Case No. D080288

IN THE CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION ONE

MANUEL CORRALES, JR.
Plaintiff and Appellant,

v.

CALIFORNIA GAMBLING CONTROL COMMISSION, CALIFORNIA VALLEY MIWOK TRIBE, MICHAEL MENDIBLES, MARIE DIANE ARANDA, ROSALIE ANN RUSSELL, CHRISTOPHER JASON RUSSELL, LISA FONTANILLA,

Defendant-Respondent and Intervenor-Respondents.

BRIEF OF RESPONDENTS MICHAEL MENDIBLES, MARIE DIANE ARANDA, ROSALIE ANN RUSSELL, CHRISTOPHER JASON RUSSELL, AND LISA FONTANILLA[1]

On Appeal from the Superior Court of California,
San Diego County, Case No. 37-2019-00019079-CU-MC-CTL

The Honorable Ronald F. Frazier

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[1] Intervenors and Respondents consider themselves to be members of the California Valley Miwok Tribe, but pursuant to instructions from the Court, have retitled here for clarity.

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to rule 8.208 of the California Rules of Court, Intervenors and Respondents Michael Mendibles, Marie Diane Aranda, Rosalie Ann Russell, Christopher Jason Russell, and Lisa Fontanilla hereby certify that no entity or person has either (1) an ownership interest of 10 percent or more in the party filing this certificate (Cal. Rules of Court, rule 8.208(e)(1)) or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves (Cal. Rules of Court, rule 8.208(e)(2)).

Dated: October 28, 2022 Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By */s/* Colin C. West
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I. INTRODUCTION

Indian tribes that do not operate casinos in California are entitled to receive Revenue Sharing Trust Fund ("RSTF") money from California tribes that do. The California Gambling Commission ("Commission") receives and distributes RSTF money among tribes.

The California Valley Miwok Tribe ("CVMT" or the "Tribe") has never operated a casino, and is thus entitled to receive RSTF money. However, for decades, the CVMT has been embroiled in disputes regarding (1) who are the Tribe's members, and (2) the related question of who may properly be part of the Tribe's governing body, which dispute affected the Tribe's ability to receive RSTF money.

In 2005, these disputes reached a key milestone, when the Bureau of Indian Affairs ("BIA") rejected a constitution offered by a group purporting to be a faction of the Tribe, led by Silvia Burley (the "Burley Faction.") because it no longer recognized Ms. Burley as the leader of the Tribe. That same year, the BIA suspended the Tribe's contract for benefits under the Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA"), also because it no longer recognized Ms. Burley as the leader of the Tribe. Following the BIA's lead, in 2006, the Gambling Commission began withholding RSTF funds from the Tribe until the BIA recognized a Tribal government.

Mr. Corrales' suit below is the latest in a series of failed lawsuits over the Tribe's RSTF funds that Mr. Corrales has brought, either as counsel or on his own behalf. This latest suit alleged that, Ms. Burley, purportedly on behalf of the "Tribe," engaged him in 2007 to, among other things, sue the Gambling Commission, to force them to release millions in the Tribe's funds

to Ms. Burley and her family. Ms. Burley's claim to represent the Tribe, or even to be a member of it, is questionable. As noted, the criteria for membership in the Tribe has been a matter of great dispute for years. Respondents here believe that they are members of the Tribe, that Ms. Burley is not, and that Respondents never authorized Ms. Burley to hire Mr. Corrales to do anything—certainly not to sue to give the Tribe's money to Ms. Burley.

Moreover, neither evidence nor even Mr. Corrales' allegations suggest that Ms. Burley intended to use any money Mr. Corrales sought to recover from the Gambling Commission to benefit anyone but herself and her family.

Nonetheless, Mr. Corrales' suit below demanded that the trial court compel the Tribe to pay Mr. Corrales over ten million dollars for pursuing those failed lawsuits—which lawsuits, again would not have benefited the Tribe, only Ms. Burley and her family—even if they succeeded.

The trial court rightfully dismissed the lawsuit for lack of subject matter jurisdiction. The court ruled that to rule for Mr. Corrales, it would first need to determine whether Ms. Burley is a member of the Tribe, and/or a leader of it, authorized to contract on the Tribe's behalf, which the court lacks jurisdiction to do. The court denied Mr. Corrales' motions for new trial and for relief from default.

Mr. Corrales' appeal asserts one substantive argument—that the trial Court erred by failing to consider whether Ms. Burley had "ostensible authority" to bind the Tribe to his fee agreement. Ostensible authority arises when the principal engages in conduct that causes a third party—here, Mr. Corrales—to reasonably believe that a purported agent—here, Ms. Burley—has the authority to bind the principal. Here, Mr. Corrales' brief argues that

the *Bureau of Indian Affairs* ("BIA") engaged in conduct that caused him to believe that Ms. Burley was authorized to bind the Tribe to his engagement letter.

Mr. Corrales' argument fails for a number of reasons, each of which is enough, standing alone, to deny his appeal.

First, Mr. Corrales did not raise this argument below. His complaint does not assert this "ostensible authority" theory, and he did not raise it in opposition to the judgment of dismissal from which he appeals. Having not raised this argument below, he cannot raise it now.

Second, under ostensible authority, the *principal*—the party that the third party seeks to bind—must have engaged in conduct that caused the third party to believe that the ostensible agent—here, Ms. Burley—had the authority to bind the principal to the contract at issue. Here, while Mr. Corrales seeks to bind the Tribe to his engagement letter, he does not allege that the *Tribe* did anything to make him believe that Ms. Burley was authorized to bind the Tribe to that letter—but instead that the BIA did. But the BIA is not the principal for the purposes of the Tribe's engagement letter, and Mr. Corrales' theory that they are—which rests on no legal authority—fails for a number of independent reasons.

Third, ostensible authority requires that the third party—here, Appellant—reasonably believes that the agent had the authority to bind the principal, based on the principal's conduct. Here, by no later than 2005, the BIA—the principal, under Mr. Corrales' baseless theory—had made clear their view that Ms. Burley did not have the authority to bind the tribe, because that year it suspended government-to-government relations with Ms. Burley, and rejected the contract for federal benefits that Ms. Burley had

submitted. Mr. Corrales had no reason, two years later when Ms. Burley signed his engagement letter, to believe that the BIA believed she was authorized to bind the Tribe to anything.

Fourth, where ostensible authority applies, it binds the *principal*, based on the doctrine of estoppel. Here, the principal under Mr. Corrales' ostensible authority theory is the BIA. Thus, even if Mr. Corrales' legally baseless theory applied here, its impact would be to bind the BIA, who is not even a party to Mr. Corrales' suit below.

Mr. Corrales' other arguments either rest on his flawed "ostensible authority" argument, or are irrelevant here.

Mr. Corrales' appeal should be rejected.

II. STANDARD OF REVIEW

Whether the court has subject matter jurisdiction is "a question of law," and the "court reviews the issue de novo." *Hollingsworth v. Heavy Transport, Inc.* (2021) 66 Cal.App.5th 1157, 1176. However, the appellate court "must accept the trial court's resolution of factual issues and draw all reasonable inferences in support of the trial court's order." *Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 266-267.

III. SUMMARY OF PROCEEDINGS BELOW

The Respondent Tribe has a long history of leadership and membership disputes, resulting in extensive litigation between different factions, each purporting to represent the Tribe. *See California Valley Miwok Tribe, et al. v. California Gambling Control Comm.* (Cal. Ct. App. Jan. 29, 2020) No.

D074339, 2020 WL 467794 ("*CVMT 2020*"),[2] at *2-3 (citing *California Valley Miwok Tribe v. Jewell* (D.D.C. 2013) 5 F.Supp.3d 86, 93-94 ("*Jewell*")); *California Valley Miwok Tribe v. California Gambling Control Comm.* (2014) 231 Cal.App.4th 885, 893-896 ("*CVMT 2014*")).

These disputes reached a key juncture when one faction, led by Silvia Burley (the "Burley Faction"), attempted to submit a tribal constitution to the BIA in February 2004. *California Valley Miwok Tribe v. Zinke* (E.D. Cal., June 1, 2017) No. CV 2:16-01345 WBS CKD, 2017 WL 2379945, at *2, *affd.* 745 Fed. App'x 46 (9th Cir. Dec. 11, 2018)). The purported constitution was rejected by the BIA because "it did not reflect the involvement of the greater tribal community." *Ibid.* (internal citations omitted). "The BIA restated this position in February 2005 when it concluded that it did not recognize any tribal government or tribal chairperson for the Tribe." *Ibid*. The BIA made clear in its February 2005 communication that "'it did not recognize Burley as the tribal Chairperson'" and that "'[u]ntil such time as the Tribe has organized, the Federal government can recognize no one … as the tribal Chairman." *CVMT 2014*, 231 Cal.App.4th at 893.

Because the BIA did not recognize any tribal government for the Tribe, it found that the Tribe was not an organized tribe. *Ibid.*; *Jewell*, 5 F.Supp.3d at 93-94. Since the BIA's 2005 rejection of the Burley Faction's attempt to organize the Tribe, litigation and administrative proceedings have been ongoing and the BIA still does not recognize any authorized tribal representative. *See* CT 2127-2129 (Trial Court April 29, 2021 Order Denying

[2] Though California Rule of Court 8.1115 generally restricts citation of unpublished opinions in California courts, Rule 8.1115 specifically allows citation of and reliance on an unpublished opinion when the opinion is relevant under the doctrines of res judicata or collateral estoppel. Cal. R. Ct. 8.1115(b)(1).

Plaintiff's Motion for Summary Judgment) at CT 2128 ("[I]t is clear from the submitted evidence that the leadership dispute within the tribe remains ongoing and is unresolved.").

In July 2005, the BIA suspended the Tribe's contract for benefits under the ISDEAA, citing the lack of a recognized tribal government body. *Cal. Valley Miwok Tribe v. United States* (D.D.C. 2006) 424 F.Supp.2d 197, 201.

Moreover, tribes who do not operate casinos are entitled to RSTF money, which funds come from Tribes who do operate casinos. *CVMT 2014*, at 888-89. The Commission collects and distributes RSTF money. *Id.* at 889. Since 2005, the Commission has retained the Tribe's share of the RSTF funds, citing the Tribe's ongoing disputes regarding who leads, and who are members of, the Tribe. *Id.* at 889-90. The Commission's stated policy is to withhold those funds until the BIA establishes a government-to-government relationship with a tribal leadership body for the purpose of entering into a contract for benefits under the ISDEAA. *Id.* at 907-08.

Mr. Corrales filed the suit at issue here on April 12, 2019.[3] The suit alleged that Ms. Burley, purporting to represent the Tribe, engaged him in 2007 to compel the Commission to release the RSTF funds to her. CT 2305 (FAC) ¶ 15. His lawsuit sought to compel the Commission to release the RSTF funds—or some portion of them—so that his fees could be paid out of them for his failed efforts trying to get the funds released to Ms. Burley and her family. *Id.* ¶¶ 21, 22.

Respondents intervened in the suit below. They are descendants of Lena Shelton, and are thus members of the Tribe under a 2015 decision by

[3] Corrales filed a First Amended Complaint ("FAC") on May 21, 2021, with leave of Court. CT 2305.

the Assistant Secretary—Indian Affairs—of the BIA. Respondents believe that Ms. Burley is not a member of, or a leader of, the Tribe, and never authorized Ms. Burley to engage Mr. Corrales to do anything. Importantly, Mr. Corrales does not allege, and he does not even argue, that Ms. Burley intended to use the money he may recover from the Commission on her behalf to benefit anyone but herself and her family. Respondents here, obviously, object to the notion that their RSTF money should be used to pay for legal services they did not authorize, by a lawyer they did not hire, and whose lawsuits, had they succeeded, would have diverted money away from them and to Ms. Burley and her family.

The "Burley Faction" also intervened below, and Corrales' First Amended Complaint added Burley as a defendant, as well as the "Burley Faction" and Respondents here.

On June 21, 2021, the "Burley Faction" moved to dismiss the Complaint for lack of jurisdiction. CT 2342-2367. The motion argued that resolving Mr. Corrales' claims would require that the Court decide issues of tribal membership and governance—specifically, whether Ms. Burley was authorized by the Tribe to enter into the relevant fee agreement here—which issues the Court lacked jurisdiction to decide. *Id.* Mr. Corrales opposed the motion, as well as the accompanying demurrer. CT 2707.

The Court granted the motion to dismiss on December 14, 2021. CT 2798-2799. The Court noted "it is apparent that in order to adjudicate any of Plaintiff's claims in this lawsuit, this court would first have to reach threshold questions as to the membership and leadership of California Valley Miwok Tribe." CT 2798. "Without a clear determination by the Tribe itself as to the identity of its leaders and the scope of their authority, the court is not competent to determine whether Sylvia Burley had the Tribe's authority

to enter into a fee agreement with Plaintiff on the Tribe's behalf." CT 2799.

The Court denied Mr. Corrales' motions for new trial and for relief from default on April 1, 2022. CT 3318-3319.

IV. ARGUMENT

Mr. Corrales does not dispute the key bases for the Court's opinion, namely that (1) determining the validity of his fee agreement would require that the trial court answer questions of tribal membership and leadership and (2) the Court lacks jurisdiction to answer either question. *Lamere v. Superior Court* (2005) 131 Cal.App.4th 1059, 1067 (holding "Congress did not intend that the courts of this state should have the power to intervene—or interfere—in purely tribal matters" such as disputed composition of tribal government or membership). Mr. Corrales' brief rests almost entirely on his argument that the trial court erred by failing to find that Ms. Burley had "ostensible authority" to bind the Tribe to his fee agreement.

That argument fails. First, having not raised this argument below, Mr. Corrales cannot raise it now. Second, the argument is legally flawed for several, independent, reasons.

A. Having Not Raised "Ostensible Authority" Below, Mr. Corrales May Not Prevail Now on That Theory.

Generally, "theories not raised in the trial court cannot be asserted for the first time on appeal … it would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal." *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1344. Mr. Corrales never raised his "ostensible authority" theory below—none of (1) his complaints, (2) his opposition to the motion to dismiss that the trial court granted, nor (3) his motions for relief from default or new trial mention even

the doctrine or anything resembling it. *See generally*, __. Mr. Corrales, moreover, does not argue he fits into any of the narrow exceptions to the general bar on raising issues for the first time on appeal.

For that reason, alone, his appeal should be rejected.

B. Ostensible Authority Does Not Apply Here.

Putting aside Mr. Corrales' failure to raise this argument below, Mr. Corrales' argument fails because, for several reasons, ostensible authority does not apply here.

First, ostensible authority exists when the principal performs some overt act or omission that makes the third party reasonably believe the principal has given the agent the authority at issue. Cal. Civ. Code § 2317; *Valentine v. Plum Healthcare Group, LLC (2019)* 37 Cal.App.5th 1076, 1086-1087. Ostensible authority requires that "(1) the person dealing with the agent must do so with a reasonable belief in the agent's authority; (2) such belief must be generated by some act or neglect *by the principal sought to be charged*; and (3) the person relying on the agent's apparent authority must not be negligent in holding that belief." *J.L. v. Children's Institute, Inc.,* 177 Cal.App.4th 388, 403-04 (2009) (emphasis added).

Mr. Corrales does not allege that the "*principal sought to be charged*"—here, the Tribe—did anything to make him reasonably believe that Ms. Burley had the authority to bind the Tribe to Mr. Corrales' fee agreement. Mr. Corrales instead asserts that *the BIA* took actions that made him believe that Ms. Burley was authorized to bind the Tribe to his fee agreement. Mr. Corrales cites no authority, nor coherent argument, that the BIA—or any third party—can act as the principal for another party for the purposes of ostensible authority.

That, alone, is fatal to Mr. Corrales' argument.

Second, the "principal" under Mr. Corrales' flawed theory—the BIA—did nothing that would give a reasonable person—particularly an attorney like Mr. Corrales—a belief that Ms. Burley had the authority to bind the Tribe to Mr. Corrales' fee agreement. Ostensible authority only exists when elements of equitable estoppel are present. *Saks v. Charity Mission Baptist Church* (2001) 90 Cal.App.4th 1116, 1138 ("a plaintiff cannot recover on the basis of ostensible authority without a showing of facts sufficient to raise an [equitable] estoppel"). Equitable estoppel requires "(a) a representation or concealment of material facts (b) made with knowledge, actual or virtual, of the facts (c) to a party ignorant, actually and permissibly, of the truth (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it." *Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 998.

Estoppel against a government agency like the BIA will be applied only "in the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow." *County of Humboldt v. McKee* (2008) 165 Cal.App.4th 1476, 1494.

Mr. Corrales does not contend that the BIA said anything, or concealed any facts, that led him to believe that Ms. Burley was authorized to bind the Tribe to his fee agreement. Mr. Corrales' brief admits as much. Indeed, the only time his brief contends that the BIA even referenced his fee agreement was when it *declined* to take any action in response to Mr. Corrales' request that the BIA approve that agreement. OB at 31. Mr. Corrales instead contends that *Ms. Burley* made representations "which led Corrales to believe that Burley had the authority on behalf of the Tribe to retain him for legal services for the Tribe, and that he would be paid for his services from the

RSTF proceeds the Commission was collecting and holding for the Tribe." *Id.* However, again, ostensible authority requires that "the belief must be generated by some act or neglect *by the principal sought to be charged." J.L.,* 177 Cal.App.4th at 403-04. "Ostensible authority is not established by the statements and representations of the agent." *Dill v. Berquist Constr. Co.* (1994) 24 Cal.App.4th 1426, 1438 n.11.

Third, "estoppel is barred where the government agency to be estopped does not possess the authority to do what it appeared to be doing." *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870. Here, Mr. Corrales does not even assert that the BIA had the authority to authorize a third party to bind a tribe to any contract, much less a fee agreement.

Fourth, not only does Mr. Corrales not even contend that the BIA took the legally required affirmative steps to make him reasonably believe that Ms. Burley was authorized to bind the Tribe to his fee agreement, the BIA's conduct, if anything, indicated that Ms. Burley did *not* have the authority to bind the Tribe to any contract.

In 2005, the BIA suspended the Tribe's federal contract, submitted by Ms. Burley, because it questioned whether she was a legitimate leader of the Tribe. *Cal. Valley Miwok Tribe*, 424 F.Supp.2d at 201. Indeed, that is why Mr. Corrales got hired to begin with—the Commission, following the BIA's lead, suspended distribution of the RSTF funds at issue until the BIA recognized a tribal government. [cite] The BIA's actions would cause a reasonable person in Mr. Corrales' position to *doubt* Ms. Burley's authority to bind the Tribe, not the opposite. "A third person … is not compelled to deal with an agent, but if he does so, he must take the risk. He takes the risk not only of ascertaining whether the person with whom he is dealing is the agent, but also of ascertaining the scope of his powers." *Young v. Horizon West, Inc.*

(2013) 220 Cal.App.4th 1122, 1134. Mr. Corrales does not even assert that he did anything to confirm with the BIA—or anyone besides Ms. Burley herself—whether she had the authority to bind the Tribe to his fee agreement.

Finally, even if all these fatal obstacles did not face Mr. Corrales' theory, it would not change the outcome here. Where ostensible authority is present, the principal—here, the BIA—is bound. "A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof." Cal. Civ. Code § 2334. Mr. Corrales' suit seeks no recovery against the BIA, only the Tribe.

Mr. Corrales' "ostensible authority" argument fails.

C. "Quantum Meruit" Does Not Change the Outcome Here.

Citing *Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, Mr. Corrales argues that the Court had jurisdiction to hold that he was entitled under quantum meruit to recover for the value of his services. Putting aside that Mr. Corrales' failed efforts to divert money away from the Tribe and to Ms. Burley and her family provided no value to the Tribe, quantum meruit requires that "the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made." *Huskinson*, 32 Cal.4th at 458. Here, while Mr. Corrales argues that *Ms. Burley* may have had such an expectation, her expectation does not bind the Tribe unless she had some legal authority to bind them. As the trial court determined, it lacked subject matter jurisdiction to determine whether she had such authority.

D. The Trial Court Did Not Err In Declining to Stay the Case Instead of Dismissing It.

A trial court's denial of plaintiffs' motion for a stay is subject to the abuse of discretion standard of review. *Bains v. Moores* (2009) 172 Cal.App.4th 445, 480. While Mr. Corrales asserts that the trial court abused its discretion when it denied his request for a stay in lieu of a dismissal, he offers no argument as to how the court did so, and no legal authority in support of his assertion. *Ewald v. Nationstar Mortgage, LLC* (2017) 13 Cal.App.5th 947, 947-948 ("Arguments should be tailored according to the applicable standard of appellate review.' . . . We repeatedly have held that the failure to provide legal authorities to support arguments forfeits contentions of error.")

He instead refers to a federal case—*Ramah Navajo Chapter v. Jewell* (D.N.M. 2016) 167 F.Supp.3d 1217—but points to no ruling of the Court in that case at all, much less any ruling that may have any relevance here. Mr. Corrales simply points to what he sees as overlap between issues that may arise in that case, and those that may arise here, and suggests that *it* somehow dictates a certain result here. Those assertions do not suggest that the trial court erred here.

E. The Trial Court Did Not Err In Denying Mr. Corrales' New Trial Motion or Motion for Relief From Default.

Mr. Corrales' arguments that the trial court erred in denying his motions for new trial or relief from default both, at bottom, rest on his "ostensible authority" argument. As noted, that argument is procedurally unavailable to him, and is legally flawed for a number of reasons.

V. CONCLUSION

The Court should reject Mr. Corrales' appeal, and affirm the trial court's judgment.

Dated: October 28, 2022 Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By */s/ Colin C. West*
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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the attached brief is set in 13-point Century Schoolbook font, and contains 3,821 words as counted by Microsoft Word, the word-processing program used to generate the brief.

Dated: October 28, 2022 By: */s/Colin C. West*

Colin C. West

PROOF OF SERVICE

I, Ellen D. Woodward certify that I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action. My email address is ellen.woodward@morganlewis.com and my business address is Morgan, Lewis & Bockius LLP, One Market, Spear Street Tower, San Francisco, California 94105.

On October 28, 2022, I served true copies of the following document described as **RESPONDENT'S BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed copies of the document in sealed envelopes or packages addressed to the persons at the addresses listed in the Service List and placed the envelopes or packages for collection and mailing, following our ordinary business practices. I am readily familiar with Morgan, Lewis & Bockius LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY ELECTRONIC TRANSMISSION: The foregoing document was posted directly on the TrueFiling website at https://tf3.truefiling.com/ via electronic transmission for service on counsel as indicated on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 28, 2022, at San Francisco, California.

By: */s/Ellen D. Woodward*

Ellen D. Woodward

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Trial Judge *Served on October 28, 2022 Via U.S. First Class Mail or*	Clerk of Court San Diego Superior Court – Central Courthouse

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