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15 THE SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF NAPA

17 SODA CANYON GROUP,

18 Petitioner,

19 vs.

20 COUNTY OF NAPA; NAPA COUNTY
21 BOARD OF SUPERVISORS; and
22 DOES 1 through 10, inclusive,

23 Respondents

24 MOUNTAIN PEAK VINEYARDS, LLC;
25 ERIC YUAN; HUA YUAN; and DOES 11
26 through 20, inclusive,

27 Real Parties in Interest.
28

Case No.: 17CV001063

**PETITIONER'S SUPPLEMENTAL
BRIEF AFTER REMAND TO
CONSIDER ATLAS FIRE EVIDENCE**

[CEQA Matter]

Date: November 18, 2021
Time: 8:30 am
Dept.: 5

Action filed: September 20, 2017

1 **I. INTRODUCTION**

2 After partially granting Petitioner Soda Canyon Group (“SCG”)’s motion to augment the
3 administrative record in this administrative mandate proceeding, this Court remanded this
4 matter back to Respondent Napa County Board of Supervisors (“Board”) for “reconsideration
5 of the matter in light of the ‘truly new evidence of emergent facts’” stemming from the 2017
6 Atlas Fire (“Fire Evidence”). *See* Order Remanding the Case to Napa County and/or the Napa
7 County Board of Supervisors, June 17, 2019 (“Remand Order”) at 4. Respondents and Real
8 Party in Interest Mountain Peak Vineyards, LLC (“MPV”) filed not one, not two, but *three*
9 separate petitions for writs of mandate in the Court of Appeal to reverse the Remand Order,
10 *and then* a separate appeal seeking to do the same. The Court of Appeal summarily denied all
11 three writ petitions and ultimately dismissed the appeal.

12 Respondent County of Napa (“County”), its Board, and MPV’s repeated attempts to
13 overturn the Remand Order resulted in a substantial self-imposed delay, and the matter did not
14 return to the Board for a hearing to consider the Fire Evidence until May 18, 2021. After
15 receiving the Fire Evidence, and hearing additional public comment, two of the five Supervisors,
16 Diane Dillon and Belia Ramos, demonstrated their leadership and understanding of the true
17 dangers to public safety from the misbegotten MPV Winery project (“Project”), and voted
18 against re-approving it. Unfortunately, however, the three remaining Supervisors chose to ignore
19 the Fire Evidence and public opposition, and voted to reaffirm the original 2017 approval.¹

20 As this Supplemental Brief will show, the Board’s Resolution No. 2021-81, Findings of
21 Fact and Decision on Remand (“Remand Findings”) adopted in support of its decision to re-
22 approve the Project are not supported by substantial evidence. To the contrary, the Fire
23 Evidence utterly negates the Board’s Findings and ultimate conclusion that Soda Canyon Road
24 has adequate capacity to accommodate both emergency vehicles and evacuees from the Project
25 vicinity during a significant wildfire event. The Board therefore prejudicially abused its
26 discretion, and this Court should accordingly GRANT SCG’s writ petition.

27 ¹ Board members disclosed they had recently spoken with MPV representative Donna Olford
28 about the Project, with all three Board members who voted to reapprove it (Supervisors Pedroza,
Gregory, and Wagenknecht) disclosing they had met with her the day before the remand hearing. SR 404.

1 **II. FACTUAL & PROCEDURAL BACKGROUND**

2 In August 2017, the County approved a use permit for MPV’s proposed winery. The
3 Project consists of a new 100,000 gallon per year (gpy) winery, a 33,424 square foot (sf)
4 excavated wine cave, a 6,412 sf outdoor crush pad, an 8,046 sf office and tasting facility, and 26
5 parking spaces with two new driveways providing access from Soda Canyon Road.
6 Administrative Record (“AR”) 1, 311; Supplemental Administrative Record (“SR”) 38.² The
7 Project site is located near the very end of the 6.5-mile paved portion of Soda Canyon Road, a
8 dead-end, steep, narrow, winding, highly deteriorated two-lane road in the mountains east of
9 Napa Valley. AR 19; SR 342-343. The surrounding area is remote and generally undeveloped
10 hillside, with a scattering of vineyards and rural residences on generally large parcels. AR 344,
11 2153-54, 6864.007-6864.008. MPV’s winery would host up to 60 public visitors per day for wine
12 tasting (275 visitors per week), and would host outdoor evening events for up to 75 people
13 twice per year and 125 people once per year. SR 40-41. This equates to 14,575 visitors per year –
14 the largest visitation allowance in the history of Napa County for a remote winery located on a
15 dead-end road. AR 1060-61, 1081, 3452, 3945-3948, 4473-4495, 6864.009. In total, this new
16 commercial enterprise would introduce approximately 45,000 new vehicle trips per year on Soda
17 Canyon Road. AR 18, 1060-61.

18 Soda Canyon Road has a long history of accidents. AR 19, 6864.038-6864.063 (images of
19 recent accidents on SCR), AR 6864.090-6864.093 (images of deteriorated conditions), 6864.099-
20 6864.115 (images of large trucks broken down), 2156-2162, 2178-2179, 2181-2185, 2880, 2928-
21 2997. There are (or were, before the Atlas Fire) approximately 163 homes accessed via Soda
22 Canyon Road. AR 2153-2154, 2927; SR 123, 348-349. Additionally, while the road’s paved
23 portion dead-ends at the Antica Winery property, there is a dirt road starting at the entrance to
24 the Project that splits from the paved road and continues for several miles to another dead-end,
25 where several other homes and vineyards are located. AR 2880, 6864.008, 6864.180.

26 Although there are currently three permitted wineries on Soda Canyon Road, only one
27 currently hosts public wine tastings. AR 618. The County has limited that winery, Antica, to

28 _____
² Bates page citations to the AR and SR omit leading zeroes.

1 hosting only 5,200 visitors per year, compared to this Project's 14,575 per year – even though
2 Antica is far larger (450,000 gpy on 1,200 acres compared to MPV's 100,000 gpy on 41 acres).
3 AR 618, 1060-61, 1081, 2230, 2909, 3206-3209. In fact, the MPV Project proposes the largest
4 visitation allowance of any winery in the history of Napa County that is located on a dead-end
5 road, and is the largest project ever proposed in Napa County when considering the remoteness
6 of the location and access constraints. AR 3452, 3945-3948, 4473-4495, 6864.009.

7 The mountainous area around Soda Canyon Road has a long history of wildfires dating
8 back to the 1800s, with major fires occurring in 1861, 1913, 1944, 1960, 1981, 2017, and 2020.
9 AR 3820-03823, 3480-3484; 6864.117-6864.139. During the County's original review
10 proceedings, local residents presented evidence relating to these earlier fires, and testified that
11 the Project's remote location in a dry, wooded, fire-prone hillside area accessible only via Soda
12 Canyon Road would make evacuating the area extremely difficult in the event of another fire,
13 thereby creating an undue fire safety risk. AR 16-17; 3480-3484; 6864.117-6864.139. The
14 County, however, dismissed this testimony as merely speculative, concluding that the risk of
15 wildfire in the area was "significantly reduced" due to the abundance of vineyards, and that even
16 if a fire did occur, Soda Canyon Road could accommodate resident evacuations while also
17 allowing in emergency response vehicles. AR 15, 17-18, 44. In its original approval of the
18 Project on August 22, 2017, the County adopted findings that included in relevant part:

19 **Fears and speculation** that visitors to wineries will drive unsafely and/or impaired, will
20 be irresponsible toward fire safety, and will impede property owners' egress in the event
21 of wildland fire **does not rise to the level of substantial evidence.** AR 15.

22 **Neighbors' opinion that winery visitors will cause traffic congestion during a fire**
23 **is not supported by fact. Generalized fears and concerns about a project does not**
24 **constitute substantial evidence.** AR 17.

25 In the event of a fire that results in mass evacuations from this area, **[Soda Canyon]**
26 **road has sufficient capacity and roadway width to accommodate all outgoing**
27 **traffic while allowing incoming fire response units. [¶] In addition, most of Foss**
28 **Valley in the vicinity of the Project site is now planted in vineyard, which**
significantly reduces the extent of wildland fire than can occur in the vicinity.
During the Atlas Peak Fire in 1981, most of the areas that are now planted in vineyards
were undeveloped wildlands, which provided a combustible fuel source. AR 17-18.

1 **Appellant’s claim that fire/rescue response efforts will be impeded along Soda**
2 **Canyon Road if the Project is constructed are unfounded and not supported by**
3 **factual evidence.** AR 00044.

4 Construction of the Mountain Peak Winery, **especially the cave, would provide a safe**
5 **haven for sheltering in place in the event of wildfire conflagration and evacuation.**
6 Appellant Grupp testified that sheltering in place is one of the recommendations
7 included on the “Pre-Attack Fire Plan” in the event of evacuation. The proposed **Project**
8 **would not interfere with planning or response to wildland fire, and the property**
9 **and proposed winery nominally improve wildland fire response.** AR 00017.
10 (Boldface added).

11 In September 2017, SCG filed its petition for writ of administrative mandate under
12 C.C.P. § 1094.5 challenging the County’s approval. The petition included claims under the
13 California Environmental Quality Act (CEQA) that the County had unlawfully failed to prepare
14 and environmental impact report before approving Mountain Peak’s project. The petition also
15 included separate claims that the Project was inconsistent with the County’s General Plan, and
16 that the County’s findings of fact in approving the Project – which include the fire safety finding
17 quoted above – were not supported by substantial evidence.

18 On October 8, 2017, just three weeks after SCG filed this lawsuit, the Atlas Fire – one of
19 the worst fires in Napa County history – exploded at approximately 9:52pm and was later
20 determined to be moving at an approximate rate of 100 yards every three seconds, equivalent to
21 68 mph. SR 213, 348. The Fire burned 22,110 acres, including the entirety of lower Soda
22 Canyon Road in less than one day, and a total of 42,181 acres in just two days. SR 0123-0124,
23 348. The fire damaged or completely destroyed 260 buildings on Soda Canyon Road or its
24 offshoots, and damaged or destroyed 82% (134) of the 163 residences on the Road, with 72%
25 (118) suffering a complete loss. *Id.* The fire also burned vineyards on the Project site, SR 150-
26 154; 365-367; 469; 873-874 (images, testimony), and killed two individuals (a Soda Canyon Road
27 resident, Sally Lewis, and her caregiver Teresa Santos) before they could evacuate. SR 435, 444.

28 As the fire spread, Soda Canyon Road became completely blocked by burning trees and
debris, making it impassable by automobile. SR 207-208. Approximately 20 people along lower
Soda Canyon Road were temporarily trapped in their cars and unable to evacuate due to a fallen
tree, *id.*, while at least another 45 individuals were completely trapped on the upper portion of

1 Soda Canyon Road. SR 253. At one critical point, there was a literal traffic jam clear right at the
2 entrance to the MPV Project, composed of some 30-40 residents, property owners, vineyard
3 workers, and their respective vehicles including cars, SUVs and semi-trucks transporting grapes
4 from nearby vineyards that took several precious minutes to clear. SR 246-247. As a result of
5 being trapped, approximately 45 people on upper Soda Canyon had to be evacuated by CHP
6 helicopters, while the remaining trapped individuals were forced to shelter in place. SR 253.

7 The occurrence of the Atlas Fire and the experiences of residents who tried to flee it
8 plainly negated the County’s original factual findings that (a) the residents’ fire safety concerns
9 were unfounded and speculative, (b) fire risk on Soda Canyon Road and specifically in the area
10 around the Project was minimal, and even if a fire did occur, (c) the Project would not interfere
11 with wildland fire planning or response efforts, and (d) Soda Canyon Road could accommodate
12 evacuating vehicles and emergency response units. *See* AR 15, 17-18, 44. Accordingly, SCG filed
13 a Motion to Augment the Administrative Record with, among other things, evidence of the
14 Atlas Fire, the resulting impassibility of Soda Canyon Road, and the subsequent need to
15 evacuate the Project area by helicopter. This Court granted the motion in part, and ordered the
16 matter remanded to the County to consider “new evidence of emergent facts” relating to the
17 fire, relying on C.C.P. § 1094.5(e). *See* Remand Order at 4.

18 Respondents and MPV thereafter filed a joint petition in the Court of Appeal for a writ
19 of mandate seeking to overturn the Remand Order, which the Court summarily denied. The
20 County and MPV then filed two additional writ petitions, respectively, which the Court of
21 Appeal likewise summarily denied. MPV also filed an appeal of the Remand Order, which the
22 Court of Appeal dismissed as premature in June, 2020, followed by a remittitur in August, 2020.

23 The Board ultimately held its hearing on remand on May 18, 2021. County planning staff
24 reported to the Board that “[n]one of the new [Fire Evidence] provided in the seven
25 declarations substantially challenges or requires modification of the decision reached by the
26 Planning Commission on January 4, 2017, and upheld by the Board on August 22, 2017.” SR 61.
27 Three of five Supervisors voted to re-approve the Project, and on July 13, 2021, the Board
28 adopted the Remand Findings. SR 1 *ff.* As discussed below, the Remand Findings are directly

1 contradicted by the Fire Evidence, as well as by additional evidence from a diverse range of
2 Napa residents, wineries, and property owners,³ all of which the County disregarded.

3 **II. ARGUMENT**

4 The Remand Findings focus on four of SCG’s appeal grounds that were previously
5 denied in 2017, summarizing SCG’s position purporting to explain the basis for re-denial. SR 1-
6 9. As explained below, the Remand Findings are all contradicted by the Fire Evidence.

7 **A. Fire Evidence Contradicts County’s Re-Denial of SCG Appeal Ground #7**

8 The Project would add approximately 45,000 additional vehicle trips *per year* to Soda
9 Canyon Road, AR 18, which amounts to roughly 123 additional vehicle trips *per day*. SCG has
10 consistently claimed that the Project and its thousands of annual visitors would impact rescue
11 and evacuation efforts during a major fire. AR 3454-3461; 3483; SR 360, 369. The County’s
12 Remand Findings conclude, however, that “[t]he addition of the Project, with its minimal
13 number of visitors, would not have substantially impacted the evacuation, as the congestion at
14 [the Project entrance] did not appear to be a result of the lack of capacity of the road.” SR 5.
15 The County further claims that because “hundreds of trees have been removed from Soda
16 Canyon Road” since the Atlas Fire, the possibility of trees blocking the road during the next fire
17 is reduced. *Id.* These conclusions are undermined by the Fire Evidence, and ignores the reality
18 that the Project is located near the end of a narrow, 6.5-mile dead-end road that still has *several*
19 *hundred* trees lining and *extending over* the road in an area prone to major and devastating wildfires.

20 On the first night of the Atlas Fire, at least 45 residents, property owners, and vineyard
21 workers became completely trapped near the Project because lower Soda Canyon Road was
22 completely blocked by flames. SR 253. In addition, Soda Canyon Road was blocked near the
23 1.5-mile for several precious minutes due to a downed tree. SR 207-208. Furthermore, there was
24 a literal traffic jam *right at the entrance to MPV*. SR 246-247. Even if “hundreds of trees” have
25 been removed, a claim that is highly questionable and directly contradicted by the testimony of
26 Soda Canyon property owners, there are still several hundred more trees lining the entirety of

27 ³ For example, letters opposing the Project from Jo Ann Truchard and Kellie Duckhorn, make
28 plain that Project opposition is not limited to SCG; in fact, other Napa residents and wineries see it as
going too far. *See* SR 931; 1080-1081.

1 the road. SR 433, 2151-2154. When the next major wildfire occurs, the addition of any number
2 of cars, let alone some 120 cars, will dramatically impact evacuation and rescue efforts due
3 specifically to the *still* narrow, winding, steep Soda Canyon Road that lacks sufficient capacity,
4 and is still lined with hundreds of trees that will come down in the next major fire and again
5 block residents and visitors alike as vividly demonstrated on October 8, 2017. Indeed, during the
6 summer of 2020, a large oak tree ***on the Project site came down during a windstorm and***
7 ***blocked the unpaved portion of the road.*** SR 433, 2151-2154.

8 **B. Fire Evidence Contradicts County’s Re-Denial of SCG Appeal Ground #8**

9 SCG asserts that the Project’s location in areas designated “High” or “Very High Fire
10 Hazard Severity Zones” poses a threat to the public safety and welfare. AR 3480-3484; SR 0362-
11 0364; SR 2033-2054. The County, however, concludes the “Project would not significantly
12 increase fire risk,” citing as a mitigating factor the fact that “the property is now planted in
13 vineyard.” SR 5-6. The County then misleadingly cites to Ms. Cindy Grupp’s prior testimony
14 that “sheltering in place is one of the recommendations included [i]n the ‘Pre-Attack Fire Plan’
15 in the event of evacuation.” SR 6. In reaching these conclusions and affirming its denial of
16 SCG’s eighth appeal ground, the County (once again) ignores several critical facts.

17 First, the Project site is located near the very end of Soda Canyon Road, which serves as
18 the **only** exit, including during an emergency. AR 3455. When it becomes completely blocked by
19 trees or fire, as occurred during the Atlas Fire, people are literally trapped. Second, the Project
20 parcel – and specifically a portion of its vineyards – **burned in the Atlas Fire.** SR 150-154; 365-
21 367; 469; 873-874. Second, some 45 residents who were trapped on upper Soda Canyon Road
22 went to the vineyards at the neighboring Antica winery property and *still* had to be evacuated by
23 helicopter in 60+ mph winds. SR 253, 371. In combination, these facts make abundantly clear
24 that vineyards do **not** provide adequate protection to “shelter in place” during major fires, such
25 as the 1981 and 2017 fires. Supervisor Dillon stated the issue succinctly during her comments on
26 May 18, 2017: “This is not about whether the project contributes to fire safety. . . It’s is [sic] this
27 a safe place to put this activity. . . I think just because people survive by being in a vineyard and
28 helicoptered out doesn’t mean we should countenance that as a solution.” SR 477.

1 Third, the County’s reliance upon Ms. Grupp’s prior testimony is wholly misleading. On
2 May 23, 2017, Ms. Grupp testified that the Pre-Attack Fire Plan “is based on the parameters of a
3 normal day . . . [w]hen it’s not a normal day, you can put the pre-attack plan back in the door
4 [sic].” AR 3483-3484. She then went on to describe heat and wind conditions eerily similar to
5 what occurred just months later during the Atlas Fire and how the addition of 40,000 plus
6 vehicles on Soda Canyon Road “will impede rescue and escape efforts in the event of a fire.” *Id.*

7 Fourth, the Atlas Fire indiscriminately damaged or destroyed 134 of the 163 homes on
8 Soda Canyon, which were located in both the “High” and “Very High Fire Hazard Severity
9 Zones,” SR 349, 362-364, and killed two women unable to escape the fire that was moving at a
10 rate of 68mph. SR 213, 348, 435, 444. These facts stemming from the Atlas Fire make it clear
11 that the Project cannot be considered in a vacuum to the exclusion of the remainder of Soda
12 Canyon Road, as was done by a thin majority of the Board on remand.

13 **C. Fire Evidence Contradicts County’s Re-Denial of SCG Appeal Grounds 9 & 10**

14 SCG has asserted that Soda Canyon Road will quickly become congested in the event of
15 a fire, and that the presence of the Project would increase the risk of fire and significantly
16 impact rescue efforts. AR 3480-3484; SR 357. The County on remand, however, reached the
17 following conclusions: (1) “[i]n the event of a fire that results in mass evacuations from this area,
18 *[Soda Canyon] road has sufficient capacity and roadway width to accommodate all outgoing*
19 *traffic while allowing incoming fire response units,*” SR 8 (emphasis added); (2) “the capacity
20 and condition of Soda Canyon Road are sufficient to accommodate the Project traffic and
21 provide a safe means of evacuation in the event of a wildfire,” (*id.*); and (3) “[n]o credible
22 evidence established that the addition of another winery along Soda Canyon Road would
23 significantly increase the risk of fire or significantly hinder rescue efforts.” SR 7-8. These
24 conclusions are directly contradicted by the Fire Evidence.

25 On October 8, 2017, residents had only moments to grab their wallets, keys, and pets
26 before fleeing, SR 212-213, and on lower Soda Canyon Road around the 1.5-mile mark, 15-20
27 people became trapped behind a large tree that had fallen across the road. SR 207-208, 358. For
28 several minutes as fire closed in on all sides, no traffic could pass by, *including a fire engine on*

1 *downhill side of tree*, which did not have chains or chainsaw to remove tree. *Id.* An unknown
2 citizen in a white truck had a tow rope, and after several minutes was able to move the crown of
3 the tree just enough for 1 vehicle to squeeze by at a time. *Id.* These actual events make it
4 abundantly clear that the road does not have “sufficient capacity and roadway width to
5 accommodate all outgoing traffic while allowing incoming fire response units,” SR 8, especially
6 when hundreds of trees still line and overhang the road today and continue to fall over during
7 wind events, including on the Project site as recently as the summer of 2020. SR 433, 2151-2154.

8 In addition, due to the geography of Soda Canyon, the 6.5-mile steep, narrow, winding
9 road has not and never could be widened or flattened. In other words, the road does not have
10 sufficient capacity now, and never will in the future. As such, it would only take 1 of the 45,000
11 additional annual cars that the Project will add to block the entire road in an emergency; or
12 conversely, add dozens of cars to the road when a tree is down in a fire such that residents
13 cannot escape and are consumed by the fire as were Salley Lewis and Teresa Santos.

14 **The Red Flag Warning Condition Does Not Address the Capacity of Soda**
15 **Canyon Road During Fire Events and Provides No Evidentiary Basis to Support**
16 **Re-Approval of the Project.**

17 In re-approving the Project, the Board imposed a new condition requiring that no
18 visitation or marketing may occur on days in which a Red Flag Warning or PG&E Public Safety
19 Power Shutoff is in effect for the property. SR 46 (Condition of Approval 4.20(i).) The Board
20 found that “[t]his condition will substantially reduce the likelihood that Winery visitors will be
21 present at the Project location when a wildfire occurs,” SR 5, and that the condition would also
22 “substantially reduce the number of people at the Project site in the event of a wildfire.” SR 6.
23 This new condition **does not provide any evidence, let alone substantial evidence**, to
24 support the Remand Findings’ conclusions regarding the capacity of Soda Canyon Road to
25 accommodate both emergency vehicles and evacuating residents during a wildfire. Fires do not
26 discern between red flag warning days, and non-red flag warning days – major wildfires can, do,
27 and do ignite on seemingly safe, low-wind days.

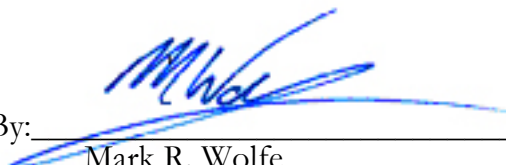
1 **III. CONCLUSION**

2 In addition to violating CEQA, as SCG has briefed separately, the foregoing shows the
3 County prejudicially abused its discretion by re-approving MPV's Project based on findings that
4 are utterly contradicted by the Fire Evidence. SCG respectfully asks the Court to GRANT its
5 Petition for Writ of Mandate pursuant to Code of Civil Procedure section 1094.5 on this basis.

6 Dated: October 22, 2021

Respectfully submitted,

M. R. WOLFE & ASSOCIATES, P.C.

9
10 
11 By: _____
Mark R. Wolfe
Attorneys for Petitioner Soda Canyon Group

1 **PROOF OF SERVICE**

2 *Soda Canyon Group v. County of Napa, et al.*
3 Napa County No. 17CV001063

4 I hereby declare that I am employed in the City San Francisco, County of San Francisco,
5 California. I am over the age of eighteen years and not a party to this action. My business address
6 is 580 California Street, Suite 1200, San Francisco, CA 94104. I am familiar with this firm's
7 practice for the collection and processing of mail sent via U.S. Mail, which provides that mail be
8 deposited with the U.S. Postal Service on the same day in the ordinary court of business.

9 On October 22, 2021 I served the attached **PETITIONER'S SUPPLEMENTAL**
10 **BRIEF AFTER REMAND TO CONSIDER ATLAS FIRE EVIDENCE** in this action:


11 **BY FIRST CLASS MAIL:** I am familiar with my employer's practice for the collection and processing of
12 correspondence for mailing with the U.S. Postal Service. In the ordinary course of business,
13 correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On
14 the date written above, following ordinary business practices, I placed for collection and mailing at my
place of employment a copy of the attached document(s) in a sealed envelope, with postage fully prepaid,
addressed as shown.

15 **BY ELECTRONIC MAIL:** On the date written above, I caused a copy of the attached document(s) to
16 be transmitted via electronic mail to the electronic mail address maintained by the person on whom it is
17 served at the electronic mail address shown, before 5:00 p.m. That transmission was reported as complete
without error by my electronic mail software. The parties served have agreed to accept service
electronically.

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23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed at San Francisco, California on October 22, 2021.

25 
26
27 Susan Anthony
28