No. 103070-3

SUPREME COURT
OF THE STATE OF WASHINGTON

DEBRA LAUDONE,

Petitioner,

v.

DAVID AND SUSAN LEWIS, and the marital community composed thereof,

Respondents,

and

CITY OF SEATTLE,

Defendant.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals properly held that petitioner Laudone failed to effectively serve respondents Lewis by leaving process with Ms. Lewis' mother at Ms. Lewis' sister's home, as it was undisputed that respondents David and Susan Lewis had been living elsewhere for at least two months, and had only temporarily stayed with the sister for less than three weeks after a fire destroyed Lewis' home.

In an unpublished decision, Division One affirmed the trial court's order vacating the default judgment against Lewis because the sister's residence was not Lewis' "usual abode" for purposes of substitute service under RCW 4.28.080(16). Its decision does not conflict with any decisions from this Court or the Court of Appeals. RAP 13.4(b)(1), (2). And the Court's application of the substitute service statute's plain language does not raise an issue of substantial public interest, RAP 13.4(b)(4), because the legislature has established alternative means of serving a

defendant when there is "no clear usual abode" under RCW 4.28.080. Laudone never attempted service on Lewis under any of the other statutory provisions before the statute of limitations ran on her complaint.

This Court should deny review.

II. RESTATEMENT OF ISSUES

Laudone conceded that the evidence is "clear and unrebutted" that Lewis had been living in their "temporary home" in Medina for two months when she attempted substitute service by leaving process with Ms. Lewis' mother at her sister's residence, where Lewis stayed for less than three weeks after a fire destroyed their home.

1. Did Division One properly conclude that Lewis met their burden of showing clear and convincing evidence that the sister's home was not Lewis' "usual abode" for purposes of service under RCW 4.28.080(16)?

2. Can RCW 4.28.080(16) be "liberally construed" to allow substitute personal service at a place

Lewis had occupied only temporarily for less than three weeks and had left over two months earlier?

3. Is there a substantial public interest in expanding the means provided by the legislature to serve process, when Laudone neither attempted to personally serve David Lewis under RCW 4.28.080(16) at his known place of employment, nor sought to establish the sister's home as Lewis' usual mailing address for service under RCW 4.28.080(17)?

III. RESTATEMENT OF FACTS

A. Laudone attempted substitute personal service on Susan Lewis' mother at the home of her sister, where Lewis had stayed for less than three weeks, two months earlier.

Petitioner Debra Laudone alleged that, on January 1, 2019, she tripped and fell on the sidewalk in front of the

home of respondents, David and Susan Lewis ("Lewis"),[1] located at 501 West Highland Drive in Seattle. (CP 2)

On November 30, 2021, nearly three years later, Lewis' Highland Drive home was destroyed by fire. (CP 23, 40) At the time of the fire, Laudone had not provided notice of her accident to Lewis, and they were unaware of her injury. (CP 40)

On December 20, 2021, less than two weeks before the statute of limitations for personal injury claims expired, RCW 4.16.080(2), Laudone filed a complaint against Lewis. (CP 1) For Laudone's complaint to be deemed "commenced" within the statute of limitations, Laudone had to perfect service within 90 days, or by March 20, 2022. RCW 4.16.170.

[1] This answer refers to David and Susan Lewis jointly as Lewis. When referring to them individually, this answer refers to them by their first names.

On March 1, 2022, less than three weeks before the statute of limitation expired, Laudone attempted to serve Lewis at Susan Lewis' sister's home at 5719 Coniston Road N.E. in Seattle ("Coniston Road"), where Lewis had "camp[ed] out" for two to three weeks after the fire that destroyed their home on West Highland Drive. (*See* CP 8, 41) At the time of attempted service, Lewis had not stayed there for over two months, as they had left Coniston Road before Christmas 2021 and taken up temporary residence at a friend's guesthouse in Medina, until April 1, 2022, when they moved into their new residence at 2202 8th Avenue in Seattle. (*See* CP 23-24, 41, 43, 120)

Laudone discovered the Coniston Road address because Lewis' mail had been temporarily forwarded there after the fire. (CP 41, 46, 80) The affidavit of the process server states that he personally delivered the summons and complaint "into the hands of and leaving same with Laurine White, Co-Resident to [David and Susan Lewis], a

person of suitable age and discretion, who is a resident therein." (CP 8) Ms. White was Susan Lewis' 94-year-old mother, who resided at Coniston Road with Susan Lewis' sister. (CP 23)

Laudone had learned the address of David Lewis' Seattle office three months earlier, in December 2021. (CP 68-69) David Lewis was there "almost every day that the financial markets have been open over the last four years." (CP 22-23) Nonetheless, other than the single attempt at substitute service at Coniston Road, Laudone made no attempt to personally serve the summons on Lewis.

B. The trial court vacated Laudone's default judgment, finding that Laudone failed to properly effect personal or substitute service of process.

On May 6, 2022, Laudone obtained a default order against Lewis. (CP 13, 137-39) On January 13, 2023, without notice, Laudone obtained a default judgment against Lewis in the amount of $806,836.80, erroneously

representing "Defendants were personally served at their new residence." (CP 142, 146-49)

On March 28, 2023, over two months after obtaining the default judgment, Laudone mailed a copy of the judgment to Lewis' new residence at 2202 8th Avenue, where they had been living for nearly a year. (CP 25, 35) Lewis obtained counsel, and within a month of receiving notice of the default judgment, filed a motion to vacate the default judgment and to quash the purported substitute service of process on Lewis at Coniston Road. (CP 9, 25)

Both David and Susan Lewis denied that Coniston Road was their "usual abode" at the time Laudone attempted substitute service there. (*See* CP 24, 41) While she had "limited recollection of doing so," Susan Lewis believed she asked the post office to temporarily forward their mail to her sister's home at Coniston Road after the fire destroyed their home at West Highland Drive. (CP 41)

Both David and Susan Lewis recounted how, by the third week of December 2021, they had moved to Medina to temporarily stay in their friend's guesthouse, where they were living when Laudone attempted substitute service at Coniston Road. (CP 23-24, 41, 43) Lewis' friend, in whose guest house Lewis was staying, stated, "David and Susie moved into the guest house in December of 2021. They stayed until approximately the end of March 2022." (CP 120)

In response to the motion to vacate, Laudone's counsel claimed that 93-year-old Ms. White "represented herself as a co-resident of David and Susan Lewis." (CP 58) But the affidavit of the process server made no such assertion, summarily stating only that Ms. White was "Co-resident" of Lewis at Coniston Road. (CP 8) Laudone did not present a supplemental affidavit from the process server clarifying the basis for the conclusory statement in

his original affidavit and, by this time, Ms. White had passed away. (*See* CP 42)

In asserting that substitute service on the elderly Ms. White at Coniston Road was proper, Laudone relied on a "postal trace," which showed that, as of February 17, 2022, mail for Lewis was being sent to Coniston Road. (CP 58, 80) Laudone made no other effort to confirm that Lewis was residing at Coniston Road before directing the process server to attempt service there. (*See* CP 58)

On May 11, 2023, King County Superior Court Judge Judith Ramseyer ("the trial court") granted Lewis' motion to quash service of process and to vacate the default judgment, finding that the "evidence does not show that personal or substitute service of process was properly effected." (CP 126)

C. The Court of Appeals affirmed because Lewis' "unrebutted" evidence established that Susan Lewis' sister's home was not their "usual abode" for substitute service.

Laudone appealed the trial court's decision arguing that Coniston Road was Lewis' "usual abode" for purposes of substitute service under RCW 4.28.080(16). In an unpublished decision, Division One affirmed the trial court's decision vacating the default judgment, holding that Lewis presented "unrebutted" evidence that clearly and convincingly established that Coniston Road was not their usual abode at the time of the attempted substitute service on Susan Lewis' mother. (Op. 6, 9)

IV. GROUNDS FOR DENYING REVIEW

A. Division One followed clear statutory language and established law in holding that Laudone failed to serve Lewis at their "usual abode."

Division One properly affirmed the trial court's decision granting Lewis' motion to vacate the default judgment, after holding that Lewis presented clear and

convincing evidence that Coniston Road was not their "usual abode" for purposes of substitute service under RCW 4.28.080(16). (Op. 6-9) This statute allows service on defendant "by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein." Division One's decision, adhering to clear statutory language, conflicts with no decisions of this Court or the Court of Appeals and presents no basis for review under RAP 13.4(b)(1) and (2).

"Usual place of abode" is the "center of one's domestic activity." *Sheldon v. Fettig*, 129 Wn.2d 601, 610, 919 P.2d 1209 (1996). In determining whether a defendant was properly served under RCW 4.28.080(16), the court's "inquiry is whether *at the critical time"*—when substitute service was attempted—the location "was a center of domestic activity" for defendant. *Blankenship v. Kaldor*, 114 Wn. App. 312, 316, 57 P.3d 295 (2002) (emphasis added), *rev. denied*, 149 Wn.2d 1021 (2003). The party

challenging service "bears the burden of showing by clear and convincing evidence that the service was improper." *Streeter-Dybdahl v. Nguyet Huynh*, 157 Wn. App. 408, 412, ¶9, 236 P.3d 986 (2010), *rev. denied*, 170 Wn.2d 1026 (2011).

1. As it was undisputed that Lewis had left Coniston Road after staying there less than three weeks, clear and convincing evidence established it was not their usual abode for substitute service.

Division One properly held that Lewis presented clear and convincing evidence that Coniston Road was not their usual abode at the time substitute service was effected. Evidence is "clear and convincing" when the witness' testimony is "undisputed," "not inherently improbable, and no one questioned his credibility." *Cochran v. Cochran*, 2 Wn. App. 514, 517, 468 P.2d 729 (1970); *see also State v. Reed*, 92 Wn.2d 271, 276, 595 P.2d 916 (when testimony on the fact that must be proven is "unrebutted," that fact is proven by "clear and convincing

evidence"), *cert. denied*, 444 U.S. 930 (1979); *Smith v. Frates*, 107 Wash. 13, 13–14, 180 P. 880 (1919) (when the "most important" facts are "undisputed," the "evidence is clear and convincing").

Coniston Road was not Lewis' "center of domestic activity" at the "critical time" when Laudone attempted substitute service there. *See Blankenship*, 114 Wn. App. at 316. As Division One noted, "the Lewises each submitted declarations, which were unrebutted, stating they had moved from the Coniston Road address in December 2021, months before the substitute service in March 2022. Importantly, the owner of the Medina guesthouse signed their own declaration confirming the Lewises had moved to the guesthouse in December 2021." (Op. 6)

Division One correctly noted that Laudone conceded on appeal that she was "in total agreement that respondents were living at the Medina residence at the time of service. That aspect of their declarations is clear

and unrebutted, and conceded." (Op. 6, quoting Reply Br. 24) Because it was undisputed that Lewis was not residing at Coniston Road at the time service was attempted, Division One properly concluded that substitute service under RCW 4.28.080(16) was improper. *See, e.g., Dolan v. Baldridge*, 165 Wash. 69, 75, 4 P.2d 871 (1931) (service on defendant's wife at defendant's former home, from which he moved, was not proper; that home was not the "house of his usual abode" because it was not where he was "actually living at the time of service").

Division One's decision that Coniston Road was not Lewis' usual abode for substitute service under RCW 4.28.080(16) does not conflict with *Northwick v. Long*, 192 Wn. App. 256, 364 P.3d 1067 (2015). (Petition 16, 20) Under the specific facts of *Northwick*, Division One held the defendant had not met his burden of showing that his father's home was not his usual abode at the time

substitute service was attempted. 192 Wn. App. at 264, ¶¶18, 19.

In *Northwick,* defendant presented an affidavit from his father denying that the defendant was living with him at the time the father accepted the summons. But the process server's deposition testimony revealed that the father had twice confirmed with the process server that defendant was living with him. 192 Wn. App. at 259-60, ¶4. Plaintiff also presented an investigator's report showing the father's address as defendant's address. 192 Wn. App. at 260, ¶5. Based on these specific facts, and defendant's failure to prove he lived elsewhere, Division One held defendant failed to meet his burden of rebutting proper service by clear and convincing evidence. 192 Wn. App. at 264, ¶¶18-19.

Here, in contrast to the plaintiff in *Northwick*, Laudone presented no evidence from the process server or from anyone else that Ms. White represented that Lewis

was residing at Coniston Road when she purportedly received copies of the summons and complaint. In contrast to *Northwick,* evidence from the process server was "unavailing," because as Division One noted, "the declaration of service fails to indicate White affirmatively asserted she was 'co-resident' of the Lewises. Instead, the statement that White and the Lewises are 'co-resident[s]' was presented in a conclusory manner, with no explanation as to the origin of that assertion." (Op. 7, alteration in original) Further, Lewis presented "unrebutted" evidence that they were living in Medina when substitute service was attempted. (Op. 6) This unpublished decision does not conflict with *Northwick* because whether a specific defendant has been served at his "usual abode" is a fact-specific inquiry.

Laudone nevertheless argues that to prove Coniston Road was not their usual abode, Lewis had to present

"credible evidence of a different usual abode." (Petition 17) This is exactly what Lewis did.

Lewis called Medina their "temporary home," where they had been residing for more than two months when Laudone's process server left the summons with Susan Lewis' mother at Coniston Road. (*See* CP 23-24, 41, 120) The only conclusion that can be drawn from these facts is Medina, rather than Coniston Road, was the "center of their domestic activity" at the time substitute service was attempted. *See, e.g., Gerean v. Martin-Joven*, 108 Wn. App. 963, 970-71, 33 P.3d 427 (2001), *rev. denied*, 146 Wn.2d 1013 (2002) (by not disputing defendant was living in Walla Walla when substitute service was attempted, plaintiff "thus concedes that Deer Park was not the defendant's usual place of abode").

Laudone erroneously asserts that Lewis' description of Medina "matches that of the Court of Appeals' description of the Coniston Road address." (Petition 16)

But as Division One noted, and Laudone acknowledged, the evidence was "clear and unrebutted, and conceded" that Lewis had been living in Medina for months before Laudone attempted service at Coniston Road. (Op. 6) In contrast, Lewis had only stayed at Coniston Road "for about three weeks" in the wake of the fire that destroyed their home. (Op. 2) Under these facts, Division One properly concluded that "the Coniston Road address was not the center of the Lewis' domestic activity at the 'critical time.'" (Op. 6, citing *Blankenship*, 114 Wn. App. at 316)

2. RCW 4.28.080(16) cannot be "liberally construed" to make the sister's residence, where Lewis stayed for three weeks, their "usual abode" when at the time of attempted substitute service, they were living elsewhere.

Despite the unrebutted evidence that Lewis had been living in Medina, Laudone asks the Court to "liberally construe" RCW 4.28.080(16) to hold Coniston Road Lewis' "usual abode." (Petition 13-15) Laudone misplaces reliance

on *Sheldon v. Fettig*, 129 Wn.2d 601, 609, 919 P.2d 1209 (1996), where this Court held that "usual abode" under RCW 4.28.080(16) should "be liberally construed to effectuate service and uphold jurisdiction of the court." "Liberal construction does not mean abandoning the statutory language entirely." *Gerean,* 108 Wn. App. at 972 (citing *Salts v. Estes*, 133 Wn.2d 160, 162, 943 P.2d 275 (1997) (dog sitter staying temporarily in defendant's home was not a "resident therein" for substitute service under RCW 4.28.080(16)).

In *Sheldon,* this Court held defendant's parent's home was her usual abode, notwithstanding that she was living in Chicago for a flight attendant training program when plaintiff served her brother at her parents' home. 129 Wn. 2d at 611-12. Under the specific facts of *Sheldon,* this Court held defendant could have two usual abodes for substitute service. The defendant's parents' home continued to be her "center of domestic activity" because

defendant left many of her belongings at her parents' home after moving to Chicago, she returned frequently to her parents' home when she was not in flight, and even after moving to Chicago she registered to vote in Washington, "swearing she was a Washington resident living at her parents' address." *See* 129 Wn.2d at 604. Since the defendant "used the family home for so many of the indicia of one's center of domestic activity," this Court held it was the "place at which the defendant is most likely to receive notice of the pendency of a suit." 129 Wn.2d at 610.

As Division One noted, this Court has already recognized "that the facts in *Sheldon* represent the 'outer boundaries' of this liberal construction principle." (Op. 5, citing *Salts*) Here, Laudone cannot point to any similar evidence to show that Lewis used Coniston Road for *any* "of the indicia of one's center of domestic activity" found in *Sheldon*. The "postal trace" by which Lewis had temporarily forwarded their mail to Coniston Road after

the fire did not make Coniston Road "much more the 'center of domestic activity' than the Medina location." (Petition 19-20)

As Division One stated, "the use of a particular address for a limited purpose is not a critical factor in determining a center of domestic activity." (Op. 7, quoting *Streeter-Dybdahl*, 157 Wn. App. at 414, ¶13 (that defendant's mail was forwarded to her brother's home did not make it her usual abode when she lived elsewhere); *see also Vukich v. Anderson*, 97 Wn. App. 684, 691, 985 P.2d 952 (1999) (that mail was sent to home owned by defendant that he rented to a third party was "ambiguous" as proof that it was his usual abode since tenant could "easily forward" defendant's mail to defendant's new residence).

Lewis' designation of Coniston Road to temporarily receive mail while they indisputably lived elsewhere does not make it a "center of their domestic activity." While

Sheldon held that RCW 4.28.080(16) should be "liberally construed in order to effectuate service," 117 Wn.2d at 152, as this Court later held in *Salts*, liberal construction does not mean "close is good enough." 133 Wn.2d at 162.

In this case, Coniston Road, where Lewis "camped out" for less than three weeks and departed more than two months before Laudone attempted substitute service, is neither "close enough" nor "good enough" to establish it was their usual abode under RCW 4.28.080(16). The facts here are closer to those in *Gross v. Evert-Rosenberg*, 85 Wn. App. 539, 933 P.2d 439, *rev. denied*, 133 Wn.2d 1004 (1997), on which Laudone relies to assert that in "evaluating substitute service of process," courts must consider the purpose of the statute is "to allow injured parties a *reasonable means* to serve defendants in a manner reasonably calculated to accomplish notice." (Petition 13, emphasis added by petitioner)

In *Gross*, plaintiff attempted substitute service on defendant's son-in-law, who was living in a home owned by defendant, but where defendant no longer resided. Division One held substitute service was not proper because "[a]lthough the tenants in the old home were related to [defendant], they had a completely different center of domestic activity" than defendant. 85 Wn. App. at 543. Division One specifically declined "to extend the *Sheldon* holding to these facts," 85 Wn. App. at 543, stating it was "not persuaded that liberal construction of the substitute service statute should be extended to the facts before us." 85 Wn. App. at 541.

Division One correctly observed that "the Lewises have a weaker connection to the Coniston Road address than the connections which were found to be insufficient in *Gross*." (Op. 8) "[T]he Lewises' only connections to the Coniston Road address was a short emergency stay with their relatives, and the simple fact that the Lewises

temporarily forwarded their mail there, but for a duration of time unidentified in the record." (Op. 8)

As Laudone acknowledges, the cases establish "no bright line rule" in determining whether a location is defendant's "center of domestic activity" for purposes of substitute service under RCW 4.28.080(16). (Petition 13) Thus, identifying the defendant's "center of domestic activity" is a fact-specific inquiry, and in this case, the relevant facts were undisputed. Liberal construction of RCW 4.28.080(16) does not allow substitute service on Lewis at a relative's home, where they sheltered briefly after a fire destroyed their residence, while Lewis was living elsewhere.

B. Laudone did not avail herself of other available methods to serve Lewis under RCW 4.28.080.

There is no "substantial public interest" in providing expanded means for persons to serve process on individuals who lack a "clear usual abode" as Laudone

argues. (Petition 5, 21, citing RAP 13.4(b)(4)) The legislature has provided ample alternatives when defendants have no clear usual abode and are living in "temporary residences." (Petition 21) To the extent Lewis' use of "temporary residences" left them without a clear usual abode for substitute service under RCW 4.28.080(16), Laudone had other means by which to serve—personal, hand-to-hand, service under RCW 4.28.080(16) or substitute service at Lewis' usual mailing address under RCW 4.28.080(17).[2] Laudone attempted neither.

[2] Prior to obtaining the postal trace, Laudone also recognized that service by publication under RCW 4.28.100 was another alternative means of service. (CP 74: "I think I may end up asking the court for permission to serve by publication, because every trail I've found has grown cold.")

1. Laudone could have personally served David Lewis under RCW 4.28.080(16) at his office, which was known to Laudone.

Laudone argues because Lewis had no clear usual abode, they should have been required to accept substitute service at "the place at which the defendant is most likely to receive notice of the pendency of a suit," which Laudone claims was Coniston Road. (Petition 15) However, the place Lewis was "most likely to receive notice of the pendency of a suit" was David Lewis' office, where he could be found "almost every day that the financial markets [are] open." (*See* CP 23) That location was known for months by Laudone before she attempted service at Coniston Road. (*See* CP 68-69) It was undisputed that no process server had ever attempted to personally serve David Lewis at his office or leave papers for him prior to Laudone obtaining a default judgment. (CP 123-24)

2. Laudone could have attempted service at Lewis' "usual mailing address" under RCW 4.28.080(17).

Laudone's argument for review conflates RCW 4.28.080(16)'s requirement for substitute service at the defendant's "usual abode," with those of RCW 4.28.080(17), the statute for substitute service at defendant's "usual mailing address. Laudone also could have, but failed to, comply with RCW 4.28.080(17) to serve Lewis by mail.

According to Laudone, Lewis must provide "publicly available documentation or information that would tend to show establishment of a new residence" to prove Coniston Road was not their usual abode. (Petition 19) Neither *Streeter-Dybdahl,* 157 Wn. App. 408 nor *Vukich,* 97 Wn. App. 684, on which Laudone relies, or any other decision, supports Laudone's argument that a defendant must show that their "usual abode" could have been discovered by a

"reasonably diligent plaintiff" through "publicly available" information. (Petition 18-19)

Under RCW 4.28.080(17), when defendant "cannot with reasonable diligence be served" under RCW 4.28.080(16), service can be made at defendant's "usual mailing address" by leaving the summons "with a person of suitable age and discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address."

A defendant challenging substitute service under RCW 4.28.080(17) must show that plaintiff with "reasonable diligence" could have located defendant for service under RCW 4.28.080(16). *See Wright v. B & L Properties, Inc.*, 113 Wn. App. 450, 459-60, 53 P.3d 1041 (2002) (service proper when defendant failed to show that plaintiff with "reasonable diligence" could have located him for personal service), *rev. denied*, 149 Wn.2d 1014

(2003). By contrast, a defendant challenging substitute service under RCW 4.28.080(16), must show only that the place of substitute service was not their "usual abode." (IV § A, *supra*)

Similarly, even if, under RCW 4.28.080(17), plaintiff cannot with "reasonable diligence" locate defendant for either personal service or service at their usual abode, defendant can still challenge service by showing that they were not served at their usual mailing address. *See Goettemoeller v. Twist*, 161 Wn. App. 103, 108, ¶8, 253 P.3d 405 (2011) (service improper when defendant established that the location where substitute service was attempted was not his usual mailing address). The "crux of the issue" for proper service under RCW 4.28.080(17) is not plaintiff's "due diligence" in locating defendant, but whether defendant is served at their correct usual mailing address. *Goettemoeller*, 161 Wn. App. at 110, ¶12.

As Division One recognized, once Lewis established by clear and convincing evidence that Coniston Road was not their usual abode, Laudone's "due diligence" was irrelevant, and service was not proper. (*See* Op. 7, n. 3) There is no substantial public interest in ignoring the clear statutory language of RCW 4.28.080(16) and the case law defining a defendant's "usual abode" as the "center of domestic activity. Laudone's failure to avail herself of the statutory alternatives to service of process at Lewis' usual abode does not warrant review of Division One's decision.

V. CONCLUSION

This Court should deny review.

I certify that this answer is in 14-point Georgia font and contains 4,375 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 21st day of June, 2024.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on June 21, 2024, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

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DATED at Brooklyn, New York this 21st day of June, 2024.

/s/ Andrienne E. Pilapil
Andrienne E. Pilapil

SMITH GOODFRIEND, PS

June 21, 2024 - 10:49 AM

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