CASE NO. S290188

IN THE

SUPREME COURT

OF THE
STATE OF CALIFORNIA

GLENN MANIAGO AND GENEANNE MANIAGO,
Plaintiffs and Appellants,

v.

DESERT CARDIOLOGY CONSULTANTS' MEDICAL GROUP, INC., *et al.*
Defendants and Respondents.

After a published opinion of the Court of Appeal,
Fourth Appellate District, Division 1
Case No. D085025

Appeal from the Superior Court of the State of California
for the County of Riverside, Case No. CVRI 2303683
Hon. Harold Hopp

APPELLANTS' REPLY BRIEF

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I. ISSUE PRESENTED

Is a voluntary dismissal with prejudice an appealable order if it was entered after an adverse ruling by the trial court in order to expedite an appeal of the ruling?

II. INTRODUCTION

Respondents Desert Cardiology Consultants' Medical Group and Praveen Panguluri ("Respondents" or "Defendants") devote a majority of their lengthy Answer Brief on the Merits (the "Answer Brief") to addressing questions outside the scope of this appeal. Although reply briefs generally do not begin with the issue presented, Appellants Geneanne and Glenn Maniago (the "Maniagos") do so to center the discussion on the only question that this Court has called the parties to answer.

This appeal is from a published opinion of the Fourth District Court of Appeal: *Maniago v. Desert Cardiology Consultants' Group* (2025) 109 Cal. App. 5th 621. The Maniagos voluntarily dismissed their case with prejudice after the Superior Court entered orders sustaining demurrers and eliminating all five of Geneanne Maniago's causes of action and three of four of Glenn Maniago's causes of action, as well as narrowing substantially the recoverable damages. AA 332-344. Having voluntarily amended their complaint to address Defendants' concerns, the Maniagos were prepared to stand on the First Amended Complaint in lieu of amending their complaint yet again. *See Lee v. Hanley* (2015) 61 Cal. 4th 1225, 1232. Therefore, the Maniagos requested dismissal with prejudice solely to expedite an appeal of the Superior

Court's adverse rulings. AA 341. The Court of Appeal dismissed the Maniagos' appeal, holding that a voluntary dismissal entered by a clerk at a plaintiff's request is a nonappealable, ministerial act. *Id.* at 628.

The Court of Appeal's holding disregards the majority of cases in which California courts "treat a voluntary dismissal with prejudice as an appealable order if it was entered after an adverse ruling by the trial court in order to expedite an appeal of the ruling." *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal. App. 4th 1006, 1012 (citations omitted). The primary precedent in this line of cases is *Ashland Chemical Co. v. Provence* (1982) 129 Cal. App. 3d 790, 792-793. On the other hand, in *Yancey v. Fink* (1991) 226 Cal. App. 3d 1334, 1342-43, the court concluded that a voluntary dismissal entered by a clerk at a plaintiff's request is a nonappealable, ministerial act. With the exception of this and perhaps one other case[1], it appears that no California court in the last 20 years published an opinion relying upon *Yancey* to conclude that only a dismissal order signed by a judge is appealable.

The Court of Appeal stated that it could not reconcile *Ashland* and *Yancey*. 109 Cal. App. 5th at 631. It was this "circuit split" that the Court must now resolve. Respondents

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[1] The other case is *Chaves Reyes v. Hi-Grade Materials Co.* (2025) 110 Cal. App. 5th 1089, 1099-1100. Both opinions were authored by Justice Buchanan of the Fourth District Court of Appeal.

did not address the divided opinions reflected in *Ashland* and *Yancey* until page 58 of the Answer Brief.[2]

California law requires a finding of appellate jurisdiction "to promote judicial economy, to preserve a party's right to appeal, and to permit appellate review on the merits." *Meinhardt v. City of Sunnyvale* (2024) 16 Cal. 5th 643, 654-55. Those principles are reflected not only in well-settled precedent, but in Code of Civil Procedure § 906, pursuant to which a party may appeal an order that "involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party". *See County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal. App. 4th 292, 312 (quoting Cal. Code of Civ. P. § 906).

When it dismissed the Maniagos' appeal, the Court of Appeal disregarded *Meinhardt* and well-settled precedent establishing that a dismissal order entered after a plaintiff voluntarily dismissed its case with prejudice to expedite an appeal after an adverse ruling is appealable. The Court should vacate the Court of Appeal's order and direct it to consider fully the Maniagos' appeal.

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[2] In footnote 3 on page 11 of the Answer Brief, Respondents acknowledged that, "The conflict primarily is between [*Ashland*] and [*Yancey*]", but Respondents did not discuss that conflict in the subsequent 47 pages.

III. ARGUMENT

A. A DISMISSAL ORDER ENTERED AFTER A PLAINTIFF VOLUNTARILY DISMISSED ITS ENTIRE CASE TO EXPEDITE APPEAL OF AN ADVERSE RULING IS IMMEDIATELY APPEALABLE.

Respondents urge the Court to reject "Plaintiffs' approach" or "Plaintiffs' proposed approach" as if the Maniagos advance a novel proposition that is unsupported by the law and precedent. *See*, *e.g.*, Answer Brief at p. 54. According to Respondents, Appellants are out to decimate a "cornerstone of the appellate system and a fundamental principle of appellate practice." Answer Brief at pp. 20, 25 and 26. Respondents can assure the Court, however, that reversing the Court of Appeal will not lead to the downfall of the appellate system or appellate practice in California.

Respondents' hyperbole is a transparent and misguided effort to distract from the fact that Appellants advance "an approach" that is neither novel nor untested. To the contrary, a majority of California courts have held that a voluntary dismissal with prejudice is an appealable order when entered after an adverse ruling and to expedite an appeal of the ruling. *Ashland*, 129 Cal. App. 3d at 792-793; *Stewart*, 87 Cal. App. 4th at 1012, citing *Casey v. Overhead Door Corp.* (1999) 74 Cal. App. 4th 112, 116, fn. 2 (disapproved on other grounds in *Jimenez v. Superior Court* (2002) 29 Cal. 4th 473, 481); *Denney v. Lawrence* (1994) 22 Cal. App. 4th 927, 930 fn. 1; *Gutkin v. University of Southern California* (2002) 101 Cal. App. 4th 967, 974; *Giraldo v. Department of Corrections &*

Rehabilitation (2008) 168 Cal. App. 4th 231 (citing *Stewart*); *Goldbaum v. Regents of University of California* (2011) 191 Cal. App. 4th 703, 708; *Austin v. Valverde* (2012) 211 Cal. App. 4th 546, 550-51; *Flower v. Prasad* (2015) 238 Cal. App. 4th 930, 935; *Berry v. Frazier* (2023) 90 Cal. App. 5th 1258, 1266-67.

The Court of Appeal declined to follow the majority view as reflected in *Ashland* and its progeny. 109 Cal. App. 5th at 630-32. Instead, the opinion relies primarily upon *Yancey*, 226 Cal. App. 3d at 1342-43, to support its conclusion that a voluntary dismissal entered by the clerk at a plaintiff's request is a "ministerial act of the clerk, not a judicial act, and thus not appealable." *Id.* at 841. The Court of Appeal stated that *Yancey* could not be reconciled with *Ashland*. *Id.* at 844. It also stated that, despite "nearly identical circumstances", *Yancey* reached the opposite conclusion of *Ashland*. *Id.*

But the facts in *Ashland* and *Yancey* are not "nearly identical." In *Yancey*, a local water district foreclosed upon and sold a certain parcel of land. The purchaser of the land sought to challenge an order sustaining the demurrer to his declaratory relief action, among other things. 226 Cal. App. 3d at 1339, 1341. There was, however, no judgment of dismissal. *Id.* at 1342. The Court of Appeal "directed the purchaser to 'serve and file a certified copy of a proper order or judgment of dismissal…" *Id.* "Rather than following these instructions," purchaser filed a voluntary request for the dismissal of the entire declaratory relief action, which the

clerk entered. *Id.* The Court of Appeal viewed Purchaser's decision as disobedience and refused to hear the appeal. *Id.*

In *Ashland*, an action on a promissory note, the trial court sustained a demurrer without leave to amend based on the applicable California's statute of limitations (four years) instead of Kentucky's statute of limitations (five years). 129 Cal. App. 3d at 792. Plaintiff appealed prematurely before realizing there was no appealable judgment. *Id.* Plaintiff then requested an order dismissing the complaint with prejudice for the express purpose of expediting the appeal. *Id.*

On appeal, the defendant in *Ashland* argued that a voluntary dismissal precludes an appeal of an order sustaining a demurrer. 129 Cal. App. 3d at 792. The court rejected defendant's argument. It noted that plaintiff dismissed its complaint only after the trial court sustained a demurrer without leave to amend. No question existed that plaintiff did so "only to obtain a final judgment so it could contest the court's ruling." 129 Cal. App. 3d at 793. Therefore, the court heard the appeal because the "request for dismissal was tantamount to a request to enter judgment on [defendant's] demurrer." *Id.*

Although this Court did not cite *Ashland* in its *Meinhardt* opinion, it could have. In *Ashland*, the court recognized the order sustaining the demurrer without leave to amend as final and appealable. In *Meinhardt*, this Court noted that certain interlocutory orders, including orders sustaining demurrers without leave to amend, can constitute final judgments and, pursuant to Rule of Court 8.104(d)(2),

California courts may permit appeals to proceed.[3] 16 Cal. 5th at 655. The Court recognized that it "may be fairly easy" to conclude that an order sustaining a demurrer without leave to amend is final for purposes of an appeal. *Id.* at 658, n. 10.

Like *Ashland*, *Yancey* could also be included in *Meinhardt*'s discussion of cases in which a California court found a way to hear an appeal rather than dismiss the appeal in its entirety. In *Yancey*, the court took steps to preserve the appeal. Although it concluded that a clerk's order entered after voluntary dismissal is a non-appealable "ministerial act", the court recognized Purchaser's right to appeal the redemption portion of the foreclosure action pursuant to Code of Civil Procedure Section 904.1(b). 226 Cal. App. 3d at 1344. Thus, *Yancey* found a way to "preserve a party's right to appeal" and "permit appellate review on the merits." *Meinhardt*, 16 Cal. 5th at 654-55.

The Maniagos' case is one in which it is "fairly easy" to determine that an order sustaining a demurrer with leave to amend is final for purposes of the one judgment rule. *See Meinhardt*, 16 Cal. 5th at 658, n. 10 and *Lee v. Hanley*, 61 Cal. 4th at 1232. "When a demurrer is sustained with leave to amend, and the plaintiff chooses not to amend but to stand on the complaint, an appeal from the ensuing dismissal order may challenge the validity of the intermediate ruling sustaining the demurrer." *Id.* (quoting *Santa Clara*, 137 Cal.

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[3] The Answer Brief does not address Rule of Court 8.104(d)(2) or this important statement of the law in *Meinhardt*.

App. 4th at 312 (citing *Bank of America v. Superior Court* (1942) 20 Cal. 2d 697, 703)). In this case, the Maniagos amended their complaint once and were prepared to "stand on" the first amended complaint. *See* AA 21, 67, 109 and 126.

The Court of Appeal refused to hear the Maniago's appeal on the merits, eliminating rather than preserving their right to appeal. It did not determine whether the orders below were sufficiently final to constitute a judgment. It did not acknowledge, much less discuss, this Court's analysis in *Meinhardt*. This was clear error.

Respondents make the same mistake. If Respondents engaged in even the most cursory analysis of the factors enumerated in *Meinhardt*, they would necessarily concede that the trial court's order eliminating virtually all of the Maniagos' causes of action is an appealable order. Respondents' version of a "bright-line rule" ensures that appeals cannot be heard until after a trial has concluded and judgment entered. Important issues of liability would go unresolved until after the judgment is entered and reversed, and a second trial commenced. In this instance, Geneanne Maniago's entire case and the majority of Glenn Maniago's case would not be heard on the merits at the first trial. The unnecessary delay would inevitably cause the Maniagos to suffer prejudice. It would also result in a tremendous and unjustifiable waste of judicial resources.

B. RESPONDENTS DO NOT, AND CANNOT, JUSTIFY THE PROPOSED REQUIREMENT THAT A TRIAL JUDGE MUST SIGN AN ORDER DISMISSING THE CASE BEFORE AN APPEAL MAY BE HEARD.

Respondents emphasize that, in cases like *Ashland* and *Lee*, the judges signed orders or judgments of dismissal. Relying upon *Yancey*, the Court of Appeal similarly concluded that the dismissal order entered by the clerk at a plaintiff's request is a "ministerial act of the clerk, not a judicial act, and thus not appealable. See *Maniago*, 109 Cal. App. 5th at 628, citing 226 Cal. App. 3d at 1342-43. Neither the Court of Appeal in its opinion, nor Respondents in their Answer Brief, explain why it is imperative that a judge execute a dismissal order. *Id.*

The cases upon which *Yancey* relies offer no explanation for the distinction between a "ministerial act" and a "judicial act". *See, e.g., Associated Convalescent Enterprises v. Carl Marks & Co., Inc.* (1973) 33 Cal. App. 3d 116, 120. Not a single case cited in *Yancey* explains the distinction drawn between a dismissal order entered by a clerk at a plaintiff's request and a judicial order. *See, e.g., Cook v. Stewart McKee & Co.* (1945) 68 Cal. App. 2d 758, 761-62.

The Court of Appeal does not analyze the facts of the cases cited in *Yancey*, merely quoting language that appears in the headnotes without considering the facts. Similarly, in their Answer Brief, Respondents quote the limited language that appears to advance their cause but omit any discussion of the facts that shape that analysis. The cases cited in

Yancey involve a very unique fact pattern that is quite unlike the present case. In those cases, defendants appealed trial court orders after plaintiffs requested dismissal of the case voluntarily.[4]

In *Cook*, the court correctly refused to hear defendant's appeal from a dismissal order entered by the clerk at plaintiff's request. 68 Cal. App. 2d at 762. The reason is simple: defendant got what it wanted, *i.e.*, the trial court granted its motion to strike the pleadings, after which plaintiff voluntarily dismissed the case. *Id.* at 760, 762. Unsatisfied with the favorable result, Defendant sought appellate review of the trial court's order overruling its demurrer to the complaint. *Id.* at 761-62. The Court of Appeal reasoned that the dismissal "leaves [the defendant] exactly where it desired to be before and after the filing of the action." *Id.* at 762.

While it stated that a clerk's entry of judgment is a judicial act "from which no appeal may be prosecuted", the Court of Appeal also acknowledged that "a clerk's dismissal might be considered a judicial act". 68 Cal. App. 2d at 761, 762. More significantly, there was no question that plaintiff was foregoing further litigation of its claims and did not

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[4] *Yancey* credits *Wells v. Marina City Properties, Inc.* (1981) 29 Cal. 3d 781, 787, for the proposition that a plaintiff "obviously [can] not appeal [his] own voluntary dismissal ...." 226 Cal. App. 3d at 1343. Its reliance is wholly misplaced. The quotation is a description of the holding in *Parenti v. Lifeline Blood Bank* (1975) 49 Cal App.3d 331, 333, of which the Court disapproved in *Wells*. 39 Cal. 3d at 789.

intend to appeal. Plaintiff's voluntary dismissal had "the effect of an absolute withdrawal of his claim and leaves the defendant as though he had never been a party." *Id.* at 762. Consequently, defendant had no right to appeal the dismissal order entered by the clerk.

In *Associated Convalescent*, the Court of Appeal also refused to hear defendant's appeal after plaintiff dismissed the case voluntarily. 33 Cal. App. 3d 116, 118-19. After the trial court sustained demurrers to eight of eleven causes of action, plaintiff dismissed the action without prejudice. *Id.* at 118. Defendant requested costs of suit and attorney's fees. In a minute order, the trial court awarded costs of suit but refused to award attorney's fees because defendants were not prevailing parties "in whose favor a final judgment is rendered". *Id.* at 119. The trial court declined to enter a proposed judgment offered by defendants, so they appealed the portion of the minute order denying attorney's fees and the denial of their request for a judgment. *Id.* at 119.

In both *Cook* and *Associated Convalescent*, defendants sought to appeal after an order dismissing the case was entered by a clerk at the plaintiffs' request to terminate the litigation. In this case, however, Plaintiffs voluntarily dismissed the case not to forego further litigation, but solely for the purposes of appeal. Unlike *Cook* and *Associated Convalescent*, Plaintiffs – not Defendants – are appealing the case. Therefore, the distinction between "ministerial actions" and judicial orders is irrelevant at best.

Respondents suggest that in the absence of a "proper order or judgment of dismissal", a court "will be required to construe the order 'to contain language it does not have.'" Answering Brief at pp. 20, 43 and 61 (quoting *Yancey*, 226 Cal. App. 3d at 1342). According to Respondents, "The appellate court will have to speculate." Respondents' argument begs the question, "Speculate as to what?"

A so-called "proper" order of judgment or judgment of dismissal signed by a judge is *pro forma*. Appellants request that the Court take judicial notice of the "Order of Dismissal" entered in *Dawson v. City of San Diego*, San Diego Superior Court case No. 37-2009-00084389 and the "Judgment of Dismissal after Sustaining of Demurrer to First Amended Complaint without Leave to Amend" entered in *Belemjian, et al. v. Harris, et al.*, Fresno Superior Court Case No. 15 CECG 00029.

Like many (if not most) "proper order[s] or judgment[s] of dismissal" entered after a demurrer is sustained, the Order of Dismissal in *Dawson* and the Judgment of Dismissal in *Belemjian* provide no information that is not otherwise in the case file. That information is equally available to an appellate court when the appeal is based on an order dismissing the case entered by a clerk. In this case, a declaration from the Maniagos' counsel, filed simultaneously with the Request for Dismissal, provides the same information that was included in the Order of Dismissal and the Judgment of Dismissal. AA at 340-341. The Court of Appeal was not required to

speculate. All information required for the Court of Appeal to decide the case on the merits was present and available.

Respondents fail to distinguish a "ministerial action" and an order signed by a judge. It is a distinction without a difference.

C. THE COURT SHOULD DISREGARD RESPONDENTS' ARGUMENTS THAT ARE BEYOND THE SCOPE OF THE ISSUE PRESENTED AND/OR DO NOT RESPOND TO ISSUES PROPERLY RAISED IN APPELLANTS' OPENING BRIEF.

The Court should decline to consider issues that Respondents improperly raise in violation of California Rule of Court 8.516(a)(1). The only portion of the Answer Brief that addresses the issue presented in the section entitled "Legal Analysis" begins at page 58 and concludes at 71.

In an abundance of caution, the Maniagos respond briefly to some of the new issues that Respondents raise. Word count limitations make it challenging for the Maniagos to respond to all of Respondents' extraneous arguments here. If the Court is inclined to address issues beyond the issue presented, the Maniagos request reasonable notice and an opportunity to fully brief and argue those issues. Rule of Court 8.516(b)(2).

1. Respondents argue that the trial court must determine whether an order is appealable. Answer Brief at p. 11. Respondents do not cite a single case that holds a trial court is qualified to determine finality for purposes of appeal. Unlike the Federal Rules of Civil Procedure, the California

Rules of Civil Procedure do not authorize a trial court to certify an immediate appeal. *See* Fed. R. Civ. P. 54(b) and 28 U.S.C. § 1292(b). Pursuant to California Code of Civil Procedure Section 904.1, an appeal is to the Court of Appeal, not to the Superior Court. In California, a trial court does not determine appealability.

2. Respondents argue that, "It should not be sufficient for plaintiffs to simply file a request for dismissal, to be entered by the clerk." Answer Brief at p. 12. This Court stated the issue presented as follows:

> Is a voluntary dismissal with prejudice an appealable order if it was entered after an adverse ruling by the trial court in order to expedite an appeal of the ruling?

Respondents' framing of the issue disregards many of the key factors underlying the issue presented, including: (a) whether the dismissal was with prejudice; (b) whether it was entered after an adverse ruling; and (c) whether it was requested to expedite an appeal of an adverse ruling. Additionally, it ignores factors that courts answering the question have considered, including whether it was the plaintiff or defendant that sought to appeal. *See Associated Convalescent*, 33 Cal. App. 3d at 120 and *Cook*, 68 Cal. App. 2d at 761-62.

3. Respondents argue that, "If every trial court interim ruling is appealable simply by the device of filing a request for dismissal with prejudice, there will be a dramatic increase in the number of appeals." Answer Brief at p. 19.

Respondents offer no facts or data to support their contention. If the Court requests, Appellants will submit the following documents regarding the number of appeals in California:

- Judicial Council of California, *1999 Annual Report: Court Statistics Report*;
- Judicial Council of California, *2025 Court Statistics Report: Statewide Caseload Trends*; and
- U.S. Census Bureau, California Population from 1996 to Present.

Appellants contend that the data does not show a corresponding increase in the number of appeals after *Ashland* was decided in 1982, or a corresponding decrease in appeals after *Yancey* was decided in 1991. Rather, the data suggests that any increase in the number of cases in the appellate courts is related to population trends in California.

4. Respondents argue that, "Defendants will have reason for concern, particularly health care providers sued by plaintiffs to plead around the Medical Injury Compensation Reform Act (MICRA) by pleading theories other than professional negligence." Answer brief at p. 19, The opposite is true: Respondents seek to extend MICRA to cases in which it clearly does not apply. One of the substantive issues that the Court of Appeal refused to address was whether MICRA or Code of Civil Procedure Section 425.13 apply to Glenn Maniago's claims for punitive damages against Respondents, who were not his health care providers, not his employers,

but his co-workers. *See* Appellants' Opening Brief at p. 30 (filed 29 May 2024).

Respondents' counsel filed an *amicus* brief in *Gutierrez v. Tostado*, Supreme Court Case No. S283128. Respondents' counsel argued that MICRA and Section 425.13 should apply to all claims arising out of harm that occurred while a medical professional was providing services. In the trial court, Respondents argued that *Canister v. Emergency Ambulance Services* (2008) 160 Cal. App. 4th 388, controlled and required that Glenn Maniago's punitive damages claims be stricken. The Maniagos argued that *Johnson v Open Door Community Health Centers* (2017) 15 Cal. App. 5th 153, applied and should preclude the striking of Glenn Maniago's punitive damages claims. In *Gutierrez*, the Court concluded that MICRA's statute of limitations does not extend to claims for negligence arising from a breach of a duty owed to the public generally. *Gutierrez v. Tostado* (2025) 97 Cal.App.5th 786.

In this case, Respondents and their counsel argue for an expansive application of MICRA to any injury suffered while a medical professional was providing care. It is not the case that the Maniagos would "plead around MICRA", but that Respondents would wield MICRA as a shield and a sword to attack in every personal injury case in which a medical professional was named as a defendant.

In light of the decision in *Gutierrez v. Tostado*, the Maniagos should have the opportunity to challenge the Superior Court's orders on appeal. To that end, the Maniagos

request that the Court enter an order directing the Court of Appeal to hear the Maniagos' appeal on the merits.

5. Relying on *Le Francois v. Goel* (2005) 35 Cal. 4th 1094, Respondents argue that, "[U]ntil the one final judgment in a case, the trial court has the power to reconsider its interim orders." As Respondents concede, *Le Francois* involved a motion for summary judgment. The immediate case involves orders sustaining demurrers. In this case, the Superior Court would not reconsider its orders in the absence of amended pleadings that included new factual allegations supporting the causes of action to which demurrers were sustained or additional grounds for attorney's fees were presented. *See* AA 332 and 334.

Additionally, Code of Civil Procedure Section 1008 does not contemplate that a Court will change its mind regarding factual allegations in a pleading and, on its own motion, enter a different order. Instead, Section 1008(c) only addresses the circumstance in which there is "a change of law that warrants [a court] to reconsider a prior order it entered." Respondents' suggestion that every court order is open for revision or amendment, including orders sustaining demurrers, is simply not supported by the law.

IV. CONCLUSION

For all the foregoing reasons, the Maniagos respectfully request that this Honorable Court reverse the Court of Appeal's judgment and hold that the Court of Appeal has jurisdiction to hear this appeal and must reach the merits of the Maniagos' appeal.

Dated:
20 October 2025

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Dated:
20 October 2025

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CERTIFICATION

Counsel certifies that this document contains 4173 words. Counsel relies on the word count of the word processing program used to prepare this document.

Dated:

20 October 2025

JOHN ARAI MITCHELL

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John Arai Mitchell

STATE OF CALIFORNIA
Supreme Court of California

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