**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| TEAMSTERS LOCAL 2010,<br><br>Charging Party,<br><br>v.<br><br>REGENTS OF THE UNIVERSITY OF CALIFORNIA,<br><br>Respondent. | Case No. SF-CE-1198-H<br><br>PERB Decision No. 2880-H<br><br>October 24, 2023 |

Appearances: Beeson, Tayer & Bodine by Susan K. Garea, Attorney, for Teamsters Local 2010; Jennifer N. Henry, Labor Relations Advocate, for Regents of the University of California.

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

BANKS, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Teamsters Local 2010 (Teamsters) to the proposed decision of an administrative law judge (ALJ). The complaint alleged in relevant part that the Regents of the University of California interfered with protected rights in violation of the Higher Education Employer-Employee Relations Act (HEERA) when it implemented a policy prohibiting a skilled trades employee from placing a union insignia bumper magnet on the University vehicle assigned to him.[1] Following an evidentiary hearing, the ALJ dismissed the allegation, finding the policy did not

[1] HEERA is codified at Government Code section 3560 et seq. Unless otherwise specified, all statutory references herein are to the Government Code.

interfere with employee protected rights, and that even had Teamsters proven a prima facie case, the University established its affirmative defense by showing special circumstances required the prohibition.

Based on our review of the proposed decision, the entire record, and relevant legal authority, we conclude the University failed to demonstrate special circumstances that would justify its total prohibition against union bumper magnets on University-assigned vehicles. Accordingly, we find the University interfered with protected rights, and we reverse the proposed decision.

## FACTUAL AND PROCEDURAL BACKGROUND

The University is a higher education employer within the meaning of HEERA section 3562, subdivision (g). Teamsters is an exclusive representative within the meaning of HEERA section 3562, subdivision (f), representing employees in the skilled trades units at the University. At all times relevant, Eduardo Rosales was a trustee for and President of Teamsters and a higher education employee in the skilled trades bargaining unit at the University. At all times relevant, Aaron Mahn was a supervisor within the meaning of HEERA.

Rosales, who has worked as an electrician for the University at its San Diego campus (UCSD) since 1991, operates the University truck that is assigned to him. Rosales and the other two skilled trades employees in his department spend much of the workday in the field with their respective University-assigned trucks. The trucks are not rotated or reassigned; indeed, since 1991, Rosales has been assigned three trucks in total, receiving a new assigned truck when UCSD upgrades its vehicles.

UCSD maintains a vehicle usage policy which states, in part,

> "No other decals, stickers, or other signs, including dealer-identified license plate holders, shall be placed on any University vehicle, except that a Chancellor may authorize exceptions on a case-by-case basis."

In 2018, Rosales distributed to unit members Teamsters magnets that affix to a vehicle bumper and to other metal surfaces. The bumper magnets leave no residue and cause no damage to a vehicle. They can be removed nightly or when the driver ceases operating the vehicle. The bumper magnets contain the Teamsters' union insignia and the message "We are Teamster Strong!"[2]

In May 2018, Rosales placed two Teamsters magnets on the bumper of the UCSD vehicle assigned to him. He displayed the magnets to show support for his union and had no intent to convey a message about UCSD's beliefs. During the entire period that Rosales displayed the Teamsters magnets, UCSD never received any complaints about them. In July 2018, at UCSD Labor Relations' instruction, Rosales' supervisor Mahn directed Rosales to remove the Teamsters magnets from his truck. Rosales complied with the directive. When he issued the directive, Mahn thought the bumper magnets were permanently affixed and did not know they were magnetic.

At the time that Mahn directed Rosales to remove the Teamsters magnets from his University-assigned truck, the truck displayed a license plate frame advertising a local car dealership. Neither Mahn nor any other UCSD representative instructed Rosales to remove the frame, and it remained on his vehicle.

[2] UCSD has never claimed that this is an offensive message, nor do we find that it is objectively so.

At that same time, other UCSD skilled trades employees had affixed personal stickers to their UCSD vehicles that did not reference the Teamsters. For instance, a painter had multiple personal stickers on the UCSD vehicle he operated, including a sticker for the band "Guns N Roses," and a sticker for the restaurant, "L & L Hawaii." These stickers have been displayed for years, both before and after Rosales was directed to remove the Teamsters magnets. The stickers continued to be displayed at least through the day before the formal hearing in this case. Rosales himself had also displayed "Raiders" decals on the window of the truck's cab, and no UCSD representative had ever directed him to remove them. Additionally, a UCSD Information Technology vehicle displayed a "Klein Tools" sticker through at least the second day of the formal hearing in this matter. Indeed, the University could point to no instance in which it had enforced its "no sticker" policy prior to Mahn directing Rosales to remove the Teamsters magnets. The record is clear that the University's selective enforcement continued up to and even during the hearing.

UCSD permits employees to display union insignia in their cubicles, at and around their desks, and on their lockers. This includes display in areas accessible to the public and for employees who interact with the public. For example, a UCSD employee whose cubicle is in the public lobby of the extension office openly and visibly displays Teamsters insignia. UCSD employees hang posters, banners, magnets, and Teamsters-decorated Christmas trees inside and outside their cubicles. There is no record of any complaints regarding such displays. The cubicles, desks, and lockers are UCSD property.

Employees display the same Teamsters magnets on University-owned vehicles at other campuses, including, for example, University of California, Merced (UC Merced) and University of California, Irvine (UC Irvine). Members of Teamsters-represented units display the same magnets on vehicles owned by California State University (CSU) at various CSU campuses, including Cal Poly, Sonoma State, San Francisco State, CSU East Bay, and San Diego State.

On July 20, 2018, Teamsters filed the unfair practice charge at issue. On October 11, 2019, PERB's Office of the General Counsel issued a complaint, which the University answered on October 31, 2019. The parties participated in an informal conference on February 10, 2020, but did not reach a settlement. The ALJ conducted an evidentiary hearing on September 17 and October 5, 2020. The parties filed closing briefs on February 26, 2021, and the matter was submitted to the ALJ for a decision. The ALJ issued a proposed decision on December 29, 2022.

Teamsters filed a Statement of Exceptions and a supporting brief excepting to many of the proposed decision's factual and legal findings. The University filed a response, urging us to affirm the proposed decision.

## DISCUSSION

The Board enjoys broad discretion in its review of an ALJ's proposed decision. (PERB Reg. 32320; *Oakland Unified School District* (2007) PERB Decision No. 1880, p. 2.)[3] When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

[3] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

However, if a proposed decision has adequately addressed issues raised by certain exceptions, the Board need not further analyze those exceptions. (*Ibid*.) The Board also need not address alleged errors that would not affect the outcome. (*Ibid*.) To the extent an ALJ assesses credibility based upon observing a witness in the act of testifying, we defer to such assessments unless the record warrants overturning them. (*Los Angeles Unified School District* (2014) PERB Decision No. 2390, p. 12.)

Before turning to the substantive issues, we address a procedural issue. Revisions to PERB Regulations that took effect in January 2022 direct an excepting party to file a single, integrated document—which may be in the form of a brief—while also authorizing a later reply brief focused on responding to new issues that the responding party raised in its opposition. (PERB Regs. 32300, subds. (b) and (d), 32312, subd. (c); see also *Accelerated Schools* (2023) PERB Decision No. 2855, pp. 8-9.) Here, Teamsters instead followed a practice permitted under the former version of PERB Regulations, concurrently filing one document entitled "Exceptions to Proposed Decision" and another entitled "Brief in Support of Exceptions to Proposed Decision." We have discretion whether to accept or reject either or both documents. (*Bellflower Unified School District* (2022) PERB Decision No. 2544a, p. 14 [although the respondent's exceptions failed to cite to legal authority as required by PERB Regulations, Board nonetheless "thoroughly analyzed the record and applicable law" to ensure that its order was correct].) Either of Teamsters' two filings alone is sufficiently clear to allow us to research and resolve this matter, and we have exercised our discretion by considering only the document filed in the form of a statement of exceptions.

Here, Teamsters except to, among other things, the ALJ's finding that it did not prove a prima facie case of interference and the alternative finding that the University established an affirmative defense. For the following reasons, we agree with Teamsters as to both of these central issues.

HEERA section 3565 provides higher education employees "the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring." It is well settled that "the right of employees to self-organize and bargain collectively . . . 'necessarily encompasses the right effectively to communicate with one another regarding self-organization at the jobsite.'" (*County of Sacramento* (2014) PERB Decision No. 2393-M at p. 22.) This broad right includes the right to display union insignia and slogans.

To establish a prima facie interference case, a charging party must show that a respondent's conduct tends to or does result in some harm to protected union and/or employee rights. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 36 (*San Diego*).)[4] A charging party need not show that the respondent acted because of an unlawful motive. (*County of San Joaquin*, *supra*, PERB Decision No. 2775-M, p. 24.)

If a charging party establishes a prima facie case, the burden shifts to the respondent. (*San Diego*, *supra*, PERB Decision No. 2747-M, p. 36.) The degree of harm dictates the respondent's burden. (*Ibid.*) If the harm is "inherently destructive" of

[4] Charging party need only show that the employer engaged in conduct that tends to or does result in at least slight harm to rights guaranteed by statute. (*County of San Joaquin* (2021) PERB Decision No. 2775-M, p. 24.)

protected rights, the respondent must show that the interference results from circumstances beyond its control and that no alternative course of action was available. (*Ibid*.) For conduct that is not inherently destructive, the respondent may attempt to justify its actions based on operational necessity. (*Ibid*.) In such cases, PERB balances the asserted business need against the tendency to harm protected rights; if the tendency to harm outweighs the necessity, PERB finds a violation. (*Ibid*.) Within the category of actions or rules that are not inherently destructive, the stronger the tendency to harm, the greater is the respondent's burden to show its business need was important and that it narrowly tailored its actions or rules to attain that purpose while limiting harm to protected rights as much as possible. (*County of San Joaquin*, *supra*, PERB Decision No. 2775-M, p. 25.)

Here, Teamsters has established that the University's conduct tends to or did result in some harm to protected union and employee rights. Indeed, the University's ban on union bumper magnets directly contradicts years of PERB precedent. California public employees have long had the right to display union insignia in the workplace. (*City of Sacramento* (2020) PERB Decision No. 2702-M, p. 9; *Superior Court v. Public Employment Relations Bd.* (2018) 30 Cal.App.5th 158, 172; *Regents of the University of California* (2018) PERB Decision No. 2616-H, p. 9 (*Regents*); *State of California (Department of Parks and Recreation)* (1993) PERB Decision No. 1026-S, p. 4 (*Parks*).) This general rule is subject to an exception where special circumstances justify a narrowly tailored prohibition. (*County of Sacramento*, *supra*, PERB Decision No. 2393-M, p. 20.) The employer has the burden of establishing special circumstances as an affirmative defense. (*Id*. at p. 29.) Any restriction on the right to

display union insignia and messages regarding working conditions is presumptively invalid, though, because such activity in the workplace is generally "far less disruptive" than solicitation and distribution. (*Regents*, *supra*, PERB Decision No. 2616-H, pp. 13-14.)

PERB adapted its special circumstances test from *Republic Aviation Corp. v. NLRB* (1945) 324 U.S. 793.[5] (*Regents*, *supra*, PERB Decision No. 2616-H, p. 10.) It is unclear why the ALJ in this matter suggested that relevant PERB precedent is not applicable to the case at hand, as PERB has consistently required an employer to prove that it has a narrowly crafted any ban based on legitimate special circumstances.[6]

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[5] Although California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent governing private sector labor relations, PERB considers federal precedent for its potential persuasive value. (*Operating Engineers Local Union No. 3, AFL-CIO (Wagner et al.)* (2021) PERB Decision No. 2782-M, p. 9, fn. 10; *City of Santa Monica* (2020) PERB Decision No. 2635a-M, p. 47, fn. 16; *City of Commerce* (2018) PERB Decision No. 2602-M, pp. 9-11; see also *Social Workers' Union, Local 535 v. Alameda County Welfare Dept.* (1974) 11 Cal.3d 382, 391 [when interpreting California public sector labor relations laws, federal precedent is a "useful starting point," but it does "not necessarily establish the limits of California public employees' representational rights"]; *County of San Joaquin* (2021) PERB Decision No. 2761-M, pp. 24, 33, 45-48 & fn. 19 [considering private sector labor law precedent for its persuasive value while noting certain differences in California public sector labor law precedent]; *City of Bellflower* (2020) PERB Order No. Ad-480-M, p. 11 [both "statutory differences and distinct principles relevant to agencies serving the public have frequently led the Board to craft sui generis precedent"].)

[6] Because federal law is only persuasive and not controlling authority for interpreting the statutes within our jurisdiction, our previous decision to borrow the phrase "special circumstances" from federal precedent does not bind us automatically to subsequent developments in federal law. (*Napa Valley Community College District* (2018) PERB Decision No. 2563, p. 13; see also *El Camino Healthcare District, El Camino Hospital, and Silicon Valley Medical Development, fLLC* (2023) PERB

(*Sacramento*, *supra*, PERB Decision No. 2702-M, p. 9; *Regents*, *supra*, PERB Decision No. 2616-H, p. 10.)

When applying the special circumstances test, PERB requires the employer to make a "concrete, fact-based evidentiary showing" of a special circumstance and considers such arguments on a case-by-case basis. (*City of Sacramento*, *supra*, PERB Decision No. 2702-M, p. 10.) Relevant factors include whether an insignia or message is likely to negatively affect operations, such as by posing a safety risk, disrupting employee discipline, distracting from work demanding great concentration, or damaging employer property. (*Ibid*.) Also important is the specific context in which the employer enacted or enforced the prohibition, the locations involved, industry practice, and the parties' past practice. (*Ibid*.)

Thus, a history of insignia or messages in the workplace without resulting incidents can undercut an employer's argument. (*City of Sacramento*, *supra*, PERB Decision No. 2702-M, p. 11; *Regents*, *supra*, PERB Decision No. 2616-H, pp. 17-20.) General, speculative, isolated, or conclusory evidence of potential disruption to an employer's operations does not amount to special circumstances. (*County of Sacramento*, *supra*, PERB Decision No. 2393-M, p. 24.) Moreover, PERB will look at the totality of the circumstances to assess whether the employer's alleged concern,

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Decision No. 2868-M, p. 26, fn. 18 [judicial appeal pending].) Notably, in *Regents*, *supra*, PERB Decision No. 2616-H, we declined to follow the National Labor Relations Board's presumption of validity as to restrictions on union insignia and buttons in patient care areas, and instead continued to follow our traditional rule that a public entity's ban on non-business insignia is presumptively invalid if applied against union insignia, but the employer may rebut this presumption by showing "special circumstances." (*Id*. at p. 15.)

even if potentially valid, served as a pretext for limiting protected activity. (*City of Sacramento*, *supra*, PERB Decision No. 2702-M, pp. 13-14 [employer's failure to require regular inspection of hardhats for damage undermined its professed concern that stickers could obscure a dent or other hardhat defect].)

Here, the vehicle at issue is owned by the University but individually assigned to Rosales. Rosales spends much of his workday out and about, in and alongside the truck, and the magnet reflects the driver's opinion. The ALJ correctly recognized this analogy when he reasoned that "[i]n some ways, it is not unlike a button pinned to employee clothing or insignia added to a uniform because it can be attached and removed as desired to any particular vehicle assigned an employee for use in connection with their performing work."

Moreover, the record fails to show that a union bumper magnet is likely to negatively affect University operations, such as by posing a safety risk, disrupting employee discipline, distracting from work demanding great concentration, or damaging employer property. The basis of the University's argument is that there is a risk that the union insignia or message will be attributed to the University itself or will be considered an endorsement by the University. However, there is nothing in the record to indicate that any such confusion has occurred or is likely to occur. Mere speculation is insufficient to outweigh the right to display union insignia in the workplace.[7] Additionally,

[7] Even in instances in which an employer raises safety concerns about insignia display, it cannot establish safety-based special circumstances to support such a ban unless it can provide concrete evidence that employee safety is foreseeably threatened by displaying the union insignia (*Parks*, *supra*, PERB Decision No. 1026-S, pp. 5-6), and that it has acted consistently with its stated concern (*County of Sacramento*, *supra*, PERB Decision No. 2393-M, pp. 27-31).

there is no special circumstance based on any claimed damage to the vehicle or safety concern; the magnet is removable and leaves no residue. Indeed, the University did not argue nor present any evidence that the magnets cause damage or safety concerns.

Furthermore, the record supports Teamsters' assertion that the practice of placing union bumper magnets on University-owned vehicles is not a rarity. In *County of Sacramento*, *supra*, PERB Decision No. 2393-M, we cited with approval non-California authority holding that a history of insignia in the workplace without resulting incidents is relevant to determining whether special circumstances exist, and that even a six-month history was an "important point" in finding that a correctional institution's need to protect inmate and officer safety did not justify its insignia policy. (*Id*. at pp. 27-28; accord *City of Sacramento*, *supra*, PERB Decision No. 2702-M, p. 11.) We also found it relevant that municipal fire departments permitted firefighters to wear union insignia, and we presumed, in the absence of contrary evidence, that there had been no operational problems when firefighters had worn union insignia in the past. (*City of Sacramento*, *supra*, PERB Decision No. 2702-M, p. 11; see also *County of Sacramento*, *supra*, PERB Decision No. 2393-M, pp. 30-31.) Here, the record indicates that members of Teamsters skilled trade units affix Teamsters magnets to the bumpers of University trucks at UC Irvine and UC Merced, as well as to employer-owned trucks at multiple CSU campuses, all without incident or evidence of confusion.

Finally, the University's selective enforcement of its vehicle insignia policy was discriminatory, reflecting enforcement against union insignia, but not against dealership license-plate frames and other messages unrelated to University business, such as

those related to sports, music, or restaurants. The University did not take any action to remove Rosales' other decals that were unrelated to University business, nor did it enforce the policy against the painter who displayed multiple personal messages for years. Indeed, the University only applied the policy more broadly when it decided to crack down on union magnets. An employer rule is unlawful if, on either a facial or as applied basis, it singles out protected conduct or speech, as compared to non-protected activities or speech. (*County of Tulare* (2020) PERB Decision No. 2697-M, pp. 18-19; *County of Orange* (2018) PERB Decision No. 2611-M, pp. 3-4; *Regents of the University of California (Irvine)* (2018) PERB Decision No. 2593-H, p. 8.) And a facially neutral, consistently applied rule is unlawful if it responds to protected activity or otherwise is motivated by discriminatory animus. (*County of Lassen* (2018) PERB Decision No. 2612-M, p. 6) Here, the University's discriminatory enforcement singled out union speech, and the timing of its broader crackdown shows it was motivated by an attempt to target protected activity. These circumstances constitute further, independent reasons why the University cannot demonstrate special circumstances.

Accordingly, the University unlawfully interfered with protected rights.[8]

ORDER

Based on the foregoing findings of fact and conclusions of law, and the entire record in this case, the Public Employment Relations Board has found that the

[8] The complaint did not allege separate claims for discrimination or unilateral change without notice and an opportunity to bargain, and no party has asked us to consider such claims. Nonetheless, the fact of the University's discrimination is relevant to the complaint's interference claim. (See, e.g., *County of San Joaquin*, *supra*, PERB Decision No. 2775-M, pp. 43-45.)

Regents of the University of California (University) interfered with employee rights guaranteed by the Higher Education Employer-Employee Relations Act (HEERA) in violation of Government Code section 3571, subdivision (a) when it prohibited employees at its San Diego campus from placing bumper magnets bearing union messages and insignia on University-issued vehicles.

Pursuant to Government Code section 3563, subdivisions (h) and (m), it is hereby ORDERED that the University, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Prohibiting employees from placing magnetic decals bearing union messages and insignia on their employer-issued vehicles.

2. Interfering with employees' right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF HEERA:

1. Rescind the directive that Eduardo Rosales remove the Teamsters Local 2010 (Teamsters) bumper magnet from his University-issued vehicle.

2. Revise the San Diego campus vehicle usage policy to permit the display of non-permanent union messages and insignia in compliance with HEERA.

3. Within 10 workdays following the date this Decision is no longer subject to appeal, post at all San Diego campus work locations where notices to University employees in the skilled trades bargaining unit are customarily posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by

an authorized agent of the University, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. The University shall take reasonable steps to ensure that the Notice is not altered, defaced, or covered with any other material. In addition to physically posting this Notice, the University shall post it by electronic message, intranet, internet site, and other electronic means the University uses to communicate with Teamsters-represented employees at the San Diego campus.[9]

4. Notify OGC of all actions taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on Teamsters.

Members Krantz and Paulson joined in this Decision.

[9] Any party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.

APPENDIX

**NOTICE TO EMPLOYEES**
**POSTED BY ORDER OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**
**An Agency of the State of California**

After a hearing in Unfair Practice Case No. SF-CE-1198-H, *Teamsters Local 2010 v. Regents of the University of California*, in which all parties had the right to participate, the Public Employment Relations Board has found that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3560 et seq., by prohibiting employees at its San Diego campus from placing bumper magnets bearing union messages and insignia on University-issued vehicles.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Prohibiting employees from placing magnetic decals bearing union messages and insignia on their employer-issued vehicles.

2. Interfering with employees' right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF HEERA:

1. Rescind the directive that Eduardo Rosales remove the union bumper magnet from his University-issued vehicle.

2. Revise the San Diego campus vehicle usage policy to permit the display of non-permanent union messages and insignia in compliance with HEERA.

Dated: _____ Regents of the University of California

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

**PROOF OF SERVICE**

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Appeals Office, 1031 18th Street, Suite 207, Sacramento, CA, 95811-4124.

On October 24, 2023, I served PERB Decision No. 2880-H regarding *Teamsters Local 2010 v. Regents of the University of California*, Case No. SF-CE-1198-H on the parties listed below by

____ I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.
____Personal delivery.
_X_Electronic service (e-mail).

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 24, 2023, at Sacramento, California.

Joseph Seisa
(Type or print name)

J. Seisa
(Signature)