Case No. 18-36082

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KELSEY CASCADIA ROSE JULIANA, *et al*.,
Plaintiffs-Appellees,
v.
UNITED STATES OF AMERICA, *et al*.,
Defendants-Appellants.

On Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b)

MOTION UNDER CIRCUIT RULE 27-12 TO EXPEDITE APPEAL AND TO SET SCHEDULE FOR BRIEFING AND ORAL ARGUMENT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Plaintiff-Appellee Earth Guardians states that it does not have a parent corporation and that no publicly-held companies hold 10% or more of its stock

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I. INTRODUCTION

Pursuant to 28 U.S.C. § 1657(a), Federal Rules of Appellate Procedure 2, 27, and 31(a)(2), and Ninth Circuit Rules 27-12 and 34-3, Plaintiffs-Appellees ("Plaintiffs") respectfully move for expedited briefing, hearing, and determination of this interlocutory appeal because this case raises issues of unusual magnitude and urgency. Due to the urgency of this matter and the need for a prompt scheduling order, Plaintiffs respectfully request a prompt ruling on this motion. Plaintiffs seek the following expedited schedule:

Opening Brief:	February 1, 2019 (currently due April 5, 2019)
Answering Brief:	February 22, 2019 (currently due May 6, 2019)
Optional Reply Brief:	March 8, 2019 (currently due May 29, 2019)

Plaintiffs additionally request that the appeal be calendared for the April 2019 calendar. Finally, Plaintiffs request an order that no party will file a Streamlined Request for Extension of Time as to that party's opening or reply brief under Ninth Circuit Rule 31-2.2.

This matter is an interlocutory appeal of denials of motions to dismiss, for judgment on the pleadings, and for summary judgment. There has been no trial. The parties agree that all necessary transcripts for the four orders subject to the interlocutory appeal have been prepared and are part of the docket in the district court. ECF 67, 82, 329; Declaration of Philip Gregory in Support of Plaintiffs'

Motion to Expedite Appeal and to Set Schedule for Briefing and Oral Argument ("Gregory Decl.") ¶ 2. In response to a request for Defendants' position on this motion, on December 31, 2018, counsel for Defendants-Appellants ("Defendants") responded that, while they agree all necessary transcripts have been ordered, they oppose the motion. *Id*.

Good cause exists for expediting the briefing and hearing of this interlocutory appeal. The issues raised in this interlocutory appeal have been briefed by the parties multiple times in the district court, ECF 27-1, 195, 207, in this Court on four prior petitions for writ of mandamus, Ct. App. I Doc. 1-1, Ct. App. II Doc. 1-2, Ct. App. III Doc. 1-2, Ct. App. IV Doc. 1-2, and three times before the United States Supreme Court. S. Ct. App. I. Doc. 1, S. Ct. App. II. Doc. 1, S. Ct. Pet. Doc. 1.[1] Furthermore, in this case of public importance, the constitutional harms experienced by Plaintiffs

[1] Plaintiffs reference the District Court docket, *Juliana v. United States*, No. 6:15-cv-0157-AA (D. Or.), as "ECF"; the docket for Defendants' First Petition, *In re United States*, No. 17-71692 (9th Cir), as "Ct. App. I Doc."; the docket for Defendants' Second Petition, *In re United States*, No. 18-71928 (9th Cir.), as "Ct. App. II. Doc."; the docket for Defendants' Third Petition, *In re United States*, No. 18-72776 (9th Cir.), as "Ct. App. III Doc."; the docket for Defendants' Fourth Petition, *In re United States*, No. 18-73014 (9th Cir.), as "Ct. App. IV Doc."; the docket for Defendants' Fifth Petition, *Juliana v. United States*, 18-80176 (9th Cir.), as "Ct. App. V Doc."; the docket for the instant proceedings under 28 U.S.C. § 1292(b) as "Ct. App. VI Doc."; the docket for Defendants' first application for stay to the Supreme Court, *U.S. v. U.S. Dist. Ct.*, No. 18A65, as "S. Ct. App. I Doc."; the docket for Defendants' second application for stay to the Supreme Court, *In re United States*, No. 18A410, as "S. Ct. App. II. Doc."; and the docket for Defendants' Petition for Mandamus to the Supreme Court, *In re United States*, No. 18-505, as "S. Ct. Pet. Doc."

from the conduct of Defendants are ongoing, significant, and worsening every day. As a result, Plaintiffs will continue to suffer irreparable harm if this appeal is not expedited.

Over three years ago, Plaintiffs brought this case because Defendants' affirmative, ongoing conduct, persisting over decades, in creating, controlling, and perpetuating a national fossil fuel-based energy system, despite long-standing knowledge of the resulting destruction to our Nation and profound harm to these young Plaintiffs, violates Plaintiffs' constitutional due process rights. The uncontroverted evidence shows that the lives, liberties, and property of American children, including Plaintiffs, are harmed ***now*** by Defendants' systemic conduct in causing climate change through creation and perpetuation of the fossil fuel energy system, that these harms are growing increasingly irreversible, and that the timing of implementing substantial reductions of greenhouse gas ("GHG") emissions is a critical factor in preventing future harm. There is no question that any further delay in resolution of Plaintiffs' claims and issuance of a final remedy locks in additional impending catastrophes on top of those ***already occurring*** and diminishes the possibility of remedying the already present dangers.

In light of the uncontradicted evidence of irreparable harm to Plaintiffs in this case of public importance, the years of delay resulting from Defendants' previous improper, successive, duplicative attempts at early appeal, the multiple times the

parties have already briefed the issues, and the lack of any harm to Defendants, Plaintiffs request this Court expedite these interlocutory proceedings and its consideration thereof, and adopt the schedule for briefing and oral argument proposed by Plaintiffs.

II. PROCEDURAL BACKGROUND

Over three years have passed since the Complaint was filed. ECF 7. Over two years have passed since the district court denied Defendants' first motion to dismiss. ECF 83. On November 28, 2016, less than three weeks after the district court denied Defendants' first motion to dismiss, Plaintiffs initially informed the district court that any delay in getting to trial would necessitate a motion for preliminary injunction in light of the ongoing, irreparable harms being suffered by Plaintiffs. *See* Gregory Decl. ¶ 3. In response, the district court urged Plaintiffs to forgo filing the injunction motion as there would be a trial by the middle or fall of 2017. *Id*. Instead of having a prompt trial on appropriate equitable relief, Defendants have brought numerous motions resulting in years of delay in resolving this case while continuing their ongoing unconstitutional conduct in causing climate change. *Id.* ¶¶ 19, 20, Exhs. 3, 4 (depicting Defendants' numerous unsuccessful, duplicative motions and attempts at early appeal in this case and numerous applications for stays); *see also* Ct. App. V Doc. 8-1 at 3 n. 1 (J. Friedland, dissenting) (noting Defendants' "repeated efforts to bypass normal litigation procedures . . . ha[ve] wasted judicial resources

in this case"). This miscarriage of justice continues even though Plaintiffs thus far have prevailed on each of Defendants' motions and petitions for dismissal, judgment, and mandamus at all three levels of the federal judiciary, and in spite of the fact that the parties are ready to commence trial. Gregory Decl. ¶ 3.

On November 21, in response to this Court's November 8 Order directing the district court to "promptly resolve [Defendants'] motion to reconsider the denial of the request to certify orders for interlocutory review," Ct. App. IV Doc. 3 at 2, the district court *sua sponte* certified four of its prior orders for interlocutory appeal. ECF 444 at 6; *see also* ECF 445 (denying Defendants' motion for reconsideration as moot). On November 30, Defendants petitioned for permission to appeal pursuant to 28 U.S.C. § 1292(b). Ct. App. V Doc. 1-1. In opposing Defendants' petition for permission for interlocutory appeal, Plaintiffs demonstrated the likely three-year delay in final resolution of this case and delay of a remedy for Plaintiffs' ongoing and worsening harm which would result from interlocutory review. Ct. App. V Doc. 2; Gregory Decl. ¶ 21, Exh. 5 (depicting alternate paths of appellate review on final judgment with and without intervening interlocutory appeal). This Court granted permission for interlocutory appeal on December 26, 2018. Ct. App. V Doc. 8-1. This Court set the following briefing schedule for interlocutory review on December 27, Ct. App. VI Doc 2-1:

- January 3, 2019: Mediation Questionnaire due;
- January 25, 2019: Transcript shall be ordered;
- February 25, 2019: Transcript shall be filed by court reporter;
- April 5, 2019: Defendants' opening brief and excerpts of record due;
- May 6, 2019: Plaintiffs' answering brief and excerpts of record due;
- Defendants' optional reply brief due within 21 days of Plaintiffs' answering brief.

This schedule provides for even greater delay of final resolution of Plaintiffs' claims than contemplated by Plaintiffs in opposing permission for interlocutory appeal. Gregory Decl. ¶ 21, Exh. 5 (contemplating briefing to be completed by April).

III. LEGAL STANDARD

"[E]ach Court of the United States . . . shall expedite the consideration of any action . . . if good cause therefor is shown." 28 U.S.C. § 1657(a). "'[G]ood cause' is shown if a right under the Constitution . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit." *Id.* Ninth Circuit Rule 27-12 similarly provides that "[m]otions to expedite briefing and hearing may be filed and will be granted upon a showing of good cause." Cir. R. 27-12. "'Good Cause' includes, but is not limited to, situations in which . . . in the absence of expedited treatment, irreparable harm may occur or the appeal may become moot." *Id.* Appeals for which good cause is shown under 28 U.S.C. § 1657 are to "receive

hearing or submission priority." Cir. R. 34-3. Pursuant to Federal Rule of Appellate Procedure 31(a)(2), this Court "may shorten the time to serve and file briefs, either by local rule or by order in a particular case."

Furthermore, Ninth Circuit Rule 34-3 automatically expedites the hearing date in all actions for injunctive relief. *See* Cir. R. 34-3. Because Plaintiffs' complaint seeks only equitable relief, they are entitled to expedited consideration under Ninth Circuit Rule 34-3. This Court has found good cause to expedite appeals in cases involving significant issues of health and welfare, where urgent action was needed to avoid irreparable harm to the parties. *See, e.g., Flagstaff Med. Ctr., Inc. v. Sullivan*, 962 F.2d 879, 884 (9th Cir. 1992).

IV. ARGUMENT

A. The Issues on Appeal Have Been Briefed Numerous Times

Briefing should be expedited because, as to the issues raised by this interlocutory appeal, Defendants have repeatedly presented materially identical legal arguments in successive, duplicative motions and petitions in all three tiers of the federal judiciary. A chart demonstrating Defendants' repeated, successive attempts to present the same issues in these filings is attached as Exhibit 3 to the Gregory Declaration. In addition, these arguments also have been made as part of Defendants' twelve motions to stay in this case between the district court, this Court, and the Supreme Court. A timeline of Defendants' motions for stay is attached as Exhibit 4

to the Gregory Declaration. A brief summary of these instances of briefing of the identical issues is set forth below.

On November 17, 2015, Defendants moved to dismiss Plaintiffs' claims, arguing lack of standing, failure to state constitutional claims, and nonexistence of a federal public trust doctrine. ECF 27-1. On November 10, 2016, the district court denied that motion. ECF 83.

On June 9, 2017, Defendants filed their first petition for writ of mandamus with this Court directed to the issues raised in their motion to dismiss: standing, the merits of two of Plaintiffs' constitutional claims, and the failure to identify a cause of action, such as a claim under the Administrative Procedure Act ("APA"). Ct. App. I Doc. 1-1 ("First Petition"). *Id*. On March 7, this Court denied the First Petition. *In re United States*, 884 F.3d 830 (9th Cir. 2018).

Following denial of the First Petition, Defendants filed two motions in the district court, each presenting duplicative legal arguments to those raised in and rejected by the district court on the motion to dismiss, and considered by this Court in denying mandamus. On May 9, Defendants moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). ECF 195. On May 22, Defendants filed a motion for partial summary judgment, again arguing lack of standing, the two newly recognized fundamental rights fail on the merits, Plaintiffs' claims must be pled under the APA, and separation of powers concerns bar Plaintiffs' claims and

requested relief. ECF 207. Defendants did not move for summary judgment on Plaintiffs' other constitutional claims.[2] Defendants did not support their motions with any evidence. *Id.*; *see* also ECF 98. As to all issues other than standing, S. Ct. Pet. Doc. 1 at 8, Defendants asserted entitlement to judgment purely as a matter of law, rendering their arguments substantively duplicative of those rejected in the motion to dismiss and the First Petition.

On July 5, Defendants filed their second petition for writ of mandamus in this Court. Ct. App. II Doc. 1-2 ("Second Petition"). As here, Defendants again sought review of the denial of the motion to dismiss, reproducing the same arguments. *Id.* at 20-45. On July 20, this Court denied the Second Petition, concluding Defendants again failed to satisfy any of the requirements justifying mandamus. *In re United States*, 895 F.3d 1101 (July 20, 2018).

On July 17, the Solicitor General filed Defendants' first application with the Supreme Court. S. Ct. App. I Doc. 1 ("First Application"). Defendants duplicated their arguments here. *Id.* The Supreme Court denied the First Application. *United States v. U.S. Dist. Court*, No. 18A65, 2018 WL 3615551, at *1 (July 30, 2018).

[2] Defendants have never argued (beyond making conclusory statements) that Plaintiffs' claims of infringement of well-established fundamental rights or of discrimination may not proceed even if this Court accepts interlocutory appeal on Plaintiffs' other claims. Consequently, these claims will survive and must be heard in the district court even if the other claims are considered and dismissed on early review.

On October 5, Defendants filed their third petition for mandamus with this Court, requesting a stay of proceedings and presenting the same arguments raised here and in previous motions and petitions with the district court and this Court. Ct. App. III. Doc. 1-2 ("Third Petition").

On October 18, Defendants filed another Petition with the Supreme Court, repeating identical arguments presented in the district court, in three petitions to this Court, and in their First Application to the Supreme Court. S. Ct. App. II. Doc. 1. On November 2, the Supreme Court denied the Second Application. *In re United States*, No. 18A410, 2018 WL 5778259.

On November 5, Defendants filed the Fourth Petition in this Court, again briefing the very issues presented by the district court's orders currently on appeal. Ct. App. IV Doc. 1. Also on November 5, Defendants moved the district court to reconsider its denials of Defendants' requests to certify for interlocutory appeal under 28 U.S.C. § 1292(b) and stay the litigation, ECF 418-419, briefing many of the issues raised by this appeal.

Finally, on November 30, Defendants again petitioned this Court for interlocutory review of the order on motions to dismiss, and the order on motions for judgment on the pleadings and summary judgment, again briefing the issues previously briefed in Defendants' first four petitions. Ct. App. V Doc. 1-1.

As Judge Friedland pointed out in her dissent, Defendants have made "repeated efforts" to address these issues "by seeking mandamus relief in our court and the Supreme Court." Ct. App. V Doc. 8-1 at 3 n. 1 (J. Friedland, dissenting). Given the "repeated" briefing of virtually identical issues at all levels of the federal judiciary, there is no need to delay briefing or oral argument in this case, and this motion for expedited treatment should be granted.

B. Plaintiffs' Irreparable Harms Intensify as a Result of Continuing Delay in Securing a Remedy

Good cause for expedited treatment exists here because the overwhelming, uncontested evidence shows Plaintiffs are and will continue to suffer substantial harm and irreparable injury from *any* further delay in resolving their claims and securing a remedy. In their Answer to the Complaint, Defendants admit:

- Defendants "permit[], authorize[], and subsidize[] fossil fuel extraction, development, consumption, and exportation";
- "fossil fuel extraction, development, and consumption produce CO_2 emissions and . . . past emissions of CO_2 from such activities have increased the atmospheric concentration of CO_2";
- "the consequences of climate change are already occurring and . . . will become more severe with more fossil fuel emissions";
- "[T]he use of fossil fuels is a major source of [CO_2] emissions, placing our nation on an increasingly costly, insecure, and environmentally dangerous path";
- "[C]urrent and projected atmospheric concentrations of GHGs . . . threaten the public health and welfare of current and future generations, and this threat will

> mount over time as GHGs continue to accumulate in the atmosphere and result in ever greater rates of climate change."

ECF 98 ¶¶ 7, 10, 150, 213; *see also* ECF 146 at 2-4 (district court setting forth "non-exclusive sampling" of significant admissions in Answer). To date, Defendants have proffered ***zero evidence*** to contest Plaintiffs' evidence of the damage these young Americans are suffering from this delay and the dire urgency of their claims. Atmospheric carbon dioxide ("CO_2") concentrations are already well into the danger zone, and Defendants' unlawful conduct daily enhances that danger. *See, e.g.*, ECF 262-1, 274-1, 275-1 (expert declarations of Drs. James Hansen, Harold Wanless, and Eric Rignot).

In addition to the uncontested evidence in the district court, Defendants' recently released climate reports[3] unmistakably affirm that the substantial damages

[3] On November 23, 2018, Defendants released the Fourth National Climate Assessment, a comprehensive report on climate change and its impacts in the United States, endorsed by each of the agency Defendants. U.S. Glob. Change Research Program, *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* (2018), *available at* https://www.globalchange.gov/nca4 (hereinafter "NCA4"). The same day, Defendants released the Second State of the Carbon Cycle Report, highlighting major elements of the North American and global carbon cycles and key interactions with climate forcing and feedbacks. U.S. Glob. Change Research Program, *Second State of the Carbon Cycle Report: A Sustained Assessment Report* (2018), https://carbon2018.globalchange.gov/downloads/SOCCR2_2018_FullReport.pdf (hereinafter "SOCCR2"). Plaintiffs request this Court take judicial notice of these publicly available federal reports and the other reports cited herein and in the supporting declaration of Philip L. Gregory, which are not already in the district

Plaintiffs are already suffering will continue to worsen if trial does not commence immediately and a remedy is not implemented promptly. The magnitude of Plaintiffs' harm is correlated to the amount of GHG emissions released into the atmosphere. According to the NCA4:

> Earth's climate is now changing faster than at any point in the history of modern civilization . . . . Climate-related risks will continue to grow without additional action. ***Decisions made today*** determine risk exposure for current and future generations and will either broaden or limit options to reduce the negative consequences of climate change.

NCA4, *Chapter 1: Overview*, 34 (emphasis added). Other NCA4 findings highlight the harms Plaintiffs are suffering and the urgent need for Defendants to reduce GHG emissions. *See, e.g.*, Gregory Decl. ¶¶ 4-12. Defendants' SOCCR2 also demonstrates the emergency facing Plaintiffs, presenting key findings regarding increasingly rapid changes in the carbon cycle, which are converting carbon sinks into carbon sources, further exacerbating the harm. *See, e.g.* Gregory Decl. ¶ 13.

Notwithstanding Defendants' acknowledgement in these reports of the substantial role and dangers of fossil fuels in the United States[4] and the urgent need

court record. *Cachil Dehe Band of Wintun Indians of the Colusa Indian Comm'y v. California*, 547 F.3d 962, 968 n.4 (9th Cir. 2008); ECF 368.

[4] Gregory Decl. ¶ 14 (describing a November 2018 U.S. Geological Survey ("USGS") report that confirms the substantial GHG emissions associated with the extraction and use of fossil fuels from Federal lands, for which Defendants are responsible); *see id.* at ¶ 15 (describing a December 2018 National Oceanic and Atmospheric Administration Report detailing impacts to the arctic from climate change).

for GHG emission reductions to avoid locking in irreversible harms, Defendants have doubled-down in their unconstitutional systemic conduct, continuing their exacerbation of the climate crisis and harm to Plaintiffs. *See, e.g.*, Gregory Decl. ¶¶ 16-18. A report recently issued by the EPA confirms that unabated GHG emissions will result in profound economic losses to the U.S. economy, costing trillions of dollars.[5]

It could not be clearer that Defendants will continue to engage in their unconstitutional systemic acts, locking in more accumulated CO_2 and making Plaintiffs' injuries potentially irreversible. Any reduction of delay in this interlocutory appeal helps prevent irreparable harm to Plaintiffs so that, should Plaintiffs prevail in this appeal, the claims can return to the district court for trial and issuance of a prompt remedy. Defendants will suffer no harm from expedition as they contend that this appeal involves solely legal issues which have been briefed many times.

C. These Constitutional Claims are Entitled to Expedited Review

Good cause to expedite review is also present here because expedition would allow "a right under the Constitution" to be "maintained in a factual context that indicates that a request for expedited consideration has merit." 28 U.S.C. § 1657(a).

[5] U.S. Environmental Protection Agency, *Multi-Model Framework for Quantitative Sectoral impacts Analysis: A Technical Report for the Fourth National Climate Assessment*, EPA 430-R-17-001 (2017). Judicial notice is requested.

"It is abundantly clear that Congress intended to give preference on crowded court dockets to federal questions." *Zukowski v. Howard, Needles, Tammen, & Bergendoff*, 115 F.R.D. 53, 55 (D. Colo. 1987). This Court has previously recognized the appropriateness of expediting appeals challenging the constitutionality of the government's actions. *See, e.g.*, Order Granting Motion To Expedite *Smith v. Obama*, No. 14-35555, ECF No. 20 (9th Cir. July 14, 2014); *Perry v. Schwarzenegger*, No. 10-16696, 2010 WL 3212786, at * 1 (9th Cir. Aug. 16, 2010) (order *sua sponte* expediting briefing and hearing of appeal in the Constitutional challenge to the state of California's Proposition 8)..

As demonstrated above, any delay in resolution of Plaintiffs' claims locks in further irreparable harms, inflicting further infringement of Plaintiffs' constitutional rights. Defendants sought certification on the merits of two of Plaintiffs' constitutional claims. Should Plaintiffs prevail in this appeal, expediting review will allow those claims to more quickly proceed to trial and a prompt remedy, thereby avoiding additional irreparable harms and further infringement of those constitutional rights. *See Goldie's Bookstore, Inc. v. Superior Court of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) ("An alleged constitutional infringement will often alone constitute irreparable harm."); *see also Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) ("Environmental injury, by its nature, can seldom be

adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.").

Expedited review is additionally warranted because this is a case of profound public importance. "Even in the absence of a controlling federal statute, cases of public importance may be given calendar precedence, as may other cases in which delay will cause unusual hardship." C. WRIGHT, ET AL., FED. PRAC. & PROC. (CIVIL) § 2351 (3d ed. 2014). As Defendants' admissions in their Answer and the evidence in the district court and in Defendants' recent reports show, Defendants' conduct in causing and contributing to climate change poses an existential threat to our Nation: "[C]urrent and projected atmospheric concentrations of GHGs . . . threaten the public health and welfare of current and future generations, and this threat will mount over time as GHGs continue to accumulate in the atmosphere and result in ever greater rates of climate change." ECF 98 at ¶ 213. Expedited briefing, hearing, and consideration on this appeal is necessary to prevent worsening irreparable injury to Plaintiffs and their constitutional rights in this matter of extreme public importance.

V. CONCLUSION

In light of the irreparable harm to Plaintiffs in further delay, the substantial delay that has already resulted from Defendants' successive, duplicative attempts at early appeal, the multiple times the parties have briefed these issues, the absence of

any harm to Defendants, and the numerous times these issues have been thoroughly briefed, Plaintiffs propose the following expedited schedule:

- Jan. 3, 2019: Mediation Questionnaire due
- Jan. 5, 2019: Transcript shall be ordered
- Jan. 11, 2019: Transcript shall be filed by court reporter
- Feb. 1, 2019: Defendants' opening brief due
- Feb. 22, 2019: Plaintiffs' answering brief due
- Mar. 8, 2019: Defendants' optional reply brief due
- Week of April 1, 2019: Oral argument

The evidence shows, and Defendants' most recent reports confirm, time is of the essence to protect Plaintiffs' constitutional rights from further infringement in this case of profound public importance. The issues presented have been briefed by the parties more than a dozen times at all three levels of the federal judiciary. As Defendants claim this appeal presents issues that are "purely legal," Defendants should be able to brief the issues on an expedited basis.

DATED this 2nd day of January, 2019, at Redwood City, CA.

Respectfully submitted,

s/ Philip L. Gregory
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CERTIFICATE OF COMPLIANCE

I certify that this Motion contains 4,073 words, excluding the portions exempted by Federal Rules of Appellate Procedure 27(a)(2)(B) and 32(f), which is under the limit of 5,600 words established by Circuit Rules 27-1(1)(d) and 32-3(2). The Motion's type size and type face comply with Federal Rule of Appellate Procedure 32(a)(5) and (6).

s/ Philip L. Gregory
Philip L. Gregory