *Yarick* and *Cotton* on these points. There, plaintiffs sued defendant United Healthcare, a healthcare provider, for alleged misrepresentations in the marketing of its MA plans. The appellate court held that the Medicare Act expressly preempts lawsuits under California's Unfair Competition Law and Fair Advertising Law, and further concluded that the plaintiffs' claims for denial of benefits were subject to dismissal for failure to exhaust the administrative remedies of the Medicare Act before proceeding with their action. Most pertinent to this case, *Roberts* analytically skewered the

reasons put forth by petitioner here in his reliance on *Cotton* and *Yarick*.

Roberts faulted *Yarick*'s conclusion that Part C's express preemption clause only reached "(1) 'positive state enactments' such as 'laws and administrative regulations, but not common law,' and (2) common-law rights grounded solely in duties created by positive state law." 2 Cal.App.5th at 167. The problem with *Yarick's* conclusion is twofold: it is inconsistent with *Riegel*, *supra*, 552 U.S. 312; and relies heavily on a case – *Sprietsma v. Mercury Marine* (2002) 537 U.S. 51– and its discussion of preemptive clause language in the Federal Boat Safety Act of 1971, which is so different that it is not "relevant" to the text of Part C's express preemption provision.

In fact, *Yarick* does not even mention *Riegel*, a High Court opinion decided a year before *Yarick* was issued. As amicus discussed (*ante* at p. 21), *Riegel* held that the MDA Amendments of 1976 (21 U.S.C. § 360k), which closely parallel the text of Part C's preemption clause to supersede state "requirements," "includes its common-law duties." As *Roberts* explains, "*Riegel*'s rationale applies with full force" in that case and here because "excluding common-law duties from the scope of preemption would make little sense." 552

U.S. at 324-325. "Common-law duties prescribing different standards than those imposed by federal law disrupt the federal scheme no less than state regulatory law to the same effect." *Ibid*.

Sprietsma is also not "relevant" according to *Roberts* because the differently worded preemption language in the Boat Safety Act it discusses and *Yarick* relies upon, was accompanied with a provision saving common-law actions. Part C, however, "has no clause saving common-law actions." *Roberts*, *supra*, 2 Cal.App.5th at 167.

Roberts also "parts company" with *Cotton*'s conclusion that Part C's preemption clause "only reaches laws specifically targeting MA plans." *Id*. at 168. Again, *Roberts* cites to *Riegel* and its parsing of the MDA Amendments of 1976's preemption clause, which reaches "requirements . . . 'with respect to' medical devices." *Roberts* explains that *Riegel* supports the conclusion that the phrase *with respect to* "does not refer to the specificity or breadth of the 'State law or regulation' to be preempted; instead, it refers to the extent of preemption—those laws or regulations are superseded to the extent Part C's standards [,which the Medicare regulations equate with 'requirements,'] supersede them." *Id*.

Neither is *Cotton*'s and petitioner herein's reliance on *McCall v. PacificCare of Cal., Inc.* (2001) 25 Cal.4th 412 helpful. While *McCall* holds that Medicare beneficiaries suing a health maintenance organization under state law for negligence, fraud and other torts for refusing to provide medical services are not required to administratively exhaust their claims, that opinion predates the 2003 enactment of Part C's express preemption clause. *McCall* specifically noted that plaintiff's claims before it were not preempted by the Medicare Act because "no intent to displace state tort law remedies was expressed in the Medicare Act as it read at the time relevant to this case." *Id.* at 422, quoted in *Roberts*, *supra*, 2 Cal.5th at 168.

Nor is petitioner correct that *Do Sung Uhm*, *supra*, 620 F.3d 1134 requires a "a conflict with federal standards" to hold that a state law claim to be preempted. PFR, p. 21. To the contrary, *Uhm* found "that Congress intended to expand the preemption provision *beyond* those state laws and regulations inconsistent with the enumerated standards." 620 F.3d at 1149-1150; italics added. Nonetheless, *Uhm* determined that the state laws were "inconsistent" with the MA's enumerated standards, and decided the case on that more limited basis. As the appellate opinion here clarifies in

quoting from a pertinent CMS regulation about the difference between the 1997 Part C preemption clause and its 2003 amendment in the Medicare Modernization Act:

> The presumption was that a State law was not preempted if it did not conflict with an M+C requirement, and did not fall into one of the four specified categories where preemption was presumed . . . . [¶] We concluded that the [2003 Medicare Modernization Act] reversed this presumption and provided that State laws are presumed to be preempted unless they relate to licensure or solvency. We also referenced the Congress' intent that the MA program, as a Federal program, operate under Federal rules, and referred to the Conference Report as making clear the Congress' intent to broaden the scope of preemption. 70 Fed.Reg. 4194, 4319 (Jan. 28, 2005); Opn., pp. 19-20.

CONCLUSION

The current and controlling language of the Medicare Part C preemption clause is plain and clear. It says what it means and means what it says. Thus, the presumption against preemption has no place in application to the text of Part C's explicit preemption provision. For this reason and the others aforementioned, this Court should affirm the judgment below.

Dated: June 8, 2022

/s/Fred J. Hiestand
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CJAC General Counsel

CERTIFICATE OF WORD COUNT

I certify that the software program used to compose and print this document indicates it contains, exclusive of the caption, tables, certificate and proof of service, approximately 4,700 words.

Dated: June 8, 2022

/s/Fred J. Hiestand
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PROOF OF SERVICE

I, David Cooper, am employed in the city and county of Sacramento, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3418 Third Avenue, Suite 1, Sacramento, CA 95817.

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Executed this 8th day of June 2022 at Sacramento, California.

/s/David Cooper
David Cooper

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S271501**
Lower Court Case Number: **B303451**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/8/2022

Date

/s/Fred Hiestand

Signature

Hiestand, Fred (44241)

Last Name, First Name (PNum)

Fred J. Hiestand, Counselor at Law

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