

FILED
ALAMEDA COUNTY

DEC 22 2022

CLERK OF THE SUPERIOR COURT
By *A. Mendez* Deputy

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7 CENTER FOR ENVIRONMENTAL HEALTH

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

10
11 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

12 Plaintiff,

13 v.

14 WHOLE FOODS MARKET CALIFORNIA,
15 INC., *et al.*,

16 Defendant.

Case No. RG 19-026800

**CONSENT JUDGMENT AS TO
KEURIG DR PEPPER INC.**

17
18 **1. INTRODUCTION**

19 1.1. On July 12, 2019, plaintiff Center for Environmental Health (hereinafter "CEH"),
20 a non-profit corporation, filed a complaint in Alameda County Superior Court entitled *Center for*
21 *Environmental Health v. Whole Foods Market California, Inc., et al.*, for civil penalties and
22 injunctive relief pursuant to the provisions of Cal. Health & Safety Code ("Health & Safety
23 Code") §25249.5, *et seq.* ("Proposition 65") (the "Action"). On September 12, 2019, CEH filed
24 the First Amended Complaint (the "Complaint") in the Action naming Keurig Dr Pepper Inc.
25 ("Keurig") as a party. Keurig together with all of its subsidiaries are referred to collectively as
26 "KDP." CEH and KDP are referred to collectively as the "Parties."

27 1.2. Keurig is a corporation that employs more than ten persons and processes, bottles,
28 imports, distributes and sells flavored and unflavored carbonated mineral water products under

1 the Penafiel brand name (“Penafiel Mineral Water”). Arsenic is alleged to be present in KDP’s
2 Penafiel Mineral Water. This Consent Judgment resolves CEH’s claims against KDP with
3 respect to Arsenic in Penafiel Mineral Water sold by KDP as described further herein.

4 1.3. On June 10, 2019, more than sixty days prior to filing the Complaint, CEH served
5 Keurig and the appropriate public enforcement agencies with the requisite 60-day notice (the
6 “Notice”) alleging that KDP violated Proposition 65. CEH’s Notice and the Complaint allege
7 that KDP sold Penafiel Mineral Water that contained arsenic (inorganic arsenic compounds) and
8 arsenic (inorganic oxides) (referred to collectively herein as “Arsenic”), which are chemicals
9 known to the State of California to cause cancer and birth defects or other reproductive harm,
10 without providing any clear and reasonable warning to consumers of the Penafiel Mineral Water
11 regarding the carcinogenicity and reproductive toxicity of Arsenic, in violation of Health &
12 Safety Code §25249.6.

13 1.4. KDP has implemented a state-of-the-art filtration system that ensures that Penafiel
14 Mineral Water will not contain Arsenic at levels that CEH alleges requires a warning under
15 Proposition 65, as further described herein. Under the arsenic filtration protocol currently used
16 by KDP at the facility that processes and bottles Penafiel Mineral Water sold in the United States
17 today, KDP conducts regular testing for Arsenic concentration. A detection of 3.0 part per billion
18 (“ppb”) or higher concentration of Arsenic in the filtered mineral water is the trigger for initiating
19 a chemical cleaning sequence for “regenerating” the arsenic filtration media to increase arsenic
20 filtration efficiency and reduce the concentration level of Arsenic in the filtered Penafiel Mineral
21 Water. The protocol is thus designed to keep levels of Arsenic in Penafiel Mineral Water well
22 below the 3.0 ppb level. KDP has performed testing that shows that during the first half of 2022,
23 these levels were consistently below 3.0 ppb. KDP’s 2021 Bottled Water Quality Report for
24 Penafiel Mineral Water shows Arsenic levels below 1.0 ppb (*see*
25 [https://www.drinkpenafiel.com/wp-content/uploads/2022/02/Penafiel-Carbonated-Mineral-](https://www.drinkpenafiel.com/wp-content/uploads/2022/02/Penafiel-Carbonated-Mineral-Water-2021-CA-WQR-English.pdf)
26 [Water-2021-CA-WQR-English.pdf](https://www.drinkpenafiel.com/wp-content/uploads/2022/02/Penafiel-Carbonated-Mineral-Water-2021-CA-WQR-English.pdf) (last checked July 20, 2022)).

27 1.5. For purposes of this Consent Judgment only, the Parties stipulate that this Court
28 has jurisdiction over the allegations of violations contained in the Complaint and personal

1 jurisdiction over Keurig as to the acts alleged in the Complaint, that venue is proper in the County
2 of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
3 resolution of all claims that were or could have been raised in the Complaint against KDP based
4 on the facts alleged therein.

5 1.6. For the purposes of resolving this dispute by compromise and avoiding prolonged
6 litigation, CEH and Keurig enter into this Consent Judgment as a full and final settlement of all
7 claims that were raised in the Notice and Complaint, or that could have been raised in the
8 Complaint, arising out of the facts or conduct alleged therein. By executing this Consent
9 Judgment and agreeing to provide the relief and remedies specified herein, Keurig does not admit
10 any issue of fact or law, including but not limited to any violations of Proposition 65 or any other
11 law or legal duty, and in fact denies that any violations whatsoever have occurred. By executing
12 this Consent Judgment and agreeing to the injunctive relief set forth herein, CEH does not admit
13 any issue of fact or law. Nothing in this Consent Judgment shall prejudice, waive or impair any
14 right, remedy, argument or defense the Parties may have in any other current or future legal
15 proceedings. This Consent Judgment is the product of negotiation and is accepted by the Parties
16 for purposes of settling and resolving issues disputed in this Action, including future compliance
17 by KDP with Section 2 of this Consent Judgment, and shall not be used for any other purpose, or
18 in any other matter. Nothing in this Consent Judgment shall prohibit CEH from seeking, or the
19 Court from ordering, different injunctive or other relief from entities that are not parties to this
20 Consent Judgment. The Parties acknowledge that while this Consent Judgment requires
21 compliance with Proposition 65 solely by Arsenic reduction and not via warnings, Proposition 65
22 itself does not require reformulation and compliance may be achieved via clear and reasonable
23 warnings.

24 2. COMPLIANCE

25 2.1. **Entities.** Keurig represents and warrants that it has the power and authority to
26 ensure compliance with the terms of this Consent Judgment by its subsidiaries and affiliated
27 companies under common ownership, whether located in the United States, Mexico or elsewhere.
28 Keurig shall ensure compliance with the terms of this Consent Judgment by its subsidiaries and

1 affiliated companies under common ownership, whether located in the United States, Mexico or
2 elsewhere. As described above, for purposes of this Consent Judgment, the term “KDP” includes
3 all Keurig subsidiaries and affiliates.

4 **2.2. Prohibition on Sales of Penafiel Mineral Water to California Consumers.** As
5 of the date this Consent Judgment is entered by the Court (the “Effective Date”), KDP shall not
6 process, bottle, import, distribute, ship or sell, or cause to be processed, bottled, imported,
7 distributed, shipped or sold, any Penafiel Mineral Water that will be sold or offered for sale by
8 KDP or any other entity to consumers in California, that contains Arsenic in concentrations
9 greater than 5.0 ppb (the “Reformulation Level”). In determining the Arsenic level in the
10 Penafiel Mineral Water, testing shall be by a laboratory accredited by the National Environmental
11 Laboratory Accreditation Program (NELAP) or a similar accreditation program using EPA
12 Method 1638 or an equivalently sensitive test methodology for the detection of Arsenic in water
13 with a detection limit of no more than 1.0 ppb (the “Test Protocol”). Notwithstanding any other
14 provision contained herein, it shall not be a violation of this Consent Judgment if Penafiel
15 Mineral Water containing Arsenic in concentrations greater than the Reformulation Level that is
16 distributed, shipped, or sold by KDP outside of the United States, is then resold to consumers in
17 California by unauthorized third parties without KDP’s actual or constructive knowledge that the
18 sale to California consumers occurred.

19 **2.3. Ongoing Compliance Requirements.** After the Effective Date but prior to the
20 manufacture, distribution, shipment, or sale by KDP of any Penafiel Mineral Water that will be
21 sold or offered for sale by KDP or any other entity to consumers in California, KDP shall perform
22 the following actions:

23 **2.3.1.** KDP shall maintain a Quality Assurance/Quality Control (“QA/QC”)
24 program designed to ensure that all Penafiel Mineral Water sold or offered for sale to consumers
25 in California contains Arsenic at levels below the Reformulation Level. KDP shall keep written
26 records regarding compliance with the QA/QC Protocol and make such records available to CEH
27 upon request for the duration of the testing period set forth in section 2.3.2.1. In addition to
28 ensuring that the Arsenic levels in Penafiel Mineral Water sold or offered for sale to consumers in

1 California will be lower than the Reformulation Level, KDP shall ensure that the QA/QC
2 program is consistent with the requirements of the “naturally occurring” exemption under
3 Proposition 65 found at 27 California Code of Regulations §25501, including but not limited to
4 the requirements of 27 California Code of Regulations §25501(a)(4). The QA/QC program shall
5 at a minimum include a program of testing, adapting refined manufacturing techniques, and
6 implementing filtration or other systems designed to ensure that the Arsenic in all Penafiel
7 Mineral Water sold or offered for sale to consumers in California is both lower than the
8 Reformulation Level and subject to the “naturally occurring” exemption under Proposition 65.

9 2.3.2. As part of the QA/QC program, and for the time periods set forth herein,
10 KDP shall implement or maintain a testing program meeting at least the following minimum
11 requirements.

12 2.3.2.1. KDP shall test random samples of its Penafiel Mineral Water at
13 the facility that processes and bottles Penafiel Mineral Water sold to consumers in California
14 using the Test Protocol at the frequency set forth in this Section. KDP shall only be able to
15 reduce the frequency pursuant to the next level of the schedule below if all tests from the then
16 current schedule demonstrate Arsenic levels at or below the Reformulation Level.

17 (a) The first testing period shall be for one year or more after the
18 Effective Date. During this period KDP shall perform testing required by this Section once per
19 week (when the Penafiel Mineral Water is being bottled) until it has produced at least fifty-two
20 weeks of consecutive test results that are at or below the Reformulation Level.

21 (b) The second testing period shall extend for a year or more after
22 the end of the first testing period under Section (a) above. During this period KDP shall perform
23 testing required by this Section one time per month (when the Penafiel Mineral Water is being
24 bottled) until it has produced at least fifty-two weeks of consecutive test results that are below the
25 Reformulation Level.

26 (c) In the event that KDP completes each of the testing cycles set
27 forth above in consecutive fashion it shall no longer be required to conduct testing pursuant to
28 this Section but must continue to comply with the QA/QC program and any testing requirements

1 contained therein.

2 2.3.2.2. Penafiel Mineral Water That Exceeds Reformulation Standard:

3 After the Effective Date, if Keurig obtains test results indicating that a Penafiel Mineral Water
4 product sold in California contains Arsenic in concentrations greater than the Reformulation
5 Level, Keurig shall, within 15 days of receiving such results, provide to CEH a Notice with: (a) a
6 copy of the test results and any related QA/QC or other documentation regarding the production
7 of the Penafiel Mineral Water and the testing; (b) an itemization of all Penafiel Mineral Water
8 from the same production lot, including the SKU and lot numbers, number of units affected, and
9 distribution status of those units; (c) a plan of correction to cure the violation, including a detailed
10 description of the specific corrective actions to be taken, the dates such actions will be completed,
11 and the scope of such actions (including, but not limited to, which Penafiel Mineral Water
12 product(s) will be addressed by the action); and (d) a description of what changes, if any, Keurig
13 proposes to make to the QA/QC Program to ensure future compliance with the Reformulation
14 Level. If the Notice is the first or second Notice sent by Keurig under this Section, there shall be
15 no further action. If the Notice is not the first or second Notice sent under this Section (i.e., the
16 third or later Notice), the Parties shall meet and confer regarding the scope of any corrective
17 action, including but not limited to corrective action to cure and remedy the violations. If the
18 Parties cannot agree on the sufficiency or timing of Keurig's proposed corrective action, or if the
19 Parties are unable to agree as to what changes, if any, need to be made to the QA/QC program,
20 CEH may seek enforcement of this Consent Judgment in accordance with Section 3.

21 Notwithstanding the foregoing, if the results from any testing conducted pursuant to this Consent
22 Judgment show Arsenic levels exceeding 10 ppb, Keurig shall immediately notify CEH, the
23 California Department of Public Health – Food and Drug Branch and the Federal Food and Drug
24 Administration and institute a voluntary recall at the consumer and retail level of all Penafiel
25 Mineral Water from the same production lot. Keurig shall coordinate with CEH in good faith on
26 any such recall effort. CEH intends to monitor compliance by Keurig with the QA/QC Program,
27 this section 2.3 and the other terms of this Consent Judgment.

28 2.4. **Documentation.** The certifications and results of all testing performed pursuant to

1 this Consent Judgment shall be retained by KDP for a period of five years from the date of the
2 certification or testing and shall be provided to CEH upon request not more than quarterly during
3 the two testing periods set forth in Section 2.3.2.1.

4 **3. ENFORCEMENT OF CONSENT JUDGMENT**

5 CEH may, by motion or application for an order to show cause before the Superior Court
6 of the County of Alameda, enforce the terms and conditions contained in this Consent Judgment.
7 At least 45 days prior to bringing any motion or application to enforce the requirements of
8 Section 2 above, CEH shall provide Keurig with a Notice of Violation setting forth the basis for
9 the alleged violation. The Parties shall then meet and confer regarding the basis for CEH's
10 anticipated motion or application in an attempt to resolve it informally. Should such attempts at
11 meeting and conferring fail, CEH may in good faith file its enforcement motion or application.
12 Should CEH prevail on any motion or application to enforce a material violation of this Consent
13 Judgment under this Section, CEH shall be entitled to its reasonable attorneys' fees and costs
14 incurred as a result of such motion or application. Should Keurig prevail on any motion or
15 application under this Section, Keurig may be awarded its reasonable attorneys' fees and costs as
16 a result of such motion or application upon a finding by the court that CEH's prosecution of the
17 motion or application was not brought on a reasonable basis.

18 **4. PAYMENTS BY KEURIG.**

19 **4.1. Total Settlement Payment.** On or before ten (10) days after the Effective Date,
20 Keurig shall pay the total sum of \$625,000 as a settlement payment as further set forth in this
21 Section.

22 **4.2. Allocation of Payments.** The total settlement amount for Keurig shall be paid in
23 five (5) separate checks in the amounts specified below and delivered as set forth below. Any
24 failure by Keurig to comply with the payment terms herein shall be subject to a stipulated late fee
25 to be paid by Keurig in the amount of \$100 for each day the full payment is not received after the
26 applicable payment due date set forth in Section 4.1. The late fees required under this Section
27 shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding
28 brought pursuant to Section 4 of this Consent Judgment. The funds paid by Keurig shall be

1 allocated as set forth below between the following categories and made payable as follows:

2 4.2.1. A civil penalty in the amount of \$115,252 pursuant to Health & Safety
3 Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with Health &
4 Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
5 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of
6 the civil penalty payment for \$86,439 shall be made payable to OEHHA and associated with
7 taxpayer identification number 68-0284486. This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010, MS #19B
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 The CEH portion of the civil penalty payment for \$28,813 shall be made
21 payable to the Center for Environmental Health and associated with taxpayer identification
22 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
23 Street, San Francisco, CA 94117.

24 4.2.2. An Additional Settlement Payment (“ASP”) in the amount of \$86,278 to
25 CEH pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title
26 11, §3204. CEH intends to place these funds in CEH’s Toxics in Food Fund and use them to
27 support CEH programs and activities that seek to educate the public about toxic chemicals in
28 food, to work with the food industry and agriculture interests to reduce exposure to toxic
chemicals in food and to thereby reduce the public health impacts and risks of exposure to
Arsenic and other toxic chemicals in food sold in California. CEH shall obtain and maintain
adequate records to document that ASPs are spent on these activities and CEH agrees to provide
such documentation to the Attorney General within thirty days of any request from the Attorney
General. The payment pursuant to this Section shall be made payable to the Center for

1 Environmental Health and associated with taxpayer identification number 94-3251981. This
2 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
3 94117.

4 4.2.3. Keurig shall pay \$423,470 as a reimbursement of a portion of CEH's
5 reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made
6 in two separate checks as follows: (a) \$411,292 payable to the Lexington Law Group and
7 associated with taxpayer identification number 94-3317175; and (b) \$12,178 payable to the
8 Center For Environmental Health and associated with taxpayer identification number 94-
9 3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero
10 Street, San Francisco, CA 94117.

11 4.2.4. To summarize, Keurig shall deliver checks made out to the payees and in
12 the amounts set forth below:

13 Payee	Type	Amount	Deliver To
14 OEHHA	Penalty	\$ 86,439	OEHHA per Section 5.2.1
15 Center For Environmental Health	Penalty	\$ 28,813	LLG
16 Center For Environmental Health	ASP	\$ 86,278	LLG
17 Lexington Law Group	Fee and Cost	\$411,292	LLG
18 Center For Environmental Health	Fee and Cost	\$ 12,178	LLG

19 **5. CLAIMS COVERED AND RELEASE**

20 5.1. Provided that Keurig complies in full with its obligations under Section 4, this
21 Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the
22 public interest and Keurig and its parents, subsidiaries, affiliated entities that are under common
23 ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys
24 ("Defendant Releasees"), and all entities to which KDP distributes or sells Penafiel Mineral
25 Water, such as distributors, wholesalers, customers, subsidiaries, related companies and retailers
26 ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn
27 about alleged exposure to Arsenic contained in Penafiel Mineral Water that was sold or
28 distributed by KDP prior to the Effective Date (the "Released Products").

1 David T. Biderman
2 Jasmine W. Wetherell
3 Perkins Coie LLP
4 1888 Century Park East, Suite 1700
5 Los Angeles, CA 90067-1721
6 DBiderman@perkinscoie.com
7 JWetherell@perkinscoie.com

8 Any Party may modify the person and/or address to whom the notice is to be sent by sending the
9 other Party notice by first class and electronic mail.

10 **8. COURT APPROVAL**

11 8.1. This Consent Judgment shall become effective as to this Section 8.1 upon the date
12 signed by CEH and Keurig, whichever is later. CEH shall prepare and file a Motion for Approval
13 of this Consent Judgment and KDP shall support approval of such Motion.

14 8.2. If this Consent Judgment is not entered by the Court, it shall be of no further force
15 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
16 purpose.

17 **9. GOVERNING LAW AND CONSTRUCTION**

18 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
19 California.

20 **10. ENTIRE AGREEMENT**

21 10.1. This Consent Judgment contains the sole and entire agreement and understanding
22 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments or understandings related thereto, if any, are hereby merged herein
24 and therein. There are no warranties, representations or other agreements between the Parties
25 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
26 other than those specifically referred to in this Consent Judgment have been made by any Party
27 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
28 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
contained or referenced herein, oral or otherwise, shall be deemed to exist and to bind any of the
Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
modification, waiver or termination of this Consent Judgment shall be binding unless executed in

1 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
2 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof,
3 whether or not similar, nor shall such waiver constitute a continuing waiver.

4 **11. RETENTION OF JURISDICTION**

5 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
6 Consent Judgment.

7 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

8 12.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
10 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

11 **13. SUCCESSORS AND ASSIGNS**

12 13.1. This Consent Judgment shall apply to and be binding upon CEH and KDP, and
13 their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of
14 them.

15 **14. NO EFFECT ON OTHER SETTLEMENTS**

16 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
17 against an entity that is not KDP on terms that are different from those contained in this Consent
18 Judgment.

19 **15. EXECUTION IN COUNTERPARTS**

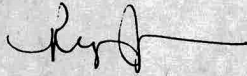
20 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by
21 means of facsimile or portable document format (pdf), which taken together shall be deemed to
22 constitute one document.

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Dated: September 28, 2022

Regina Jackson

Printed Name

Interim CEO

Title

KEURIG DR PEPPER INC.

Dated: _____

Printed Name

Title

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH


Dated: _____

Printed Name

Title

KEURIG DR PEPPER INC.

Dated: Sept. 26, 2022



ANTHONY SHOEMAKER

Printed Name

CHIEF LEGAL OFFICER

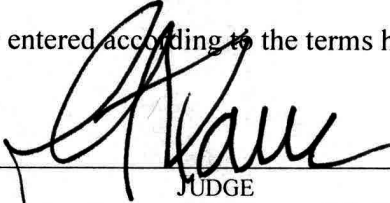
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JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Keurig, this Consent Judgment settlement is approved and judgment is hereby entered according to the terms herein.

Dated: 12-22-22



JUDGE
Superior Court of the State of California

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 12/22/2022 Chad Finke, Executive Officer / Clerk of the Court
PLAINTIFF/PETITIONER: Center For Environmental Health	By: <u><i>A. Mendola</i></u> Deputy
DEFENDANT/RESPONDENT: Whole Foods Market California, Inc et al	A. Mendola
CERTIFICATE OF MAILING	CASE NUMBER: RG19026800

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117-

Jasmine W. Wetherell
PERKINS COIE LLP
1888 Century Park East
Suite 1700
Los Angeles, CA 90067-

Chad Finke, Executive Officer / Clerk of the Court

Dated: 12/23/2022

By:

A. Mendola

A. Mendola, Deputy Clerk

CERTIFICATE OF MAILING