Jennie Lee Anderson (SBN 203586)
ANDRUS ANDERSON LLP
155 Montgomery Street, Suite 900
San Francisco, California 94104
Telephone: 415-986-1400
Facsimile: 415-986-1474
jennie@andrusanderson.com

Adam J. Levitt (*pro hac vice forthcoming*)
DiCELLO LEVITT GUTZLER LLC
Ten North Dearborn Street, Sixth Floor
Chicago, Illinois 60602
Telephone: 312-214-7900
Facsimile: 312-253-1443
alevitt@dicellolevitt.com

Attorneys for Plaintiffs and Proposed Class
[*Additional Counsel Listed on Next Page*]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

THE MENOMINEE INDIAN TRIBE OF WISCONSIN, **THE MENOMINEE INDIAN GAMING AUTHORITY d/b/a THE MENOMINEE CASINO RESORT**, and **WOLF RIVER DEVELOPMENT COMPANY**, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

(1) LEXINGTON INSURANCE COMPANY;
(2) UNDERWRITERS AT LLOYD'S – SYNDICATES: ASC 1414, XLC 2003, TAL 1183, MSP 318, ATL1861, KLN 510, AGR 3268;
(3) UNDERWRITERS AT LLOYD'S - SYNDICATE: CNP 4444;
(4) UNDERWRITERS AT LLOYD'S - ASPEN SPECIALTY INSURANCE COMPANY;

CASE NO. 3:21-cv-00231-WHO

PLAINTIFFS' RESPONSE TO DEFENDANT ARCH SPECIALTY INSURANCE COMPANY'S MOTION TO DISMISS AND JOINDER IN DEFENDANT LEXINGTON INSURANCE COMPANY'S MOTION TO DISMISS PLAINTIFFS' AMENDED CLASS ACTION COMPLANT

Date: June 16, 2021
Time: 2:00 p.m.
Judge: William H. Orrick
Room: Courtroom 2

(5) UNDERWRITERS AT LLOYD'S - SYNDICATES: KLN 0510, ATL 1861, ASC 1414, QBE 1886, MSP 0318, APL 1969, CHN 2015, XLC 2003;
(6) UNDERWRITERS AT LLOYD'S – SYNDICATE: BRT 2987;
(7) UNDERWRITERS AT LLOYD'S - SYNDICATES: KLN 0510, TMK 1880, BRT 2987, BRT 2988, CNP 4444, ATL 1861, NEON WORLDWIDE PROPERTY CONSORTIUM, AUW 0609, TAL 1183, AUL 1274;
(8) HOMELAND INSURANCE COMPANY OF NEW YORK;
(9) HALLMARK SPECIALTY INSURANCE COMPANY;
(10) ENDURANCE WORLDWIDE INSURANCE LTD T/AS SOMPO INTERNATIONAL;
(11) ARCH SPECIALTY INSURANCE COMPANY;
(12) EVANSTON INSURANCE COMPANY;
(13) ALLIED WORLD NATIONAL ASSURANCE COMPANY;
(14) LIBERTY MUTUAL FIRE INSURANCE COMPANY;
(15) ARCH AMERICAN INSURANCE COMPANY; and
(16) SRU DOE INSURERS 1-20;

Defendants.

[*Additional Counsel*]

DiCELLO LEVITT GUTZLER LLC
MARK A. DICELLO*
madicello@dicellolevitt.com
KENNETH P. ABBARNO
kabbarno@dicellolevitt.com
MARK ABRAMOWITZ*
mabramowitz@dicellolevitt.com
7556 Mentor Avenue
Mentor, OH 44060
Telephone: 440.953.8888

BURNS BOWEN BAIR LLP
TIMOTHY W. BURNS
tburns@bbblawllp.com
JEFF J. BOWEN*
jbowen@bbblawllp.com
JESSE J. BAIR*
jbair@bbblawllp.com
FREYA K. BOWEN*
fbowen@bbblawllp.com
1 South Pinckney Street, Suite 930
Madison, WI 53703
Telephone: 608.286.2302

THE LANIER LAW FIRM PC
MARK LANIER*
ALEX BROWN*
alex.brown@lanierlawfirm.com
10940 W. Sam Houston Parkway N., Ste. 100
Houston, TX 77064
Telephone: 713.659.5200

DANIELS & TREDENNICK
DOUGLAS DANIELS*
douglas.daniels@dtlawyers.com
6363 Woodway, Suite 700
Houston, TX 77057
Telephone: 713.917.0024

Attorneys for Plaintiffs and Proposed Class

(application for admission
pro hac vice to be filed)

I. INTRODUCTION

Plaintiffs the Menominee Indian Tribe of Wisconsin, The Menominee Indian Gaming Authority, and Wolf River Development Company (collectively, "the Menominee") alleged that they suffered substantial business interruption losses as the coronavirus pandemic swept through their property and Wisconsin, causing businesses to close and customers to stay home, and resulting in numerous civil authority orders that also limited permissible business activity. Plaintiffs alleged that the coronavirus was physically present on their properties and that coronavirus caused physical loss or damage to their properties through its impact on the physical surfaces, the danger to individuals, and the resulting reduced functionality of the property. This physical loss or damage produced substantial losses as well as various costly repair measures and other expenses, but the Menominee's insurers refused to pay the insurance claim submitted, forcing the Menomonee to file the present litigation.

Defendant Arch Specialty Insurance Company ("Arch") moves to dismiss the Amended Complaint largely on the basis of an exclusion it contends formed part of a separate insurance policy sold to the Menominee. This policy was not attached to the complaint or described in it, and the Menominee have separately moved to strike the policy from consideration at this stage of the litigation. Even if the Court did consider the exclusion, however, it does not apply to the claims raised here. The Court should deny Arch's motion.

II. STANDARDS FOR MOTIONS TO DISMISS

When evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court must accept all material allegations in the complaint—as well as any reasonable inferences to be drawn from them—as true and construe them in the light most favorable to the non-moving party. *Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005). To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Under this standard, a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and "the factual allegations that are taken as true must plausibly suggest an entitlement to relief." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

"'As a general rule, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Williams v. Cty. of Alameda*, 26 F. Supp. 3d 925, 935 (N.D. Cal. 2014) (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)). Courts only recognize three exceptions to this general rule. *Poisson v. Aetna Life Insurance Co.*, 488 F. Supp. 3d 942, 945–46 (C.D. Cal. 2002). First, pursuant to Federal Rule of Evidence 201, a court may take judicial notice of adjudicative facts that are "not subject to reasonable dispute," such as "matters of public record" and facts that are "generally known" or that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (quoting Fed. R. Evid. 201(b)). Second, a court may consider documents that are attached to or "properly submitted as part of the complaint." *Poisson*, 488 F. Supp. 3d at 945. Lastly, a court may consider a document that is not "physically attached to the complaint," but only if the complaint "necessarily relies" on the document *and* the document's "authenticity . . . is not contested." *Lee*, 250 F.3d at 688. However, if a document "merely creates a defense to the well-pled allegations in the complaint, then that document did not 'necessarily form the basis of the complaint' and cannot be incorporated by reference." *Khoja*, 899 F.3d at 1002.

When interpreting an insurance policy, if the "meaning a layperson would ascribe to the language of a contract of insurance is clear and unambiguous, a court will apply that meaning." *Montrose Chem. Corp. v. Admiral Ins. Co.*, 913 P.2d 878, 10 Cal. 4th 645, 666 (1995). At the same time, a policy provision "will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable." *Foster-Gardner, Inc. v. Nat'l Union Fire Ins. Co.*, 959 P.2d 265, 18 Cal. 4th 857, 868 (1998). "If an asserted ambiguity is not eliminated by the language and context of the policy, courts then invoke the principle that ambiguities are generally construed against the party who caused the uncertainty to exist (i.e., the insurer) in order to protect the insured's reasonable expectation of coverage." *Id.* In addition, insurance coverage is "interpreted broadly so as to afford the greatest possible protection to the insured," while "exclusionary clauses are interpreted narrowly against the insurer." *MacKinnon v. Truck Ins. Exch.*, 73 P.3d 1205, 1213, 31 Cal. 4th 635, 648 (2003). Accordingly, insurers must "phrase

exceptions and exclusions in clear and unmistakable language." *Id*. Whereas the insured has the burden to establish that the claims fall within the basic scope of coverage, the insurer must demonstrate that the claim is specifically excluded. *Id*.

III. ARGUMENT

A. The Court Should Dismiss Arch's Motion without Considering the Documents Attached to the Motion

Arch first seeks to dismiss the Amended Complaint based on the arguments raised in Lexington's motion to dismiss. For the reasons set forth in the Menominee's opposition to that motion, Dkt. 72, the motion should be denied. The Amended Complaint expressly alleges the presence of the virus on insured property, physical loss or damage to property as a result of the virus, and business interruption losses and other expenses flowing from that physical loss or damage. Given the high standards this Court applies to motions to dismiss, and the need to make every inference in favor of the non-moving party, the motion must be denied.

Arch next seeks to apply an exclusion purportedly attached to a separate excess policy issued by Arch that was neither attached to the Amended Complaint nor described in that complaint. For the reasons set forth in the Menominee's separately filed Motion to Strike, the Court should strike this extrinsic documentation. The Menominee have no record of receiving any such policy from Arch. Dkt. 73-1 (hereinafter, "Bowman Decl."). Instead, the only property policies the Menominee received were contained in the Tribal First "Property Solutions" book. Bowman Decl. Based on the information the Menominee possessed, the Menominee believed that the Tribal First "Property Solutions" book, *see* Dkt. 58-1, contained all of the relevant policy language governing their relationship with their insurers, including Arch. Bowman Decl. For these reasons, the Menominee dispute the authenticity of the purported Arch excess policy and its application here.

Accordingly, this Court should not consider this disputed, extrinsic document at this stage of the litigation. *E.g.*, *City of Royal Oak Retirement System v. Juniper Networks, Inc.*, 880 F. Supp. 2d 1045, 1060 (N.D. Cal. 2012) (granting motion to strike because the "Declaration falls

into none of these categories [of 12(b)(6) exceptions] and thus cannot be considered by the Court for purposes of ruling on the pending motions to dismiss"); *In re Easysaver Rewards Litig.*, 737 F. Supp. 2d 1159, 1169 (S.D. Cal. 2010) ("The law allows a court to consider extrinsic evidence in a motion to dismiss when it is incorporated into the complaint, however, the rule expressly states that the material must be beyond dispute . . . In this instance, the requirements of the rule have not been met because Plaintiffs challenge the authenticity of the screenshots."); *Davis v. Minnesota Life Ins. Co.*, No. 1:19-CV-00453-DCN, 2020 WL 6163119, at *7 (D. Idaho Oct. 21, 2020) ("In sum, the Court can hardly evaluate the terms of the Policy if it does not know which documents actually constitute the Policy . . . . Discovery is clearly necessary to flesh out what constituted the Policy and the [summary plan description] in this case, who authored the various documents, which documents were in effect during the relevant time period, and which documents [the insured] was aware of.").[1]

Because the Menominee have alleged "direct physical loss or damage," and because Arch's purported policy should not be considered at this stage, Arch's motion should be denied.

B. Even if Considered, Arch's Pollution and Contamination Exclusion Would Not Bar The Menominee's Claim

If the Court considers the policy attached to Arch's Motion, the Court should still deny the motion to dismiss because the purported exclusion cited by Arch does not apply to the business interruption and other losses sought by the Menominee. Arch seeks to apply what is expressly a "pollution and contamination" exclusion, designed to address accidental spills of chemical or biological materials, to the spread of a virus during a pandemic. Nether the text nor the purpose of the exclusion support Arch's position. If Arch wished to exclude loss caused by the spread of a virus, it could have included an express virus exclusion in its policy, as did the insurers in many of the cases Arch cites. Arch did not do so.

Arch's pollution and contamination exclusion does not extend to the spread of a virus

[1] *See also Wks. v. Home Depot U.S.A., Inc.*, No. CV 19-6780 FMO (ASX), 2020 WL 1652539, at *1 (C.D. Cal. Jan. 21, 2020) (denying motion to dismiss without prejudice for "improperly referencing materials outside the pleadings").

from external sources during a pandemic. The exclusion reads:

> This policy does not cover any loss, damage, cost or expense caused by, resulting from, contributed to or made worse by actual, suspected, alleged or threatened presence, discharge, dispersal, seepage, migrations, introduction, release or escape of "Pollutants or Contaminants", all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage insured by this policy, except as specifically referenced below.

Arch Motion, Dkt. 70-2, Ex. A, at 26.

This language does not apply to the Menominee's losses. First, the exclusion expressly applies to "Pollutants or Contaminants," placing it in a long line of pollution exclusions attached to property policies. Courts have routinely interpreted such exclusions to apply to traditional environmental pollution or analogous situations. *MacKinnon*, 73 P.3d at 1216 ("Limiting the scope of the pollution exclusion to injuries arising from events commonly thought of as pollution, i.e., environmental pollution, also appears to be consistent with the choice of terms 'discharge, dispersal, release or escape.' . . . [T]here appears to be little dispute that the pollution exclusion was adopted to address the enormous potential liability resulting from anti-pollution laws enacted between 1966 and 1980."); *see also Century Sur. Co. v. Casino W., Inc.*, 329 P.3d 614, 616 (Nev. 2014) ("The absolute pollution exclusion's drafting history further supports the conclusion that the exclusion was designed to apply only to outdoor, environmental pollution."); *American States Ins. Co. v. Koloms*, 687 N.E.2d 72, 75 (Ill. 1997); ("Accordingly, we agree with those courts which have restricted the exclusion's otherwise potentially limitless application to only those hazards traditionally associated with environmental pollution."); *Sullins v. Allstate Ins.* Co., 667 A.2d 617, 623 (Md. 1995) ("It appears from the foregoing discussion that the insurance industry intended the pollution exclusion to apply only to environmental pollution."). Courts have applied similar reasoning to the comparable pollution exclusion in first-party property policies. *E.g., Vigilant Ins. Co. v. V.I. Tech., Inc.*, 253 A.D.2d 401, 402 (N.Y. Sup. Ct. App. Div. 1998) (declining to apply first-party pollution exclusion and noting that the "commonly understood meaning of the language in question should not be held to be different depending on whether it is used in a 'first-party' or 'third-party' policy"). Like the purchasers of these policies with pollution exclusions, the Menominee could have expected the exclusion to

apply to situations involving pollution or contamination from a polluting event, not a pandemic resulting in the infestation of property through the simple visitation of customers and employees.

Second, the language of the exclusion highlights its basic purpose, using words traditionally relating to environmental pollution, like "discharge," "seepage," "release," and "escape" — words used to describe the management and escape of traditional pollutants otherwise thought to be contained. Like the overall purpose of the exclusion, these terms generally imply a foreign substance leaking from, or escaping from, something on plaintiff's property or nearby property. Once that happened, the policy would exclude loss or damage caused by the presence, movement, or impact of the pollutant. Of course, the policy defines "Pollutant" to include a "virus," and the exclusion might therefore apply to the rupture of a sealed medical waste container used to prevent the "release," "escape," or "dispersal" of a harmful bacteria or virus, but these terms do not encompass the spread of a communicable disease, like COVID-19, through the normal behavior of patrons or casino workers. Nothing in the Amended Complaint suggests that the virus "escaped" or was "discharged" by the Menominee, that it dispersed, seeped, or escaped from any kind of container, or that the Menominee somehow contributed to the presence of the virus on its property.

Third, the exclusion states that it applies to the presence, escape or dispersal of Pollutants or Contaminants "caused by, contributed to or aggravated by any physical damage insured by this policy." Dkt. 70-2, Ex. A, at 26. The exclusion applies broadly to any such causal relationship, applying to "all" such presence, seepage, or movement of pollutants, whether the connection is "direct or indirect, proximate or remote or in whole or in part" caused by such physical damage. *Id.* This reading of the exclusion also comports with its traditional purpose as applying to the escape or spread of environmental pollutants or contaminants. Arch appears to offer a different reading of the "caused by . . . physical damage" clause, but reading that phrase to modify the term "Pollutants and Contaminants" is a reasonable interpretation of the words Arch selected when it drafted the exclusion. That reading also harmonizes the construction of this exclusion with the historical interpretation of broad pollution exclusions by courts.

Arch cites two unpublished trial court cases from other jurisdictions that have recently

applied a pollution exclusion to losses incurred in the coronavirus pandemic, but these cases fail to engage the nature and purpose of the exclusion, and, in any case, should not be followed. First, Arch cites *Circus Circus LV, LP v. AIG Specialty Insurance Co.*, No. 2:20-cv-01240-JAD-NJK, 2021 WL 769660 (D. Nev. Feb. 26, 2021), which applies a somewhat similar exclusion to a claim for loss resulting from the coronavirus pandemic. The *Circus Circus* court acknowledged that the Nevada Supreme Court had found a similar pollution clause ambiguous and had noted that "that the clause could be construed as one applying to 'traditional environmental pollution.'" *Id*. at *5 (citing *Century Sur. Co.*, 329 P.3d at 616). However, the court simply declined to apply *Century* in the first instance because it involved a third-party policy, rather than a first-party policy, and concluded without any separate analysis that the terms "release," "dispersal," and "discharge" applied to the pandemic. *Id.* at *5–6. The court also rejected the policyholder's argument that any virus must have been release from "solid waste," an argument not made here. *Id.* at *6. The reasoning in this case is not persuasive or applicable.

Similarly, Arch cites *Zwillo V, Corp. v. Lexington Insurance Co.*, No. 4:20-00339-CV-RK, 2020 WL 7137110 (W.D. Mo. Dec. 2, 2020), but that case, too, did not consider the nature of the pollutant exclusion. The court acknowledged the argument that other jurisdictions had found the exclusion "to apply to traditional environmental and industrial pollution," but concluded that "Missouri precedent directs a different result." *Id*. at *6 (citing *Heringer v. Am. Family Mut. Ins.*, 140 S.W.3d 100, 105 (Mo. Ct. App. 2004)). *Heringer*, however, held that lead had been specifically defined as a pollutant in the policy, and the claimant's injuries from the forced discharge and dispersal of that pollutant through the use of a heat gun on paint fell within its scope. *Heringer*, 140 S.W.3d at 104. Again, that case offers little guidance to the spread of a communicable disease through the mere presence of human visitors or employees without any other actions taken. The *Zwillo* court also noted that policy separately contained a virus exclusion and rejected the policyholder's argument that "virus" must modify the word "waste," *Zwillo*, 2020 WL 7137110, at *7, a condition and argument not present in this case. Like *Circus Circus*, *Zwillo* is not persuasive in the circumstances here.

Other courts have expressly examined the origin and purpose of a Pollution and

Contamination Exclusion and have declined to apply it to coronavirus claims. For example, in *JGB Vegas Retail Lessee, LLC v. Starr Surplus Lines Insurance Co.*, the court denied the insurer's motion to dismiss based on a pollution exclusion because the insurer had "not shown that it is unreasonable to interpret the Pollution and Contamination Exclusion to apply only to instances of traditional environmental and industrial pollution and contamination that is not at issue here, where JGB's losses are alleged to be the result of a naturally-occurring, communicable disease." No. A-20-816628-B, 2020 WL 7190023, at *3 (Nev. Dist. Ct. Nov. 30, 2020); *see also Thor Equities, LLC v. Factory Mut. Ins. Co.*, No. 20 Civ. 3380, 2021 WL 1226983 (S.D.N.Y. March 31, 2021) (declining to apply pollution and contamination exclusion on the ground it was ambiguous).

Arch also cites several cases including exclusions other than Pollutant and Contamination exclusions, including several cases that apply exclusions for "fungi, wet rot, dry rot, bacteria or virus" and a long string cite with cases that apply express virus exclusions. Arch Motion, Dkt. 70 at 7–8 n.1. Arch does not show that any of those cases involve pollutant and contamination exclusions or raise any comparable issues regarding the "release" or "discharge" of pollutants. Arch implies that its exclusion resembles the virus exclusion in these cases, but the cases themselves demonstrate that Arch could have, but did not, attach an express virus exclusion to the policy. Arch's own exclusion is very different, and these cases have no bearing on Arch's policy.

In fact, one court has examined the exclusion cited by Arch in a claim brought under the same property program at issue here. *Cherokee Nation v. Lexington Ins. Co.*, Case No. CV-20-150, 2021 WL 506271 (Okla. Dist. Ct. Jan. 28, 2021). That decision granted summary judgment to the plaintiff policyholders and is currently on appeal by the insurers. *See id.* The court assumed without deciding for the purposes of the motion that the exclusions cited by various excess insurers including Arch formed part of the property program and did not address fact-based arguments against their application. *Id.* at *2 n.7. Even assuming that the exclusions were valid, however, the court concluded that the exclusions, including Arch's exclusion "did not clearly and distinctly apply" to the loss. *Id.* at *11. The court expressly adopted the

interpretation of the exclusion also set forth above, finding that "the exclusion is limited to claims "caused by, contributed to or aggravated by any physical damage," without reference to physical loss." *Id*. at *11 n.19. Because "physical damage" and "physical loss" had "distinct meanings within the TPIP Policy," the court found that "Defendant Arch must have intended to provide coverage for physical loss." *Id*. This Court should similarly decline to apply Arch's exclusion.

C. The Court Should Not Apply Arch's Purported Exclusion Without Giving The Menominee an Opportunity to Conduct Discovery Regarding its Inclusion in the Policy

The Menominee believe this Court should strike the portion of Arch's motion relating to the purported exclusion it attached to the motion. The Menominee further believe that, if the Court considers the exclusion, the Court should conclude it does not apply to the Menominee's losses. In the event that the Court does consider the exclusion and believes it could apply to the losses at issue, the Menominee also believes it would be premature to grant the motion at this time, before the Menominee has had an opportunity to conduct discovery regarding the inclusion, communication, and interpretation of the exclusion.

If the Court chooses to consider materials outside the pleadings and to convert a motion under Rule 12(b)(6) into a motion for summary judgment, the court must give the parties notice and a reasonable opportunity to supplement the record. *Williams v. Cty. of Alameda*, 26 F. Supp. 3d 925, 935–36 (N.D. Cal. 2014) (citing *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1408 (9th Cir. 1995)). That opportunity might include a motion under Federal Rule of Civil Procedure 56(d) for additional discovery. *See generally Williams*, 26. F. Supp. 3d at 936.[2] If the Court does decide to consider the exclusions, the Menominee respectfully request the opportunity under Rule 56(d) to conduct discovery into the materials presented by Arch.

[2] *Id.* ("Given the relatively early stage of this litigation, the Court exercises its discretion and declines to convert Defendants' motion to dismiss into a motion for summary judgment. The Court finds that the evidence submitted by Defendants is more appropriately considered after the parties have had an adequate opportunity to fully develop the factual record. Neither party has suggested that the factual record is sufficiently developed such that a motion for summary judgment is appropriate at this stage of the proceedings."); *see also Michael v. La Jolla Learning Inst., Inc.*, No. 17-CV-934 JLS (MDD), 2019 WL 4747658, at *5 (S.D. Cal. Sept. 30, 2019) ("'Converting Defendants' Motion into one for summary judgment would be premature at this point in the case,' in part because '[t]he record discloses [that] no discovery [has been] conducted.'") (quoting *Lacey v. Malandro Commc'n, Inc.*, No. CV-09-01429-PHX-GMS, 2009 WL 4755399, at *4 (D. Ariz. Dec. 8, 2009)).

Dated this 7th day of May 2021

Respectfully submitted,

ANDRUS ANDERSON LLP

By: */s/ Jennie Lee Anderson*
Jennie Lee Anderson

Attorneys for Plaintiffs and Proposed Class.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on May 7, 2021 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on May 7, 2021.

/s/ Jennie Lee Anderson
Jennie Lee Anderson