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**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**Intercontinental Exchange, Inc.,  
a corporation, and**

**Black Knight, Inc.,  
a corporation,**

**Respondents.**

**Docket No. 9413**

**THIRD PARTY DANIEL SOGORKA'S  
MOTION TO QUASH OR LIMIT RESPONDENT ICE'S DEPOSITION SUBPOENA**

Daniel Sogorka, a nonparty to this proceeding and recipient of a deposition subpoena issued by Respondent Intercontinental Exchange, Inc. ("ICE"), hereby files this Motion to Quash or Limit the Deposition Subpoena pursuant to § 3.34(c) of the Rules of Practice for Adjudicative Proceedings ("Rules of Practice"). A copy of ICE's deposition subpoena is attached hereto as Exhibit A.

**THE PARTIES**

Mr. Sogorka is the President and Chief Executive Officer of Sagent M&C, LLC ("Sagent"), a nonparty to this proceeding that builds mortgage loan servicing software for banks and lenders on three primary platforms: core mortgage servicing, default management, and customer engagement. Mr. Sogorka is also a member of Sagent's Board of Directors.

**PRELIMINARY STATEMENT**

This Motion arises out of ICE's overreaching and unreasonable approach to third-party discovery. Mr. Sogorka and Sagent are not parties to this action. And Mr. Sogorka is the highest-ranking officer at Sagent and an archetypal apex witness. Yet, ICE is unwilling to move from its

**MOTION OF DANIEL SOGORKA TO QUASH OR LIMIT DEPOSITION SUBPOENA**

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cumulative, duplicative, and burdensome request that Sagent’s apex witness sit for deposition, even after Sagent and its private equity sponsor, Warburg Pincus LLC (“Warburg”), agreed to two corporate representative depositions along with two witnesses in their individual capacities.<sup>1</sup> Those two witnesses—Matthew Tully and Chandler Reedy—have personal knowledge of the facts relevant to this proceeding and will testify on behalf of Sagent and Warburg across a broad range of topics.

ICE’s demand for Mr. Sogorka’s deposition would be unreasonable even if it was the only discovery ICE served on Sagent. But ICE’s deposition subpoena to Mr. Sogorka comes on the heels of Sagent and Warburg already reviewing over 20,000 documents—the vast majority of which were irrelevant—in response to ICE’s document subpoenas.<sup>2</sup> Sagent and Warburg ultimately produced over 2,000 documents as third parties to this proceeding. In addition to giving ICE the exact information it seemingly hopes to extract from Mr. Sogorka, those documents confirm that for the vast majority of documents and communications in which Mr. Sogorka is involved, others at Sagent and Warburg (including Mr. Tully and Mr. Reedy, who are both going to be deposed) are also involved.

ICE cannot justify the need to depose Sagent’s highest-ranking officer, especially given the breadth of Sagent’s and Warburg’s document productions, Sagent’s and Warburg’s tangential relation to these proceedings, and Mr. Sogorka’s general lack of personal, unique knowledge that

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<sup>1</sup> ICE served a total of six deposition subpoenas on Sagent and Warburg, including two corporate representative deposition subpoenas about a broad range of irrelevant and highly-sensitive topics going back years before the acquisition at issue in this case was even announced (*i.e.*, January 2020 to the present).

<sup>2</sup> ICE served subpoenas for documentary material on Sagent and Warburg, both of which requested documents irrelevant to this proceeding. For example, ICE’s subpoenas requested documents going back to **2017**—five years before ICE announced its proposed acquisition of Black Knight.

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can be obtained from less burdensome sources. Requiring Mr. Sogorka to testify about information ICE already has (or will have) from documents, two individual depositions, and two corporate representative depositions, would be “unreasonably cumulative or duplicative,” and the “burden and expense . . . outweigh[s any] likely benefit” to ICE. 16 C.F.R. § 3.31(c)(2)(i), (iii).

The ALJ should quash ICE’s deposition subpoena to Mr. Sogorka.

**ARGUMENT**

Administrative Law Judges have the authority to limit or quash overly broad, unreasonably cumulative, and unduly burdensome and expensive discovery. Indeed, the Rules of Practice “require that discovery be limited when the Administrative Law Judge determines that:

- (i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.”

*In the Matter of Axon Enter., Inc. A Corp., & Safariland, LLC, A P’ship*, No. 9389, 2020 WL 4671851, at \*1–2 (citing 16 C.F.R. § 3.31(c)(2)).

Courts further recognize that deposing individuals in high-level “apex” roles can be a “severe burden,” and that “adversaries might use this severe burden to their unfair advantage.” *United States ex rel. Galmines v. Novartis Pharms. Corp.*, No. CV 06-3213, 2015 WL 4973626, at \*1 (E.D. Pa. Aug. 20, 2015). Rooted in Federal Rule of Procedure 26, the apex doctrine limits depositions of high-level officials when it is “unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26 (b)(2)(C)(i); *see also Black Card, LLC v. VISA U.S.A., Inc.*, No. 15-CV-027-S,

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2016 WL 7325665, at \*3 (D. Wyo. Dec. 12, 2016) (“When lower-level employees possess the relevant and sufficient knowledge to the matter being litigated, depositions of high-level corporate executives may be duplicative, cumulative and burdensome”).<sup>3</sup> Courts consider “(1) whether the deponent has unique first-hand, non-repetitive knowledge of the facts at issue in the case and (2) whether the party seeking the deposition has exhausted other less intrusive discovery methods.” *Apple Inc. v. Samsung Elecs. Co., Ltd*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). And courts generally restrict depositions of apex individuals where:

- “(1) the executive has no unique personal knowledge of the matter in dispute;
- (2) the information sought from the executive can be obtained from another witness;
- (3) the information sought from the executive can be obtained through an alternative discovery method; or
- (4) sitting for the deposition is a severe hardship for the executive in light of his obligations to his company.”

*Naylor Farms, Inc. v. Anadarko OGC Co.*, No. 11-CV-01528-REB-KLM, 2011 WL 2535067, at \*1 (D. Colo. June 27, 2011). The existence of a single factor above is sufficient to restrict Mr. Sogorka’s deposition. Here, Mr. Sogorka satisfies all four.

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<sup>3</sup> To the extent that ICE argues discovery in FTC administrative proceedings is broader, the apex doctrine is consistent with FTC Rule 3.31(c)(2) requiring the ALJ to limit discovery that is “unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.” And courts and ALJs have distinguished between FTC *investigatory* proceedings, which this is not, and *adjudicatory* proceedings, which this is, with the former affording broader discovery than the latter. *See In the Matters of Civil Investigative Demand to Johnson & Johnson Dated August 19, 2019, and Subpoena Duces Tecum to Johnson & Johnson Dated August 19, 2019*, FTC File No. 191-0152, 2019 FTC LEXIS 95, at \*7-8 (Oct. 18, 2019) (noting that the standard for relevance is “broader and more relaxed” than would be in an adjudicatory discovery demand); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992) (“The standard for judging relevancy in an investigatory proceeding is more relaxed than in an adjudicatory one”).

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*First*, Mr. Sogorka generally lacks unique, personal knowledge of the issues in this proceeding, and whatever unique knowledge he may have is not sufficient to justify his deposition. As the CEO, Mr. Sogorka was certainly involved in Sagent's response to ICE's proposed acquisition of Black Knight. But so, too, were other individuals at Sagent, including Mr. Tully, who even ICE admits led the charge on Sagent's strategy and response to the proposed acquisition.<sup>4</sup>

Courts require "*the party noticing the deposition* to make at least some preliminary showing that the deponent has unique, non-repetitive, first-hand knowledge of facts at issue in the case." *Bicek v. C & S Wholesale Grocers, Inc.*, 2013 WL 5425345, at \*5 (E.D. Cal. Sept. 27, 2013) (emphasis in original). ICE proffers two justifications to demand Mr. Sogorka's deposition: (1) he sits on Sagent's board, and (2) he has unique email communications. But Mr. Reedy, who will testify in his individual and corporate representative capacity, also sits on Sagent's board. And the question is not whether Mr. Sogorka sent or received a unique *email*; it is whether Mr. Sogorka has unique *knowledge* that no one else possesses and that "is *essential* to the case at hand." *Myles v. Cnty. of San Diego*, No. 15CV1985-BEN (BLM), 2016 WL 4366543, at \*3 (S.D. Cal. Aug. 15, 2016) (emphasis added). ICE has not shown that he does.

*Second*, information ICE can obtain from Mr. Sogorka can be obtained either from Mr. Tully, in his individual or corporate representative capacity, or Mr. Reedy, in his individual capacity as a Sagent board member. This is especially true for Mr. Tully, who will testify on behalf of Sagent across nearly a dozen topics related to the proposed acquisition and Sagent's response

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<sup>4</sup> ICE may argue that Mr. Sogorka has extensive experience in the mortgage servicing industry and thus has unique knowledge. But that is true of nearly every apex witness, which is why courts look to whether the apex witness has unique knowledge of the *facts at issue in the case*—as opposed to unique experience generally—in addition to whether the information can be obtained from other, less-intrusive discovery and whether the discovery would be a hardship.

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thereto. In these situations, the ALJ should require ICE to first take Mr. Tully's deposition before demanding Mr. Sogorka's. *See Anderson v. Cnty. of Contra Costa*, No. 15-CV-01673-RS (MEJ), 2017 WL 930315, at \*4 (N.D. Cal. Mar. 9, 2017) (requiring plaintiff to first depose the 30(b)(6) witness and then meeting and conferring with defendants on the necessity and scope of the apex deposition); *Mehmet v. PayPal, Inc.*, 2009 WL 921637 at \*2 (N.D. Cal. Apr. 3, 2009) (stating “[c]ourts generally refuse to allow the immediate deposition of a high-level executives, the so-called ‘apex deponents,’ before the depositions of lower level employees with more intimate knowledge of the case”) (emphasis in original).

**Third**, ICE can obtain the information it seeks through alternative discovery, including the over 2,000 documents Sagent and Warburg have produced to date. *See Myles v. Cnty. of San Diego*, 2016 WL 4366543, at \*3 (S.D. Cal. Aug. 15, 2016) (party seeking deposition of high-ranking official bears burden of showing that the official has first-hand knowledge that is essential to the case and not available from other sources). For example, in *Cannavan v. Cnty. of Ventura* the court denied plaintiffs' request to depose a high-ranking official where the information could be obtained from other depositions and other sources of discovery, including “interrogatories and document production requests.” No. CV2010012FMOPVCX, 2021 WL 4945186, at \*8 (C.D. Cal. July 16, 2021). Because plaintiffs “[had] not shown why these depositions and other forms of discovery cannot provide the information that they seek from [the apex witness],” the court denied their apex deposition request. *Id.*

**Fourth**, sitting for a deposition will cause hardship to Mr. Sogorka and Sagent. “[D]epositions of high-level officers severely burdens those officers and the entities they represent.” *United States ex rel. Galmines v. Novartis Pharms. Corp.*, 2015 WL 4973626, at \*1 (E.D. Pa. Aug. 20, 2015). Mr. Sogorka is already testifying in a multi-week trial in June, in addition

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to his extensive commitments as Sagent's President and CEO, and his extensive commitments as a Sagent board member. Requiring Mr. Sogorka to prepare for and sit for a deposition on the compressed timeline in this proceeding will severely burden Mr. Sogorka and Sagent.

"Virtually every court that has addressed deposition notices directed at an official at the highest level . . . of corporate management has observed that such discovery creates a tremendous potential for abuse or harassment." *Celerity, Inc. v. Ultra Clean Holding, Inc.*, 2007 WL 205067, at \*3 (N.D. Cal. Jan. 25, 2007). Given Mr. Sogorka's general lack of unique, personal knowledge about the issues in this proceeding, and Sagent and Warburg already producing over 2,000 documents, two individual witnesses, and two corporate representatives, ICE's insistence on Mr. Sogorka's deposition suggests they intend to "use this severe burden to their unfair advantage" rather than obtain information relevant to this proceeding. *Novartis Pharms. Corp.*, 2015 WL 4973626, at \*1. The ALJ should quash ICE's deposition subpoena to Mr. Sogorka in its entirety. At a minimum, the ALJ should require ICE to first take less intrusive discovery before it renews its request for Mr. Sogorka's deposition.

**CONCLUSION**

For the foregoing reasons, Mr. Sogorka requests that the ALJ quash ICE's deposition subpoena in its entirety.

DATED: June 1, 2023

**KIRKLAND & ELLIS LLP**

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*Attorneys for Sagent M&C, LLC and Warburg  
 Pincus LLC*

**MOTION OF DANIEL SOGORKA TO QUASH OR LIMIT DEPOSITION SUBPOENA**

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 3.22(c) of the FTC Rules of Practice, the undersigned hereby certifies that the above and foregoing Motion contains 2,161 words, including headings, footnotes, and quotations, but not including the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and required attachments.

By: */s/ Tammy Tsoumas* \_\_\_\_\_

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Telephone: (310) 552-4334

*Attorneys for Sagent M&C, LLC and Warburg  
Pincus LLC*



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**STATEMENT OF CONFERENCE**

The undersigned counsel for Sagent M&C, LLC, hereby certifies, pursuant to Rule 3.22(g) of the FTC Rules of Practice, that she has conferred with ICE's counsel in good faith to resolve by agreement the issues raised by this motion and have been unable to reach such agreement on the issues noted in this motion. The undersigned conferred with ICE's counsel (Danielle Rose and Alexandria Swette) on May 19, 2023, at 11:00 a.m. PST, and May 30, 2023, at 2:15 p.m. PST; on Zoom, for such purpose.

By: /s/ Tammy A. Tsoumas  
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*Attorneys for Sagent M&C, LLC and Warburg  
Pincus LLC*

# **EXHIBIT A**



# Subpoena to Testify at a Deposition

Provided by the Secretary of the Federal Trade Commission, and  
 Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Daniel Sogorka                  Sagent M&amp;C, LLC (d/b/a Sagent Lending Technologies)                  1000 Continental Drive, Suite 570                  King of Prussia, PA 19406</p>	<p>2. FROM</p> <p style="text-align: center;"><b>UNITED STATES OF AMERICA                  FEDERAL TRADE COMMISSION</b></p>
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This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Deposition will occur in person at a location to be agreed by the parties and will be recorded by a videographer.</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Danielle L. Rose or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>Thursday, May 18, 2023 at 9:00 a.m. ET</p>
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6. SUBJECT OF PROCEEDING

FTC Part 3 Action related to proposed transaction between Intercontinental Exchange, Inc. and Black Knight, Inc.

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>D. Michael Chappell                  Chief Administrative Law Judge</p> <p style="text-align: center;"><b>Federal Trade Commission                  Washington, D.C. 20580</b></p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Kobre &amp; Kim LLP                  Danielle L. Rose                  (danielle.rose@kobrekim.com; 212.488.1209)                  Benjamin Sirota                  (benjamin.sirota@kobrekim.com; 212.488.1265)                  Counsel for Respondent Intercontinental Exchange, Inc.</p>
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<p>DATE SIGNED</p> <p>5/01/2023</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p>/s/ Danielle L. Rose</p>
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### INSTRUCTIONS AND NOTICES

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

### PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within the earlier of ten days after service thereof or the time for compliance therewith. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 8.

### YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

### TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel. Witness travelers can contact the FTC travel office for guidance at (202) 326-3299 or [travel@ftc.gov](mailto:travel@ftc.gov). PLEASE NOTE: Reimbursement for necessary transportation, lodging, and per diem expenses cannot exceed the maximum allowed for such expenses by an employee of the federal government.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

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**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Docket No. 9413

Intercontinental Exchange, Inc.,  
a corporation, and

Black Knight, Inc.,  
a corporation,

Respondents.

**DECLARATION OF WENDY LEE ON BEHALF OF SAGENT M&C, LLC**

I, Wendy Lee, Chief Legal Officer of nonparty Sagent M&C, LLC (“Sagent”) and duly authorized to make this Declaration on behalf of Sagent, declare the following under penalty of perjury:

1. I have read the attached Motion to Quash or Limit ICE’s Deposition relating to the deposition subpoena served upon Daniel Sogorka by Respondent Intercontinental Exchange, Inc. The factual statements contained therein are, within my personal knowledge, true and correct.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of June, 2023.

DocuSigned by:  
*Wendy Lee*  
5BCCF996116B454...  
Wendy Lee

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**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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In the Matter of  
  
Intercontinental Exchange, Inc.,  
a corporation, and  
  
Black Knight, Inc.,  
a corporation,  
  
Respondents.

Docket No. 9413

PUBLIC

**[PROPOSED] ORDER GRANTING THIRD PARTY DANIEL SOGORKA’S MOTION TO QUASH OR LIMIT RESPONDENT ICE’S DEPOSITION SUBPOENA**

On June 1, 2023, non-party Daniel Sogorka filed a Motion to Quash or Limit the Deposition Subpoena (“Motion”) served by Respondent Intercontinental Exchange, Inc. (“Respondent”) on May 3, 2023.

16 C.F.R. § 3.31(c)(2) requires the Administrative Law Judge to limit discovery if it determines that:

- (i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.”

Based on the representation in the Motion, Mr. Sogorka has demonstrated that the discovery Respondent seeks from him is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive, or the burden and expense of the proposed discovery on a Mr. Sogorka outweigh its likely benefit. Accordingly, the Motion is GRANTED, and Respondent’s deposition subpoena to Mr. Sogorka is quashed in its entirety.

SO ORDERED

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: June \_\_, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 1, 2023, I filed the foregoing document electronically using the Federal Trade Commission's e-filing system, which will send notification of such filing to:

April Tabor Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, D.C. 20580

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW., Rm. H-110  
Washington, D.C. 20580

I also certify that I caused the foregoing document to be served via email to:

**Complaint Counsel**

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Abby L. Dennis  
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DATED: June 1, 2023

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Warburg Pincus LLC*

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**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the original filing, and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

DATED: June 1, 2023

Respectfully submitted,

By: /s/ Tammy A. Tsoumas  
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