

1 Hearing Date: June 26, 2026

2 Hearing Time: 9:00 a.m.

3 Judge: Hon. Anne Egeler

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

9 SAVE THE DAVIS-MEEKER GARRY  
10 OAK,

No. 24-2-01895-34

11 Plaintiff,

**PLAINTIFF’S SECOND MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT; AND MOTION FOR  
RELEASE OF BOND**

12 v.

13 LEATTA DALHOFF, in her capacity of  
14 Mayor of Tumwater

15 Defendant.

16

17 **INTRODUCTION**

18

19 This motion presents a narrow legal question: whether the mayor of Tumwater must obtain  
20 a permit from the Washington Department of Archaeology and Historic Preservation (“DAHP”)  
before physically altering the Davis Meeker Garry Oak under chapter 27.53 RCW.

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22 That question is no longer disputed. After previously arguing throughout this litigation that  
23 no permit was required, the mayor has now conceded that a DAHP permit is legally necessary prior  
24 to performing work on the tree. There is therefore no material issue of fact, and Plaintiff is entitled  
to a declaratory ruling and injunctive relief as a matter of law.

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26 A final ruling is necessary notwithstanding the mayor’s recent concession. The mayor’s  
position on this issue has shifted over time, and no binding determination currently exists to govern

1 future actions. Absent a court order, the tree remains vulnerable to alteration without compliance  
2 with state law.

3 Plaintiff also moves for release of the \$10,000 supersedeas cash deposit posted to maintain  
4 the status quo during appellate review. Because Plaintiff prevailed on appeal and the purpose of  
5 the supersedeas has been fulfilled, those funds should be released.

### 6 RELIEF REQUESTED

7 Plaintiff respectfully requests that the Court:

- 8 1. Grant partial summary judgment and enter a declaratory ruling that the mayor must  
9 obtain a permit from DAHP prior to any physical alteration of the Davis Meeker oak;
- 10 2. Enter a permanent injunction prohibiting any alteration of the tree without such permit;
- 11 3. Direct the Clerk to release the \$10,000 supersedeas cash deposit to Plaintiff; and
- 12 4. Grant such other relief as the Court deems just and equitable.

### 13 EVIDENCE RELIED UPON

14 This motion relies on the declarations of Tanya Nozawa (May 24, 2024; “Nozawa Decl.”),  
15 Diane Riley, (May 27, 2024; “Riley Decl.”), Bill Iyall (May 28, 2024; “Iyall Decl.”), Stewart  
16 Hartman (May 27, 2024; “Hartman Decl.”), Beowulf Brower (May 28, 2024; “Brower Decl.”),  
17 Debbie Sullivan (May 24, 2024; “Sullivan Decl.”), and Ronda Larson Kramer (May 24, 2024;  
18 “Kramer Decl.”), all of which were previously filed with this Court for the May 30, 2024, TRO  
19 dissolution hearing.  
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21 After this case was appealed, additional declarations were submitted to the Court of  
22 Appeals. Those declarations of Beowulf Brower (“Brower Supp. Decl.”), Laura Young (“Young  
23 Decl.”), Ronda Larson Kramer (“Kramer Supp. Decl.”) are attached as Exhibits A through C to the  
24 October 24, 2025, Declaration of Bryan Telegin, filed with this Court in support of SDMGO’s  
25 November 5, 2025, Motion for Partial Summary Judgement.

26 In addition, this motion relies on the declaration of Bryan Telegin in support of Plaintiff’s  
Motion to Amend the Complaint (March 16, 2026), and exhibits attached thereto. Both declarations

1 of Alyssa Jones Wood are also cited in this motion, filed by the mayor in support of its responses  
2 to SDMGO’s motion for partial summary judgment and motion to amend the complaint (referenced  
3 herein as the “Wood Decl.” and “2d Wood Decl.”).

## 4 OVERVIEW OF THE CASE

### 5 A. The Davis Meeker Oak

6 The historic Davis Meeker oak is located next to the Olympia Airport in the City of  
7 Tumwater. The tree has been a landmark and trail marker on the Cowlitz Trail for centuries, and  
8 later the Oregon Trail. Nozawa Decl. ¶ 2; Riley Decl. ¶ 9. The Oregon Trail involved the important  
9 activity of settling the Tumwater area. The Cowlitz Trail involved the important activity of traveling  
10 on the most important north-south indigenous trade route in the region and is part of an ancient water  
11 and land transportation route used by Indigenous peoples since time immemorial. Riley Decl. ¶ 10.  
12 The tree stood next to the Cowlitz Trail for hundreds of years. Riley Decl. ¶ 9. This particular tree  
13 was a trail marker and may have been modified by Indigenous peoples to serve as one. Young Decl.  
14 ¶ 12.

15 The tree is situated on the original Cowlitz Prairie, which extended from Vancouver,  
16 Washington, to Puget Sound. Iyall Decl. ¶ 3. In this area, Garry oaks were cultivated by native  
17 peoples for thousands of years through planting of acorns and regular burning of the prairies,  
18 limiting the growth of other trees and allowing the oaks to survive. *Id.* In addition, “camas, wild  
19 carrots, [and] onions were harvested at this ancient site, with the tree providing shade as a resting  
20 place after Tribal people finished a day of gathering and harvesting the gifts of the land.” Young  
21 Decl. ¶ 9.

22 The tree is historically and culturally significant for its place in the tragic story of violence  
23 toward native peoples in our region. “This tree is known as one of the few territorial trees in the  
24 area used to hang Indigenous People as a method of forced property eviction before and during the  
25 regional Indian War of 1855–1856. After settlers arrived, vigilantes used it to hang Native  
26 Americans from one of its branches.” *Id.* ¶ 4. The branch used for these vigilante hangings broke

1 off in an ice storm in the 1990s, but “the massive healed-over scar from where it broke off can still  
2 be seen today.” Riley Decl. ¶ 5.

3 **B. Washington’s Archeological Sites and Resources Law, chapter 27.53.RCW**

4 The historic and cultural significance of the Davis Meeker oak triggers the protections of  
5 Washington’s Archeological Sites and Resources Law at chapter 27.53 RCW. Under that law,  
6 “archaeological resources” broadly encompass “all sites, objects, structures, artifacts, implements,  
7 and locations of prehistorical or archaeological interest.” RCW 27.53.040. From the statute’s  
8 outset, RCW 27.53.040 makes clear that protection under Washington’s Archeological Sites and  
9 Resources Law is not limited to discrete, portable objects like arrowheads pottery, but instead  
10 reaches any place bearing cultural or historic significance. In fact, the legislature specifically  
11 declared archaeological resources to include “all sites” and “all locations” of prehistoric *or*  
12 archaeological interest. The scope of the statute is reinforced in RCW 27.53.060, which requires a  
13 permit from DAHP prior to physically altering or damaging “*any historic or prehistoric*  
14 *archaeological resource or site.*” RCW 27.53.060(1) (emphasis added).

15 The definitional provisions in RCW 27.53.030 further confirm the statute’s broad scope.  
16 An “archaeological site” is defined simply as a locality that contains archaeological objects—*see*  
17 RCW 27.53.030(3)—and an “archaeological object” is one that “comprises the physical evidence  
18 of an indigenous or subsequent culture, including material remains of past human life, including  
19 monuments, symbols, tools, facilities, and technological by-products.” *See* RCW 27.53.030(2).  
20 These definitions are not limited to traditionally conceived artifacts like tools or pottery; rather,  
21 they encompass physical features of the landscape that reflect evidence of human activity.  
22 Indigenous land-use practices, such as regular burning of the prairies to specifically cultivate oak  
23 trees and physically modifying trees to serve as land markers along the Cowlitz Trail, often  
24 involved intentional environmental modification. The tree to this day contains a scar marking the  
25 branch used to hang Indigenous People for forced property evictions, a physical marker of the tragic  
26 history of violence towards native people. Riley Decl. ¶ 5. DAHP itself has found that “the Tree is

1 an archaeological site or object and therefore protected under state law.” Telegin Decl., Ex. C (June  
2 4, 2024, letter from DAHP to mayor).

3 The statute also recognizes multiple, distinct yet related categories of protected resources.  
4 RCW 27.53.060(1) protects both historic and prehistoric archaeological resources or sites. A  
5 resource is “prehistoric” if it is associated with “peoples and cultures who are unknown through  
6 contemporaneous written documents in any language,” which plainly encompasses Native  
7 American cultural practices such as trail marking and burning the prairies for the cultivation of  
8 oaks. RCW 27.53.030(10). “Historic archaeological resources” are those that are eligible for formal  
9 listing in the State or national register, though such eligibility is not required for protection under  
10 the statute. RCW 27.53.030(9).

11 DAHP has repeatedly stated in letters issued to the mayor’s office that the Davis Meeker  
12 oak “constitutes an archaeological object and/or an archaeological resource contained within an  
13 archeological site.” Telegin Decl., Ex. D (July 11, 2024, letter from DAHP to Jeffrey S. Myers).  
14 DAHP emphasized that “[t]rees can compromise physical evidence of indigenous and subsequent  
15 cultures.” *Id.* at 2. DAHP also informed the mayor and the City Attorney’s office that the Davis  
16 Meeker oak likely qualifies for listing on the national register. Telegin Decl., Ex. B (May 30, 2024,  
17 Decl. of Ronda Larson); Telegin Decl., Ex. C (June 4, 2024, letter from DAHP to mayor).

18 The mayor’s position throughout much of this case has been that the statute applies only to  
19 a narrow universe of man-made objects. In its briefing to the Court of Appeals, the mayor argued  
20 that the purview of DAHP should be governed by the Merriam-Webster definition of archaeology,  
21 which is limited to ““the scientific study of material remains (such as tools, pottery, jewelry, stone  
22 walls, and monuments” of past human life and activities.”” Telegin Decl., Ex. F at 33 (Sept. 13,  
23 2024, COA Resp. Br.) (quoting Merriam-Webster dictionary definition). But the protections of  
24 chapter 27.53 RCW extend to “all sites” and “all locations” of archaeological or prehistoric interest.  
25 Taken together, these broad categories defined in the statute form a constellation of protected  
26 archaeological sites, objects, and resources—distinct in terminology, but unified by their  
archaeological or historical significance. Both the language of the statute and DAHP confirm that

1 the law reaches a far broader universe of culturally significant resources, including landscape  
2 features shaped by human activity and imbued with prehistorical, historical, and archaeological  
3 meaning.

4 **C. Procedural Background**

5 The day before the hearing on the mayor’s motion to dissolve the original temporary  
6 restraining order issued in this case, DAHP sent its first letter to the mayor explaining that the tree  
7 is “a historic feature associated with the Cowlitz Trail and subsequent Oregon Trail” and that “there  
8 are archaeological permit requirements, necessary prior to the removal or alteration of the Davis-  
9 Meeker Garry Oak Tree.” *See* Telegin Decl., Ex. A (May 30, 2024, letter from DAHP).

10 In the months that followed the TRO hearing, DAHP issued two additional substantive  
11 letters reiterating that the tree is protected under Washington’s Archeological Sites and Resources  
12 Law and that the mayor is required to obtain a permit before altering or removing the tree. *See id.*,  
13 Ex. C (June 4, 2024, letter from DAHP to mayor); *see also id.*, Ex. D (July 11, 2024, letter from  
14 DAHP to Jeffrey S. Myers). In its June 4, 2024, letter, DAHP expressly stated that “the [t]ree is an  
15 archaeological site or object and therefore protected under state law.” Telegin Decl., Ex. C (June  
16 4, 2024, letter from DAHP to mayor). The mayor affirmatively contested DAHP’s June 4, 2024,  
17 letter, arguing that no permit is necessary. *See* Telegin Decl., Ex. E (June 28, 2024, letter from  
18 Jeffrey S. Myers to DAHP asserting that “the Thurston County Superior Court already determined  
19 that the archeological statute did not prevent removal of the tree”). On July 11, 2024, DAHP sent  
20 another letter to the mayor’s attorney, comprehensively explaining that the tree “constitutes an  
21 archaeological object and/or an archaeological resource contained within an archeological site” and  
22 reiterating that a permit is required. Telegin Decl., Ex. D (July 11, 2024, letter from DAHP to  
23 Jeffrey S. Myers).

24 Following dissolution of the TRO, the parties continued to litigate the DAHP permitting  
25 issue before the Court of Appeals. The mayor argued strenuously to the Court of Appeals that  
26 chapter 27.53 RCW does not apply, asserting that the Davis Meeker oak is not an archaeological  
object and that DAHP’s interpretation is not entitled to deference. *See* Telegin Decl., Ex. F at 27,

1 31–38 (Sept. 13, 2024, COA Resp. Br.) (arguing that “[o]n the merits, RCW 27.53.060 is not  
2 applicable to the [Davis Meeker oak], nor is the tree even within DAHP’s purview”). The mayor  
3 further asserted this position in response to an amicus brief from DAHP, arguing that “the tree is  
4 not an archaeological object under RCW 27.53.” Telegin Decl., Ex. G at 7–21 (Oct. 31, 2024,  
5 Respondent’s Answer to DAHP Amicus Brief). But now, in complete reversal of its prior litigation  
6 position, the mayor has conceded through her attorney that DAHP is correct, that it is required to  
7 obtain a permit, recognizing the broader plain language of the statute. *See* Def. Resp. to Pl.’s Mot.  
8 to Amend at 1; Verbatim Report of Proceedings, Att. A at 7-8.

### 9 STANDARD OF REVIEW

10 Summary judgment is warranted when there is no genuine issue of material fact, and the  
11 moving party is entitled to judgment as a matter of law. CR 56(c). “A material fact is one upon  
12 which the outcome of the litigation depends.” *Kim v. O’Sullivan*, 133 Wn. App. 557, 559 (2006.)  
13 The reviewing court “views all facts and reasonable inferences in the light most favorable to the  
14 nonmoving party.” *Id.* “[I]ssues of law are not resolved in either party’s favor but are reviewed de  
15 novo.” *Rice v. Dow Chemical Co.*, 124 Wn.2d 205, 208 (1994).

### 17 ARGUMENT

#### 18 **A. Under Washington’s Archeological Sites and Resources law, the mayor must obtain a** 19 **permit from DAHP prior to performing any work on the historic Davis Meeker oak tree.**

20 The Davis Meeker oak clearly falls within the constellation of protected historic and  
21 prehistoric archaeological sites, objects, and resources requiring a permit from DAHP. As an  
22 historical trail marker, cultivated resource, and symbol of past human life, the Davis Meeker oak  
23 qualifies as an “archaeological object,” because it constitutes “physical evidence of an indigenous  
24 and subsequent culture.” *See* RCW 27.53.030(2) (including material remains of past human life,  
25 including monuments, symbols, tools, facilities, and technological by-products). As a trail marker on  
26 the indigenous Cowlitz Trail and subsequent Oregon Trail, the tree is a prehistoric archaeological  
resource, and DAHP has made it abundantly clear that the tree is eligible for listing as an historic

1 archaeological resource. DAHP has also concluded that the tree is an archaeological object and/or site,  
2 and DAHP's determination that the tree is protected is entitled to substantial deference. *See, e.g.,*  
3 *Schofield v. Spokane Cnty.*, 96 Wn. App. 581, 587, 980 P.2d 277 (1999) ("deference should be  
4 given to an agency's interpretation of the law where the agency has special expertise in dealing  
5 with such issues.").

6 After years of litigating this issue, the mayor now agrees that she is required to obtain a  
7 permit from DAHP, conceding the tree is a protected archaeological object and resource. *See* Def.  
8 Resp. to Pl.'s Mot. to Amend at 1. At oral argument, Mr. Myers reiterated that admission, stating  
9 "*the City has conceded* that it needed a permit and has obtained that permit for the work that is  
10 contemplated." Verbatim Report of Proceedings, Att. A at 7-8 (emphasis added).

11 The only issue raised by the City at oral argument was that relief should not be granted  
12 because it is allegedly unclear how the permit requirement would apply if the City undertakes  
13 different work in the future. *See* Verbatim Report of Proceedings, Att. A at 7-8. ("How that might  
14 hypothetically apply if the City wanted to propose some other project . . . that is speculative and  
15 conjectural as to how things might apply in the future."). But the plain language of RCW  
16 27.53.060(1) is clear that a permit is absolutely required prior to *any* physical alterations to the tree.  
17 RCW 27.53.060(1) (it is unlawful for any person to "remove, alter, dig into, or excavate by use of  
18 any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or  
19 prehistoric archaeological resource or site . . . without having obtained a written permit from the  
20 director.")

21 Given the mayor's concession, and given that the protections of chapter 27.53 apply, this  
22 Court should enter summary judgment and a declaratory ruling that the mayor may not alter,  
23 remove, or otherwise physically modify the tree without first obtaining a permit from DAHP.

24 **B. The City should be permanently enjoined from making any alterations to the tree**  
25 **without first obtaining a permit from DAHP.**

26 In addition to entering a declaratory ruling that the mayor must obtain a permit from DAHP  
prior to performing any work on the historic Davis Meeker oak, this Court should permanently

1 enjoin the mayor from physically altering the tree absent a DAHP permit. To obtain a permanent  
2 injunction, the moving party must show: “(1) that he or she possesses a clear legal or equitable  
3 right, (2) that he or she has a well-grounded fear of immediate invasion of that right, and (3) that  
4 the acts complained of either are resulting in or will result in actual or substantial injury to him.”  
5 *Glob. Neighborhood v. Respect Washington*, 7 Wn.App.2d 354,386, 434 P.3d 1024, 1042 (2019)  
6 (citing *Washington Federation of State Employees v. State*, 99 Wn.2d 878, 888, 665 P.2d 1337  
7 (1983).)

8  
9 **1. SDMGO has a clear legal right to require that the mayor obtains a DAHP permit prior to performing any work on the Davis Meeker oak tree.**

10 “When deciding whether a party has a clear legal or equitable right, the court examines the  
11 likelihood that the moving party will prevail on the merits.” *Kucera v. State, Dep’t of Transp.*, 140  
12 Wn.2d 200, 216, 995 P.2d 63, 72 (2000) (citing *Rabon v. City of Seattle*, 135 Wash.2d 278, 285,  
13 957 P.2d 621 (1998)). RCW 27.53.060(1) unambiguously states that a permit is required from  
14 DAHP prior to any alteration or removal of an historic archaeological resource or site. As discussed  
15 above, and as determined by DAHP itself, the Davis Meeker oak falls under the protections of  
16 chapter 27.53 RCW. SDMGO has a legal right to the protection of this historic tree under the plain  
17 language of Washington’s Archaeological Sites and Resources Law, as admitted by now the mayor  
18 herself. *See Kucera*, 140 Wn.2d at 212 (finding that because the trial court found the requirements  
19 of SEPA were applicable, the property owners had demonstrated a clear legal right.).

20 **2. SDMGO has a well-grounded fear that the Davis Meeker oak will be cut down, and its right is being invaded by the mayor’s threats to alter the tree without first obtaining a permit from DAHP.**

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22  
23 In *Kucera v. State, Dept. of Transp.*, the Washington Supreme Court found that where  
24 property owners have a legal right to require the State to comply with the procedural requirements  
25 of SEPA, those property owners clearly demonstrated a well-grounded fear of immediate invasion  
26 of that right when the State failed to comply with SEPA’s procedural requirements. *Kucera*, 140  
Wn.2d at 217, 72.

1 Similarly, here, SDMGO has a legal right to require the mayor to comply with RCW  
2 27.53.060(1) prior to any alteration or destruction of an historic resource or site. This case was  
3 initiated because the then-mayor of Tumwater unilaterally attempted to cut down the Davis Meeker  
4 oak over the Memorial Day weekend in May of 2024, in violation of both state and local law. At  
5 this point in time, there is still significant uncertainty as to what the mayor intends to do to the tree.  
6 Throughout the various postures of this case, the mayor’s office has waffled about what it actually  
7 intends to do to the tree, first threatening to remove the tree entirely, and then asserting its right to  
8 perform maintenance activities to the tree any permission from any outside body, including  
9 potentially damaging pruning and root zone management on the tree. *See* 2d Wood Decl. at 1-2;  
10 Wood Decl. at 2, Ex. 5 at 4. In this way, the mayor’s stated positions create a continuing risk of  
11 permanent and potentially significant alteration to the tree and leaves SDMGO with a perpetual  
12 well-grounded fear that the mayor intends to harm the tree at any given moment.

13 **3. Removal or alteration of the tree would result in actual and substantial injury.**

14 The irreparable, irreversible harm that would be caused by altering or destroying the Davis  
15 Meeker oak is precisely the kind of harm that injunctions are designed to prevent. *See Kucera*, 140  
16 Wn.2d at 221, 995 P.2d at 74 (quoting *Tyler Pipe Indus., Inc. v. Dep’t of Revenue*, 96 Wn.2d 785,  
17 796, 638 P.2d 1213 (1982)). Actions that cause harm to the environment “are frequently enjoined  
18 due to the irreparable nature of environmental injury.” *Id.* at 210 (citing *Amoco Prod. Co. v. Village*  
19 *of Gambell, AK*, 480 U.S. 531, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987).)

20 The tree requires the protection it is afforded under Washington’s Archaeological Sites and  
21 Resources Law. As members of the community have shared: “if this tree is cut down, it will forever  
22 erase a piece of [their] personal history and [their] tribal history.” Riley Decl. ¶ 6.<sup>1</sup> If the Davis  
23 Meeker oak tree is cut or defaced, those are actual, substantial, and irreparable harms to the many  
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<sup>1</sup> *See also* Hartman Decl. ¶ 4 “The loss of the Old Oak tree at Olympia Airport to me personally would be like losing an old friend that I have known all my life.”

1 members of SDMGO and the surrounding community that cannot be cured within any person's  
2 lifetime.

3 If executed, the mayor's new plan for the tree threatens significant alterations that would  
4 be actual, substantial, and irreparable changes to the tree itself, potentially defacing it for future  
5 generations. Thus, in addition to issuing a declaratory order that the mayor may not have the tree  
6 removed without first obtaining a permit from DAHP, this Court should permanently enjoin the  
7 mayor from altering, removing, or otherwise harming the tree without first obtaining such approval.  
8 Such is required by the plain language of Washington's Archeological Sites and Resources Law.

9 **C. Release of Supersedeas Cash Deposit**

10 In 2024, Plaintiff was forced to post a \$10,000 supersedeas cash deposit to obtain and  
11 defend a stay during its appeal. The purpose of a supersedeas bond or cash deposit is to preserve  
12 the status quo during appeal and to protect the opposing party in the event the appellant does not  
13 prevail. Once the appeal is resolved in favor of the party who posted the bond, the basis for retaining  
14 those funds no longer exists.

15 Here, Plaintiff prevailed in the Court of Appeals on a core legal issue—whether the mayor  
16 may act unilaterally with respect to the Davis Meeker oak without involvement of the city's historic  
17 commission. The supersedeas deposit has therefore served its purpose.

18 Because there is no remaining basis to hold the funds, the Court should direct the Clerk to  
19 release the \$10,000 supersedeas cash deposit to Plaintiff.

20 **CONCLUSION**

21  
22 For all of the reasons above, Plaintiff Save the Davis-Meeker Garry Oak respectfully  
23 requests that this Court grant this motion for summary judgment and (1) declare that the mayor of  
24 Tumwater is required to obtain a permit from DAHP under Washington's Archeological Sites &  
25 Resources Law prior to removing, altering, damaging, defacing, or destroying the historic tree; (2)  
26 permanently enjoin the mayor from performing any work on the tree without first obtaining a  
permit from DAHP. Plaintiff also requests the Court direct the release of the supersedeas bond.

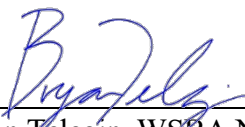
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A proposed order is submitted herewith.

Dated this 8<sup>th</sup> day of May, 2026.

TELEGIN LAW PLLC

LARSON LAW, PLLC

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2026, I served a true and correct copy of the foregoing document on each of the persons listed below, and in the manner indicated.

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Dated: May 8, 2026

TELEGIN LAW PLLC

By:   
\_\_\_\_\_  
Jamie Telegin, Legal Assistant