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12 **SUPERIOR COURT OF WASHINGTON**
13 **FOR YAKIMA COUNTY**

14 JOSE MARTINEZ-CUEVAS and PATRICIA
15 AGUILAR, individually and on behalf of all
16 others similarly situated,

No. **1620341739**

17 Plaintiffs,

**CLASS ACTION COMPLAINT FOR
DAMAGES AND DECLARATORY
RELIEF**

18 vs.

19 DERUYTER BROTHERS DAIRY, INC.,

20 Defendants.

21 **I. INTRODUCTION**

22 1. This action is brought by Plaintiffs Jose Martinez-Cuevas and Patricia Aguilar on
23 behalf of a proposed class of dairy workers who have been employed by DeRuyter Brothers
Dairy, Inc. to milk cows at its milking facilities in Outlook, Washington. For years, Plaintiffs and
Class members have worked nine to twelve hours a day, six days a week, without the benefit of
paid rest breaks, meal breaks, or overtime pay. During this time, DeRuyter also failed to pay
Plaintiffs and Class members for all hours worked, including pre-shift and post-shift work.

1 2. DeRuyter owns and manages a large dairy operation in Outlook, Washington,
2 with a herd of over 5,000 milking cows. Plaintiffs and Class members extract milk from the cows
3 through milking machines in a factory-like setting. Each day, the dairy factory runs three
4 ostensibly eight-hour shifts on a twenty-four hour cycle. There are two milking facilities. In the
5 larger of the two facilities, four workers hook up milking equipment to about 3,000 cows per
6 shift. Each cow is milked three times a day. A photo of the milking facility is attached as Exhibit
7 A.

8 3. Dairy workers prepare cows' udders for milking, connect udders to milking
9 machines, clean and scrub floors, disinfect walls using heavy hoses and industrial chemicals, and
10 remove manure from stalls.

11 4. Each day dairy workers are exposed to dangerous and unhealthy working
12 conditions. They work with large and unpredictable animals, are subjected to a high risk of
13 repetitive motion injuries, and may come into contact with transmittable diseases.

14 5. Plaintiffs, on behalf of themselves and all others similarly situated, bring this
15 action against DeRuyter for engaging in a systematic scheme of wage and hour violations against
16 dairy workers at DeRuyter's milking operation in Outlook, Washington. These violations include
17 failure to provide paid, ten-minute rest breaks, failure to provide full, uninterrupted meal breaks
18 of no less than thirty minutes, failure to separately pay for rest breaks, failure to pay employees
19 for missed rest and meal breaks, and failure to pay for work performed before and after the
20 workers' assigned shifts.

21 6. In addition, despite their long hours and work weeks performing physically
22 demanding work in factory-like conditions, Plaintiffs are excluded from the overtime protections
23 in Washington law that mandate that employers pay workers time-and-a-half for all work

1 performed in excess of forty hours per week. This exclusion, codified at RCW 49.46.130(2)(g),
2 violates the privileges and immunities clause of the Washington State Constitution, Article I,
3 Section 12. The privileges and immunities clause is intended both to prevent special treatment
4 for a few to the disadvantage of others and to prevent discrimination against particularly
5 vulnerable minority groups. The exclusion of farm workers from overtime unconstitutionally
6 grants special treatment to agricultural employers and results in discrimination against farm
7 workers, who are overwhelmingly Latino. The exemption, which is based on the same exemption
8 in the federal Fair Labor Standards Act (FLSA), incorporates the racially discriminatory
9 motivation of that law and perpetuates the vestiges of Jim Crow laws grafted on to FLSA and
10 other New Deal reforms, imposing them on Washington's farm workers of today. The Plaintiffs
11 seek a declaratory judgment that the exclusion of farm workers from overtime is unconstitutional
12 for all workers excluded by RCW 49.46.130(2)(g).

13 II. JURISDICTION AND VENUE

14 7. This Court has jurisdiction over this action pursuant to RCW 2.08.010.

15 8. Venue is proper in this Court pursuant to RCW 4.12.025(1) and RCW
16 4.12.025(3).

17 III. PARTIES

18 9. Plaintiff Jose Martinez-Cuevas ("Plaintiff Martinez-Cuevas") lives in Sunnyside,
19 Washington. He worked as a milker for DeRuyter from May 2014 until about August 2015.

20 10. Plaintiff Patricia Aguilar ("Plaintiff Aguilar") lives in Sunnyside, Washington.
21 She worked as a milker for DeRuyter from March 2015 until about May 2016.

22 11. Defendant DeRuyter is a Washington corporation with its principal place of
23 business in Yakima County, Washington.

1 12. DeRuyter is an employer for purposes of the Washington wage and hour laws and
2 rest and meal break regulations under which Plaintiffs bring their claims.

3 **IV. CLASS ACTION ALLEGATIONS**

4 13. Class Definition. Pursuant to Civil Rule 23, Plaintiffs bring this case as a class
5 action against DeRuyter on behalf of a Class defined as follows:

6 All current and former DeRuyter employees who have worked as milkers for the
7 company since December 8, 2013.

8 14. Numerosity. Plaintiffs believe there are more than fifty current or former
9 DeRuyter employees in the Class. The members of the Class are so numerous that joinder of all
10 members is impracticable. Moreover, disposition of the claims of the Class in a single action will
11 provide substantial benefits to all parties and the Court.

12 15. Commonality. There are numerous questions of law and fact common to the
13 Plaintiffs and members of the Class. These questions include, but are not limited to, the
14 following:

- 15 a. Whether DeRuyter engaged in a common practice of failing to properly compensate
16 Class members for all hours worked;
- 17 b. Whether DeRuyter engaged in a common practice of failing to provide Class
18 members with paid, ten-minute rests break for every four hours of work;
- 19 c. Whether DeRuyter engaged in a common practice of failing to pay Class members an
20 additional ten minutes of compensation for each rest break the members miss;
- 21 d. Whether DeRuyter engaged in a common practice of failing to provide Class
22 members with an uninterrupted meal period of at least thirty minutes for every five
23 hours of work;

- 1 e. Whether DeRuyter engaged in a common practice of failing to pay Class members an
2 additional thirty minutes of compensation for each meal period the members miss;
- 3 f. Whether DeRuyter engaged in a common practice of failing to pay Class Members
4 overtime compensation of one and one-half times their regular rate for all hours over
5 forty in a week;
- 6 g. Whether DeRuyter violated RCW 49.46.090 by failing to pay at least minimum wage
7 for all hours worked;
- 8 h. Whether DeRuyter violated WAC 296-131-020 by failing to provide paid, ten-minute
9 rest breaks for every four hours worked;
- 10 i. Whether DeRuyter violated RCW 49.52.050 by willfully failing to pay at least
11 minimum wage for all hours worked, by failing to provide required rest and meal
12 breaks, and by failing to pay Class members for missed rest and meal breaks;
- 13 j. Whether RCW 49.46.130(2)(g)'s exemption of farm workers from overtime
14 compensation violates the privileges and immunities clause of the Washington State
15 Constitution, Article I, Section 12; and
- 16 k. The nature and extent of class-wide injury and the measure of compensation for such
17 injury.

18 16. Typicality. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs are
19 former employees of DeRuyter who worked as milkers at the Outlook facility. Plaintiffs' claims,
20 like the claims of the Class, arise out of the same common course of conduct by DeRuyter and
21 are based on the same legal theories.

22 17. Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class.
23 Plaintiffs have retained competent and capable attorneys who have significant experience in

1 complex class action employment litigation. Plaintiffs and their counsel are committed to
2 prosecuting this action vigorously on behalf of the Class and have financial resources to do so.
3 Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with those
4 of the Class.

5 18. Predominance. DeRuyter engaged in a common course of wage and hour abuse
6 toward Plaintiffs and members of the Class. The common issues arising from this conduct that
7 affect Plaintiffs and members of the Class predominate over any individual issues. Adjudication
8 of these common issues in a single action has important and desirable advantages of judicial
9 economy.

10 19. Superiority. Plaintiffs and Class members have suffered and will continue to
11 suffer harm and damages as a result of DeRuyter's unlawful and wrongful conduct. Absent a
12 class action, most Class members likely would find the cost of litigating their claims prohibitive.
13 Class treatment is superior to multiple individual suits or piecemeal litigation because it
14 conserves judicial resources, promotes consistency and efficiency of adjudication, provides a
15 forum for small claimants, and deters illegal activities. There will be no significant difficulty in
16 the management of this case as a class action. The Class members are readily identifiable from
17 DeRuyter's records.

18 V. FACTUAL ALLEGATIONS

19 Dairy Operations in Washington State

20 20. Washington ranks tenth in total milk production in the nation, with dairy
21 constituting the second largest agricultural commodity produced in the state.

22 21. In Washington, the number of cows per dairy is on the rise. As of 2012,
23 operations with more than 1,000 cows comprised over two thirds of the Washington industry.

1 The Yakima Valley region of central Washington is one of the largest dairy-producing areas in
2 the nation and leads the State in milk production.

3 22. An operation with over 700 dairy cows is considered a large Concentrated Animal
4 Feeding Operation (“CAFO”) by the Washington State Department of Ecology.

5 23. A CAFO is a production process that concentrates large numbers of animals in
6 relatively small and confined spaces.

7 24. The expansion and increased mechanization of the industry has resulted in dairy
8 operations being staffed by relatively few workers in more dangerous conditions.

9 25. National studies reveal that certain injuries, non-fatal fall-related injuries, are far
10 higher for all farmworkers, including dairy workers, than those for workers in transportation,
11 mining, or manufacturing.

12 26. Dairy workers have a higher risk than other agricultural workers for developing
13 osteoarthritis due to repetitive, forceful, or prolonged exertion in awkward positions.

14 27. In 2014, there were 11.3 injuries per 100 workers in Washington dairies. This rate
15 is 118% higher than the rate for all state industries combined. There were also eleven (11) dairy-
16 related fatalities in Washington from 2000 until April 2015.

17 28. The nature of the work in large CAFOs and the manner in which they as
18 employers structure the work and workplace culture are the main causes of these injuries.

19 29. CAFOs in Washington are staffed by milkers who are predominantly Latino.

20 **Nature of DeRuyter Dairy Operation**

21 30. DeRuyter is a very large CAFO, with over 5,000 dairy cows.

22 31. DeRuyter operates two milking facilities in Outlook 24 hours per day, 365 days
23 per year milking all of its cows three times a day.

1 32. There are three daily shifts, which commence at 7:30 a.m., 3:30 p.m., and 11:30
2 p.m.

3 33. DeRuyter pays the workers a fixed amount for each eight-hour shift to handle a
4 specific number of milking lines and cows.

5 34. Although each shift for which the workers are paid is supposed to be limited to
6 eight hours, DeRuyter regularly requires workers to work longer than the eight-hour shift.

7 35. DeRuyter operates two milking facilities at its Outlook dairy. The larger of the
8 two facilities is staffed by four milkers who are assigned to milk 17 corrals of cows each eight-
9 hour shift. Each corral has 5 lines with 39 cows each. Four workers are therefore required to milk
10 over 3,000 cows each shift.

11 36. During their shift, Plaintiffs milked the assigned cows by attaching mechanical
12 equipment to the cows' udders to extract the milk.

13 37. Plaintiffs were also required to clean the commercial milking floor, spray down
14 stalls, corral unruly cows, and clear and move manure.

15 38. Plaintiffs are Latino. On information and belief almost all Class members are
16 Latino, and many speak Spanish as their primary language.

17 **Common Course of Conduct: Failure to Provide Proper Rest Breaks**

18 39. DeRuyter failed to provide Plaintiffs and Class members with a ten-minute rest
19 break for every four hours of work until the end of March 2016.

20 40. During the same time period, DeRuyter failed to compensate Plaintiffs and Class
21 members for each missed rest break.
22
23

1 41. During the same time period, DeRuyter profited at the expense of its workforce as
2 it received the benefit of ten minutes of additional work without paying for the additional hours
3 worked.

4 42. DeRuyter had actual and constructive knowledge of the fact that Plaintiffs and
5 Class members were not provided with a ten-minute rest break for every four hours worked and
6 were not provided pay for each rest break the workers missed.

7 **Common Course of Conduct: Failure to Provide Proper Meal Periods**

8 43. DeRuyter failed to provide Plaintiffs and Class members with a thirty-minute
9 meal period for every five hours of work.

10 44. Although Plaintiffs and Class members sometimes took some time to eat, they
11 were repeatedly interrupted, and DeRuyter required its employees to remain on duty.

12 45. As a result of this pattern or practice, Plaintiffs and Class members were regularly
13 denied full, uninterrupted thirty-minute meal periods and often had to eat while “on-the-go.”

14 46. DeRuyter failed to provide an additional thirty minutes of pay for each meal
15 period Plaintiffs and Class members missed.

16 **Common Course of Conduct: Failure to Compensate for Pre-Shift and Post-Shift Duties**

17 47. In addition to work duties outlined above, DeRuyter required Plaintiffs and Class
18 members to perform certain extra duties before and after each shift, without pay.

19 48. These pre and post-shift duties included: putting on and taking off personal
20 protective equipment, including waterproof arm sleeves and gloves, a waterproof apron, and
21 goggles/safety glasses, helping workers on prior shifts finish their assigned duties, cleaning the
22 commercial milking floor, spraying down stalls, corralling unruly cows, and clearing or moving
23 manure.

1 49. DeRuyter failed to pay Plaintiffs and Class members for all work performed
2 beyond their assigned eight-hour shifts.

3 50. Each time an employee is not compensated for these extra duties, DeRuyter
4 unfairly profits at the expense of its workforce.

5 **Common Course of Conduct: Failure to Pay Overtime**

6 51. DeRuyter also benefits from the privilege of not paying overtime wages to
7 Plaintiffs and Class members who work more than forty hours per week.

8 52. Unlike other Washington employers, the agricultural industry obtained an
9 exemption from the overtime requirement in the Minimum Wage Act ("MWA").

10 53. The MWA is based on the federal Fair Labor Standards Act ("FLSA").

11 54. The agricultural exemption of farm workers from the MWA's overtime
12 protections is based on an FLSA exemption crafted during the Jim Crow era, when most farm
13 workers were Black, Southern, and had no political power.

14 55. The FLSA provided minimum wage and overtime protections for workers across
15 the nation.

16 56. To pass the FLSA in 1938, Congress needed the votes of Southern Democrats
17 who often voted as a bloc to maintain the economic and social subordination of Black farm
18 workers and Southern racial inequality.

19 57. This compromise directly resulted in the exemption of farm workers from both
20 the minimum wage and overtime protections of the FLSA. Thus, and by design, most Black
21 workers in the South were excluded from the protective reach of the original FLSA.

22 58. Following federal law, Washington's MWA was first passed in 1959 and
23 established minimum wage and overtime protections.

1 59. As enacted, Washington's original MWA excluded farm workers from the
2 definition of "employee," and thus from minimum wage and overtime protections.

3 60. As a direct result, the racially motivated exclusion of farm workers from the
4 FLSA was therefore incorporated into state law.

5 61. In 1960, the year after the MWA was enacted, CBS broadcast Edward R.
6 Murrow's documentary "Harvest of Shame," which depicted the plight of migrant farm workers
7 throughout the United States.

8 62. An interview in the film with then United States Secretary of Labor, James
9 Mitchell, demonstrated the lobbying power of the agricultural industry nationally and in
10 Washington State.

11 63. Secretary Mitchell stated that farm workers were the "great mass of excluded
12 Americans" who had no voice in Congress, while agricultural employers were highly organized
13 to "make their wants and terms and conditions known to our legislators.

14 64. Secretary Mitchell stated, "I know of no greater pressure lobbies in Washington
15 than the farm group. The pressures of the farm groups are tremendous."

16 65. Secretary Mitchell stated he had "been frustrated to a greater extent than in any
17 other sphere of activity as Secretary of Labor in my inability to make any impact at all in terms
18 of either regulations or law that would help the farm workers."

19 66. Over the next decade, various changes were made to the FLSA and in 1975, the
20 Washington Legislature amended the MWA to reflect those changes in Washington law.

21 67. In line with the FLSA, the 1975 amendments required agricultural employers to
22 pay the minimum wage (except to those workers covered by the hand-harvest and family-
23

1 member exemptions), but they explicitly excluded farm workers from the right to overtime
2 compensation.

3 68. The influence of the agricultural industry continues to be a significant political
4 and economic force in Washington that has resulted in perpetuating laws to its benefit and to the
5 detriment of farm workers.

6 69. Currently, agriculture represents approximately twelve percent (12%) of
7 Washington's economy.

8 70. While the racial demographics of the agricultural industry have changed since the
9 Jim Crow era, farm workers are still predominantly people of color. Washington's agricultural
10 labor force today is comprised primarily of Latino workers, living in rural and poor communities.

11 71. Yakima County, where Defendant operates, is the number one county in
12 agricultural market value in the entire state.

13 72. Yakima County also has one of the state's highest rates of poverty, with about a
14 fifth (1/5) of the population and a third (1/3) of the children living in poverty.

15 VI. FIRST CLAIM FOR RELIEF

16 Violation of RCW 49.46.020 and .090 – Failure to Pay Minimum Wage

17 73. RCW 49.46.020 requires that employers pay employees no less than the minimum
18 hourly wage for each hour worked.

19 74. As described above, DeRuyter failed to pay Plaintiffs and Class members for each
20 hour worked.

21 75. By the actions alleged above, DeRuyter violated the provisions of RCW
22 49.46.020 and RCW 49.46.090.
23

1 **VIII. FOURTH CLAIM FOR RELIEF**

2 **Violation of RCW 49.52.050 – Willful Refusal to Pay Wages**

3 84. DeRuyter’s violations of RCW 49.46.020, RCW 49.46.090, RCW 49.46.130, and
4 WAC 296-131-020 were willful and constitute violations of RCW 49.52.050.

5 85. RCW 49.52.070 provides that any employer who violates the provisions of RCW
6 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, attorneys’ fees,
7 and costs.

8 86. As a result of the willful, unlawful acts of DeRuyter, Plaintiffs and the Class have
9 been deprived of compensation in amounts to be determined at trial.

10 **IX. FIFTH CLAIM FOR RELIEF**

11 **Violation of RCW 49.46.130 – Failure to Pay Overtime Compensation Based on the**
12 **Unconstitutional Exclusion of Agricultural Workers in RCW 49.46.130(2)(g)**

13 87. DeRuyter failed to pay Plaintiffs and Class members for all hours worked above
14 forty hours in a week at a rate of not less than one and one-half times their regular rate of pay.

15 88. The basis for DeRuyter’s failure to pay Plaintiffs and Class members overtime
16 compensation for all hours worked above forty in a week is RCW 49.46.130(2)(g), which
17 exempts agricultural employers from paying overtime compensation.

18 89. The MWA’s exemption of agricultural employers from the requirement to pay
19 overtime compensation violates the privileges and immunities clause of the Washington State
20 Constitution, Article I, Section 12.

21 90. Article I, Section 12 of the Washington State Constitution provides: “No law shall
22 be passed granting to any citizen, class of citizens, or corporation other than municipal,
23 privileges or immunities which upon the same terms shall not equally belong to all citizens, or
corporations.”

1 91. The privileges and immunities clause ensures the right to protection by the
2 government, the freedom from discrimination, the enjoyment of life and liberty, the rights to
3 acquire and possess property of every kind, and the rights to pursue and obtain happiness, health,
4 and safety.

5 92. The purpose of the privileges and immunities clause is both to prevent and limit
6 favoritism and special treatment for a few to the disadvantage of others and to prevent
7 discrimination against particularly vulnerable minority groups.

8 93. The MWA agricultural exemption violates both of these purposes.

9 **The Overtime Exemption Grants Agricultural Employers an Unconstitutional Privilege or**
10 **Immunity from a Requirement Necessary for Protection of Workers' Health and Safety**
11 **and Results in Discrimination Against Latino Workers.**

12 94. The MWA was enacted "for the purpose of protecting the immediate and future
13 health, safety and welfare of the people of this state." RCW 49.46.005.

14 95. The MWA's overtime law is necessary for protecting workers' health and safety.

15 96. Agricultural workers are generally engaged in employment dangerous to life and
16 deleterious to their health, and therefore Article II, Section 35 of the Washington State
17 Constitution provides them a constitutional right to laws necessary to protect them.

18 97. The MWA's overtime exemption for agricultural employers grants to agricultural
19 employers a privilege against or immunity from common law and constitutional protections to
20 health and safety, including the constitutional protection afforded to persons working in mines,
21 factories, and other employments dangerous to life or deleterious to health under Article II,
22 Section 35 of the Washington State Constitution.

23 98. There is no reasonable ground for distinguishing between (1) entities that employ
workers in factories or in other dangerous industries that must pay overtime compensation to

1 protect the health, safety, and welfare of their workers and (2) those entities, like DeRuyter, that
2 are exempt from the overtime requirement as agricultural employers.

3 99. Freedom from discrimination is also protected by the privileges and immunities
4 clause of the Washington State Constitution, Article I, Section 12.

5 100. Agricultural work was performed predominantly by Black workers when
6 Congress enacted the FLSA and by Latino workers at the time the Washington legislature
7 enacted RCW 49.46.130. Agricultural work is still predominantly performed by Latinos.

8 101. RCW 49.46.130(2)(g)'s exemption of agricultural workers was based on the same
9 exemption in the FLSA.

10 102. The FLSA exemption of agricultural workers was racially motivated to exclude
11 racial minorities from FLSA overtime protection.

12 103. RCW 49.46.130's exclusion of agricultural workers from overtime compensation
13 protection results in discrimination against the predominantly Latino workforce that performs
14 agricultural work in Washington state.

15 104. The exclusion grants agricultural employers a privilege against or immunity from
16 the generally applicable requirement to pay overtime wages to employees who work over forty
17 hours in a week in a manner that discriminates against a predominantly Latino workforce.

18 105. There is no reasonable ground for granting agricultural employers a privilege
19 against or immunity from the requirement to pay overtime compensation to their employees,
20 which results in discrimination against a predominantly Latino workforce.
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1 **The Exemption Also Violates the Equal Protection Guarantee of the Privileges and**
2 **Immunities Clause.**

3 106. The privileges and immunities clause of the Washington State Constitution also
4 guarantees equal protection of the laws and applies to statutes that have the potential to burden a
5 particularly vulnerable minority.

6 107. RCW 49.46.130 creates a class of employees entitled to the protection of overtime
7 compensation but excludes agricultural employees from that protection.

8 108. Agricultural employees who are excluded are similarly situated to other
9 employees who are entitled to protection under the MWA. There is no unique characteristic that
10 distinguishes agricultural employees from other employees, and the exemption is contrary to the
11 MWA's overall purpose.

12 109. The overtime exemption for agricultural employers burdens a particularly
13 vulnerable minority—Latino employees.

14 110. Latino farm workers have suffered a history of discrimination based on
15 immutable traits—their race and national origin—that bear no relation to their ability to perform
16 or contribute to society.

17 111. Under any level of scrutiny, the exclusion of agricultural workers from the
18 MWA's overtime provision violates the equal protection guarantee of the privileges and
19 immunities clause of the Washington State Constitution by discriminating against Latino
20 workers. Therefore, the exclusion is unconstitutional.

21 112. As a result of DeRuyter's failure to pay overtime compensation based on an
22 unconstitutional exemption of agricultural employers, Plaintiffs and the Class have been
23 deprived of compensation in amounts to be determined at trial.

1 F. Declare that RCW 49.46.130(2)(g)'s exemption of agricultural employers from
2 the requirement to pay overtime compensation violates the privileges and immunities clause of
3 the Washington State Constitution, Article I, Section 12;

4 G. Enjoin DeRuyter and their officers, agents, successors, employees,
5 representatives, and any and all person acting in concert with DeRuyter, as provided by law,
6 from engaging in the unlawful and wrongful conduct set forth herein;

7 H. Award to Plaintiffs and the Class compensatory and exemplary damages, as
8 allowed by law;

9 I. Award to Plaintiffs and the Class attorneys' fees and costs, as allowed by law,
10 including under RCW 49.48.030, RCW 49.46.090, and RCW 49.52.070 and other applicable
11 law;

12 J. Award to Plaintiffs and the Class prejudgment and post-judgment interest, as
13 provided by law;

14 K. Grant Plaintiffs leave to amend their claims to reflect the evidence presented at
15 trial; and

16 L. Provide such other and further relief as the Court deems necessary, just, and
17 proper.

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1 RESPECTFULLY SUBMITTED AND DATED this 8th day of December, 2016

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EXHIBIT

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