No. 20-35472

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

THE ERISA INDUSTRY COMMITTEE,

Plaintiff-Appellant,

v.

CITY OF SEATTLE,

Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Washington
(Hon. Thomas S. Zilly) No. 2:18-cv-01188-TSZ

BRIEF FOR THE AMERICAN BENEFITS COUNCIL, BUSINESS GROUP ON HEALTH, HR POLICY ASSOCIATION, SILICON VALLEY EMPLOYERS FORUM, AND SOCIETY FOR HUMAN RESOURCE MANAGEMENT AS AMICI CURIAE IN SUPPORT OF REHEARING

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CORPORATE DISCLOSURE STATEMENT

Amici Curiae American Benefits Council, Business Group on Health, HR Policy Association, Silicon Valley Employers Forum, and Society for Human Resource Management have no parent corporations. They have no stock, and therefore, no publicly held company owns 10% or more of their stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Rules

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

The American Benefits Council (the "Council") is dedicated to protecting employer-sponsored benefit plans. The Council represents more major employers—over 220 of the world's largest corporations—than any other association that exclusively advocates on the full range of employee benefit issues. Members also include organizations supporting employers of all sizes. Collectively, Council members directly sponsor or support health and retirement plans covering virtually all Americans participating in employer-sponsored programs.

Business Group on Health (the "Business Group") represents 436 primarily large employers, including 73 of the Fortune 100, who voluntarily provide health, disability, leave, and other benefits to over 55 million American employees, retirees, and their families.

The HR Policy Association ("HRPA") is the leading organization representing chief human resource officers of over 380 of the largest employers in the United States. Collectively, their companies provide health care coverage to over 20 million employees and dependents in the United States and spend more than $120 billion annually on health care benefits and related taxes.

[1] The parties consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no party's counsel authored this brief either in whole or in part, and no one other than *amici*, *amici*'s members, and their counsel contributed money intended to fund preparing or submitting this brief.

The Silicon Valley Employers Forum ("SVEF") comprises over 55 high-tech employers, representing over 2 million employees and dependents. SVEF impacts and influences the evolution of global benefits where member companies benchmark and share best practices to optimize, manage and create leading-edge programs in the areas of health care, retirement, and other benefits.

As the world's largest association devoted to human resource management, the Society for Human Resource Management ("SHRM") represents more than 300,000 individual members, with titles from HR Generalists to Chief Human Resource Officers working at organizations that are one-person consulting firms to organizations that are Fortune 500 companies. These organizations encompass every major industry and include over 115 million workers. SHRM members design and administer benefits, including health care in their respective organizations.

This is a case of exceptional importance for *amici* and their members, who are at the forefront of the employer-sponsored health coverage system and who offer many millions of American workers employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), including comprehensive health coverage. As most specific to this case, the Seattle ordinance at issue, Seattle Municipal Code 14.28 (the "Seattle Ordinance"), will directly impact a significant number of Council, Business Group, HRPA, SVEF, and SHRM members. More generally, *amici*'s interest is significantly amplified because the ERISA preemption issues before the Court are of the utmost

importance, as the regulatory uniformity provided by ERISA's sweeping preemption provision ensures that multi-state and national employers offering their employees ERISA-covered benefits can do so efficiently. This regulatory uniformity reduces the overall burden of administration and costs that are borne by employers and, typically, shared in part by employees. Because of "the centrality of pension and welfare plans in the national economy and their importance to the financial security of the Nation's work force," *Boggs v. Boggs*, 520 U.S. 833, 839 (1997), the protection of uniform plan administration is essential to the interests of employers and employees alike. Equally important, ERISA preemption helps ensure that employers can fairly and equitably extend health coverage and other employee benefits to workers without regard to their place of residence or employment.

ARGUMENT

Both the Panel and the District Court relied on this Court's decision in *Golden Gate Restaurant Association v. City & County of San Francisco*, 546 F.3d 639 (9th Cir. 2008), in holding that the Seattle Ordinance is not preempted by ERISA. That reliance ignores the failure of *Golden Gate* to recognize the Supreme Court's prior guidance on ERISA's preemptive scope, as well as significant jurisprudential developments with respect to ERISA preemption since this Court ruled in *Golden Gate*. Those dictates from the Supreme Court have led both the First Circuit, in *Merit Construction Alliance v. City of Quincy*, 759 F.3d 122 (1st Cir. 2014) ("*Merit*"), and the Fourth Circuit, in *Retail Industry Leaders Ass'n v. Fielder*, 475 F.3d 180 (4th Cir. 2007), to determine that laws similar to the Seattle Ordinance are preempted by ERISA. Furthermore, the increasingly disruptive effects of multiple states and localities adopting similar requirements with respect to ERISA-covered plans demands that this Court reconsider the Panel's decision and rule in a manner consistent with Congress' intent in adopting the sweeping preemption provision included in ERISA.

The Seattle Ordinance requires certain hotel industry employers to establish new ERISA-covered plans or to modify the terms of existing ERISA-covered plans, in contravention of more than forty years of case law developed around ERISA preemption. While the terms of the Seattle Ordinance are cabined to a

specific industry, this type of initiative is unlikely to remain limited to this particular industry. Instead, the repercussions of the Court permitting a single locality to exercise this type of power over ERISA-covered plans reach much further and threaten to alter the regulatory landscape materially and irreparably for employee benefit plans—not solely health plans—across the United States, to the detriment of employers, plans, participants, and beneficiaries.

I. *Golden Gate* Incorrectly Applied Supreme Court Precedent, and Its Continued Application Ignores More Recent Precedent.

a. Supreme Court Precedent on Preemption Prioritizes Broad Preemption and Uniformity.

The Petitioner's request should be granted because the application of *Golden Gate* in this case, and *Golden Gate* itself, clashes with the Supreme Court's interpretations of the expansive preemption provision in ERISA. Under ERISA's broad preemption scheme, Congress ensured that employers who offer certain types of benefits are free from varying and potentially conflicting state and local regulation of those benefits. This protection of uniform plan administration is a key component of ERISA and is responsible in large part for the employer-sponsored health care system that covers more than 180 million Americans, not to mention the host of other, non-medical benefits that millions of Americans currently receive through their employers.

By including a broad preemption provision in ERISA, Congress made a deliberate policy choice to render federal law the sole regulatory regime for

employee benefit plans. "In enacting ERISA, Congress also intended to safeguard employers' interests by 'eliminating the threat of conflicting and inconsistent State and local regulation of employee benefit plans.'" *Aloha Airlines, Inc. v. Ahue*, 12 F.3d 1498, 1501 (9th Cir. 1993). One key sponsor of the bill characterized ERISA's preemption provision as its "crowning achievement" and declared that Congress "round[ed] out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation." 120 Cong. Rec. 29197 (1974) (remarks of Rep. Dent).

> It should be stressed that with the narrow exceptions specified in [ERISA], the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law.

H.R. Rep. No. 93-1280 (1974) (Conf. Rep.), *as reprinted in* 1974 U.S.C.C.A.N. 5038, 5188.

In so doing, Congress was able to "minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction." *Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 558 F.3d 1000, 1007 (9th Cir. 2009) ("*Golden Gate II*")

(Smith, J., dissenting) (alteration in original) (quoting *N.Y. State Conf. of Blue Cross & Blue Shield Plans. v. Travelers Ins. Co.*, 514 U.S. 645, 656-57 (1995)), *cert. denied*, 561 U.S. 1024 (2010).

Uniformity of regulation is essential for longevity of our employer-sponsored benefit plan system. National uniformity creates important administrative efficiencies that permit plans covering employees in different states to provide benefits tailored to the unique needs of employees of those companies without forcing changes for employees in disparate geographic regions. It ensures that employers face "a predictable set of liabilities, under uniform standards of primary conduct and a uniform regime of ultimate remedial orders and awards when a violation has occurred." *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (quoting *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002)). This structure permits employers to focus their efforts on providing appropriate and meaningful benefits that are best suited for their workforce based on their own unique business situations. Additionally, uniformity also ensures that employers can equitably offer similarly-situated employees the same benefits regardless of where they live or work. As any employer will attest to, and as noted by Judge Smith in a dissent to the denial of rehearing of the *Golden Gate* decision, "[u]niformity is essential to ensuring that employees understand what benefits they

are entitled to and how to obtain them." *Golden Gate II*, 558 F.3d at 1009 (Smith, J., dissenting).

The benefits of uniformity are apparent in our health care landscape today. For more than 40 years, employers have proven to be the backbone of the American health coverage system. As of 2019, more than 183 million Americans, or well over half of the U.S. population, received health insurance through employment-based benefit plans. Katherine Keisler-Starkey et al., *Health Insurance Coverage in the United States: 2019*, U.S. Dept. of Commerce, (Sept. 2020), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-271.pdf. Congress enacted ERISA to safeguard "the continued well-being and security" of the "millions of employees and their dependents [who] are directly affected by these plans." 29 U.S.C. § 1001(a).

By the time of ERISA's enactment, "the operational scope and economic impact of such plans [was] increasingly interstate[.]" *Id*. ERISA's broad preemption of related state laws serves as a principal means to accomplish the "congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators—burdens ultimately borne by the beneficiaries." *Egelhoff v. Breiner ex rel. Egelhoff*, 532 U.S. 141, 149-50 (2001) (alterations in original) (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990)).

When considered in light of the various types of ERISA-covered benefits, as well as the broad spectrum of views as to how to improve those benefits from locality to locality, the administrative burdens imposed by conflicting state and local laws are no mere theoretical concern. They have concrete consequences for the many Americans who depend on ERISA plans. Evidence shows that "each one percent increase in … plans' costs … results in a potential loss of insurance coverage for about 315,000 individuals." Health Economics Practice, Barents Group, LLC, *Impacts of Four Legislative Provisions on Managed Care Consumers*: 1999-2003, at iii (1998). The cumulative effect of "[r]equiring ERISA administrators to master the relevant laws of 50 States" is a massive increase in the cost of maintaining and operating a multi-state employee benefits plan. *Egelhoff*, 532 U.S. at 149-50.

Furthermore, the regulatory uniformity required by ERISA gives employers the flexibility both to provide the type of benefits best suited to the needs of their employees and to provide them in an expedient fashion. For example, in response to the COVID-19 pandemic, many large employer plans quickly pivoted to provide their participants and beneficiaries with increased access to telemedicine to ensure

that non-COVID-related care was available.[2] Without regulatory uniformity, these types of changes would be impossible to accomplish on the timeframes necessary.

b. This Court's Decision in Golden Gate Misapplies Supreme Court Precedent.

As noted in the Petitioner's Petition, *Golden Gate* incorrectly dismissed numerous Supreme Court decisions regarding application of ERISA's preemption provision in finding that the City and County of San Francisco Administrative code §§ 14.1–14.8 (2007) ("San Francisco Ordinance"), were not preempted by ERISA. Indeed, the inconsistency with Supreme Court preemption analysis has only become more stark in the years following the *Golden Gate* decision. Since that time, the Court has crystalized the analytical framework around preemption in a number of contexts. Most notably, in *Gobeille v. Liberty Mutual Insurance Company*, 577 U.S. 312, 320 (2016), the Supreme Court's determination that a state all-payer claims reporting requirement[3] was preempted turned entirely on the

[2] Business Group on Health, *2021 Large Employers' Health Care Strategy and Plan Design Survey* 14-15 (August 2020) https://ww2.businessgrouphealth.org/acton/attachment/32043/f-d3f18f25-55c4-4652-a3a3-f19082cf4819/1/-/-/-/-/2021 PDS - Full Report.pdf.

[3] Per *Gobeille*, "Vermont requires certain public and private entities that provide and pay for health care services to report information to a state agency. The reported information is compiled into a database reflecting 'all health care utilization, costs, and resources in [Vermont], and health care utilization and costs for services provided to Vermont residents in another state.' 18 V.S.A. § 9410(b). A database of this kind is sometimes called an all-payer claims database, for it requires submission of data from all health insurers and other entities that pay for health care services." 577 U.S. at 315 (alteration in original).

impact on national uniformity of administration and the fact that the state reporting scheme ran parallel to the federal scheme under ERISA. Importantly, in *Gobeille*, plan sponsors were required to submit information about the plan or face a fine. This enforcement structure is analogous to the structure of both the Seattle and San Francisco Ordinances, where an ERISA plan must be amended or created, or some payment must be made. It matters not that such a payment is styled as a direct payment for benefits to an individual (as in the Seattle Ordinance), a payment to a fund for enhancement of other individuals' benefits (as in the San Francisco Ordinance), or a regulatory penalty. In all three cases, the state and local law coerces the plan sponsor's behavior with respect to their ERISA plan. Such state and local coercion is inconsistent with ERISA section 514's broad scope. For this reason, *Golden Gate* conflicts directly with *Gobeille* and must be overturned.

Gobeille, which came down after the *Golden Gate* decision, confirmed and clarified ERISA's underlying goal of preserving nationally uniform plan administration. *Gobeille* made clear that "plan reporting, disclosure, and—by necessary implication—recordkeeping . . . are fundamental components of ERISA's regulation of plan administration. Differing, or even parallel, regulations from multiple jurisdictions could create wasteful administrative costs and threaten to subject plans to wide-ranging liability." *Gobeille*, 577 U.S. at 323. More recent cases outside of the ERISA context have relied on *Gobeille* in rejecting a

presumption against preemption where is the statute contains an express preemption clause. That rejection places *Golden Gate* further in conflict with Supreme Court precedent because *Golden Gate* relies on that presumption in reaching its conclusion. *See Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938, 1946 (2016) (finding that, where a statute "contains an express pre-emption clause, we do not invoke any presumption against pre-emption but instead focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.") (internal quotation marks omitted) (citing *Gobeille*, 577 U.S. at 324-25); *Dialysis Newco, Inc. v. Cmty. Health Sys. Grp. Health Plan*, 938 F.3d 246, 259 (5th Cir. 2019) ("Given that *Franklin* specifically references *Gobeille*—an ERISA case—when holding that there is no presumption of preemption when the statute contains an express preemption clause, we conclude that holding is applicable here.").

Not only is *Golden Gate* inconsistent with more recent Supreme Court decisions, but it is also inconsistent with earlier decisions of the Supreme Court, in effect at the time of the *Golden Gate* decision. Members of this Court, in the dissenting opinion in the ruling denying *en banc* rehearing of the *Golden Gate* decision, recognized that *Golden Gate* "flouts the mandate of national uniformity in the area of employer-provided healthcare that underlies the enactment of ERISA" which puts it in conflict with the Supreme Court's decision in *Egelhoff*.

Golden Gate II, 558 F.3d at 1004 (Smith, J., dissenting) (citing *Egelhoff*, 532 U.S. at 149-50).

The Supreme Court in *Egelhoff* addressed a Washington state statute that invalidated the beneficiary designation of a deceased ERISA plan participant. *Egelhoff*, 532 U.S. at 143. The statute there permitted a plan to "opt out" of the state statute by specifying in the plan terms that the plan will not meet the requirements of the state statute, raising the issue of whether a plan sponsor's ability to opt out of a state or local law preserves the law in the face of ERISA preemption. *Id.* at 150. The Supreme Court was clear that such an opt out is insufficient to save a law from preemption. *Id.* at 150-51. The Supreme Court found an impermissible connection with the plan resulting in preemption because "[t]he statute binds ERISA plan administrators to a particular choice of rules for determining beneficiary status. The administrators must pay benefits to beneficiaries chosen by state law, rather than to those identified in the plan documents." *Id.* at 147. Moreover, the Supreme Court noted that "[p]lan administrators must either follow Washington's beneficiary designation scheme or alter the terms of their plan so as to indicate that they will not follow it. The statute is not any less of a regulation of the terms of ERISA plans simply because there are two ways of complying with it." *Id.* at 150.

At the heart of the *Egelhoff* decision is the Washington state statute's "interfere[nce] with nationally uniform plan administration." *Id.* at 148. Importantly for present purposes, the Washington state statute was not saved from preemption by being in effect a "default rule" from which plans could opt out. *Id.* at 150.

The Seattle Ordinance (as well as the San Francisco Ordinance at issue in *Golden Gate*) presents the same stark choice for plan administrators. They must either conform their plans to the requirements of the local regulation, or they can effectively opt out by contributing to the cost of benefits for individuals not currently eligible for coverage under the plan. The fact that employers can satisfy these ordinances by making a payment, rather than by offering health coverage themselves, does nothing to alter the fact that the statutes interfere with nationally uniform plan administration. This is because the Seattle Ordinance (and the San Francisco Ordinance) "dictate[s] the choice[s] facing ERISA plans' with respect to matters of plan administration," and thus must stand aside in order to give effect to Congress's intent in enacting section 514 of ERISA. *Id*. (second alteration in original).

As in *Egelhoff* and *Gobeille*, so too here. At the time of the *Golden Gate* decision, which undergirds the decision in this case, eight members of this Court recognized that it was in conflict with *Egelhoff*. *Golden Gate II*, 558 F.3d at 1004

(Smith, J. dissenting). Moreover, in addition to reiterating the principles in *Egelhoff*, the intervening decision by the Supreme Court in *Gobeille* makes clear that, if decided today, *Golden Gate*'s reliance on the presumption against preemption would be directly violative of Supreme Court precedent.

The Supreme Court's recent ruling in *Rutledge v. Pharmaceutical Care Management Association*, 141 S. Ct. 474 (2020), does not upset the impact and importance of *Gobeille* or *Egelhoff* as they relate to *Golden Gate*. In *Rutledge*, the Court analyzed whether the state's regulation of certain service providers to plans created such stark economic burdens as to have an impermissible connection with the ERISA plan. *Id.* at 478. In holding that it did not, the Court reaffirmed the concept that a state or local law that dictates the benefit design choices of the plan sponsor should be preempted. *Id.* at 480 ("[T]his Court asks whether a state law governs a central matter of plan administration or interferes with nationally uniform plan administration. If it does, it is pre-empted.") (citations and internal quotation marks omitted). Thus, *Rutledge* reiterates that both the San Francisco and Seattle Ordinances should be preempted, despite finding that the law at issue in *Rutledge* was not preempted.

This Court's recent decision in *Howard Jarvis Taxpayers Ass'n v. California Secure Choice Retirement Savings Program*, No. 20-15591, 2021 WL 1805758 (9th Cir. May 6, 2021) ("*Jarvis*"), likewise does not alter *amici*'s assessment of

Golden Gate as fundamentally flawed. The *Jarvis* decision concerned California's CalSavers program, which applies to eligible employees whose employers do not provide them with an ERISA retirement plan. *Id.* at *1. The CalSavers program allows eligible employees to opt out of the CalSavers program, and, if they do not opt out, requires the employer to transmit certain required payroll deductions from the employees' pay. *Id.* This Court found that the state-run CalSavers program is not an ERISA plan and that the statute's requirements on employers do not give rise to a requirement to create an ERISA plan. The CalSavers program at issue in *Jarvis* is factually distinct from the Seattle and San Francisco Ordinances, because it does not require any financial payments by the employer to an employee or to a governmental entity, or, according to this Court, does not, under any of the options, require the creation of an ERISA plan. Thus, the decision is not probative of the questions presented here.

II. The Panel Decision Further Entrenches a Circuit Split on a Matter of National Importance.

As Petitioner has ably described, the *Golden Gate* decision is an outlier among the Circuits with respect to whether ERISA preempts state and local laws mandating that employers either pay a specified sum or provide a specific coverage. This outlier status derives largely from the failure of this Court to apply the Supreme Court's prior precedents, as well as the inconsistency of *Golden Gate* with the Supreme Court's more recent rulings. As explained below, those dictates

from the Supreme Court have led both the First and Fourth Circuits to determine that laws similar to the Seattle Ordinance are preempted by ERISA. Allowing the break with other circuits to continue risks a regulatory morass of local laws, prohibitively expensive compliance programs, and reduction of benefits or increased costs passed along to participants.

The *Golden Gate* decision, which is the foundation of the decision in this matter, created a circuit split with the Fourth Circuit's decision in *Fielder*, which predated the *Golden Gate* decision and concerned a Maryland law requiring employers to spend a specific portion of their payroll costs on health care or surrender the difference between the actual spend and the required amount to the state. *Golden Gate II*, 558 F.3d at 1004 (Smith, J., dissenting) (recognizing a circuit split with the Fourth Circuit); *Fielder*, 475 F.3d 180. The Fourth Circuit held that the Maryland law was preempted because it created a situation where the only rational course of action was to increase spending on health care to avoid the tax and because it offended uniform nationwide plan administration by requiring employers to monitor local health care spending. *Fielder*, 475 F.3d at 193, 196-97.

Moreover, following the decision in *Golden Gate*, the First Circuit deepened the split, siding with the Fourth Circuit, in a case concerning a municipal training ordinance that required contractors to offer apprenticeships, which are benefits covered by ERISA. *See Merit*. In holding the ordinance to be preempted, the First

Circuit adopted reasoning similar to *Fielder* focusing on the ordinance's effect on uniform benefit administration. *Merit*, 759 F.3d at 131. In arriving at its decision, the First Circuit specifically rejected the reasoning of *Golden Gate*. *Id.*

The decision in this matter, and by extension the *Golden Gate* decision on which it relies, is in direct conflict with both the Fourth Circuit's decision in *Fielder* and the First Circuit's decision in *Merit*. In those cases, the courts rejected arguments that relied on compliance with the laws at issue via other options that theoretically allowed compliance without offending ERISA. *Id.*; *Fielder*, 475 F.3d at 193, 196-97. Because an alternate mode of compliance underpins the decision in this matter and indeed also *Golden Gate*, they are in direct conflict with both *Fielder* and *Merit*.

The decision in this matter directly thus faces a circuit split on a matter of national importance, and so both the Ninth Circuit's rules and its precedent support rehearing the case *en banc*. *See* 9th Cir. R. 35-1 ("When the opinion of a panel directly conflicts with an existing opinion by another court of appeals and substantially affects a rule of national application in which there is an overriding need for national uniformity, the existence of such conflict is an appropriate ground for petitioning for rehearing en banc."); *S & H Packing & Sales Co. v. Tanimura Distrib., Inc.*, 850 F.3d 446, 451 (9th Cir. 2017) (Malloy, J. & Gould, J., concurring) (calling for *en banc* review to "eliminate [a] circuit split" by

overruling a prior Ninth Circuit case that "was wrongly decided"), *on reh'g en banc*, 883 F.3d 797 (9th Cir. 2018). Because of the conflict among the circuits, and because the First and Fourth Circuits' decisions properly adhere to Supreme Court precedent, rehearing *en banc* is appropriate in this matter.

CONCLUSION

Because this Court's decision in *Golden Gate* is in conflict with applicable Supreme Court precedent and is increasingly in conflict with its sister circuits' position, *amici* respectfully request that the Court grant Plaintiff-Appellant's motion for rehearing *en banc*.

Dated: May 10, 2021

/s/ Lars C. Golumbic
Lars C. Golumbic

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Signature */s/ Lars C. Golumbic* **Date** 05/10/2021

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 10, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system on the following:

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