Case No.: S279137

In the Supreme Court
of the
State of California

TAMELIN STONE, AMANDA KUNWAR,

Plaintiffs and Appellants,

vs.

ALAMEDA HEALTH SYSTEM,

Defendants and Respondents.

On Review From the Court of Appeal for the First Appellate District,
Division Five
Civil No.: A164021

After an Appeal From the Superior Court of Sacramento County
Judge Noel Wise
Case Number RG21092734

APPLICATION TO FILE AMICUS BRIEF AND PROPOSED BRIEF OF AMICUS CURIAE KERN COUNTY HOSPITAL AUTHORITY IN SUPPORT OF RESPONDENT ALAMEDA HEALTH SYSTEM

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

State Statutes

Rules

Other Authorities

APPLICATION TO FILE AMICUS BRIEF

Pursuant to rule 8.520(f) of the California Rules of Court, *amicus curiae* Kern County Hospital Authority respectfully requests leave to file the incorporated brief in support of respondent Alameda Health System. This application is timely made pursuant to rule 8.520(f)(2).

Interest Of Amicus Curiae

Similar to Alameda Health System ("AHS"), *amicus curiae* Kern County Hospital Authority ("KCHA") is a public hospital authority that was authorized by the Legislature under Assembly Bill 2546 (2014) and created by Kern County's Board of Supervisors on October 6, 2015, to assist Kern County in operating Kern Medical Center. (Health & Saf. Code, §101852.) KCHA's mission is "providing access to affordable, high quality health care services, and ensuring the full engagement and viability of the health care safety net" for the residents of Kern County. (Health & Saf. Code, §101852, subd. (b) (4) & (5).) While KCHA came into existence in 2015, Kern Medical Center, which KCHA now solely owns and operates, has existed for over 150 years since 1867 when it was first established and operated directly by Kern County.

The Opinion on review directly affects public hospital authorities by creating additional, unanticipated liabilities. This decision will impact the ability of public hospital authorities to meet their obligation to efficiently provide the highest level of medical care to the residents of the counties they serve.

The Proposed Amicus Curiae Brief May Assist the Court In Deciding the Matter

The Court of Appeal held in this case that certain Labor Code

provisions, which courts previously only applied to private employers, could be applied to public hospital authorities. (*Stone v. Alameda Health Systems* (2023) 88 Cal.App.5th 84.) Proposed *amicus curiae*, like AHS, has the expertise and experience of operating a public hospital. Accordingly, in this brief, KCHA provides additional insight and context regarding the impact the Court of Appeal's decision on other public hospital authorities and the counties they serve if, contrary to decades of precedent, such authorities are stripped of the labor and employment exemptions usually afforded to public entities. Therefore, *amicus curiae* KCHA respectfully requests leave to file its brief.

CERTIFICATE REGARDING AUTHORSHIP AND FUNDING

Pursuant to rule 8.520(f)(4) of the California Rules of Court, proposed *amicus curiae* hereby certifies that no party or counsel in the pending case authored the proposed *amicus curiae* brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief.

Dated: January 5, 2024

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

By: */s/ Brian P. Walter*
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PROPOSED BRIEF OF AMICUS CURIAE

I. INTRODUCTION

The California Welfare and Institutions Code creates a duty for every county and city to "relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (Welf. & Inst. Code, §17000.) As such, counties have an affirmative legal duty to provide affordable, efficient, and adequate patient care to those in need in their communities.

To assist counties in meeting their obligation to provide health care, the Legislature has passed a number of laws since 1995 authorizing counties to create special public "health care" and "hospital authorities." (See Health & Saf. Code, §§101525-101853.) The express purpose of these hospital authorities—which are public agencies that exist separate and apart from the counties that created them—is for the authorities to act as extensions of the counties so they are better able to fulfill their public health care duties generally, and specifically the mandates of Welfare and Institutions Code section 17000.

Kern County operated Kern Medical Center ("KMC") for 149 years prior to the creation and transfer of KMC's ownership and operations to KCHA. KCHA's enabling statute, and the enabling statutes of other hospital authorities, demonstrate that the Legislature intended for hospital authorities to operate public hospitals in the same manner as counties do, with all the same rights, privileges, exemptions, preferences and authority as a county - though ideally in a streamlined, more flexible manner once freed from the bureaucracy of being one of many departments in a much

larger county organization. The continuity of operations that occurs when a county hospital transitions to a hospital authority includes continuing the exemption to the Labor Code provisions and wage orders at issue in the underlying case.

The *Stone* court erred in applying the "sovereign powers" maxim to find Labor Code provisions and wage orders regarding meal and rest breaks, overtime and payroll records applied to AHS because a hospital authority is expressly excluded from their application as a political subdivision. Additionally, there were positive indicia of a legislative intent to exempt *all* public entities, including hospital authorities, from their applicability. KCHA's own enabling statute makes it clear that the Legislature views the term "political subdivision" (as used in the wage orders) to include a "public hospital authority." (Health & Saf. Code, §101852, subd. (b)(5).) There is also no valid policy reason for limiting the public entity exemption to only those public entities that satisfy the "hallmark of sovereignty" standard utilized by the *Stone* court.

Furthermore, the text, structure and history of Labor Code section 220 demonstrates that the exemption for "employees directly employed by any county, incorporated city, or town or other municipal corporation" includes all local public entities, not only those with publicly elected boards, a geographical boundary, etc., as the *Stone* court held. The *Stone* limitations are arbitrary and not supported by the language or legislative history of Section 220.

Should the Court uphold the *Stone* decision to treat employees of public hospitals operated by county-created hospital authorities differently from employees of county-run hospitals (and other public entities) for purposes of wage and hour laws, the unanticipated risks of liability for state

wage violations will cause additional strain on public hospitals already under great financial burden. The risk of additional liability for hospital authority-run hospitals will, in turn, discourage counties from creating or maintaining public hospital authorities. This could have a cascading effect which would then deprive the counties and their residents of the benefits that come from utilization of the hospital authority model for providing more efficient healthcare.

II. PUBLIC HOSPITAL AUTHORITIES ARE CREATED AS EXTENSIONS OF COUNTIES IN ORDER TO PROVIDE HEALTHCARE TO THEIR RESIDENTS

Kern County founded KMC in 1867 and operated KMC for 149 years fulfilling its legal obligation to provide medical care to its residents. In 2014, due to the complexity of operating a hospital, Assembly Bill 2546, known as the Kern County Hospital Authority Act, was enacted, authorizing the Kern County Board of Supervisors to establish, through ordinance, the KCHA to take over the management, administration, and control of KMC from the county. (Health & Saf. Code, §101852). On October 6, 2015, the Kern County Board of Supervisors created KCHA by ordinance.

KCHA's mission, as a "public hospital authority," is "providing access to affordable, high quality health care services, and ensuring the full engagement and viability of the health care safety net" for the residents of Kern County. (Health & Saf. Code, §101852, subd. (b)(4) & (5).) KCHA's enabling statute makes clear KCHA was created in response to the "ongoing evolution of the health care environment" and to allow public entities providing health care services to "pursue innovative health care

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delivery models that proactively improve the quality of patient care services and patient experience[s].” (*Id.*)

Respondent AHS was authorized by the Legislature in a very similar manner eighteen years earlier to act as an extension of Alameda County, based on the challenges Alameda County faced due to changes in the public and private health industries, so that Alameda County could fulfill its obligation to provide healthcare to the indigent under Welfare and Institutions Code section 17000. Through statute, the Legislature granted the Alameda County Board of Supervisors the authority to create an independent hospital authority. (Health & Saf. Code, §101850.) According to the statute, AHS is tasked with the “management, administration, and other control, as determined by the board of supervisors, of the group of public hospitals, clinics, and programs that comprise the medical center, in a manner that ensures appropriate, quality, and cost-effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code.” (Health & Saf. Code, §101850, subd. (d).)

There are 21 public health care systems, including county-owned or affiliated systems and five University of California academic medical centers in California that provide care to over 3.7 million people annually. (See, California Association of Public Health Hospitals & Health Systems, “California’s Public Health Care Systems,” <https://caph.org/about/members> [as of January 5, 2024].)

Although they are public entities separate and apart from the counties which created them, public hospital authorities like KCHA and AHS are part and parcel of their respective counties’ health care safety nets with the sole purpose of providing healthcare to fulfill the counties’ health care obligations under Welfare and Institutions code section 17000. The

enabling statutes of KCHA, AHS and other public hospital and health care authorities clearly indicate the legislative intent in authorizing the creation of such public entities was to treat them as extensions of the respective counties which created them. (See Health & Saf. Code, §§101525, subd. (a) [Sonoma County Dental Health Authority], 101658, subd. (a) [Central Coast Hospital Authority], 101827 [San Luis Obispo County Hospital Authority], 101850, subd. (j) [AHS], 101853, subd. (a) [KCHA].) Absent express language to the contrary, hospital authorities should not be subject to labor and wage laws that do not apply to the counties or other public agencies that exist for the sole purpose of assisting counties to serve their legal obligations. (*Johnson v. Arvin-Edison Water Storage District* ("*Johnson*") (2009) 174 Cal.App.4th 729, 736.)

There is essentially no functional difference between those hospitals that are owned and operated by counties and those operated by county-created public hospital authorities, which exist to provide more efficient and affordable medical care to their residents. However, even though hospital authorities are unquestionably "public entities," created by counties to provide health care specifically required of those counties, *Stone* would treat employees of those public entities very differently from other public employees for wage and hour purposes, contrary to decades of past precedent exempting all local public entities from those wage and hour requirements, without any apparent legal or policy justification.

III. THE WAGE ORDER EXEMPTIONS APPLY TO HOSPITAL AUTHORITIES SINCE THE LEGISLATURE CONSIDERS THEM TO BE "POLITICAL SUBDIVISIONS"

The Court of Appeal concluded in *Stone* that statutory exemptions to the subject Labor Code provisions and wage orders that normally apply to

public entities did not apply to AHS because: (1) there were no positive indicia of a legislative intent to exempt agencies such as AHS from the statutes; and (2) under the sovereign powers maxim, application of the Labor Code provisions would not infringe upon sovereign governmental powers.

The *Stone* court's holding is contrary to well established precedent that public entities, generally, are not subject to Labor Code provisions. (See *Johnson*, *supra*, 174 Cal.App.4th at 736.) The Legislature has confirmed the "provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees." (*Campbell v. Regents of University of California* (2006) 35 Cal.4th 311, 330.) Public entities rely upon this well-established law in their budgeting and financial planning.

Here, the *Stone* court erroneously applied the sovereign powers analysis by taking an overly narrow view of the type of public entity AHS is, as well as the public entity exemption in Wage Order 5, to find "no 'positive indicia of a contrary legislative intent in either the statutes or the Wage Order.'" However, Wage Order 5 specifies (as do many other wage orders) in Section 1.B that "employees directly employed by the State or any political subdivision thereof" are excluded from the meal period, rest period and overtime requirements.

This phrase regarding "any political subdivision" has long been understood by public entities to exclude all types of public entities from the wage order. The Legislature itself has acknowledged this exclusion of public entities from wage and hour laws on multiple occasions since 2001, when it enacted laws to specifically apply meal and rest period requirements to certain types of public employees. (Lab. Code, §512.5,

subd. (c) (extending the possibility of coverage to public commercial drivers in 2004); Lab. Code, §512.1, subd. (e)(3) (extending coverage to public patient care workers in 2023).)

At a minimum, the exemption for employees of "any political subdivision" applies to public hospital authorities like AHS. KCHA's enabling statute provides a clear indication the Legislature considers public hospital authorities to be a type of political subdivision, stating: "[t]his chapter is necessary to allow the formation of a ***new political subdivision***, a ***public hospital authority***, for the purposes described above." (Health & Saf. Code, §101852, subd. (b)(5).) Although the enacting statutes for AHS are very similar to KCHA's enacting statutes, and functionally equivalent, the legislature did not use that exact language in the AHS enabling statutes eighteen years earlier. The *Stone* decision effectively treats the lack of the same precise language in AHS's enabling statutes as a substantive distinction that makes AHS not a political subdivision, and therefore subject to various wage laws, even though another hospital authority with an identical purpose – KCHA – is not subject to those same wage laws. There is no suggestion the legislature intended to make such a distinction between KCHA and AHS for wage and hour laws, nor is there any policy reason for such a distinction.

And in other contexts, the legislature has also recognized that political subdivisions include all types of public entities. (See, e.g., Gov. Code §8557, subd. (b) "other local governmental agency or public agency authorized by law." [California Emergency Services Act.]; Gov. Code, §8698, subd. (a) "any public agency authorized by law" [Shelter Crisis Act].) Because a hospital authority is a political subdivision, "the positive indicia of a contrary legislative intent" is that hospital authorities are

political subdivisions for purposes of the wage laws and wage orders relating to meal periods, rest breaks and keeping of accurate payroll records, and the *Stone* court should not have reached the sovereign powers analysis.

IV. THE EXEMPTION IN LABOR CODE SECTION 220, SUBD. (B), FOR EMPLOYEES OF "OTHER MUNICIPAL CORPORATIONS," SHOULD BE READ BROADLY TO INCLUDE ALL PUBLIC ENTITIES THAT EXERCISE GOVERNMENTAL FUNCTIONS

The text, structure and history of the prompt payment statutes demonstrates the Legislature intended the Labor Code section 220, subdivision (b), exemption for "other municipal corporations" to be read broadly and to exempt all local public entities that exercise government functions.

First, the term "municipal corporation" is broader than the term city, as "incorporated city or town" is already listed separately in the statute. (See *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545, 549.) Moreover, this Court has equated the term "other municipal corporation" as used in Section 220, subdivision (b), with "other political subdivisions of the State." (*McLean v. State of California* (2016) 1 Cal.5th 615, 629 [206 Cal.Rptr.3d 545, 377 P.3d 796].)

Furthermore, when the Legislature adopted the Labor Code, it codified the prompt payment statutes and public entity exemptions at sections 200 to 220. (Stats. 1937, ch. 90, p. 197.) As this Court noted in *McLean*, "as originally enacted, the prompt payment provisions only applied to private employers." (*McLean, supra*, 1 Cal.5th at 619, fn 1.) However, when the Legislature removed state employees from some

exemptions in 2000, it did not modify the language exempting local entities but instead moved that language to subdivision (b) so the prompt payment provisions "continue to exempt" local public entities. (*Id*.) This demonstrates that the exemption in Labor Code section 220, subdivision (b), for "other municipal corporation[s]" was meant to apply broadly to all local public entities, including public hospital authorities.

V. THE *STONE* DECISION WILL IMPAIR THE ABILITY OF COUNTIES TO PROVIDE EFFICIENT HEALTH CARE TO THEIR RESIDENTS

A. THE DECISION WILL CREATE A FINANCIAL RISK FOR COUNTIES THAT CREATE PUBLIC HOSPITAL AUTHORITIES THAT WAS NOT INTENDED BY THE LEGISLATURE

The creation of public hospital authorities is a result of the Legislature's acknowledgment that the evolving health care sector needed the creation of a separate public entity to operate a public hospital as an optimal way for a county to fulfill its commitment to the medically indigent, those who have special needs, and the general populations. (See Health & Saf. Code, §§101850, 101852.) The creation of a separate public entity benefits the public by allowing public hospital authorities to efficiently run hospitals to maximize the care for residents providing less strain on counties as they no longer have to directly grapple with the complexities of the current healthcare systems. If forced to remain public hospitals within counties to avoid increased liability and exposure, counties may be forced to cut back on services provided to the community or even close public hospitals due to a lack of resources and flexibility.

In creating public hospital authorities, neither the legislature nor counties anticipated such hospital authorities would be treated differently from any other public agencies, or that employees of authority-run hospitals would have significantly different rights than employees at county-run hospitals. The enabling statutes for AHS and KCHA specified that employees of the hospital authorities should have the same rights that they did as employees of the county hospitals, including maintaining existing employee benefits and bargaining agreements and permitting hospital authority employees to continue participating in county employee retirement plans. (See AHS Opening Brief on the Merits (AOBM), pp. 43-44; AHS Reply Brief on the Merits (ARBM), p. 30; Health & Saf. Code, §§101850, subd. (m), (s), (w), (x), 101853.1, subd. (b),(d),(g).)

The language in the enabling statutes ensured that there would be a seamless transition for the employees with no loss of rights or benefits when the hospital ownership was transferred by the County to the newly created hospital authority. But there was no indication in the enabling statutes that the hospital authority would not only provide all of the benefits of public employment for the employees of the new authority, but also be required to provide those employees with the vestiges of private sector employment. However, that is the effective result of the *Stone* decision, which the legislature and the counties could not have foreseen when they created the hospital authorities.

The *Stone* decision creates increased exposure or liability for wage and hour laws normally applicable only to the private sector. While public hospital authorities were once seen as a way to efficiently and innovatively provide medical services to residents, they may now be considered huge liabilities for the counties that fund them. This would greatly disincentivize

other counties from creating public hospital authorities and may cause counties with existing hospital authorities to reevaluate their existence. That will, in turn, curtail the ability of counties to provide efficient, affordable, medical services. Public hospital authorities are a necessary vehicle for counties to offer public hospitals the operational structure to provide healthcare services that create an "ongoing material benefit to the county and its residents." (Kern County Hospital Authority 2.170.010 section (F).)

B. THE *STONE* DECISION WOULD CREATE MORE FINANCIAL BURDEN ON ALREADY IMPACTED PUBLIC HOSPITAL AUTHORITIES.

As it currently stands, public hospitals and hospital authorities are facing increased financial burdens due to cuts in federal funding. Over 2,500 hospitals around the country have historically relied on the Medicaid Disproportionate Share Hospital ("DSH") payments for financial stability. (Murphy, Angelov, & Guippone, *Drastic Scheduled Cuts to Disproportionate Share Hospital Funding Would Increase Financial Distress for Safety Net Hospitals* (March 30, 2023) <https://www.afslaw.com/perspectives/alerts/drastic-scheduled-cuts-disproportionate-share-hospital-funding-would-increase> [as of January 5, 2024].) The DSH payments are made to hospitals with high Medicaid and uninsured patient volume to address "Medicaid underpayment and uncompensated care, which helps ensure patients have access to critical community [medical] services." (American Hospital Association, Letter to Congress (March 6, 2022) < https://www.aha.org/lettercomment/2023-03-06-hospital-organizations-urge-congress-prevent-medicaid-dsh-cuts> [as of November 21, 2023].) However, DSH payments were slated to be cut on

October 1, 2023. Ultimately, the scheduled DSH payment cuts were delayed by Congress on September 30, 2023 for six weeks. (Hut, *Update: Medicaid DSH payment cut averted as House, Senate pass short-term federal funding* (October 1, 2023) <https://www.hfma.org/payment-reimbursement-and-managed-care/medicaid-payment-and-reimbursement/an-8-billion-medicaid-dsh-cut-is-closer-to-happening/> [as of November 21, 2023].) The future of DSH payments beyond those six weeks is currently unknown and thousands of public hospitals must rely on Congress to avoid cuts to their DSH payments.

According to a report issued by Medicaid and CHIP and Access Commission ("MACPAC")[1], the $8 billion cuts that were intended to take place on October 1, 2023, and would be replicated in subsequent years, represent a 54% reduction from current levels which could "disrupt the financial viability of some safety-net hospitals." (MACPAC Report (March 2023) pp. xvi and 82.) The loss of the federal stimulus funds provided in 2020 since the beginning of the COVID-19 pandemic has also increased financial troubles for non-profit hospitals, most operating at nearly breakeven points. (Baxter, *More Financial Challenges Ahead for Not-For-Profit Hospitals* (March 8, 2023) <https://healthexec.com/topics/healthcare-management/healthcare-economics/more-financial-challenges-ahead-not-profit> [as of November 21, 2023].) In addition, hospitals are facing decreased revenues, increased expenses due to inflation, staffing shortages, and job cuts due to an effort to reduce costs. (See *id.*, Gooch, *23 hospitals, health systems cutting jobs* (March 9, 2023)

[1] MACPAC is the federal commission charged with monitoring and analyzing the DSH program,

<https://www.beckershospitalreview.com/finance/17-hospitals-health-systems-cutting-jobs-february-2023.html> [as of November 21, 2023].)

Specifically relevant to California, financial pressures caused the closure of Madera County's Community Hospital at the end of December of 2022 which left Madera County's 160,000 residents without a public hospital in their County. (Carbajal & Emerson, *Why a shuttered California Hospital is 'just the tip of the iceberg'* (March 10, 2023) https://www.beckershospitalreview.com/finance/why-a-shuttered-california-hospital-is-just-the-tip-of-the-iceberg.html [as of November 21, 2023].) The closure of Madera County's Community Hospital forced many residents to drive to neighboring Fresno County to seek medical care and caused a public health emergency for both Madera County and Fresno County. (*Id.*)

Public health authorities and agencies are already impacted by financial burdens. The *Stone* decision places more of a burden on public health authorities by subjecting them to liabilities counties the legislature did not anticipate when they created those authorities. Counties may not be able to fulfill their obligations under Welfare and Institutions Code section 17000 if the public hospitals are forced to curtail the services they provide or close down completely. The *Stone* decision has the potential to be a significant burden for counties and the residents they are obligated to serve.

VI. CONCLUSION

For the foregoing reasons, amicus curiae Kern County Hospital Authority urges the Court to reverse the Court of Appeal's decision, affirm the trial court's decision and hold that public hospital authorities and all

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others local public agencies are exempt from the Labor Code and Wage Order exemptions at issue in the case.

Dated: January 5, 2024

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

By: */s/ Brian P. Walter*
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CERTIFICATE OF WORD COUNT

I certify that, pursuant to California Rules of Court, rule 8.204(c)(1), the attached Application to File Amicus Brief and Proposed Brief of Amicus Curiae Kern County Hospital Authority in Support of Respondent Alameda Health System is proportionately spaced, has a typeface of 13 points or more, and contains 3,836 words, as determined by a computer word count.

Dated: January 5, 2024

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

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CERTIFICATE OF SERVICE

Stone v. Alameda Health System
Supreme Court Case No. S279137; Court of Appeal Case No. A16402

I, Amber J. Heinze, declare:

I am over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.

On January 5, 2024, I caused a true copy of the foregoing **APPLICATION TO FILE AMICUS BRIEF AND PROPOSED BRIEF OF AMICUS CURIAE KERN COUNTY HOSPITAL AUTHORITY IN SUPPORT OF RESPONDENT ALAMEDA HEALTH SYSTEM** to be served on interested parties in this action included on the attached service list, as follows:

- By electronic transmission via TrueFiling: I electronically filed the foregoing document with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system.

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

Executed on January 5, 2024, at Los Angeles, California.

/s/ Amber J. Heinze
Amber J. Heinze

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **STONE v. ALAMEDA HEALTH SYSTEM**
Case Number: **S279137**
Lower Court Case Number: **A164021**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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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.

1/5/2024

Date

/s/Brian Walter

Signature

Walter, Brian (171429)

Last Name, First Name (PNum)

Liebert Cassidy Whitmore

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