

1 THE HONORABLE BENJAMIN A. SETTLE
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 WASHINGTON ELECTION INTEGRITY
10 COALITION UNITED, a Washington State
11 Nonprofit Corporation; TAMBORINE
12 BORRELLI; MARY ROSE WEIDRICH;
13 TIFFANY NEVILS; BOBBIE LELAND;
14 SHARON HUSTER; AMY BRITSAS; KEYRA
15 PEREZ; TAMMIE CORBIN; ALLEN
16 CORBIN; SHERIE SUTER; PEGGY
17 NORMET; DIANE SCHMIDT; JORGE
18 DELGADO; EUGENE DELOZIER; FLORA
19 HERNANDEZ; TAIZ CEPEDA; JOE
20 KEESLAR,

21 Plaintiffs,

22 v.

23 MARY HALL, Thurston County Auditor;
24 THURSTON COUNTY, and DOES 1-30,
25 inclusive,

26 Defendants,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,

Proposed Intervenor
Defendant.

No. 3:21-cv-05787-BHS

PROPOSED INTERVENOR-
DEFENDANT WASHINGTON
STATE DEMOCRATIC CENTRAL
COMMITTEE'S MOTION TO
INTERVENE

ORAL ARGUMENT REQUESTED

NOTE ON MOTION CALENDAR:
NOVEMBER 12, 2021

26
WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S MOTION TO
INTERVENE (NO. 3:21-CV-05787-BHS)

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1

I. INTRODUCTION

2

3 Nearly a year after the November 2020 election, the Washington Election Integrity
 4 Coalition United and its *pro se* supporters (“Plaintiffs”) have filed a Complaint filled with entirely
 5 fabricated claims of election fraud. Plaintiffs’ effort to delegitimize the integrity of our State
 6 elections appears to be little more than a cut and paste of similar cases filed throughout the country
 7 immediately after the 2020 Presidential Election. Federal and state court judges roundly rejected
 8 every one of those election contests, and with them, their unsubstantiated claims of voter and
 9 election fraud. Now, after all the votes have been counted and the results certified by the county
 10 and the state, and officials have been sworn in, Plaintiffs file this action seeking to unseal ballots
 11 from Washington’s 2020 General Election and “audit” Clark County’s (“the County”) election
 12 department, claiming their votes have been “diluted” and seeking injunctive relief regarding
 13 certain election procedures.¹ Compl. ¶ 5. The Washington State Democratic Central Committee
 14 (“WSDCC”), on its own behalf and on behalf of Democratic voters throughout the state, with this
 15 Motion seeks to intervene to defend and protect the integrity of Washington’s electoral system.

16 WSDCC meets the applicable requirements for intervention as of right and permissive
 17 intervention under Federal Rule of Civil Procedure (“FRCP”) 24. The Motion is timely. It was

18 ¹ This lawsuit is one of several copycat lawsuits filed across Washington State. Lawsuits against Clark, King,
 19 Snohomish, Whatcom, and Pierce counties were originally filed in state superior court, but have since been removed
 20 to this Court. *Washington Election Integrity Coalition United et al. v. Anderson*, 3:21-cv-05726-RAJ (Oct. 1, 2021),
 21 ECF No. 1; *Washington Election Integrity Coalition United et al. v. Fell*, No. 2:21-cv-1354-RAJ (Oct. 4, 2021), ECF
 22 No. 1; *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 3:21-cv-05746-RAJ (Oct. 7, 2021), ECF
 23 No. 1; *Washington Election Integrity Coalition United et al. v. Wise*, No. 2:21-cv-01394-RAJ (Oct. 13, 2021), ECF
 24 No. 1; *Washington Election Integrity Coalition United et al. v. Bradrick*, 2:21-cv-01386-RAJ (Oct. 13, 2021), ECF
 25 No. 1. Two lawsuits, in Franklin and Lincoln counties, remain in state court. *Washington Election Integrity Coalition*
 26 *United et al. v. Beaton*, No. 21-2-50572-11 (Oct. 5, 2021), DKT 1; *Washington Election Integrity Coalition United et al. v. Schumacher*, No. 21-2-00042-22 (Oct. 4, 2021), DKT 1. Each of the lawsuits contains virtually identical claims
 on behalf of an organization called “Washington Election Integrity Coalition United,” and different county-specific
 collections of pro se individuals, all apparently recruited at roving statewide meetings called to generate support for
 the effort. See Associated Press, *Lawsuits claiming 2020 ballots were manipulated come to WA*, SEATTLE TIMES (Sept.
 21, 2021, 10:36 AM), <https://www.seattletimes.com/seattle-news/politics/lawsuits-claiming-2020-ballots-were-manipulated-come-to-washington/>; Shari Phiel, *Lawsuits Filed in Three Washington Counties Claim Votes Were ‘Flipped’*, THE CHRONICLE, <https://www.chronline.com/stories/lawsuits-filed-in-three-washington-counties-claim-votes-were-flipped,273108>. The WSDCC is seeking intervention in each and every lawsuit and, should intervention
 be granted, would be the only party before the Court other than the “Washington Election Integrity Coalition United”
 to be a party to all of the lawsuits.

1 submitted to the Thurston County Superior Court just two weeks after the Complaint was filed,
 2 *see* ECF Nos. 4-2 at 6; ECF No. 4-7 at 1–13, and WSDCC is now refiling it with this Court after
 3 removal. The WSDCC has a substantial interest in protecting the legitimacy of its candidates’
 4 electoral victories from partisan attacks, ensuring that the results of Washington’s 2020 election
 5 stand, and defending its candidates’ future election prospects.

6 As required by FRCP 24(c), this Motion is accompanied by a Proposed Answer, which is
 7 attached as Exhibit A.²

8 II. IDENTITY OF INTERVENOR

9 The WSDCC is the governing body of the Washington State Democratic Party, which
 10 works to elect Democrats, uphold Democratic values, and support Democrats across the state.
 11 Decl. of Tina Podlodowski (“Podlodowski Decl.”) ¶ 3. It is composed of two people from each
 12 Legislative District and County. *Id.* ¶ 2. It holds monthly meetings, nominates and endorses local
 13 candidates, recruits and manages precinct committee officers, passes resolutions, and campaigns
 14 for local candidates. *Id.* This action and the relief requested impact the Washington State
 15 Democratic Party, its supporters, and its elected officials.

16 III. ARGUMENT

17 WSDCC seeks to intervene in this case as a matter of right under FRCP 24(a) or, in the
 18 alternative, permissively under FRCP 24(b). WSDCC plainly meets the requirements to intervene
 19 as of right under FRCP 24(a), and thus, easily meets the requirements for permissive intervention
 20 under FRCP 24(b).

21 A. WSDCC satisfies Rule 24(a)’s requirements for intervention as of right.

22 FRCP 24(a) provides an absolute right of intervention if the intervenor shows: (1) timely
 23 application for intervention; (2) an interest which is the subject of the action; (3) that the disposition
 24 will impair or impede the applicant’s ability to protect the interest; and (4) the applicant’s interest

25 26 ² WSDCC has attached the following hereto: a Proposed Answer as Exhibit A (to ensure compliance with
 FRCP 24(c)); a declaration from WSDCC Chair Tina Podlodowski in support of this Motion as Exhibit B; and a
 proposed Motion to Dismiss as Exhibit C, which WSDCC seeks to file if it is granted intervention.

1 is not adequately represented by the existing parties. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083
 2 (9th Cir. 2003) (citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). Generally, FRCP
 3 24(a) is “construe[d] . . . liberally in favor of potential intervenors.” *Sw. Center for Biological*
 4 *Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (citing *Forest Conservation Council v. United*
 5 *States Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995), *abrogated on other grounds by Wilderness*
 6 *Soc. v. United States Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011)). WSDCC satisfies all
 7 four requirements and is entitled to intervene as of right under FRCP 24(a).

8 **1. The Motion is timely.**

9 Courts in the Ninth Circuit consider three factors in determining whether a motion to
 10 intervene is timely: “(1) the stage of the proceedings; (2) whether the parties would be prejudiced;
 11 and (3) the reason for any delay in moving to intervene.” *Nw. Forest Res. Council v. Glickman*, 82
 12 F.3d 825, 836-37 (9th Cir. 1996) (citing *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir.
 13 1990)). WSDCC’s Motion to Intervene was submitted in Thurston County Superior Court just two
 14 weeks after the Complaint was filed. *See* ECF No. 4-2 at 6; ECF No. 4-7 at 1-13 (showing that the
 15 Complaint was filed September 21, 2021, and WSDCC’s Motion to Intervene was filed October
 16 6, 2021). After Defendants filed a Notice of Removal, it was transferred to this Court as part of
 17 the Verification of State Court Records, and WSDCC is now resubmitting it to this Court. *See* ECF
 18 Nos. 1, 4-7. No substantive orders have been issued in this case. There has therefore been no delay,
 19 and no possible risk of prejudice to the other parties.

20 **2. WSDCC has an interest in the outcome of this litigation.**

21 WSDCC has an interest in the outcome of this action. Applicants have a right to intervene
 22 when they “demonstrate a ‘significantly protectable interest’ in the lawsuit” *Id.* at 837. This
 23 “practical . . . inquiry” does not require applicants to establish any “specific legal or equitable
 24 interest” *Sw. Center for Biological Diversity*, 268 F.3d at 818 (quoting *Greene v. United*
 25 *States*, 996 F.2d 973, 976 (9th Cir. 1993)). “It is generally enough that the interest [asserted] is
 26 protectable under some law, and that there is a relationship between the legally protected interest

1 and the claims at issue.” *Id.* (quoting *Sierra Club v. United States EPA*, 995 F.2d 1478, 1484 (9th
 2 Cir. 1993, abrogated on other grounds by *Wilderness Soc. v. United States Forest Service*, 630
 3 F.3d 1173, 1179 (9th Cir. 2011)).

4 WSDCC is dedicated to representing the interests of Washington’s Democratic voters by
 5 supporting the election of Democratic candidates across Washington. Podlodowski Decl. ¶ 2. It
 6 seeks to intervene as a defendant in this matter to protect the rights of its affiliated candidates and
 7 voters across Washington. *See id.* ¶ 4–6.

8 The WSDCC has an interest in ensuring the official certified results of Washington’s 2020
 9 election remain undisturbed and their credibility unimpeached. *See id.* ¶ 6. Plaintiffs appear to seek
 10 some sort of Arizona-style “audit” of the 2020 election, contrary to state law. Compl. ¶¶ 5, 49.
 11 Although Plaintiffs claim they are not seeking de-certification of the election, they nonetheless ask
 12 the Court to “determine rights” with regard to “vote flipping.” *Id.* ¶ 30. The request thus appears
 13 to seek an unofficial and extraordinary “audit” of 2020 ballots, contrary to law, and an alteration
 14 of certified election results or at least to call them into question. Plaintiff’s Equal Protection and
 15 “vote dilution claims” similarly appear to target the election’s outcome. *Id.* ¶ 54(b).

16 WSDCC’s intervention is needed to ensure that the final, certified results of Washington’s
 17 2020 election are not disturbed, on behalf of their affiliate candidates and Washington’s
 18 Democratic voters who elected those candidates. *See* Podlodowski Decl. ¶ 6; *Crawford v. Marion*
 19 *Cty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (agreeing with the unanimous view of the Seventh
 20 Circuit that the Indiana Democratic Party had standing to challenge a voter identification law that
 21 risked disenfranchising its members); *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981)
 22 (holding that “the potential loss of an election” inflicts injury on a political party). WSDCC plainly
 23 has an interest in this action.

24 In addition, groups and individuals like the Plaintiffs here suggest that fraud is perpetrated
 25 by or to benefit Democratic election officials and depict themselves as watchdogs, vowing to
 26 “restor[e] . . . transparent, secure and publicly verified elections.” Washington Election Integrity

1 Coalition United, *Support Our Work*, GIVE SEND GO, <https://givesendgo.com/GX2Y> (last visited
 2 Oct. 4, 2021); *see also* Podlodowski Decl. ¶ 5. By creating a false narrative unsupported by any
 3 factual evidence that Washington elections are replete with election fraud and vowing to put an
 4 end to it, they seek to create and foster a fictional problem. This unsupported lawsuit serves to
 5 propagate and spread that misinformation, undermining public confidence in our elections and,
 6 indeed, our democratic system of elections. Indeed, that appears to be the whole purpose of its
 7 filing. The effort threatens to damage Democratic candidates' and officeholders' reputations, and
 8 ultimately threatens Democratic candidates' future successes at the ballot box. Podlodowski Decl.
 9 ¶ 6.

10 WSDCC's interests are clearly at issue here under the broad construction of FRCP 24(a).
 11 *Sw. Center for Biological Diversity*, 268 F.3d at 818.

12 **3. Disposition will impair and impede the WSDCC's ability to protect its
 13 interests.**

14 In addition, disposition "of the action may as a practical matter impair or impede" WSDCC's ability to protect its interests. FRCP 24(a)(2). If a proposed intervenor has a protectable
 15 interest in the outcome of the litigation, courts have "little difficulty concluding" that its interests
 16 will be impaired. *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006);
 17 *see also Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1123 (3d Cir. 1992) (noting that
 18 if the intervenor "can show that they possess a legal interest in this action, then it naturally follows
 19 that such an interest would be affected by this litigation").

20 There can be no doubt that disposition of this matter has the potential to impair the
 21 WSDCC's ability to protect its interests. Federal courts have routinely concluded that interference
 22 with a political party's electoral prospects constitutes a direct injury that satisfies Article III
 23 standing, which goes beyond the requirement needed for intervention under CR 24(a)(2) in this
 24 case. *E.g., Owen*, 640 F.2d at 1132 (holding that "the potential loss of an election" is sufficient
 25 injury to confer Article III standing); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–87
 26

1 (5th Cir. 2006) (political party had suffered injury-in-fact when “its congressional candidate’s
 2 chances of victory would be reduced”); *Pavek v. Simon*, 467 F. Supp. 3d 718, 742 (D. Minn. 2020)
 3 (“[S]everal circuits have recognized” that a “political party can show direct injury if the
 4 defendant’s actions hurt the candidate’s or party’s chances of prevailing in an election.”); *Schulz*
 5 *v. Williams*, 44 F.3d 48, 53 (2d Cir. 1994) (Conservative Party had representative standing because
 6 the party “stood to suffer . . . competition on the ballot . . . and a resulting loss of votes”); *Hollander*
 7 *v. McCain*, 566 F. Supp. 2d 63, 68 (D.N.H. 2008) (“[C]ourts have held that a candidate or his
 8 political party has standing to challenge the inclusion of an allegedly ineligible rival on the ballot,
 9 on the theory that doing so hurts the candidate’s or party’s own chances of prevailing in the
 10 election.”).

11 This action threatens (and is designed to threaten) the WSDCC’s political prospects by
 12 alleging—without evidentiary support—some unidentified “fraud” or “misconduct” in the
 13 administration of the election. Podlodowski Decl. ¶ 5. The Democratic National Committee and
 14 similar political organizations were routinely granted intervention as of right in election disputes
 15 over the exact same election. *E.g., Paher v. Cegavske*, No. 20-cv-00243-WGC, 2020 WL 2042365,
 16 at *2 (D. Nev. Apr. 28, 2020) (granting intervention as of right to Democratic National Committee,
 17 Democratic Congressional Committee, and Nevada State Democratic Party where “Plaintiffs’
 18 success on their claims would disrupt the organizational intervenors’ efforts to promote the
 19 franchise and ensure the election of Democratic Party candidates”); *Issa v. Newsom*, No. 20-cv-
 20 01044-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention as of right
 21 to the DNC in suit brought by a Republican Representative, the National Republican
 22 Congressional Committee, and California Republican Party); *Donald J. Trump for President, Inc.*
 23 *v. Cegavske*, No. 20-CV-1445 VCF, 2020 WL 5229116, at *1 (D. Nev. Aug. 21, 2020) (granting
 24 intervention to DNC, DCCC, and NSDP in suit brought by President Trump’s campaign).

25 The WSDCC’s interests would be no less impaired. WSDCC easily satisfies this
 26 requirement of FRCP 24(a)(2).

WASHINGTON STATE DEMOCRATIC
 CENTRAL COMMITTEE’S MOTION TO
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1 **4. WSDCC's interests are not adequately represented by Defendants.**

2 WSDCC cannot rely on the parties in this case to adequately represent its interests. "The
 3 applicant is required only to make a minimal showing that representation of its interests may be
 4 inadequate." *People v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986). The
 5 Ninth Circuit has articulated three relevant questions: Will the Defendants "undoubtedly" make
 6 all the WSDCC's arguments? Are Defendants able and willing to make those arguments? And will
 7 WSDCC "offer any necessary elements to the proceedings that other parties" might neglect? *Id.*
 8 Once an applicant for intervention shows interests different than those of the existing parties, the
 9 requirement of showing that such interest would not be given adequate representation is minimal.
 10 *Fritz*, 8 Wn. App. at 661–62.

11 Defendants' interest is defined solely by their statutory duties to conduct elections. But the
 12 WSDCC's interests are broader. While Defendants may have an interest in ensuring that the
 13 election results are upheld, those Defendants do not share the WSDCC's interest in defending *its*
 14 *candidates* victories and reputations against Petitioners' partisan allegations, and hence,
 15 Defendants will not and cannot represent the WSDCC in that respect. Because their interests
 16 diverge, the Defendants—who are all election officials—cannot adequately represent WSDCC's
 17 interests. *See* Podlodowski Decl. ¶ 4–6; *Issa*, 2020 WL 3074351, at *3 ("While Defendants'
 18 arguments turn on their inherent authority as state executives and their responsibility to properly
 19 administer election laws, the [intervenor is] concerned with ensuring their party members and the
 20 voters they represent have the opportunity to vote in the upcoming federal election, advancing
 21 their overall electoral prospects, and allocating their limited resources to inform voters about the
 22 election procedures."). Courts have "often concluded that governmental entities do not adequately
 23 represent the interests of aspiring intervenors," *Fund for Animals, Inc. v. Norton*, 322 F.3d 728,
 24 736 (D.C. Cir. 2003); *accord* *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893,
 25 899 (9th Cir. 2011); *Associated Gen. Contractors of Am. v. Cal. Dep't of Transp.*, No. 09-01622,
 26 2009 WL 5206722, at *2–3 (E.D. Cal. Dec. 23, 2009) (granting intervention where defendant state

1 agency's "main interest is ensuring safe public roads and highways" and agency "is not charged
 2 by law with advocating on behalf of minority business owners" as intervenors would), including
 3 specifically in cases regarding the right to vote. *See Paher*, 2020 WL 2042365, at *3 (granting
 4 intervention as of right where Proposed Intervenors "may present arguments about the need to
 5 safeguard Nevada[ns'] right to vote that are distinct from [state defendants'] arguments").
 6 Defendants will undoubtably *not* make all WSDCC's arguments in this action.

7 **B. Alternatively, WSDCC should be allowed permissive intervention**

8 In the event this Court concludes that WSDCC may not intervene as a matter of right,
 9 permissive intervention is clearly appropriate. FRCP 24(b) provides in relevant part:

10 (b) Permissive Intervention.

11 (1) On timely motion, the court may permit anyone to intervene who:

12

13 (B) has a claim or defense that shares with the main action a common
 14 question of law or fact.

15

16 (3) In exercising its discretion, the court must consider whether the
 17 intervention will unduly delay or prejudice the adjudication of the original
 18 parties' rights

19 As with FRCP 24(a), FRCP 24(b)(1)(B) should be liberally construed so as to permit permissive
 20 intervention. *Newby v. Enron Corp.*, 443 F.3d 416, 422-23 (5th Cir. 2006) (stating that allowing
 21 intervention "comports with the observation that the 'claim or defense' portion of Rule 24(b)(2)
 22 has been construed liberally) (citing *In re Estelle*, 516 F.2d 480, 485 (5th Cir. 1975); *SEC v. United
 23 States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940)).

24 For the reasons discussed in Part A *supra*, WSDCC's motion is timely. WSDCC also has
 25 defenses to Plaintiffs' claims that share common questions of law and fact—for example, whether
 26 Plaintiffs have stated valid claims for relief. Significantly, intervention will result in neither
 prejudice nor undue delay. WSDCC has an undeniable interest in a swift resolution of this action

1 and is confident that its intervention in this case will result in expeditious resolution of this
 2 litigation. It is in the interest of justice to allow all those with affected interests, including both
 3 sides of the political spectrum, to participate in this case. *See, e.g., Donald J. Trump for President,*
 4 *Inc. v. Benson*, No. 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17, 2020) (granting
 5 permissive intervention in a lawsuit challenging the 2020 election results to the City of Detroit,
 6 Michigan NAACP, the Democratic National Committee, and the Michigan Democratic Party);
 7 *Libertarian Party of Pennsylvania v. Wolf*, No. 20-cv-2299, 2020 WL 6580739, at *1 (E.D. Pa.
 8 July 8, 2020) (granting permissive intervention to the Pennsylvania Democratic Party in a 2020
 9 election case). The WSDCC cannot rely on Defendants to protect the rights of its affiliate
 10 candidates and voters from partisan attacks.

11 IV. CONCLUSION

12 For the reasons set forth above, Intervenor Washington State Democratic Central
 13 Committee respectfully requests that the Court grant its Motion for Intervention.

14
 15 Dated: October 27, 2021

s/ Kevin J. Hamilton

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 WASHINGTON STATE DEMOCRATIC
 CENTRAL COMMITTEE'S MOTION TO
 INTERVENE (NO. 3:21-CV-05787-BHS) – 9

CERTIFICATE OF SERVICE

1
2 On October 27, 2021, I caused to be served upon the below named counsel of record,
3 at the address stated below, via the method of service indicated, a true and correct copy of
4 the foregoing document.

5 Jane Futterman	<input type="checkbox"/>	Via hand delivery
6 THURSTON COUNTY	<input type="checkbox"/>	Via U.S. Mail, 1st Class,
7 PROSECUTING ATTORNEY'S	<input type="checkbox"/>	Postage Prepaid
8 OFFICE (CIVIL)	<input type="checkbox"/>	Via Overnight Delivery
9 CIVIL DIVISION - BLDG NO. 5	<input type="checkbox"/>	Via Facsimile
10 2000 LAKERIDGE DRIVE SW	<input checked="" type="checkbox"/>	Via Eservice
11 OLYMPIA, WA 98502		
12 360-786-5540		
13 Fax: 360-709-3006		
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15 Washington Election Integrity Coalition	<input type="checkbox"/>	Via hand delivery
16 United	<input checked="" type="checkbox"/>	Via U.S. Mail, 1st Class,
17 13402 125th Ave NW	<input type="checkbox"/>	Postage Prepaid
18 Gig Harbor, WA 9829-44215	<input type="checkbox"/>	Via Overnight Delivery
19 253-375-1255	<input type="checkbox"/>	Via Facsimile
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15 **I certify under penalty of perjury under the laws of the
16 State of Washington that the foregoing is true and correct.**

17 EXECUTED at Seattle, Washington, on October 27, 2021.
18

19
20 *s/ Kevin J. Hamilton*
21 Kevin J. Hamilton, WSBA No. 15648
22 KHamilton@perkinscoie.com
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25 CERTIFICATE OF SERVICE – 4
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