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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO - UNLIMITED JURISDICTION

TERESE CARDAMON and NICHOLAS CARDAMON, on behalf of themselves, and on behalf of all others similarly situated, Plaintiffs, vs. THE DOMINION COURTYARD VILLAS. SCOTT ELLIS ENTERPRISES, LLC, SCOTT ELLIS ENTERPRISES, L.P., BARCELONA APARTMENTS, CASA DEL RIO APARTMENTS, DARTMOUTH TOWER APARTMENTS, OXFORD PARK APARTMENTS, REEF APARTMENTS, SCOTTSMEN APARTMENTS, SCOTTSMEN TOO APARTMENTS, VILLA FARIA APARTMENTS, CEDAR SHEPHERD, LP., (added as DOES 1), SCOTT C. ELLIS, LLC (added as DOES 2) and DOES 1 through 50, inclusive Defendants.	Case No: 16CECG01918 **CLASS ACTION** **PLAINTIFFS OPPOSITION TO DEFENDANTS' MOTION FOR AN ORDER REQUIRING PLAINTIFFS TO SUBMIT A TRIAL PLAN REGARDING MANAGEABILITY OF CLASS ACTION CLAIMS** **Date: January 11, 2022** **Time: 3:30 p.m.** **Dept: 501** **JURY TRIAL REQUESTED**

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Plaintiffs respectfully submit this response to Defendants' motion to require a trial plan to show manageability. Defendants do not provide any statutory authority for their motion, but the Court has broad power to regulate class actions including planning for the trial. See, e.g., Cal Rule of Court 3.767 (Court may make such orders as required for efficient management of the class).

Whether Defendants' can assert offsets at trial is an extremely important issue, one that would determine the length of our trial. Plaintiffs therefore join with Defendants in asking the Court for guidance on this issue

I. SUMMARY OF ARGUMENT.

This class action is solely concerned with the legality of the markup or administrative fee ("the Fee") that Defendants applied to the statutorily approved charges that were deducted from security-deposit refunds. This lawsuit does not address the legality of the itemized charges to which the Fee is applied. As a result, Defendants do not need to prove the reasonableness of their direct charges because the Class does not contest them.[1] In addition, Civil Code Section 1950.5 ("the Statute") and the explanatory case law do not permit Defendants to present offsets over and above the ones for which they have already been given credit.

Defendants elected to use the Statute's summary deduct-and-retain procedures and sent tenants itemized statements within the 21-day deadline set by subdivision (g)(1). Defendants did so in order to perfect their security interests in the Class Members' deposits, otherwise Defendants' "right to retain all or part of the security deposit under section 1950.5, subdivision (f), has not been perfected, and he must return the entire deposit to the tenant." *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 745. By electing to use the statutory procedures, Defendants have withheld millions in security deposits. They cannot now assert new and different charges. Even when a landlord elects not to proceed under section 1950.5, "he cannot set off any damages he could not have recovered if he had complied with section 1950.5, [former] subdivision (f) . . ." *Id.* at 748.

Defendants' frame their motion as one concerned with the manageability of the class. They ignore that this Court has already found that the class is manageable and that common issues of law and fact predominate.

> All that would need to be determined in this action is whether the administrative fee violated Civil Code section 1950.5 (liability), and with respect to each class member, whether the fee was withheld from their security deposit, and how much. . . . There is a very minimal degree of individual proof needed in this case--the amount of the administrative fee withheld.

Declaration of Mark Schallert, Ex. 1 (Order re: certification) at 8.

Plaintiffs have reviewed the 3000+ files of class members, and those files allow one to create a spreadsheet that calculates each individual's recovery as well the total Class recovery. See pp. 4-5, infra. At one point, Plaintiffs believed that a bifurcated proceeding would be required to adjudicate any offsets to individual claims, although Plaintiffs also contended that Defendants bad faith barred any such offsets. However, our further analysis of *Granberry* and other cases have made it clear that Defendants have no additional claims to present, and that the trial can be a straightforward process.

II. STATEMENT OF FACTS.

A. Defendants Elected to Use the Statutory Procedures to Collect Security-Deposit Charges.

Civil Code section 1950.5 sets forth a summary deduct-and-retain procedure that allows landlords to promptly claim offsets to the tenants' security deposits. Subdivision (g) requires a landlord to provide an itemized statement of deductions/setoffs no later than 21 days of the end of the tenancy.

> If, within the specified period, the landlord has not provided the tenant with a written accounting of the portion of the security deposit he plans to retain, the

[1] This does NOT mean that Plaintiffs believe the direct charges are in fact appropriate or legal, just that the issue is beyond the scope of this class action.

right to retain all or part of the security deposit under section 1950.5, subdivision (f), has not been perfected, and he must return the entire deposit to the tenant.

Granberry v. Islay Investments (1995) 9 Cal.4th 738, 745.

Defendants elected to charge and deduct using the procedures set forth in 1950.5. For more than a decade, Defendants have used the Statute's summary deduct-and-retain procedures to withhold millions of dollars in security-deposit funds pursuant to Defendants' standard practice of sending Class Members an itemized statement of charges within the deadlines set by subdivision §1950.5(g)(1). Schallert Decl., ¶1 at p. 7; Exhibit 4 pp. 2-3 responses 2 & 4. A sample of the form used by Defendants is Exhibit 2 to the Schallert Declaration.

Per subdivisions 1950.5(g)(2)(A)-(C),[2] Defendants have divided their direct charges into one of three statutorily approved categories for the repair and cleaning of apartments: (A) work by the landlord's employees (calculated as [hours x hourly rate]), (B) work by a third-party contractor charged at the invoice amount, and (C) the cost of supplies and materials needed to restore the unit. For purposes of this class action, Plaintiffs do not contest the validity of these direct out-of-pocket charges.

B. Defendants Add a Fee to the Statutorily Approved Charges to Cover Overhead Expenses.

Defendants had a standard practice of adding an administrative fee onto these three statutorily approved charges. Schallert Decl., Ex. 1 (Order) at p. 7. At 40%, the Fee would have consistently been the single largest charge assessed against security deposits. In 2018,

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[2] Although Defendants did not provide invoices, they did conform their charges to the following guidelines:

> (g)(2) Along with the itemized statement, the landlord shall also include copies of documents showing charges incurred and deducted by the landlord to repair or clean the premises, as follows:
> (A) If the landlord or landlord's employee did the work, the itemized statement shall reasonably describe the work performed. The itemized statement shall include the time spent and the reasonable hourly rate charged.
> (B) If the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work. . . .
> (C) If a deduction is made for materials or supplies, the landlord shall provide a copy of the bill, invoice, or receipt. If a particular material or supply item is purchased by the landlord on an ongoing basis, the landlord may document the cost of the item . . . used in the repair or cleaning of the unit.

Defendants modified their policies and now apply a 10% markup just to charges for third-party vendors. Ex. 4, p. 3, resp. 4. The trial will determine whether a statute enacted to protect tenants from undocumented deductions would silently grant landlords the discretion to impose a markup that is consistently larger than the deductions permitted by the Statute.

Defendants have always sought to justify the Fee by contending that it is used to pay for their overhead expenses. One of Defendants' principals, Mr. Ellis, testified that the surcharge was used to pay "overhead expenses," a term that included "Payroll taxes, workman's comp insurance, health insurance, supervision, administration, vacation time, sick time, nonproductive time, breaks, tools provided, automotive expense." Schallert Decl., Ex. 5 (Ellis Depo) at 83:8-13.

C. At Trial, Defendants' Business Records Will Allow Accurate Calculation of Individual and Class Recoveries.

Defendants maintain records reflecting the dollar amounts of the administrative fee applied to security-deposit charges. Throughout the class period, Defendants have kept a one-page summary of all charges assessed against each Class Member's security deposit, an example of which is exhibit 3 to the Schallert Declaration. The summary page, which was not given to tenants, includes the amount of the administrative fee applied to each underlying charge for repair or cleaning as set forth in the itemized statement. Ex. 5 (Ellis Depo.) at pp. 80-81.

This Court previously held that "putative class members can be easily identified through defendants' records. Little more would be required than the three-page security deposit forms, which will reveal whether the administrative charge was withheld." Ex. 1 (Order) at p. 6. At trial, Plaintiffs will present evidence from class members and from Defendants' managers describing their common practice. There will likely be expert testimony on accepted practices under section 1950.5, and Defendants can seek to present the evidence it has used to defend itself when responding to our motion for summary adjudication.

Damages should be presented through stipulated evidence. Plaintiffs' expert will input all the relevant information for the 3000+ class members based on Defendants' own business records. Plaintiffs can prepare a spreadsheet listing for each class member (i) the amount of security deposit, (ii) the amount of the statutorily approved, direct charges, (iii) the amount of the

Fee, and (iv) the amount of damages/unjust enrichment. Schallert Decl., ¶5. Defendants will be allowed to run their own spreadsheets and to review and correct any mistakes in Plaintiffs' calculations. Ibid. The numbers would reflect Defendants' business records, and it would simply be a question of inputting that data accurately.

III. ARGUMENT.

A. The Court Has Broad Power to Manage this Class Action and Issue Orders Regulating the Trial.

Defendants cite federal authorities in support of their request for a trial plan. While those authorities are helpful, we note that the California Rules of Court give the Court broad power to regulate the case, including issuing an order concerning the scope of the defenses to be raised. For example, Rule 3.676(a)(4) allows the Court to enter orders to "[f]acilitate the management of the class action through consolidation, severance, coordination, bifurcation, intervention, or joinder." As a leading practice guide notes:

> Rule 3.767 is a comprehensive and open-ended savings clause that vests trial courts with broad powers to effectively manage the parties, pleadings, and cases before them. As such, it may be cited as a source of broad authority to adopt innovative case-specific procedures that are not expressly delineated in the Rules, so long as such proposals do not expressly conflict with or frustrate specific rules.

Cabraser et al., *California Class Actions and Coordinated Proceedings*, Vol. 1, Rel. 19, p. 108. (Apple Books 2021).

It is far more efficient to resolve the issue now before the parties engage in the expansive discovery of evidence proposed by Defendants.

B. Section 1950.5 Allows Landlords to Use a Summary Deduct-and-Retain Procedure to Collect Statutorily Authorized Charges.

"The legislature enacted section 1950.5 to protect tenants, not landlords." *Granberry v. Islay Investments* (1995) 9 Cal. 4th 738, 744-45. Section 1950.5 was amended to address "the egregious acts by some landlords who have excessively overcharged tenants for cleaning and

repair or fraudulently charged tenants for work that was never performed ..." Schallert Decl., Ex. 8 (8/27/03 Senate Journal).

Section 1950.5 sets forth a summary deduct-and-retain procedure. Subdivision (e) provides that the "landlord may claim of the security only those amounts as are reasonably necessary for the purposes specified in subdivision (b)." Subdivisions 1950.5(b)(1)-(4) in turn specifies four types of charges: (1) unpaid rent, (2) repair, (3) cleaning, and (4) certain future defaults that are not relevant here. Section "1950.5 'restricts the use [of a security deposit] to specifically defined purposes,' and requires that the deposit be returned to the extent it is not necessary for those limited purposes." *250 L.L.C. v. Photopoint Corp.* (2005) 131 Cal.App.4th 703, 716 (quoting *People ex rel. Smith v. Parkmerced Co.* (1988) 198 Cal.App.3d 683) (brackets in original) (citation omitted).

Subdivision 1950.5(g)(1) requires landlords to provide the tenant with an itemized statement of these charges within 21 days of the end of tenancy. Subdivisions 1950.5(g)(2)(A)-(C) explain how charges for "repair" and "cleaning," are to be itemized with categories for (A) work by the landlord's employees, (B) charges by outside contractors, and (c) the cost of materials. See, fn. 1. Over the years, Defendants have used these statutory procedures to perfect their security interest in millions of dollars of security deposits. See *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 745. Defendants' election to use the statutory procedures means that they have already received credit for all their offsets.

C. Defendants Have Already Received Credit for the Legitimate Offsets.

Defendants chose to avail themselves of the summary deduct-and-retain procedures and sent Class Members itemized statements within the 21-day deadline set by subdivision (g)(1). Defendants did not attempt to extend the time for repairs under subdivision (g)(3). Defendants' memorandum details the extraordinary measures they undertake to find every possible offset. See Defs' Memo at 3:11-20 (identifying 20 potential charges in a bathroom). Defendants have therefore enjoyed the benefit of the offsets to which they are entitled. There are no grounds for them to assert claims for equitable offsets outside the statutory process.

It is striking that Defendants never discuss the seminal, if challenging, Supreme Court case that discusses when offsets are permitted for security deposits in the class-action context. In *Granberry v Islay Investments* (1995) 9 Cal.4th 738, the class consisted of 10,000 former tenants at a group of apartment complexes. Class Members had paid an additional, nonrefundable $100 with the first month's rent. Defendants successfully contended in the trial court that the $100 was not a security deposit to which section 1950.5 applied, but the appellate court held that the issue was one for the trier of fact. *Id.* at 742. "A jury thereafter found that the excess rental payments were security deposits within the meaning of section 1950.5, subdivision (b), but that defendants had not retained them in bad faith." *Id.* at 743.

Unlike our Defendants, the landlords in *Granberry* had not provided an itemized statement and had "lost the right to take advantage of the summary deduct-and-retain procedure of section 1950.5, subdivision (f) . . ." *Granberry,* supra, 9 Cal.4th at 745. But since the landlords had acted in good faith, the Supreme Court found that they were NOT "barred from recovering for unpaid rent, repairs, and cleaning." *Id.* at 747. The Supreme Court explained that the landlord's potential setoffs were limited to the charges permitted by the Statute.

> In addition, a landlord that seeks setoff after good faith noncompliance with the procedures described in section 1950.5, subdivision (f), does not "profit from his own wrong," because ***he cannot set off any damages he could not have recovered if he had complied with section 1950.5, subdivision (f)***"

Id. at 748 (emphasis added).

Here, Defendants have already recovered the charges/offsets available under the Statute. Subdivision 1950.5(g)(1) requires that all such charges be presented in an itemized statement within 21 days of the end of the tenancy. The only question left is whether Defendants can markup those statutory charges in order to recoup overhead expenses.

Even if a landlord had a theoretical right to allege new offsets, there are additional hurdles that would have to be cleared before any evidence was considered. First, the *Granberry* holding is expressly limited to landlords who act in good faith failed to use the deduct-and-retain procedures. Second, "Because defendants have raised their claims through the equitable defense

of setoff, the trial court must also determine whether defendants' claims are barred by any of the generally applicable equitable affirmative defenses, including laches, unclean hands, and estoppel." *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 750. This holding was the focus of a second important case discussing a landlord's right to assert offsets.

D. If the Fee Is Illegal, Defendants Are Barred From Asserting New Offsets.

Granberry held that a landlord who, in good faith, did not elect to use the statutory deduct-and-retain procedures could nonetheless pursue the same offsets permitted under the Statute. In *250 L.L.C. v. Photopoint Corp.* (2005) 131 Cal.App.4th 703, defendant landlord elected to use the deduct-and-retain procedures in Civil Code section 1950.7, which governs commercial leases and is similar to 1950.5. The landlord "wrongly retained the security deposit to cover future rent damages — damages against which the deposit could not have been applied under [Civil Code] section 1950.7— and thereby profited from its own wrong unlike the landlords in *Granberry.* " Id. at 727.

The trial court had allowed the landlord "to offset the amount of the security deposit it withheld against the even greater amount of damages it sustained on account of PhotoPoint's breach of the lease . . ." *Id.* at 708. The Court of Appeals discussed the *Granberry* decision at length and then reversed the trial court:

> We conclude that 250 violated section 1950.7 by retaining the security deposit to cover its damages for future rent owed under the lease, because section 1950.7 allows a security deposit to be applied only against unpaid rent that has accrued as of the date called for in the statute for the return of the deposit. . . . We hold further that the amount of the security deposit 250 wrongly retained cannot be offset against its future rent damages because that result would enable 250 to profit from its violation of section 1950.7.

250 L.L.C. v. Photopoint Corp. (2005) 131 Cal.App.4th 703, 708-09.

The opinion focused on *Granberry*'s holding that the landlords did "not 'profit from his own wrong,' because he cannot set off any damages he could not have recovered if he had

complied with section 1950.5." *250 L.L.C.*, supra, 131 Cal. App. 4th at 727. The appellate court read *Granberry*

> to mean that a landlord that in good faith violates the security deposit statute may offset against its damages only those amounts which it properly could have claimed of the security deposit in the first place. Here, 250 wrongly retained the security deposit to cover future rent damages — damages against which the deposit could not have been applied under section 1950.7 — and thereby profited from its own wrong unlike the landlords in *Granberry.* To allow the offset against future rent damages accomplished by the net judgment in this case would enable 250 to profit from its violation of section 1950.7 at the expense of the other creditors of PhotoPoint

250 L.L.C. v. Photopoint Corp. (2005) 131 Cal.App.4th 703, 727-28.

If the administrative fee is illegal, our Defendants would be in same position as PhotoPoint because they would have profited from their illegal conduct by retaining deposits that belonged to the Class. As a result, Defendants are not allowed to benefit from their violation by presenting component parts of its administrative fee as offsets and thereby seek to recover the same charges it was denied under an illegal Fee.

E. Defendants' Trial Strategy Is Contrary to Public Policy.

Defendants argue that they "must be provided the opportunity to explain why the Fee is reasonable as it pertains to each repair performed, both in-house and by third-party workers." Defs' Memo. at 3:4-8. This approach is contrary to the public policies that underpin the summary procedures established by section 1950.5.

Section 1950.5 sought to end the abusive practices of landlords who improperly withheld security deposits and then waited for a tenant to challenge their practice. Our Supreme Court noted that the Statute was amended because

> "'the security deposit in actuality has evolved into a bonus to be kept by the landlord upon termination of the lease agreement regardless of the damages actually sustained by the landlord. Landlords will retain security deposits after the

departure of a tenant secure in the knowledge that a former tenant is severely inhibited from initiating legal action.'"

Granberry v. Islay Investments (1995) 9 Cal.4th 738, 745 (citation omitted).

Section 1950.5 addressed these problems by establishing what the Supreme Court calls a "summary deduct-and-retain" procedure to expedite security-deposit refunds. Defendants are warping the process by withholding money for an unauthorized fee and then requiring a hearing to determine how much of that Fee can be justified. If landlords could add a fee of their choosing, few if any tenants would ever challenge the fee and landlords could continue the abusive practices that the Statute was intended to end. If a tenant takes the time to challenge the deductions, Defendants can then litigate the proper amount of the Fee.

This cannot be what the Statute envisions. The Fee is either legal or it is not, and its legality cannot depend on a case-by-case, charge-by-charge analysis without making a joke of the statutory procedures.

Nor can Defendants lay the proper foundation for the Fee because they can't prove those charges are reasonably necessary to remedy a tenant's breach of a lease obligation. See *Kraus v. Trinity Management Services Inc.* (2000) 23 Cal. 4th 116, 140 (a "security fee paid by a tenant to a landlord is an amount intended to offset expenses incurred by the landlord as a result of tenant conduct during the tenancy") (superseded by statute on other grounds). The administrative fee seeks to recoup overhead charges, and those charges exist separate and apart from any one tenant's breach of the lease obligations. In other words, overhead reflects the total costs of operation for 900 units; it is not "a result of tenant conduct during the tenancy" and is therefore not reasonably related to any breach.

F. Defendants' Authorities Are Beside the Point and Ignore This Court's Rulings.

The computations required to determine individual and class damages are so rudimentary that a lawyer could do them. As long as the data is entered correctly into the spreadsheet listing each class claim, the final numbers are computed automatically. Schallert Decl., ¶5. Defendants' case authorities make no more sense in this context than its legal arguments.

No case better illustrates our point than Defendants' lead case, *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1. *Duran* concerned a class of 260 employees who alleged that they had been misclassified as exempt, a determination that turned on reviewing the individual tasks performed during the workday were nonexempt. The decision summarized the trial:

> In the first phase of trial, the court heard testimony about the work habits of 21 plaintiffs. USB was not permitted to introduce evidence about the work habits of any plaintiff outside this sample. Nevertheless, based on testimony from the small sample group, the trial court found that the *entire* class had been misclassified. After the second phase of trial, which focused on testimony from statisticians, the court extrapolated the average amount of overtime reported by the sample group to the class as a whole, resulting in a verdict of approximately $15 million and an average recovery of over $57,000 per person.

Duran v. U.S. Bank National Assn. (2014) 59 Cal.4th 1, 12.

To describe the case is to see it has nothing to do with the "statistical evidence" to be presented in our trial. Unlike *Duran*, Class Members all experienced the same policy applied to the same types of charges. The only material difference between Class Members is the size of the individual recovery.

To the extent Defendants' cases discuss their due process rights to assert offsets and other defenses, Defendants retain all those rights. Defendants can present any relevant evidence and make any relevant argument to prove that the Fee is legal or that the Plaintiffs' recovery is barred.

Defendants go far afield and cite a Third Circuit case that denied class certification because individual determinations dominated over the common questions of law and fact. See *Newton v Merill Lynch, Pierce, Finner & Smith, Inc.*, (3rd Cir. 2001) 259 F. 3d 154, 192 (cited in Def's Memo at 8:6). Defendants' other cases also discuss the guidelines for certification. See Defs' Memo at 8:15-18. None of these cases provide meaningful guidance here, and Defendants simply ignore the leading case, *Granberry,* in which a class of 10,000 tenants prevailed on the merits at trial.

This Court regularly handles trials that are more challenging than this one will be. Defendants' arguments and supporting case law ignore that this Court has already determined that these claims are manageable and that common issues of law and fact predominate. Schallert Decl., Ex. 1 at p. 7. However, Plaintiffs believe it would be helpful at some point to have a pretrial conference to discuss any special or unusual trial procedures. Maybe at that time, Defendants will have a more focused explanation of exactly what evidence it wishes to present in its defense.

G. If Evidence of Offsets Over and Above the Statutory Charges Is Admissible, There Are Procedures that Could Effectively Adjudicate Individual Recoveries.

Plaintiffs have always contended that, if offsets are permitted, then they could be resolved in a bifurcated trial in which individual claims are determined by a special master. This bifurcated procedure would allow restitution under Business and Professions Code sections 17200 et seq. There is no right to a jury for such determinations.

However, our reading of *Granberry* and *250 LLC* demonstrates that this bifurcated procedure is not required, and Plaintiffs do not intend to bring a motion to bifurcate. Instead, we urge that this case proceed to trial in order to determine (1) whether the Fee is illegal and (2) whether Defendants acted in bad faith. Once those issues are decided, the recovery by Class Members is a function of simple mathematics.

Defendants' motion presents a critical substantive issue with potentially profound procedural consequences. Plaintiffs there respectfully request that the Court provide the parties with guidance on the scope of evidence and arguments that can be presented at trial.

Respectfully submitted,

Dated: December 28, 2021.

By: _____
Counsel for Plaintiffs *Terese Cardamon* and *Nicholas Cardamon*

PROOF OF SERVICE
(Code Civ. Proc., §§1013, subd. a, and 2015.5)

I declare that I am a citizen of the United States of America and a resident of the County of Fresno, California. I am over the age of 18 years and not a party to this action; my business address is 1233 West Shaw Avenue, Suite 106, Fresno, California 93711.

On December 28, 2021, I caused to be served the **PLAINTIFFS OPPOSITION TO DEFENDANTS' MOTION FOR AN ORDER REQUIRING PLAINTIFFS TO SUBMIT A TRIAL PLAN REGARDING MANAGEABILITY OF CLASS ACTION CLAIMS,** on each of the interested parties in said cause as indicated below:

(XXXX) **(BY PERSONAL SERVICE)** I caused a copy of said pleadings to be hand-delivered to the interested parties at:

Howard A. Sagaser, Esq.
Sagaser, Watkins & Wieland PC
5260 N. Palm Avenue, Suite 400
Fresno, California 93704

(XXXX) **(BY ELECTRONIC MAIL)** I caused a copy of said pleadings to be sent via electronic mail to the parties listed below: Howard A. Sagaser at has@sw2law.com

(XXXX) **(BY REGULAR MAIL)** I caused a copy of said pleadings to be placed in a United States mail depository. I am readily familiar with my office's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing.

TYLER H. LESTER
1233 W. Shaw Ave., Suite 100
Fresno, California 93711

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 28, 2021, at Fresno, California.

Audrey Moreno