

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DOMINGO ARREGUIN GOMEZ, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States of
America, et al.,

Defendants.

Civil Action No. 1:20-cv-01419

DECLARATION OF RALPH DeROSA

I, Ralph DeRosa, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the General Counsel for the Committee of Interns and Residents, SEIU Healthcare (CIR), a labor organization with its headquarters in Long Island City, New York.
2. CIR also has offices in California, New Mexico, Florida, Washington, D.C., New Jersey and Massachusetts.
3. CIR was established in 1957 and is the largest medical housestaff union in the country, representing approximately 17,000 intern, resident, and fellow physicians nationwide in collective bargaining. CIR is dedicated to improving housestaff working conditions, enhancing residency training and education, advancing patient care, and expanding access to healthcare. CIR envisions and works to achieve (a) better working conditions and training standards for residents and (b) a more humane, effective, and accessible quality healthcare system for all. Toward those ends, CIR engages in organizing, contract negotiations and enforcement, patient advocacy, and legislative and political action on issues including immigration, racial justice, reproductive rights and gun violence as a public health issue.

4. CIR represents residents nationwide, a majority of our members work at hospitals in New York, New Jersey, Florida and California—states that have been particularly hard hit by the COVID-19 virus. CIR residents are on the front lines of the pandemic, especially in Florida and California, both of which are setting record daily numbers of positive cases in the United States.
5. I am familiar with Presidential Proclamation No. 10052, “Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak,” signed by President Trump on June 22, 2020. The Proclamation has affected hundreds of foreign national physicians seeking to come to the United States on J-1 or H-1B visas for training.
6. Over the years, CIR’s bargaining units have included physicians working on H-1B and J-1 visas, training in programs that typically last anywhere from three to seven years. Our service to our members who are foreign nationals on temporary nonimmigrant visas represents a core principle of CIR. It is part of our mission to serve these international physicians, even as they serve and care for the U.S. population, by advocating for their working conditions; keeping them abreast of important and timely issues so that they can make informed decisions; and providing support during an intense and important part of their medical career.
7. The start dates for residents typically range from mid-June to July 1, so physicians coming to the United States to begin residency typically travel to the United States throughout the month of June. We provide orientations at all CIR hospitals to all incoming residents to educate them about what CIR does and the benefits we provide, and to encourage them to join CIR as full members. Once these physicians join a CIR bargaining unit, they often

become either dues-paying full members, or agency fee payors, who pay a fee for the benefits and services connected to their collective bargaining agreement. These dues and fees are what enable CIR to pursue its mission.

8. Before some of this year's foreign physician residents traveled to the United States to begin their residencies, we learned that the Department of State would implement and enforce the President's June 22 Proclamation and suspend the issuance of most nonimmigrant visas.
9. Once the June Proclamation went into effect, we became aware of several physicians, including three who are members of CIR bargaining units, who were refused emergency appointments to secure their J visas and were told that the refusal was due to the June Proclamation—even though the Proclamation does not apply to the J-1 foreign physician program. We also learned that some consulates refused to apply the Proclamation's national interest exception for healthcare workers, blocking hundreds of physicians seeking entry on H-1B visas.
10. The Proclamation, and the fact that it went into effect so close to the time that many residency programs begin and foreign physicians travel to the United States, has severely impaired CIR's ability to fulfill its mission and has inflicted serious harm on CIR members and CIR hospitals. The Proclamation has forced CIR to drastically divert resources away from its core mission in an attempt to assist members with the fallout of the Proclamation's broad entry suspension. By banning many foreign residents from entering to begin their residencies, the Proclamation has also deprived CIR of critically needed membership dues and fees. In addition, the Proclamation has prevented CIR members from entering the country to begin their residencies, and has also shortchanged staffing at numerous hospitals

across the country, forcing CIR members already here to cover serious shortfalls in resident manpower during a public-health crisis.

11. CIR has already diverted significant resources to help its members both here and abroad, as well as numerous other affected J-1 and H-1B residents, in an effort to respond to desperate requests for assistance in navigating the effects of the Proclamation's entry suspension. When the Proclamation was in effect, CIR was contacted by hundreds of foreign physicians blocked from coming to the United States to begin their residencies. In response, CIR staff members have cumulatively invested hundreds of hours in an effort to assist the affected H-1B and J-1 residents, as we have been in constant contact with them to answer questions and develop strategies to help them obtain approval of their visas.
12. The impact on my department has been dramatic since the Proclamation was announced. Three staff members in my department spent all of their working time, including late nights and weekends, responding to inquiries from affected residents and conducting outreach in an attempt to help them obtain approval of their visas. Although some residents have since been able to obtain visas, staff are currently spending up to 70 percent of their time working with residents who remain stuck abroad. CIR has also quickly shifted to crisis-mode and instructed staff to spend the necessary time to reach out to affected employers and members of the federal government, including elected officials, in an attempt to resolve the obstacles that the Proclamation has imposed on the H-1B and J-1 residents.
13. Fully half of my staff worked on nothing else but reacting to the crisis created by the Proclamation for at least a month after the Proclamation went into effect. Our staff members have suffered from burnout and constant stress because the unexpected drain on staff time has forced them to delay or cancel other projects and services. This has

significantly impeded our ability to do other work, including completing a video project on an important benefit we provide—a discounted medical-school-debt consultation—which we had planned to have ready in time for the new-resident orientation that occurs in June and early July. Because there is a narrow window of time in which residents may restructure their medical-school-debt payments—and because medical-school debt is a significant financial burden that most residents must bear—it is necessary for outreach to our members, such as this video, to be timely in order to be effective. The Proclamation also prevented us from timely completing an FAQ for members who were interested in participating in the public protests that happened earlier this summer; it also prevented us from providing a timely update on critical information regarding legal services benefits for the new residents who did start work on July 1. The Proclamation has thus significantly impaired our ability to provide timely member outreach, which is critical to inform residents of the benefits CIR provides and to educate them about their options on a range of important issues.

14. Moreover, orientation is one of the most critical times of the year for CIR because it provides us with our most effective opportunity to sign up incoming residents as members of the union. Our inability to complete the video on medical-school debt—an area of great concern to our members—prevented CIR from being able to effectively highlight this benefit during orientation and interfered with our efforts to try to sign up all of the incoming residents as members. CIR only signed up 74 percent of new residents as members and as a result must expend staff time to engage first-year residents throughout the Fall to sign them up as members—a difficult task given their extremely long hours and because many work at multiple worksites.

15. The Proclamation has also forced CIR to divert resources from other vital programs, including those related to the well-being of our workers, to try and manage the additional stress placed on physicians and hospitals who need help due to the fact that their full complement of residents has not been able to begin work, and they have been critically short-staffed. Because the Proclamation has prevented so many foreign physicians from starting their residencies, current CIR members working at our hospitals have taken on the extra burden of caring for more patients—a burden created by the absence of the H-1B and J-1 residents who are being prevented from working as a result of the June 22 Proclamation.
16. The Proclamation has also delayed our response to requests for assistance from current members on other matters and limited the amount of time one of our lawyers was able to spend on a critical matter involving a large academic medical center at which our members are employed.
17. By preventing residents on H-1B and J-1 visas from travelling to the U.S. to begin working, the Proclamation has also deprived, and continues to deprive CIR of union dues and agency fees that we had relied on having as part of this year's budget. Even though some of these residents have since been issued visas and allowed to enter the country, the Proclamation prevented them from starting their residencies on time, which means that these residents are therefore not paying their monthly dues and CIR must expend additional resources to try and retain them as members. The loss of such fees will materially frustrate our ability to serve our membership and impact our ability to effectively maintain vital programs in this time of need. For example, CIR needs to hire additional staff to grow its membership and help its existing membership cope with COVID-19. Dues and fees are CIR's primary source of revenue and reduced revenue will impact our ability to hire a sufficient number

of staff.

18. The ban on H-1B and J-1 visas has thus had and will continue to have a material negative impact on our organization and its membership. Already CIR has lost union dues and agency fee payments from at least 21 residents who have been barred from entering the United States because of the Proclamation. These residents were scheduled to begin employment no later than July 1, and such dues and fees would have been transmitted to CIR through a payroll deduction after the physician started work in the United States. The loss of this income cannot be recouped, and each week that passes during which these residents are absent will result in a loss of income for CIR that prevents CIR from serving its members and fulfilling its mission at a time when supporting and advocating for residents is more critical than ever. CIR is unaware of any reason why these physicians would have been denied their visas apart from the Proclamation; each physician goes through a rigorous application process and the hiring hospitals and institutions vet all selected applicants. By depriving CIR of this expected income, its ability to provide services and benefits will materially diminish because CIR's primary source of revenue is membership dues and agency fees.
19. More importantly, our current members at hospitals who expected new H-1B and J-1 residents have now been forced to increase significantly their clinical work to cover for the absent residents, causing them in some instances to work 80-hour work weeks and creating additional strain on doctors already stressed by COVID-19. On-call or overnight shifts that might normally be covered by some of the missing residents presently stuck abroad must be covered by the current group of residents at the hospital. In addition, some residents may be required to give up highly valued elective rotations to cover more taxing floor shifts

often worked by first-year residents. This increased workload is a burden for an already highly-stressed workforce that has battled, and will continue to battle the COVID-19 virus in the coming months.

20. This Proclamation will not only disrupt this year's class of residents who are seeking to enter the United States; it will also discourage excellent candidates for residency positions next year because of the uncertainty and obstacles that it has created. For instance, for the 2020-2021 year, international medical graduates will be excluded from consideration for any programs that require in-person interviews, as many will take place in November and December 2020. In addition, the uncertainty created by the Proclamation and the possibility that it could be extended will likely cause hospitals to not consider international medical graduates for residency positions. Instead, these physicians will likely look to conduct their residency training in other countries, thereby depriving the United States of many talented physicians. Given that more than one in four physicians in the United States was born in another country, this will have a long-term harmful impact on patient care, particularly in the many rural and medically underserved areas that rely greatly on foreign medical graduates for health care.
21. The Department of State's inconsistent, nontransparent, and arbitrary application of the national interest exception has made it impossible for CIR to reasonably advise and guide its members on obtaining visa approvals, resulting in additional expenditures of our staff's time. We have unsuccessfully attempted to learn all we can to best advise our staff on when, if at all, the incoming residents can be expected to arrive in the United States so that they can more effectively advocate to the hospitals that the residency spots should be held open.

22. It is incomprehensible to me why the President believes that preventing foreign national resident physicians from working in hospitals would somehow inhibit the country's economic recovery. Resident physicians coming to the United States on J-1 or H-1B visas to train and provide patient care during the duration of the Proclamation would not displace U.S. citizens from their jobs as resident physicians. Rather, they would be working in positions for which they have already been selected and hired months earlier through a rigorous and demanding application process.
23. In fact, forcing hospitals to work with fewer staff will negatively impact the ability of our members and their hospitals to effectively care for COVID-19 patients, thereby interfering with each community's ability to help control the virus. Our country's failure to effectively control the virus has harmed the U.S. economy and led to the loss of U.S. jobs. The absence of qualified physicians will only exacerbate those job losses and delay the economic recovery.
24. The resident physicians who were not able to enter the United States to begin their medical duties were assigned to work at over 45 hospitals in the following states, many of which are experiencing or have experienced serious spikes in COVID-19 infections and hospitalizations: Florida, Texas, California, Connecticut, Washington D.C., Georgia, Illinois, Maryland, Michigan, New Jersey, New York, Ohio, Oregon, Pennsylvania, and Wisconsin. These banned residents are highly qualified physicians whose services are desperately needed in the midst of the current pandemic.
25. In addition, approximately 25 to 30 percent of physicians in this country are foreign-born. The United States relies heavily on these talented doctors to provide healthcare, particularly in inner city and "safety net" hospitals, and in underserved areas.

26. CIR is willing to serve as a class representative on behalf of those who are similarly situated.

27. I know that if the class is certified we will be representing more than our institution in this case and would represent the similar interests of a large number of employers and schools with approved nonimmigrant visa petitions that will be subject to the President's Proclamation, and thus cannot have the visas issued without meeting new exemption requirements enforced and implemented by the Department of State and other government agencies. I have spoken with the lawyers who represent me about what being a class representative means. I am willing and able to help similarly situated organizations because we are all suffering due to the unfair restrictions on the entry of nonimmigrant workers imposed by this Administration.

28. On behalf of the Committee of Interns and Residents, I know of no conflict which would prevent it from being a representative of other J-1 and H-1B sponsoring institutions in the same situation. I have the authority to state on behalf of the Committee of Interns and Residents that it is willing to accept this role.

Executed this 30th day of July 2020 at Oakdale, New York.

A handwritten signature in black ink, appearing to read "Ralph DeRosa". The signature is fluid and cursive, with the first name "Ralph" being more prominent than the last name "DeRosa".

Ralph DeRosa

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DECLARATION OF WILLIAM J. GUSTAFSON

1. I am the President and Chief Executive Officer of ASSE International, Inc. (“ASSE”) and EurAuPair International, Inc. (“EurAuPair”), both of which are California public benefit corporations recognized under federal law as 501(c)(3) nonprofit organizations. I have worked with these organizations in a leadership capacity for over 40 years. The facts set forth in this declaration are based on my personal knowledge and, if called to testify to their truth, I would and could competently do so.

2. ASSE was formed in March 1976, and EurAuPair was formed in November 1988. Both organizations are “program sponsors” of Exchange Visitor Programs and engage in a private-public partnership with the U.S. Department of State (“State Department”) to manage and administer those programs. All of the individuals who participate in ASSE’s and EurAuPair’s Exchange Visitor Programs are required to receive a State Department Certificate of Eligibility (Form DS-2019) from ASSE or EurAuPair and then obtain a J-1 nonimmigrant visa from the State Department to enter the United States and participate in the programs.

3. State Department regulations set forth 15 different exchange visitor categories for which individuals can obtain J-1 nonimmigrant visas. Program sponsors of Exchange Visitor Programs, like ASSE and EurAuPair, are generally institutions of higher education, government enterprises

and agencies, or private for-profit or nonprofit firms. Program sponsors are specifically designated to manage and administer one or more of the 15 J-1 Exchange Visitor categories. State Department regulations also establish the terms and conditions for each Exchange Visitor category.

4. ASSE is designated to manage and administer Exchange Visitor programs in, among others, the Summer Work Travel category, the Intern category, and the Trainee category. EurAuPair is designated to manage and administer an Exchange Visitor Program in the Au Pair category.

5. Both ASSE and EurAuPair have implemented work-from-home measures combined with a distinctive work space layout that permits significant physical distancing between staff in the office that allow their respective staff members to manage and administer their exchange visitor programs remotely, or in the offices, and in a manner that has not impeded their ability to issue Certificates of Eligibility and match program participants with host families and employers. The staff reductions described below would not have occurred, or would not occur, but for the issuance of the President's June 22 Proclamation suspending the issuance of visas to, and the entry of, all participants in ASSE's Summer Work Travel program, ASSE's Intern program, ASSE's Trainee program, and EurAuPair's Au Pair program who had not already received a visa or entered the United States before the date the Proclamation took effect.

ASSE

6. ASSE's mission is to foster international understanding through the exchange of students from countries around the world to host families, schools and host organizations in local communities throughout the United States. It also provides opportunities for American youngsters to live abroad, learning the language and cultures in other countries. ASSE's storied past began when it was founded over 40 years ago by the Swedish National Department of Education, in

conjunction with the U.S. Department of State, as a not-for-profit, public benefit organization, to facilitate exchanges between the Scandinavian countries and America. It has since expanded its scope of student exchange to countries in Europe, the Americas, Asia, the Pacific, and Africa. ASSE is one of the most well-respected organizations and one of the largest Private Sector High School Student Exchange Programs funded by the Department of State in facilitating exchanges for countries with significant Muslim population, with the Republics of the former Soviet Union and with the Federal Republic of Germany, as a bilateral exchange program. ASSE works with a worldwide network of partner organizations abroad, which are trained and monitored by ASSE to recruit, qualify, orient and transport appropriate program participants for its various Department of State designated programs. Student fees include costs for the above partner functions, airfares, participant insurance, post-departure follow-through, and for the sponsor, ASSE, its fees to cover costs of organizing and supervising the programs. This program management fee includes recruiting, qualifying, orienting and overseeing host organizations, assisting host organizations in developing extensive training flow plans where appropriate, oversight and adjustment support of student participants and issuance of Form DS-2019, Certificate of Eligibility.

7. To fulfill its mission, ASSE is designated by the U.S. Department of State as a 'Private Sector' sponsor to organize and administer, among others, three J-1 Exchange Visitor Post-Secondary Student Program categories: Intern, Trainee and Summer Work Travel. *See* 22 C.F.R. § 62.32 (Summer Work Travel category); 22 C.F.R. § 62.22 (Intern and Trainee categories). Under applicable State Department regulations, J-1 nonimmigrant visas generally may be issued for those categories only to individuals currently enrolled in full-time, degree-granting college or university programs abroad, or to individuals who are recent graduates of those post-secondary institutions.

ASSE recruits, qualifies and orients American host organizations who are willing to provide experience and training to these full-time students or recent graduates during their program stay.

8. ASSE's J-1 Summer Work Travel program provides university students from Europe, the Americas and Asia the chance to, during their summer break, gain experience in American host organizations in seasonal positions from 2 to 4 months duration; for Northern Hemisphere students, in remote seasonal resort locations catering to summer tourism and for Southern Hemisphere students, our winter, typically in mountain ski areas or warm weather resort locations, all in temporary seasonal jobs, while documenting that they are not displacing available American workers. The host organization must provide regular American cultural activities for the students.

9. ASSE's J-1 Intern Program provides youngsters who are full-time degree seeking university students from abroad, or recent graduates - many required to fulfill terms of approved experience and specific training in their field of study - the chance to spend from 3 to 12 months learning about American management or professional techniques, while living and assimilating American culture and perfecting their English skills. U.S. Department of State designated sponsor organizations, like ASSE, must document that such internships fulfill a varied training plan in the specific students' fields and do not displace Americans.

10. ASSE's J-1 Trainee program provides university or post-secondary education graduates, who have completed their degree abroad at least a year prior and have a minimum of one year's experience, or post-secondary education vocational specialists with at least 5 years' experience, the opportunity to spend from 3 to 18 months training in an American host organization. Trainees must have a diverse and varied training plan, which offers instruction and 'on the job' experience in several facets of a host organization, compatible with the participant's degree or specialty. In addition, participants live and learn American culture as part of the program, while gaining

knowledge of American organizational functions, which they take back to their home countries to improve their experience and knowledge base.

11. In all of ASSE's exchange visitor programs, State Department regulations require that each participant must be appropriately placed, oriented, supervised, and evaluated, and that cultural, and community events be integrated into each participant's stay.

12. For each individual who applies for and is accepted into one of ASSE's Exchange Visitor Programs, ASSE issues a "Certificate of Eligibility for Exchange Visitor (J-1) Status," which is the State Department document used in the administration of exchange visitor programs. ASSE issues the Certificate of Eligibility approximately 3-8 weeks before the participant is scheduled to enter the United States. The Certificate of Eligibility permits the Exchange Visitor program participant to seek an interview at a U.S. embassy or consulate for the purpose of obtaining a J-1 nonimmigrant visa.

13. In 2019, ASSE issued Certificates of Eligibility to 3,287 exchange visitors in its Summer Work Travel program, 461 J-1 exchange visitors in its Intern program, and 292 J-1 exchange visitors in its Trainee program. The State Department issued J-1 visas to ASSE exchange visitor program participants from 80 countries, who took on seasonal employment or on-the-job training positions in 42 states. The exchange visits for ASSE's program participants lasted 2-4 months for the Summer Work Travel program, 3-12 months for the Intern program, and 3-18 months for the Trainee program. After the exchange visits ended, Summer Work Travel and Intern program participants returned to their full-time studies at universities abroad (or, for some interns who were recent graduates, they returned abroad to start their careers). Trainee program participants returned abroad as well, but most are recent graduates with prior employment experience, so they returned home to early-career positions in their chosen profession. All returned home with new skills, new

international friendships and an increased knowledge of the American workplace and culture, eager to apply everything they learned, whether it be in their university studies or their work environment.

14. All three J-1 exchange visitor categories in which ASSE operates the above-described programs are subject to the entry suspension set forth in the President's June 22 Proclamation. As a result of the Proclamation, ASSE's Summer Work Travel, Intern, and Trainee Exchange Visitor programs have effectively been shut down. We remain obligated to monitor, administer, and support the small number of participants that are currently in the United States. The Trainee and Intern programs already have qualified participants, screened and vetted host companies ready to proceed should the June 22 Proclamation be enjoined. The Summer Work Travel participants relating to the "winter" program (students enrolled in universities in the southern hemisphere have their summer break during the U.S. winter season) have been recruited and placed with host companies and must begin visa processing in the Fall.

15. As of the date of this declaration, ASSE expects a total of 1,579 individual participants and 354 host companies for issuance of Certificates of Eligibility with start dates for the remainder of calendar year 2020 in the Summer Work Travel, Intern, or Trainee programs. If the June 22 Proclamation remains in effect, an estimated 2,798 of the Summer Work Travel program participants, 370 Intern program participants, and 241 Trainee program participants would not be able to enter the United States – including those that have already cancelled because of the June 22 Proclamation. That is a 94% decrease from the number of program participants that ASSE generally has in any recent year. Over the last three years, ASSE has averaged 3,203 participants in Summer Work Travel, 420 participants as Interns, and 280 participants as Trainees.

16. On January 1, 2020, ASSE employed 33 full-time equivalent (FTE) employees. As of the date of this declaration, five have been terminated and three have been furloughed. ASSE currently is paying about \$700,000 per month to cover the wages, benefits, and other expenses for the remaining 25 staff. It is also covering the full costs of health insurance, vision, and dental care for furloughed employees and their families, which is about \$1,500 per month per furloughed staff member. At the same time, however, ASSE is not generating income in any of three above-described programs. ASSE's remaining income stream relates solely to its high school exchange student program, which has been devastated by the Covid-19 pandemic, with students (and their parents) canceling their programs due to fear of traveling, and schools canceling student acceptance due to space limitations related to social distancing, as well as host families canceling their agreement to host a student from another country. ASSE's high school program for Fall 2020 is less than 30% of the enrollment experienced during each of the past 30 years, and at the current rate of cancellations, the final enrollment number may well be less than 20%.

17. As of the date of this declaration, and as a direct result of the Proclamation, ASSE has had to refund approximately \$1,013,000 to its foreign partners in the Summer Work Travel program who expended money recruiting and screening foreign students who later, as a result of the Proclamation, had to cancel their exchange visit. ASSE has also had to refund approximately \$123,500 to partners in our Intern and Trainee programs who have had to cancel their Exchange Visitor programs in the U.S.

18. ASSE will be forced to terminate or furlough an additional 8 to 12 FTE employees if no new Interns, Trainees, or "winter" Summer Work Travel program participants are able to enter the United States for the rest of 2020. If the Proclamation is not reversed or enjoined, ASSE will be deprived of a further \$905,500 in program fees from its foreign partners for Interns, Trainees, and

“Winter” Work Travel participants who would normally arrive into the U.S. to begin their Exchange Programs in August through December.

19. After the above-described terminations and/or furloughs have occurred, ASSE will be left with a skeletal staff to manage its decimated high school program (a small fraction of its normal size), which at this point has not been impacted by the President’s Proclamation, and to manage the very small group of Summer Work Travel, Intern, and Trainee program participants who had entered the United States before the Proclamation was issued.

20. As a result of the Proclamation, and assuming the Proclamation remains in effect for the remainder of 2020, ASSE will have exhausted its accumulated cash balance in early 2021, having to wind up and cease its operations. Even periodically cutting infrastructure staff to a small skeletal core, ASSE will be unable to survive through spring of 2021. In addition, with the partner organizations around the world exclusively, or primarily, dependent upon recruiting and qualifying program participants in their respective countries for ASSE (or other sponsors), these invaluable overseas partners have, or will soon become, insolvent and also cease to exist due to lack of revenue. Hence, ASSE will no longer have a network of overseas partners from which to draw participants for its various programs once the restrictions are finally lifted. Cultural ‘Exchange Visitor Programs’, as enabled by Congress in 1961, are some of the most vital tools of Public Diplomacy, more important than ever, but if the Proclamation remains in effect, the Exchange Visitor Organizations that are carrying out and overseeing these important programs will cease to exist.

21. If the June 22 Proclamation is enjoined, ASSE may still be able to salvage its year because many Interns and Trainees have not yet cancelled and we could still produce our Summer Work Travel program for southern hemisphere students. If the June 22 Proclamation is not enjoined,

however, the above-described harm to ASSE's business—which is so severe as to threaten its very existence as an organization—is certain to occur.

EurAuPair

22. EurAuPair is one of the largest, oldest, and most highly reputed J-1 Au Pair Exchange Organizations in the United States. EurAuPair was established over 30 years ago and officially designated as a J-1 sponsor to bring bright, responsible, post-secondary school participants to the United States, who assist American parents in caring for younger children in exchange for inclusion in an American family, sharing their culture and language, while being immersed in American culture and studying in an American post-secondary educational institution.

23. EurAuPair is officially designated as a J-1 Au Pair program sponsor by the U.S. Department of State and subject to State Department regulations.

24. Under those regulations, *see* 22 C.F.R. § 62.31, qualified U.S. citizen or lawful permanent resident families may participate in EurAuPair's program so long as they have young children for the au pair to look after and require a childcare schedule not to exceed 45 hours per week. Families must also commit to provide weekends and other time off, vacation, and a stipend for the au pair to complete post-secondary coursework in the family's geographic location. Furthermore, families must agree to include the au pair as a family member, in family events, including meals, leisure time activities, excursions, etc. Although the au pair is provided her own room and meals by the host family, host families must provide the au pair with compensation consistent with the Fair Labor Standards Act and Department of Labor rules as incorporated by the State Department. EurAuPair recruits its young participants through a network of overseas partner organizations. These partner organizations, usually one per country, ensure that au pair applicants have childcare experience, are conversant in English, are at least 18 years old but no older than 26 years old on

arrival, have passed a psychometric test, have cleared a criminal background check and are of good character as demonstrated by in-person interviews and verified character references. Overseas EurAuPair partner organizations receive fee revenue for recruiting, screening, qualifying and preparing au pairs and through au pair application fees and production fees EurAuPair pays them. EurAuPair receives its fee revenue from its host families, covering: family recruitment and qualification, family matching, pre-arrival family and post arrival au pair orientations, a 5-day intensive Arrival Childcare Workshop, held in New York City, including professional instruction, monthly locally organized activities, full medical insurance coverage, monthly family and au pair monitoring and problem solving, plus round-trip airfare for participants from/to their home countries. Au Pairs do not displace young Americans, as it is unusual for such American youngsters to have interest in spending the minimum 12 to maximum 24 months living as a part of a family and caring for its young dependent children.

25. EurAuPair's field network of 10 Area Coordinators and nearly 300 Community Counselors provide support and guidance to au pairs and host families throughout their exchange year, beginning with interviewing and screening prospective host families, conducting host family and au pair orientations, maintaining monthly contact with each au pair and host family, planning monthly social and meeting activities with au pairs, and assisting with problem solving techniques in resolving placement issues. These invaluable local resources will be lost to us, and they will lose the small fee they receive for each Au Pair and Host Family placement they facilitate and support, unless the June 22 Proclamation is enjoined.

26. Au pairs must be between 18 and 26 years old on arrival, pass a criminal background check in their home country, pass a standardized psychometric test, speak English, have a driver's license, be secondary school graduates, have childcare experience and be willing to share their

culture while becoming a member of an American host family, while providing childcare for at least one year. Au pairs can, and many do, extend their initial year experience by up to an additional 12 months. Au pairs become part of their families, someone whom the families have come to love and trust with their most precious gift - their children. This continuity of reliable childcare eliminates the worry of having to say goodbye so soon to a ‘big sister’ from abroad, and helps to maintain the routine of daily home and work life.

27. For each Au Pair who applies for and is accepted into EurAuPair’s Exchange Visitor program, EurAuPair issues a “Certificate of Eligibility for Exchange Visitor (J-1) Status,” which is the State Department document used in the administration of Exchange Visitor programs. EurAuPair generally issues the Certificate approximately 3-8 weeks before the au pair’s scheduled entry into the United States. The document permits the prospective au pair to seek an interview at a U.S. embassy or consulate for the purpose of obtaining a J-1 nonimmigrant visa.

28. In 2019, EurAuPair sponsored 739 Au Pair participants from 21 countries to live with and provide childcare to families in 46 states in the U.S. EurAuPair is authorized to issue 1,300 Certificates of Eligibility to Au Pair program participants each year. As of the date of this declaration, EurAuPair has a total of 548 host families that have a continuing interest in starting to host a new J-1 au pair during what remains of calendar year 2020.

29. During the first three months of 2020, EurAuPair experienced 29% growth in the number of EurAuPair au pairs entering the U.S. to assist American host families, compared to 2019. This growth pattern was expected to continue throughout 2020. Although Consular posts are now re-opening, they are not open for certain J-visa programs, including au pair visa applications. The 60-day exchange visitor program suspension announced by the State Department on March 12 originally delayed au pair arrivals and delayed income to EurAuPair of approximately

\$575,000. Continued consular post closures further increased the number of au pairs delayed (and many were then forced to cancel their application), resulting in an additional \$663,600 of program fees delayed or lost (completely lost if the Presidential Proclamation stands as currently written). If the Presidential Proclamation stands, not just delaying arrivals but preventing them altogether (including our pent-up demand since March 12), EurAupair will have lost a total of over \$3,750,000 in revenue, which will force the complete dissolution of our organization and other organizations like EurAuPair and quite possibly end all au pair programs in the United States for good.

30. Particularly during the COVID-19 emergency, in-home childcare plays a significant role in the lives of U.S. workers and their families. In-home childcare better allows U.S. working parents to return to work, from home or on site, and thus aids, rather than impairs, the U.S. economic recovery. The needs of U.S. host families for in-home childcare will only increase over the course of the rest of the year (August through December 2020), when children may, depending on the city or state in which they live, be returning to school on a part-time basis, may be engaging in remote learning, and likely will need more daytime and after-school supervision and assistance. EurAuPair hosts that are military families are particularly negatively impacted, because they are on the move and relying on au pairs to allow military spouses to pursue their careers. Moreover, EurAuPair hosts with parents working long hours rely on au pairs, which includes many individuals beyond those treating COVID-19 patients and conducting research to combat COVID-19.

31. On January 1, 2020, EurAuPair employed 11 FTE employees. As of the date of this declaration, three have been terminated and two have been furloughed. During the furlough period, EurAuPair continues to pay 100 percent of the premiums for all health insurance, dental,

and vision coverage, which is about \$1,500 per month per furloughed employee and family. To cover the wages, benefits, and other expenses for six employees, EurAuPair pays \$267,000 per month but, because of the June 22 Proclamation, EurAuPair has not generated any income for over 4 months and will generate no income for the remainder of the year, effectively stopping the program and shutting down the organization.

32. To make matters worse, EurAuPair has had to refund \$434,500 in fees to host families. I expect that number to increase substantially as families who remain hopeful realize that their au pair will be unable to join them in the United States.

33. If the Au Pair program cannot resume this year, EurAuPair will be forced to eliminate two additional FTEs and either extend existing furlough periods or convert those furloughs to terminations. EurAuPair will also be forced to forego millions of dollars in revenue (from June to December) associated with expected Au Pairs who cannot be placed with their host families because they cannot enter the United States. If the Proclamation remains in effect, EurAuPair will run out of funds and will not continue to exist by early 2021. EurAuPair partners abroad either exclusively, or primarily, serve to recruit and prepare qualified au pairs from their home countries. They have ended, or by year's end will be forced to end this substantial part of their business.

34. Should the June 22 Proclamation be enjoined in August 2020, we are confident we would be able to reopen and operate our exchange programs including securing J-1 visa issuance for our participants.

35. The July 17 2020 guidance from the State Department concerning some limited exceptions to the June 22 Proclamation does not help us. Host families responding to an informal survey show that at maximum, 9% feel they may qualify for one of the exemptions, but that includes some

freedom of interpretation, as currently there is no direction or clarity by the Department of State of the intended exemptions and how they can be documented.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2020.



By: William J. Gustafson

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DOMINGO ARREGUIN GOMEZ, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States of
America, et al.,

Defendants.

Civil Action No. 1:20-cv-01419

DECLARATION OF KLAUS H. JEPSEN

I, Klaus H. Jepsen, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a co-founder of Shipco Transport Inc., one of the world's leading neutral Non-Vessel Operating Common Carriers, and Group Chief Executive Officer and a member of the Board of Directors for Scan-Group A/S, our parent company. Shipco is a New Jersey corporation established in 1988, with its executive headquarters located at 127 Main Street, Chatham, New Jersey. It is a 100% wholly owned subsidiary of SSYNC Inc. (formerly Scan-Shipping Inc.), a holding company incorporated in the state of New York.
2. My career in the shipping industry has taken me all over the world. I began my career in 1975 as an apprentice with our parent company, Scan Group A/S (formerly Scan-Shipping A/S). After completing my apprenticeship, I moved to Singapore in 1979 to establish operations and a new branch office for Scan-Shipping. Following my tenure in Asia, I relocated to the U.S. in 1981 and launched Scan-Shipping's New York office. In 1983, I moved back to Copenhagen to take on the position of Assistant General Manager/Vice President at Scan-Shipping.

3. Identifying an opportunity to become more involved in the emerging Non-Vessel Operating Common Carriers (NVOCC) side of our industry, in 1988, I co-founded Shipco Transport Inc. in New Jersey, becoming one of the first neutral NVOCC's in the U.S. As an NVOCC, we provide customers with more frequent and efficient logistics than steamship lines, carriers and freight forwarders can, and at a lower cost. We consolidate our customers' cargo and act as the carrier issuing our own bill of lading, eliminating the middle man, making it a one stop shop for our customers.
4. As Group CEO, I hold the final chief executive managerial decision-making authority for our entire company on a global basis, including all operations, budgets, finances, commercial development, profitability, I.T. platforms development, personnel matters, etc.
5. Shipco currently has 21 branch offices and 425 employees in the United States, consisting of United States citizens and foreign nationals. Globally, Shipco has more than 70 branch offices and over 2,000 employees across 35 countries. Our customer base includes freight forwarders and customs brokers, as well as direct imports and exports from trading companies, manufacturers, and others. In 2019, our top four regional offices alone generated an estimated combined gross revenue of nearly \$100 million. Our gross income was well over \$55 million and our operations net income was over \$10 million.
6. Our international success has resulted from the convergence of a number of significant factors brought about by our group of international companies', as a whole, working together with coordinated business strategies, procedures, and operations. These include a focus on precise corporate planning; sophisticated management techniques; in-house developed and designed computer systems, finance systems, and e-commerce applications; proprietary services and methods; and, most significantly, the selection of key individuals

to establish, strategize, and implement corporate plans, goals, methods, techniques, and systems. This approach is applied to all the subsidiaries and service areas within Scan-Group's group of companies. In essence, the present and future success of the group's international operations, and of each individual subsidiary, hinges upon strategic planning and expert application of our group's own methods, systems, and techniques. We operate in such a competitive market that this level of highly coordinated planning and execution constitute an absolutely crucial element of the viability of all components in the group, including Shipco.

7. Shipco and its sister companies' presence in the US has enabled us to increase our market share in the Americas, as well as benefit industry efficiency through the increased market competition and expertise we provide. We constantly strive to improve our company, our industry and our clients' impact on the global front, and to achieve this goal we have made many advancements in our field that have benefitted our industry, our customers and our communities as a whole. Just a few examples -
 - a. In 1994, we introduced our group's acclaimed airfreight division to the U.S. and established Shipco's first airfreight branch office.
 - b. In 1995, we brought the NVOCC concept to Copenhagen, by establishing Shipco Transport Denmark A/S, to cater to the growing demand for a neutral NVOCC provider in Denmark. Up until that point in time Denmark had predominately been a freight forwarder dominated industry.
 - c. In 1997, in cooperation with Scan-Shipping we established a Project/Out-of-Gauge Division providing services ranging from 20-foot open top container with over height to complete turn-key projects.

- d. In 2004, Shipco co-founded the AirCargoGroup, a global association of leading Neutral Airfreight Wholesaler, committed to delivering value added international airfreight services exclusively to the worldwide retail freight forwarding, shipping, logistics, and transport-related industry.
8. Most importantly, in 2007, we at Shipco founded Worldwide Alliance Inc. (WWA) – a network of the world’s leading NVOCC companies dedicated to providing their customers with efficient and cost-effective transportation and global logistics solutions for their LCL cargo through a network of exclusive agents. WWA currently has 17 members who are single handedly chosen for their proven leadership and extensive experience as the strongest neutral LCL providers in their respective markets. WWA has over 160 offices and 4,800 employees across 6 continents and 72 countries, offering over 2,500 direct weekly LCL export services. The success of the WWA and its members is entwined, and as a key member our success directly affects the other 16 NVOCC members, their employees, customers, agents, and vendors. Shipco, WWA and all its sister companies are an integral part of the U.S. and global economies.
9. In addition, our company has always had a policy of benefitting our local communities and economies. For example, as with all of our offices, the current location of our New York metro regional office, in Elizabeth, New Jersey, was chosen with purpose, not only due to its proximity to the Elizabeth ports, but specifically for its designation as an Urban Enterprise Zone (UEZ). Shipco is proud to be generating jobs and making capital improvements in this UEZ.
10. We also developed a training and internship program for the Elizabeth Board of Education, giving local high school students an introduction to our industry as a future career choice.

Students learn about our industry, participate in 6-week internships, and attend guided tours of the Port Newark Terminals for an in depth look at the “city within a city” and engineering innovations behind the gates of a port terminal.

11. At our Chatham, New Jersey executive headquarters we have installed an automobile electric charging station in our parking lot. Our Elizabeth location installed solar energy panels. These few examples demonstrate our concern for local neighborhoods and the country, as we continue our green initiatives and do our part to help reduce our carbon footprint.
12. To give you an idea, as of May 2020, we employ over 200 people and have generated nearly \$4.25 million in gross revenue in New Jersey alone. We care deeply for our employees and during the COVID lockdown, rather than furlough or layoff any of our employees, our talented IT team worked diligently to provide remote working capabilities to our employees not only in the mandated states, but in all of our U.S. offices. This was not only critical to keep our employees’ health and financial stability secure, but as an essential company, we needed to continue to satisfy our customers’ and our communities’ logistics needs for the transport of essentials such as Personal Protective Equipment (PPE) and hazardous materials during these unprecedented times.
13. The success of Shipco Transport Inc. thus far has been primarily due to the diligent efforts and dedication of our knowledgeable management and support staff, whose expertise has made Shipco into a highly profitable company. Approximately 90% of our U.S. staff are U.S. citizens or Lawful Permanent Residents, and even during these trying economic times, we have not downsized, furloughed or laid off any U.S. workers.

14. Over the last twelve years, Shipco has filed more than 200 nonimmigrant H-1B and L-1 petitions to sponsor temporary foreign-national workers in the United States. We have also happily hosted over 200 J-1 trainees that we have over the same period of time. Below is an estimated breakdown of our H and L petitions filed each year, and the number of J-1 trainees we have hosted:

Year	H-1B	L-1	J-1
2020	3	4	9
2019	10	4	30
2018	11	5	24
2017	8	11	15
2016	4	2	11
2015	5	5	8
2014	3	3	6
2013	8	3	20
2012	12	5	9
2011	10	11	12
2010	8	10	15
2009	19	8	13
2008	10	13	14
2007	9	9	16
Totals	120	93	202

15. We take pride in our employment practices and think of our staff as family rather than employees. Our industry is a very small, competitive employment market with a relatively small applicant pool, resulting in high staff turnover rates between competitors. So, while we often lose employees to our competitors and vendors, we have nonetheless routinely maintained a consistent staff count by continually rehiring locally.
16. On or about May 7, 2020, Shipco filed an L-1A nonimmigrant visa petition with U.S. Citizenship and Immigration Services (USCIS), as we wanted to employ Mr. Brian Nielsen (the beneficiary of the petition) in the United States as our Finance Director, Americas Region. The Finance Director is the member of our senior executive team with sole

responsibility for our company's financial health. The position combines operational and strategic roles, to manage accounting and financial control functions and establish the financial long-term growth of the business, as well as be able to meet continually changing circumstances and devise immediate short-term relief during seasonal or market fluctuations and trying economic times like the present. The Finance Director is an integral component of our executive structure and our company's continued success, evolution and resilience. The Finance Director has top managerial control of all managerial, developmental, banking, financial, legal and tax and other regulatory compliance responsibilities for the centralized accounting and financial functions of our organization's entire Americas Region, including all of the United States, Chile, Canada, Trinidad and Jamaica (totaling 25 branch offices plus our AMRO corporate office), as well as our Pune Resource Center. The Finance Director, as an expert advisor to the COO Americas/President USA, is responsible for establishing and overseeing our company's financial goals and policies for our entire Americas Region, and soon will also be involved in our global accounting and financial functions. This is clearly an essential function of any business, including ours, and cannot be left without strong and exemplary leadership. Shipco's future success is dependent upon Mr. Nielsen's success in this role.

17. Mr. Nielsen has been and continues to be employed as Chief Financial Officer, Europe Region, at our sister office in Denmark. Prior to joining our Denmark-Europe Regional office, Mr. Nielsen had nearly 30 years of relevant industry experience with progressively increasing responsibility. As mentioned above, a key to our success has been proprietary, in-house-designed computer and finance systems, and Mr. Nielsen has a unique specialized knowledge of our company's global accounting and financial functions—while these

systems were developed abroad, we need to deploy them in our U.S. operations. We are a global company in a global industry, providing services that span the globe. Shipco's success clearly relies on our group of companies' ability to have operations and systems that are seamless throughout our international offices. We rely on each other's advancements. When our offices here in the U.S. develop a system or function that is clearly successful, it makes business sense to roll them out to our international offices. Similarly, when one or more of our international offices develops a successful system abroad, we would be remiss not to use the same system to ensure the same success here.

18. In recent years, we have been reorganizing and expanding with the goal of making Shipco Transport in the United States our global operations headquarters, not just the hub for our Americas offices. As such, we have moved our executive global headquarters from Hoboken, New Jersey to Chatham, New Jersey. The Hoboken office is now the Americas Regional Office. We have also begun to establish our global divisions in the United States. For instance, even though our Pune, India IT office still exists, our headquarters for Global IT Integration is now here in the U.S. Similarly, we have transferred the executive control of other functions, such as Import Operations and Business Development, to our U.S. Global headquarters. Our Global executives, including myself, our Global CIO, Global COO and Executive Vice Presidents are all here in the United States. As part of this restructure, we must establish a global accounting function here in the United States.
19. On June 30, 2020, USCIS approved our L-1A nonimmigrant visa petition. Mr. Nielsen, however, cannot begin to work for Shipco in L-1A status unless he receives a L-1A visa at the U.S. consulate abroad and enters the United States in L-1A status.

20. Before Mr. Nielsen obtained his consular interview, the Department of State implemented and enforced the President's June 22 Proclamation and suspended the issuance of most nonimmigrant visas, including the L-1A petition for Mr. Nielsen, unless the beneficiary employee is able to meet what is essentially a new requirement for a nonimmigrant visa: showing that their admission is in the national interest. I am unaware of any basis barring Mr. Nielsen's admission to the United States.
21. Our inability to bring Mr. Nielsen to the United States will severely hamstring Shipco's operations here in the United States and the Americas region. Our current Finance Director, who went through our company training program in 2005, has worked for us in the United States for over 10 years, and worked together with Mr. Nielsen to create our global accounting methods, has resigned. We had started months earlier to prepare for the transfer of not only Mr. Nielsen but also the global accounting function to the United States. Mr. Nielsen has extensive executive and proprietary knowledge of and experience with our global accounting functions, not only in Shipco but also in our sister and parent companies, thereby allowing for a smooth transition without financial loss or delay. Over the last 3 years, Mr. Nielsen and our current Finance Director have worked hand-in-hand to develop our own in-house global accounting function. Mr. Nielsen has been spearheading the roll out in our European offices and has seen enormous success. In order for our U.S. offices to see the same success, we cannot simply bring in an outside hire who will have to start from scratch. Mr. Nielsen is currently the only executive both in and outside of our group of companies who is qualified to take on this role immediately. He must take a hands-on role to supervise the reorganization and retraining of our accounting and finance teams as to the new global accounting methods and our global platform, called Phoenix Finance.

The inability of Mr. Nielsen to receive a visa and arrive promptly after his predecessor will render Shipco vulnerable and leave us in a very precarious position while the economy is already stressed due to COVID- 19.

22. The nonimmigrant visa ban will be devastating for our company, our operations, and our reputation in this industry. We face the prospect of having no financial director for the Americas region for months and, even if we were to find someone else to take on this role, he or she would require at the very least 6 months of training in our offices abroad to catch up to an entry level comparative to what Mr. Nielsen would bring to the role. This will harm our company's continued global growth as we try to maintain, and hopefully increase, our market share during the unexpected COVID-19 challenges of shipping delays, plant closures, and shortages in vessel space and equipment, and the need for innovative and cost-saving financial measures. The global pandemic has required innovative cost-saving financial measures, and only the Finance Director is in a position to conceive of and implement such measures across the Americas region. Without an experienced Financial Director who is also knowledgeable of Shipco and its global practices as a whole, Shipco will lack the talent, leadership and versatility to meet the current economic crisis head-on and quickly develop cost-savings so that we can continue with our existing headcount. If we should realize further declines in business with no new financial offsets in sight, then we will be forced to make the very difficult decision of reducing overhead expenses by letting staff go and closing some of our smaller branch offices. As it stands, we are already operating a very "tight ship," and if we are forced to reduce staff, we might not be able to meet the same level of service that our clients have come to expect. This would result in the decline and possible failure of many other businesses, such as warehouses, vendors,

agents, freight forwarders, and others in the United States that depend on our business's success, causing a domino effect that our economy does not need right now.

23. Without the Financial Director we cannot continue our plans of centralizing global accounting, which is a position and function that should be here in the United States, but will allow us to expand our global business reach which is fundamental to our business model. We have centralized global operations, global sales and global IT here in the United States, so it the natural progression in our company's development to add global accounting and finance to our esteemed executive managerial function. An exemplary, stable executive team is critical for our revenue growth and future plans to add American workers.
24. A lack of a Finance Director will also jeopardize Shipco's reputation and goodwill in the industry – its relationships with clients, its edge vis-à-vis competitors, and the value of its brand as described above. We have a reputation as a leader in our industry and have been consistently recognized as such, which can be directly attributable to our ability to access foreign talent to offer increased products and services to our customers in the global markets. For example, I had the honor of being named Person of the Year by the New York/New Jersey Foreign Freight Forwarders and Brokers Association in 2015. The American Journal of Transportation recently called Shipco “one of the world's leading neutral NVOCCs” and reported on our two new less than container load (LCL) export services from the United States to China that we launched last year. This was possible because of our new China Desk in our Los Angeles office—yet another global function that we transferred to the United States. Had we not been able to bring the L-1A manager over who had developed the China Desk, we would not have been able to establish such a successful transfer of the function. As a result, our Pacific region's annual revenues have

increased by approximately 40% due to the additional business brought in by the China Desk division. As of this year we are expanding the division to exports to Asia, not just China, and have 20+ American employees now within this division. More business means more revenue, which means more employees, more vendors, more businesses benefit in our industry. Increased exports to China also benefit both the local economy in Los Angeles and the U.S. economy as a whole.

25. I also fail to understand why the President believes our sponsorship of foreign nationals would somehow harm the economic recovery. As Finance Director, Mr. Nielsen is expected to increase efficiency and profitability, thereby allowing us to expand further, hire many more American workers, stimulate our local and national economies, and give back to our local communities. Shipco's operations and its growth or contraction have a ripple effect, not in just our industry but in nearly all industries. We facilitate the shipment of all kinds of goods, including many that are essential to our economy today, like PPE, medical devices, project cargo, aid and relief cargo, cars, aircraft parts, hazardous materials, food and beverages, household goods, retail items, and many other essential items that hospitals, businesses and consumers are in particular need of today. Our business strives to provide the most reliable and cost- and time-efficient transportation of such goods for our customers.

26. In addition to Mr. Nielsen, Shipco will be hosting three new J-1 trainees who are awaiting interview appointments to obtain their visa stamps. Shipco has also filed petitions for three H-1B employees and one other L-1A manager with USCIS. In fact, one of the three H-1B employees was approved by USCIS on July 17, 2020 for the Specialty Occupation of Logistics Engineer. I am unaware of any reason other than the June 22 Proclamation that

would keep any of these trainees or employees from receiving their visas. It is through the H, J, and L visa programs that Shipco has ensured its continued success over the years, as we rely on valuable skilled talent from abroad to fill critical positions here in the United States. If the J, L and H programs are not available, it will adversely impact Shipco's business and reputation as a business leader in the shipping industry. And because Shipco has a fundamental role in the transport of goods to and within the United States, numerous other businesses in and outside our industry, including trucking companies, retailers and wholesalers, and even consumers will suffer from our decreased capacity due to the loss of Mr. Nielson's services in the United States and concomitant effects that will resonate throughout our workforce as mentioned above.

27. Shipco and our competitors in the shipping industry keep the supply chain intact for essential household and food products, which are absolutely critical during a global pandemic, including PPE, hazardous materials, and other items that are so crucial to the survival of our economies and our nation. This ban will tie their hands and ultimately severely impact local economies and communities, resulting in greater unemployment rates.

28. All of our branch offices located throughout the United States, including our largest offices in New Jersey, California, Georgia, Florida, Illinois, Massachusetts, South Carolina, Texas, and Washington, buy goods, services, and equipment from local businesses thereby stimulating the local economy. We contract services with local trucking, warehouse, and other vendors in every other state in the United States in order to create regional transportation hubs and expand our nationwide logistics network, thereby stimulating the national economy.

29. I am willing to serve as a class representative on behalf of those who are similarly situated to me.

30. I know that if the class is certified, I will be representing more than my own company in this case and would represent the similar interests of a large number of employers with approved nonimmigrant visa petitions that will be subject to the President's Proclamation and thus cannot have the visas issued without meeting new requirements enforced and implemented by the Department of State and other government agencies. I have spoken with the lawyers who represent me about what being a class representative means. I am willing and able to help similarly situated employers because we are all suffering due to the unfair restrictions on the entry of nonimmigrant workers imposed by this administration.

31. On behalf of Shipco Transport Inc., I know of no conflict which would prevent it from being a representative of other U.S. employers in the same situation. I have the authority to state on behalf of Shipco Transport Inc. that it is willing to accept this role.

Executed this 31st day of July 2020 at Chatham, NJ.

A handwritten signature in black ink, appearing to read 'Klaus H. Jepsen', written over a horizontal line.

Klaus H. Jepsen, Group CEO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DOMINGO ARREGUIN GOMEZ, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States of
America, et al.,

Defendants.

Civil Action No. 1:20-cv-01419

DECLARATION OF JOSE MARTIN

I, Jose Martin, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the President and CEO of PowerTrunk, Inc.
2. PowerTrunk, Inc. (“PowerTrunk”) was established in 2009. It is incorporated in Delaware and registered to do business in New Jersey. PowerTrunk’s headquarters are at 66 York Street, Jersey City, New Jersey 07302.
3. PowerTrunk is the wholly owned U.S. subsidiary of Teltronic S.A.U. (“Teltronic”), a Spain-based Professional Mobile Radio company that designs, manufactures and markets professional Land Mobile Radio (“LMR”) systems. PowerTrunk’s TETRA systems have been installed at locations in over 50 countries worldwide. PowerTrunk is the U.S. arm of Teltronic and is responsible for sales in the United States and Canada; distribution, field engineering, and customer support for Teltronic’s LMR projects, in particular TETRA Networks. PowerTrunk and its parent company, Teltronic, are part of the Sepura Group (“Sepura”), a U.K.-based global leader in the design, manufacture, and supply of digital radio products, systems and applications developed specifically for business and mission critical communications.

4. PowerTrunk is a pioneer of TETRA technology in the United States. TETRA (TErrestrial Trunk RAdio) is an open voice-and-data Land Mobile Radio (LMR) standard developed by the European Telecommunications Standards Institute (ETSI) with contributions from Motorola, Nokia, Alcatel, Marconi and Thompson. TETRA has been adopted, among others, by the governments of the U.K., Germany, Belgium, The Netherlands, Italy, Sweden, Denmark, South Korea and Finland, to deploy nationwide radio systems for first responders. In North America, TETRA was first chosen by British Columbia's Power Authority (BC Hydro) in 2011, and New Jersey Transit Corporation ("NJ TRANSIT") in 2012. TETRA is superior to any other previously available LMR technology in the U.S. owing to its cellphone-like speech quality (allowing users to recognize each other's voice), excellent background noise cancellation (TETRA radios can be used in extremely noisy environments such as airports and heavy industries) and higher data throughput (allowing TETRA radios to report their GPS location and other parameters to operations centers).
5. PowerTrunk was a pioneer in getting TETRA technology accepted for use in the United States, first in 2010 through the Federal Communications Commission ("FCC") Equipment Authorization of PowerTrunk's variant of the TETRA technology for use in NJ TRANSIT's radio project, and then as part of the FCC's September 21, 2012 Report and Order which amended the FCC's Part 90 Rules (radio emission requirements) to accept the TETRA standard for use in the U.S. Through these efforts, PowerTrunk became the first commercial provider of TETRA technology in the United States. TETRA is such a new technology, that it faced fierce barriers to entry from the legacy technology providers who did not want to face its competition for market share.

As a result, the growth and development of a workforce needed to install and maintain TETRA technology in the U.S. had been stifled for many years, leaving few available to staff TETRA technology projects. It was only recently that the FCC, in its September 2021 Report and Order, made a final amendment to the previously existing FCC radio emission rules to allow TETRA technology to fully compete with the legacy technology, finally giving the U.S. full access to the superior TETRA technology used around the world.

6. PowerTrunk is the leading provider of TETRA technology in the U.S., having deployed TETRA networks for, among other high-profile end users, NJ TRANSIT, the largest statewide transit agency in the United States; the Metropolitan Transit Authority in New York City (“MTA/NYCT”); and at Los Angeles International Airport (“LAX”) and John F. Kennedy (“JFK”), two of the busiest airports in the world.
7. PowerTrunk has 11 employees in the U.S., including six U.S. citizens, one lawful permanent resident, and four foreign nationals, mostly from our parent company. Over the past 11 years, our company has filed approximately 10 petitions for nonimmigrant visas, seeking to temporarily employ nonimmigrant workers in the United States. All of them were approved and the employees entered on valid visas. We have a need to hire employees in the L and H-1B visa categories because our TETRA technology is new to the U.S., as we introduced it, and we want to grow and continue hiring and training American workers to use TETRA. We have already hired and trained 5 non-dual U.S. citizens to conduct TETRA-related business. We cannot do this without foreign talent who come to the U.S. because TETRA was developed outside of the U.S. and has only newly been introduced in the U.S., with PowerTrunk having 95% of the market share

for implementing the technology. Without its foreign employees, highly skilled in TETRA technology, PowerTrunk could not possibly continue training American employees. The other big TETRA supplier in the world, Motorola Solutions, does not offer TETRA in the U.S. for commercial reasons, and because it requires on-site training where the equipment is installed. It would be impossible to train remotely.

8. On or about October 11, 2019, PowerTrunk filed an L-1B extension petition (the initial L-1B petition was filed January 10, 2017) with U.S. Citizenship and Immigration Services (“USCIS”), because we wanted to continue to employ Victor Manuel Hernandez Hernandez (“Mr. Hernandez”) at our office in New Jersey. Mr. Hernandez is the beneficiary of the L-1B petition in the position of Senior TETRA Systems Engineer.
9. Mr. Hernandez has been in this position and working in New Jersey since 2017. He has been employed with our parent company, Teltronic, since 2012 (and had been an intern at our offices abroad while he was at University). USCIS approved our L-1B extension petition on October 22, 2019 with a validity period of February 1, 2020 – January 31, 2022. Mr. Hernandez then filed an application to renew his L-1B visa stamp in his passport. The new visa would enable him to reenter the U.S. in L-1B status after traveling abroad, once his prior visa expires. Mr. Hernandez was interviewed at the U.S. Embassy in Madrid, Spain, on January 9, 2020. He was asked to provide additional information, including a DS 5535, CV, description of the job, letter of invitation from the Petitioner, and letter of recommendation from the Petitioner. He submitted the requested information the next day, January 10, 2020. Mr. Hernandez received an email from the Embassy on February 10, 2020 as a reminder to submit the information (even

though he had already submitted it) and the DS 5535 for his wife (who had also applied for L-2 status with him). Mr. Hernandez submitted the requested information the same day, February 10, 2020. Because he had not heard from the Embassy after more than two weeks, Mr. Hernandez returned to the U.S. on January 18, 2020, and continued working at PowerTrunk on his prior valid L-1B visa.

10. Mr. Hernandez received notification from the U.S. Embassy about February 24, 2020, to send his passport for the purpose of receiving the L-1 visa stamp in his passport. As requested, Mr. Hernandez swiftly flew back to Spain and submitted his passport on March 10, 2020. On March 20, 2020, Mr. Hernandez submitted a follow up email to the Embassy. The Embassy responded that as of March 12, 2020, it was operating at reduced staffing, and appointments for consular services at the U.S. Embassy would be limited, thereby further delaying the stamp of his passport for the L extension. On March 31, 2020, Mr. Hernandez received another email from the Embassy stating that services had been suspended since March 12, 2020, the passport was in the mail department of the Embassy waiting to be processed once the services resumed, and an L visa holder was not permitted to travel back to the United States from the Schengen area.

11. Because Mr. Hernandez was urgently needed by NJ TRANSIT to continue to provide essential services support to NJ TRANSIT's public safety and bus radio system, a new system for mission critical communications, we requested assistance from our law firm, Duane Morris, LLP to try to obtain the visa stamp. Duane Morris sent correspondence to the Embassy on April 29, 2020, requesting emergency issuance of the L-1 visa stamp. The attorney included a letter from NJ TRANSIT explaining the critical need for Mr. Hernandez's services, which is attached to this declaration. The letter explained: "In

the event of major network outage, Victor's technical expertise, found nowhere else in PowerTrunk, Inc., is vitally important towards the recovery of NJ TRANSIT's mission-critical radio network. This is especially true during the COVID-19 crisis where it is more urgent than ever to make sure that the network does not have outages and if so, they are fixed immediately. We have been working with Victor on this project and he has critical knowledge of our system."

12. The Embassy responded, "...routine services in Madrid are suspended until further notice due to Presidential Proclamation 9993. We are unable to issue visas non-exempted in the proclamation." The next day, April 30, 2020, our attorney sent follow up correspondence emphasizing the urgency of our situation and again, requesting emergency treatment. On May 4, 2020, our attorney received an email response from the Embassy stating, "L1 visas are not included in the National Interest Exemption. Please visit our website regularly for updated information on when the Presidential Proclamation is lifted."

13. On or about May 14, 2020, we reached out to Congressman Greg Walden's office for assistance. His office contacted the Embassy to request assistance issuing the visa stamp. On June 4, 2020, they received the following response:

"Thank you for your inquiry regarding nonimmigrant visa applicant Victor Manuel Hernandez Hernandez. The U.S. Embassy in Madrid received Mr. Hernandez and Ms. Potenza's passports to complete their visa applications via the courier service the day before Spain enacted a state of alarm. During the state of alarm no delivery or collections by the courier service were permitted until this week. Mr. Hernandez and Ms. Potenza's passports were sent to them yesterday via the courier service. They should receive them in one week or less. When Presidential Proclamation 9993 is no longer in effect, we will be able to issue their visas."

14. Our attorneys contacted the Embassy again on July 27, 2020, after new guidance was

issued by the Stated Department again requesting a National Interest Exemption.

They received the following reply:

“If Mr. Hernandez doesn't have a valid visa issued in his passport, then his visa hasn't been approved. An approved petition I-797 does not mean he has a visa, it's only a requirement to apply for one. A consular officer has to approve a visa. Only a visa holder can apply for a NIE through this email address. Please be informed that L visas issuance is suspended due to Presidential Proclamation 10052 until, at least, December 31st, 2020.”

15. Mr. Hernandez has been stuck in Spain waiting for the Embassy to provide his L-1 visa stamp. Mr. Hernandez cannot return to work for PowerTrunk in L-1B status until he receives the L-1 visa and enters the United States in L-1B status.

16. Prior to him obtaining his L-1 renewal visa, we learned the Department of State would implement and enforce the President's June 22 Proclamation and suspend the issuance of most nonimmigrant visas, including the L-1 petition for the beneficiary unless they met a new requirement for a nonimmigrant visa, including a national interest exception.

17. This is causing an extreme hardship to our business and to Mr. Hernandez who has been living with relatives and staying at hotels in Madrid over the past few months as he does not have a home in Spain. Further, he has been separated from his wife who is in the U.S. and did not travel to Spain with him in March 2020

18. The absence of Mr. Hernandez at our New Jersey office for any further length of time is likely to result in the following severe, and irreparable harm:

- a. We have contracts with various transit agencies in the U.S. that we are required to perform with strict time lines and specific crucial tasks, for which Mr. Hernandez is the most critical liaison. His absence is causing a huge impact on our business, as only he has the technical expertise essential to properly service those contracts. For

example, we are under contract to provide a mission-critical LMR network to NJ TRANSIT. NJ TRANSIT is in the final stages of implementing this advanced digital LMR network, using TETRA technology, a system pioneered by PowerTrunk in the U.S. It is critical to the safety and security of NJ TRANSIT's operations. It is vitally important that NJ TRANSIT complete the implementation of this mission-critical, public safety network, especially given the recent COVID-19 crisis and its impact on NJ TRANSIT's operations and on the citizens of New Jersey. PowerTrunk and NJ TRANSIT have an urgent need for Mr. Hernandez's technical expertise to ensure the rapid completion of the NJ TRANSIT mission-critical LMR network and critical issues impacting its operations. Attached is a letter from NJ TRANSIT explaining the essential services that Mr. Hernandez provides to them. Mr. Hernandez is the most knowledgeable regarding the system and emergencies such as network outages, and we have no one like Mr. Hernandez to handle major outages and complex system integration issues. Such outages, if not rectified immediately, could result in the buses and upwards to 200 cars being trapped in tunnels, and other traffic chaos, that would jeopardize the safety of local communities. Mr. Hernandez's physical presence is essential, not only to immediately address potential outages, but also to complete the last phase of the NJ TRANSIT project, which requires hand-on systems integration work, which only he has the proper skills to do.

- b. Without Mr. Hernandez, we cannot comply with NJ TRANSIT's demanding contractual requirement to maintain its Bus Radio System operational at all times (5-minute downtime per year) and to complete the integration of NJ TRANSIT's Bus Radio System with an Automatic Vehicle Location ("AVL") system supplied by a third party, namely Clever Devices, a Long Island company. In the event of outages, which are not infrequent, the entire NJ

TRANSIT's bus operation would be compromised, as he is the only one at the company capable of troubleshooting such outages.

- c. For NJ TRANSIT, without Mr. Hernandez, who is PowerTrunk's leading expert in TETRA technology, PowerTrunk is already facing discredit with this important customer, which will negatively affect our reputation with other customers and members of the public who depend on our timely installation of vital services. For NJ TRANSIT there would be an inability to properly respond to network issues, including outages, considering the contractual requirement to meet key performance indicators such as network availability 99.999% of the time, which translates in the aforementioned maximum network downtime of 5 minutes per year. This would cause irreparable harm to the entire New Jersey transit system, a critical system to New Jersey and its residents. In addition, it would result in reputational damage, including unrecoupable financial loss of about \$200,000 if Mr. Hernandez is not able to return to complete the last phase of the project, as he is the only person at PowerTrunk with the requisite skills to do so competently. The resulting financial loss and reputational harm would force PowerTrunk to terminate employees, resulting in job losses for U.S. workers.
- d. Mr. Hernandez's absence will also imminently cause delays and other issues to the MTA/NYCT Bus Radio System Project, resulting in significant harm to our reputation, including potential loss of the contract altogether. Mr. Hernandez is the only qualified engineer we have to conduct complex commissioning in the field. Mr. Hernandez's advanced knowledge of our

proprietary technology cannot be duplicated or provided remotely. The first phase of the project (Staten Island) requires full integration of all subsystems in October 2020. Our situation is critical because, without Mr. Hernandez, we cannot satisfy our obligations to MTA/ NYCT. We will need to justify delays pursuant to the contract provisions, which will have an adverse impact on our business reputation and goodwill from MTA/NYCT as MTA is the largest transit agency in the U.S. All of PowerTrunk's potential customers closely follow PowerTrunk's performance in New York City and New Jersey. Because we work with the largest transit systems in the country, if we fail to perform, we are in dire straits. Our reputation would suffer severe, and likely irreparable damage.

- e. The unrecoupable financial losses we may suffer if Mr. Hernandez cannot resume his role in the U.S. and service the MTA/NYCT contract are staggering as well. The nonimmigrant visa ban is devastating for our company, especially in relation to the MTA/NYCT Bus Radio System Project which would result in a loss of revenue in 2020 and possibly the entire contract in the event of termination for non-performance –\$34-million and long-term reputational damage. Without assurance that Mr. Hernandez will be back to complete this work, there is a significant risk we will not be able to perform on the contract. If this happens, it will also affect our ability to hire additional U.S. workers because of the resulting financial hardship.
19. I am aware of no reason other than the June 22 Proclamation that is keeping Mr. Hernandez from obtaining the visa stamp he needs to return to the United States and

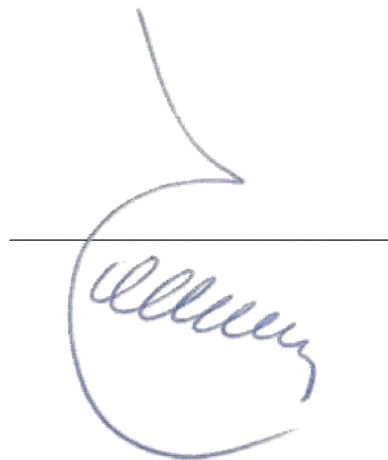
to work at PowerTrunk.

20. For the above reasons, I also fail to understand why the President believes our sponsorship of foreign nationals would somehow impair the economy or undermine economic recovery. Our technology, which we made available to American users at great expense and efforts, has been chosen by the most prominent American transit agencies, airports, and other industries because it allows implementation of voice- and data-centric applications over a single network. This contributes to reducing our customers' operational expenditure ("OPEX") because they do not need to pay for expensive, unreliable cellular-based services and, simultaneously, enjoy the benefits of a mission-critical-capable technology designed to stand when everything else fails. Back in 2012, Hurricane Sandy proved PowerTrunk right when all cellular systems went down for days, but our system remained operational. Our system was already in operation a few months before the Super Bowl XLVIII, a major sport event upon which NJ TRANSIT relied on PowerTrunk's TETRA technology.
21. The President's ban deprives companies like ours from temporarily employing talented foreign nationals in the manner Congress provided for in the immigration laws. I am willing to serve as a class representative on behalf of those who are similarly situated to me and cannot have foreign workers enter the United States on work visas because of the June 22 Proclamation.
22. I know that if the class is certified I will be representing more than our company in this case and would represent the similar interests of a large number of employers with approved nonimmigrant visa petitions that will be subject to the President's Proclamation, and thus cannot have the visas issued without meeting new

requirements enforced and implemented by the Department of State and other government agencies. I have spoken with the lawyers who represent me about what being a class representative means. I am willing and able to help similarly situated employers because we are all suffering due to the unfair restrictions on the entry of nonimmigrant workers imposed by this Administration.

23. On behalf of PowerTrunk, I know of no conflict which would prevent it from being a representative of other U.S. employers in the same situation. I have the authority to state on behalf of PowerTrunk that it is willing to accept this role.

Executed this 30th day of July 2020 at Jersey City, New Jersey.



Jose Martin
PowerTrunk, Inc.
President and CEO

Philip D. Murphy, Governor
Sheila Y. Oliver, Lieutenant Governor
Diane Gutierrez-Scaccetti, Commissioner
Kevin S. Corbett, Executive Director

NJ TRANSIT
One Penn Plaza East
Newark, NJ 07105-2246
973-491-7000

28 April 2020

Embassy of the United States of America
Consular Section
Calle de Serrano 75
28006 Madrid
Spain

To Whom It May Concern,

We are writing to request your immediate assistance to issue a visa to an essential contractor working on our mission-critical public safety radio network.

New Jersey Transit Corporation, an instrumentality of the State of New Jersey, established pursuant to N.J.S.A. 27:25-1 et. seq., with its principal offices located at One Penn Plaza East, Newark, New Jersey 07105-2246 (hereinafter "NJ TRANSIT"), is New Jersey's public transportation corporation. Its public safety mission is to provide secure, reliable, convenient and cost-effective transit service.

Covering a service area of 5,325 square miles, NJ TRANSIT is the nation's third largest provider of bus, rail and light rail transit, linking major points in New Jersey, New York and Philadelphia. The agency operates an active fleet of 2,221 buses, 1,231 trains and 93 light rail vehicles. On 252 bus routes and 12 rail lines statewide, NJ TRANSIT provides nearly 270 million passenger trips each year.

NJ TRANSIT is vital to the state's economic and social well-being and its citizens. Our workers are considered "essential" by the State. To safely and effectively operate and manage our large transit vehicle fleet, NJ TRANSIT is in the final stages of implementing an advanced digital land mobile radio network. This mission-critical system is vital to the safety and security of NJ TRANSIT's employees and the public users of our services. It is vitally important that NJ TRANSIT completes the implementation of this mission-critical, public safety network, especially given the recent COVID-19 crisis and its impact to our customers, employees, and services.

A critical element in our ability to complete this vital project is to have the complex technical support from our main equipment supplier, Teltronic S.A.U, of Zaragoza, through its U.S. subsidiary, PowerTrunk, Inc., Jersey City, New Jersey.

NJ TRANSIT has a contract with Nokia to complete our mission-critical public safety radio network and PowerTrunk, Inc. is the main equipment sub-contractor. One of PowerTrunk's employees, Victor Hernandez Hernandez, Passport Number PAD509363

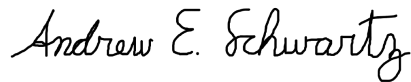
(Spain), is a vital technical resource and an **essential** participant necessary for NJ TRANSIT - and Nokia – to successfully complete this project.

Victor is PowerTrunk's best TETRA expert, the technology used by NJ TRANSIT. In the event of major network outage, Victor's technical expertise, found nowhere else in PowerTrunk, Inc., is vitally important towards the recovery of NJ TRANSIT's mission-critical radio network. This is especially true during the COVID-19 crisis where it is more urgent than ever to make sure that the network does not have outages and if so, they are fixed immediately. We have been working with Victor on this project and he has critical knowledge of our system.

NJ TRANSIT respectfully requests that the Consul General give due consideration to the expeditious processing of Victor Hernandez Hernandez's visa application to afford NJ TRANSIT with the necessary technical resource it needs to ensure the rapid completion of the project to implement its mission-critical land mobile radio network as well as providing it with the best possible technical resource to address critical operational issues impacting networks operations.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Andrew E. Schwartz". The signature is written in a cursive, flowing style.

Andrew E Schwartz
Director, Radio Communications
NJ TRANSIT
O +1 973 491 7745
C +1 201 407 3367
<mailto:aschwartz@njtransit.com>

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DOMINGO ARREGUIN GOMEZ, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States of
America, et al.,

Defendants.

Civil Action No. 1:20-cv-01419

DECLARATION OF TERRY NEWMAN

I, Terry Newman, make the following declaration based on my personal knowledge and declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct.

1. I am the owner and President of Superior Scape, Inc. (“Superior Scape”).
2. Superior Scape was incorporated in the state of Michigan in 1989. Our company headquarters are located at 51989 Schoenherr Rd., Shelby Township, Michigan, 48315. We are a small, family-owned business.
3. Superior Scape is a landscape contractor. Our clients include commercial and residential property owners, property management companies, corporations and governments. We operate year-round, providing snow removal services, holiday decorating, and winter landscaping services from mid-December through mid-March. We have a permanent year-round staff of 18 U.S. workers: 8 sales and office staff and 10 laborers. Ninety percent of our annual income from mid-December through mid-March is generated through our snow removal services. Starting in mid-March, our workforce swells by approximately 40 workers each year, and 100 percent of our

income is generated by our landscaping and groundskeeping services. Mid-March through mid-December is our primary period of need for foreign temporary workers.

4. Superior Scape has participated in the H-2B temporary worker program for approximately eight years total since its inception, but has relied on these workers for the last five consecutive years. Given the steady growth of our business and reputation as a great service provider, along with the revitalization of Michigan's economy, we have witnessed a growing demand for our professional landscape and groundskeeping services. Of course, the number of competing landscape contractors operating in our area, Southeast Michigan, has grown substantially as well. The growth of the landscaping industry, in combination with record low unemployment rates in the industry, has created fierce competition for landscape laborers for at least the past five years, and this remains true today. By paying wages well above the prevailing rate and maintaining a good relationship with our U.S. workers, we have a group of 10 to 15 U.S. seasonal workers who return to us each year during our period of peak need.
5. Over the past 10 years, we have been certified by the Department of Labor (DOL) to bring anywhere from 10 to 28 foreign workers to the United States on H-2B nonimmigrant temporary worker visas. Each year we then apply to U.S. Citizenship and Immigration Services ("USCIS") for permission to bring those workers to the United States. Upon approval, nonimmigrant visas are issued by the U.S. Consulate overseas and the workers travel to Michigan to work with us from April 1 through mid-December. In order to obtain certification from the DOL, we have to demonstrate that no qualified U.S. workers want the job in the area of employment at the prevailing wage. Thus, testing the U.S. job market is a prerequisite to our annual H-2B filing with USCIS.

6. Eighty percent of the workers we bring to the United States each year through the H-2B process have been returning workers. They know how to do the work, they are efficient, and our customers trust them. We have built our infrastructure based on a combination of local labor and the returning H-2B workers each year – we budget, set sales targets, and purchase equipment and plants to ensure we can fulfill our contracts with our customers and grow our company. Our company has enjoyed steady growth over the past five years due, in large part, to our ability to employ our H-2B workers. Yet we remain a small, family-owned business.
7. In 2020, due to the extremely high demand for these visas, the DOL set up a new program, whereby applications for temporary labor certification would be received for only three days. The DOL assigned numbers to each application, and a computer would randomly select a number of applications for processing in five groups: A, B, C, D, and E. Applications in group A would be processed first, followed by those in group B, etc. In three days, the Department of Labor received over 5,677 applications for 99,362 positions with only 33,000 visas available. We were selected to group B.
8. Although our application for temporary labor certification was processed promptly and as quickly as possible, by the time we received our certification the Department of Homeland Security had announced that all 33,000 H-2B nonimmigrant visas had been assigned and that no further visa petitions would be accepted.
9. Although we had to delay a number of contracts due to the absence of H-2B workers this spring, most of our customers were willing to allow us to complete the work planned for the spring this fall. We planned on employing 40 H-2B workers for employment from October 1 through December 19, 2020. We have prepared temporary labor certification

applications for these workers and are prepared to file them. Unfortunately, the President's June 22 proclamation halting the issuance of H-2B workers will prevent us from bringing any temporary workers to support our business this year.

10. Because the Proclamation will deprive us of these 40 essential workers, we will lose money this year. As of today, the projected financial loss this year due to the absence of our H-2B workers will jeopardize our solvency and ability to continue operations. As a small, family-run business we cannot withstand the loss of cash flow and income, which depend on our ability to employ seasonal H-2B workers.
11. Our application for temporary labor certification is ready to be filed as soon as we receive our prevailing wage determination from the DOL. Recruitment and certification will take approximately one month, and we will then then file the visa petition with a request for premium processing so that the petition can be approved within 10 calendar days. As there are plenty of visa numbers available for the first half of fiscal year 2021, we fully expect our petition to be approved in time to allow us to bring 40 workers to the U.S. for an October 1, 2020 start date. As far as we know, nothing would prevent our application from being approved in time to meet this October 1, 2020 date apart from the June 22 Proclamation.
12. While 40 H-2B workers is greater than the number of workers we normally employ on a seasonal basis, the greater number is necessitated because we postponed many major landscaping projects to the fall when we would have the necessary workforce available to complete those projects.
13. Without seasonal workers, we will be unable to fulfill the contracts as promised. This has already negatively affected our solid reputation in the community – customers

are angry because we cannot begin their work until a much later time, and some customers have cancelled. Landscaping is a highly competitive business and our reputation for high quality, honest work that is completed on time has remained a core principle that has kept us in business. Any further diminishing of our reputation will likely cost us far more than the multi-million loss projected for this year, as it may take years to rebuild the trust we have worked so hard to build. Our business is at risk due to the Proclamation's ban on seasonal H-2B workers. If we do not receive H-2B workers this October, we will have to consider closing the business.

14. Additionally, because we are grossly understaffed in laborers, we have transferred sales and executive employees to work alongside our landscape laborers to fulfill our existing contracts. We have terminated one salesperson, a U.S. citizen, in part because we do not have the labor force to support additional sales. We are planning to terminate a second salesman (also a U.S. citizen) because we do not have the laborers to support his sales. The inability to bring in foreign workers is literally causing us to terminate our valued American workers who have been with us for 12 and 25 years respectively.
15. We are doing everything we can to fill our need for labor with U.S. workers. If we could hire American workers, we absolutely would. We constantly recruit and recently placed two more job orders with the State of Michigan. We hired the only job applicant, but unfortunately, he never showed up to work. This, despite current COVID-related unemployment! The continued viability of our company depends on the 40 H-2B workers we need to employ this fall.
16. In short, our business's viability depends on the immediate end of President

Trump's Proclamation banning H-2B nonimmigrant visas.

17. The last time we were deprived of H-2B workers was 2017, when USCIS unexpectedly did not select and adjudicate our visa petitions in the first half of the year due to unprecedented demand. Although Congress authorized the Secretaries of Labor and Department of Homeland Security to issue additional visas, they did not do so until July 2017. Thankfully, we were able to employ our H-2B workers by mid-August. Until that point, we had projected losses of more than a million dollars and thought we would have to shut down at least until we could employ H-2B workers again. We realized that we could lose our reputation as a dependable servicer very quickly, as angry customers and competitors quickly used our labor shortage to harm our good name, resulting in a material loss of income. Fortunately, we were able to survive because of the work completed by our H-2B workers in the second half of 2017 and the fact that we obtained H-2B workers in April of 2018.
18. I am afraid of losing everything I have worked so hard for. I lie awake at night wondering what I will do if I have to close my business and fire our entire workforce. What will happen to their family members? What about our customers and community that benefit from our tax revenues and good business relationships? I know our losses will reverberate along the supply chain to the companies who sell us equipment and vehicles and provide us with product, to the banks who have financed our purchases, and to the businesses that will be impacted when employees will no longer have paychecks to spend.
19. I also worry about my own family. My business *is* my retirement plan. All of my assets are tied up in the business. I have built up the business with the idea that, when

the time comes, I would sell it and generate enough income to provide for my remaining years. I am afraid that I will have to start from scratch. Quite frankly, there's no reason I should have to because the law allows us to employ seasonal workers and we would like to continue doing so.

20. I have always tested the job market as required by the DOL and the Department of Homeland Security to demonstrate that there are no qualified, available American workers for the positions at the prevailing wage. We will always recruit workers wherever we can find them. There are simply very few American workers who want to perform hard labor for over 12 hours a day all season long, even considering the incredible amount of overtime pay.

21. Putting me out of business with a Proclamation that claims to protect the interests of U.S. workers makes no sense. If I go out of business, I will terminate all of the U.S. workers I have, including myself.

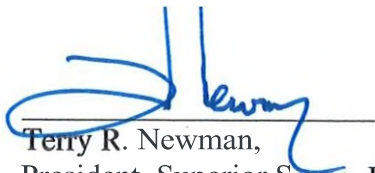
22. I am willing to serve as a class representative on behalf of those who are similarly situated to me.

23. I know that if the class is certified, I will be representing more than my own company in this case and would represent the similar interests of a large number of employers with certification from the DOL that there are insufficient numbers of U.S. workers who are ready, willing, and able to accept temporary employment, as well as those with approved nonimmigrant visa petitions that will be subject to the President's Proclamation and thus cannot have the visas issued without meeting new requirements enforced and implemented by the Department of State and other government agencies. I have spoken with the lawyers who represent me about what being a class

representative means. I am willing and able to help similarly situated employers because we are all suffering due to the unfair restrictions on the entry of nonimmigrant workers imposed by this administration.

24. On behalf of Superior Scape, Inc., I know of no conflict which would prevent it from being a representative of other U.S. employers in the same situation. I have the authority to state on behalf of Superior Scape, Inc. that it is willing to accept this role.

Executed this 29th day of July, 2020 at Shelby Township, Michigan,



Terry R. Newman,
President, Superior Scape, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DOMINGO ARREGUIN GOMEZ, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States of
America, et al.,

Defendants.

Civil Action No. 1:20-cv-01419

DECLARATION OF LAURA RODNITZKY

I, Laura Rodnitzky, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the Chief People Officer of 3Q Digital, a fully integrated digital marketing agency headquartered in Chicago, with employees located in San Francisco, Chicago, Denver, Austin, San Diego, Raleigh, Charlottesville, Dublin, and Singapore. 3Q Digital is a Delaware corporation established in 2008, with its executive headquarters located at 25 East Washington Street, Suite 420, Chicago, Illinois 60602.
2. I began my career with 3Q Digital in 2009. After spending several years on the digital marketing production side of the company, where I actively serviced our client accounts and led a large team of production and reporting associates, I transitioned to the operational side of the business. After 2 years running company-wide change management projects and the overall business operations, I then transitioned onto the human resources team, and ultimately became the Chief People Officer in 2018. As Chief People Officer, I lead the teams responsible for talent acquisition, talent development, human resources, benefits, people analytics, DEI (diversity, equity, and inclusion), and employee engagement, and culture.

3. 3Q Digital is the largest independent digital marketing agency in the United States. In 2019, we had over \$15 million in Gross Income. Our customer base includes leading brands such as Square, TurboTax, Mailchimp, TheRealReal, and Wine.com, and we partner with leading technology companies including Facebook, Twitter, Pinterest, LinkedIn, Google, Microsoft, and Apple Computers. For many of our customers, we manage their global digital marketing campaigns. 3Q Digital spends over a billion dollars on behalf of its clients and their marketing strategies every year.
4. 3Q is a worldwide industry leader and our clients expect quality service. Our best-in-class search, paid social media, and display techniques are combined with select technology partners and our in-house mobile, landing page optimization, design, and analytics teams for top-to-bottom campaign optimization. Over the course of many years, 3Q Digital has developed proprietary practices that, upon public distribution, have since become the industry standard. Our Alpha Beta campaign structure and Lin-Rodnitzky Ratio are considered best practices for measuring account health. Our proprietary single-objective social techniques have helped clients reach and convert high-performing new audiences. We offer our clients a unique Strategic Growth Assessment™, developed and executed by our Strategy Team, with recognition that the most significant opportunity for transcendent client growth integrates best-in-class channel management with wider-scope marketing levers.
5. We currently have 330 employees in the United States, consisting of U.S. Citizens and foreign nationals. More than 95% of our U.S. staff are U.S. citizens or Legal Permanent Residents. In addition to our operations in the United States, 3Q Digital has a global

presence. Our two international offices and six international employees serve our international clients.

6. The success of 3Q Digital thus far has been primarily due to the diligent efforts and dedication of our knowledgeable management and support staff, whose expertise has made 3Q Digital into a profitable company. We seek to hire the very best in the field, so that when our clients come to us with questions and problems that need to be solved, they know they are getting serious value for their money that they cannot get elsewhere. Our reputation—for being an industry leader, for being able to make our clients leaders in their own industries, and for being able to deliver integrated marketing strategies that allow our clients to grow their own businesses—is everything in a competitive marketplace. Hiring the best person possible for any opening we have allows us to anticipate and stay ahead of industry trends so that we can better serve our clients and position them for success. In a service industry, our people are our most valuable asset.
7. Because of the success we have built thanks to our employees, we have been able to truly support our employees and our clients during the economic downturn caused by the COVID-19 pandemic. Many of our competitor agencies suffered massive layoffs during these trying economic times. We furloughed approximately 3% of our staff in the spring, but have already been able to bring many of them back to full-time work, and we have not down-sized or laid off any U.S. workers due to COVID challenges. We also continue to give back to the communities where we have a presence. In fact, 3Q employees donated over \$7,000 to national and local organizations during COVID and the recent turbulent movements facing our nation. We continue to provide services at a discounted rate for

companies impacted by COVID and provide pro bono services to non-profits around the country.

8. Recruiting and retaining the best talent includes employing international workers on H-1B visas when necessary. 3Q Digital has had great success with employing international workers on H-1B visas. We sponsor two to three H-1B employees every year and currently employ four such workers in our offices in the United States, all in positions that we simply could not fill with U.S. talent.
9. As a data-driven company, the scientific and analytic background that many of our H-1B employees have is highly valuable and not easily found in many applicants, which empowers our company to continue to evolve. We strive to stay abreast of market trends, such as the movement towards decision sciences and analytics. The H-1B program has allowed us to strengthen our competitiveness by hiring workers with specialized skillsets, including deep analytics analysis.
10. We have also found that an international workforce leads to more creativity and productivity in the workplace, thanks to the diversity of perspectives and experience. This not only helps us to build a rich and more fulfilling workplace culture for all employees, but helps us develop successful global strategies for clients who are trying to reach a global customer base. Our ability to bring broad and diverse perspectives to the table is increasingly demanded by both current and potential clients, whose diversity-and-inclusion initiatives require that the vendors they hire have a diverse employee base, so as to better develop successful global strategies.
11. Our H-1B employees have made invaluable contributions to 3Q's success, enhancing our reputation for global excellence, expanding our service offerings, and boosting our overall

revenues by using their unique and specialized skill sets to develop new and creative solutions for our clients. Our H-1B employees are critical to our expansion plans, both domestically and worldwide. Improving the quality of our client services, enhancing our data analytics, and leading on diversity-and-inclusion initiatives for our clients—and thus staying ahead of market trends and giving our clients a competitive edge in their own industries—would not be possible if we could not hire H-1B workers.

12. Our employees best serve our needs when they are able to be present in our U.S. offices or onsite with our clients. Barring that, at the very least, our employees best serve our needs when they are in the same or similar time zone as their team members and client. These requirements exist because the innovations that our employees create are best attained through the collaborative environment we have at 3Q. It is extremely challenging, if not impossible, to recreate through online interaction the creativity and productivity that our employees generate through collaborative, in-person innovation—whether at 3Q’s offices or on-site with clients. It is thus critical that we be able to bring the best and the brightest people we can hire to the United States through the H-1B visa program. Working remotely is not a viable, long-term solution.

13. On or about March 30, 2018, 3Q Digital filed an H-1B nonimmigrant visa petition with U.S. Citizenship and Immigration Services (USCIS) on behalf of Mr. Balaji Bhat. We wish to hire Mr. Bhat as a Search Engine Marketing Account Manager in our San Francisco office. As a Search Engine Marketing Account Manager, Mr. Bhat will be responsible for the design and execution of paid search strategy, managing projects for client accounts, and acting as the primary paid search point of contact for assigned clients by answering client emails and leading weekly calls. He will drive paid search strategy for top-tier

clients; create roadmaps, plan strategic initiatives, and optimize efforts to hit client goals and targets; set and hit client targets for both volume and return on investment; identify and execute tasks that will have the most significant impact on hitting targets; quantify and prioritize initiatives and opportunities accordingly; monitor campaigns to ensure an account is pacing well relative to budgets and targets; and implement testing initiatives in key areas such as ad creatives, landing-page messaging, landing-page layout, audience segmentation, placements, networks, and third-party tools. Mr. Bhat's work is essential to meeting our largest client's needs and is essential to retaining their business.

14. At the time of filing the H-1B petition, Mr. Bhat was already employed at 3Q Digital as a Search Engine Marketing Account Manager pursuant to F-1 OPT (optional practical training) status. He sought a change of status to H-1B nonimmigrant status in conjunction with our petition. Prior to joining 3Q Digital, Mr. Bhat earned a bachelor's degree in Economics and a Certificate in New Media and Humanities from the University of Massachusetts in Amherst, Massachusetts.
15. We sponsored Mr. Bhat for an H-1B visa because he has been working on a significant client account for the past three years and, through his creativity and skill set, he has built up the client relationship in a way that no one else would be able to replicate easily. As one of the longest-standing 3Q team members on this client's account, He has developed intimate knowledge of the client, their marketing needs, the history of prior strategies and what has been successful and what has not. He combines this knowledge with his own creative talent to develop the strategy of how to spend the client's marketing budget and translate that into success. However, this client requires on-site service because 3Q Digital's marketing strategies are integrated into the client's business. The client further

demands that 3Q Digital staff its account with employees who are available to work in the same time zone. Staffing their account in this manner has been necessary to help them become, and will be necessary to allow them to remain, a leader in their industry.

16. Because of the irreplaceable contributions Mr. Bhat brings to this significant client account and ultimately to our bottom line, 3Q Digital has gone to extraordinary lengths to retain Mr. Bhat as an H-1B employee. On June 22, 2018, USCIS issued a Request for Evidence requesting additional evidence that the role of Search Engine Marketing Account Manager is a specialty occupation requiring a minimum of a bachelor's degree in a specific field. On September 13, 2018, we responded to the Request for Evidence. On November 27, 2018, USCIS denied our H-1B petition.

17. Mr. Bhat's OPT work authorization expired on September 30, 2018, and he was forced to depart the United States after his work authorization document expired. His departure represented a significant setback for us because of our client's demand for on-site service and same-time-zone availability. Ever since he departed the United States in 2018, Mr. Bhat has continued to work for 3Q Digital and this significant client account from abroad, first as a contractor and then as an employee through our Singapore entity. He has maintained U.S. working hours in order to do so, which has been extraordinarily difficult for both Mr. Bhat and his colleagues in the United States. Singapore is literally on the other side of the world—and therefore in an opposite time zone—which puts the United States' working hours and Singapore's working hours at opposite times of day. Since 2018, Mr. Bhat has been waking up at 10-11 pm his time from Sunday until Thursday to meet the same-time-zone requirement. He has been unable to lead a normal life in Singapore,

keeping as he does opposite hours from everyone around him. Keeping these hours is not sustainable for him.

18. Mr. Bhat's skills and experience are so valuable to 3Q Digital that in March 2019, we filed a lawsuit against USCIS pursuant to the Administrative Procedures Act in the U.S. District Court for the District of Columbia. We filed for summary judgment on June 28, 2019. On March 6, 2020, the Court found that USCIS abused its discretion in denying our H-1B petition. On June 15, 2020, after we followed up with the U.S. Attorney's Office regarding the decision, USCIS approved our H-1B petition on behalf of Mr. Bhat as valid from June 15, 2020 until September 6, 2021.
19. It took more than three months from the date of summary judgment being granted to USCIS approval of our H-1B petition—and that only occurred upon our prodding the U.S. Attorney's Office. Mr. Bhat immediately began compiling all the necessary paperwork, and within a week of receiving approval, on June 24, 2020, filed a DS-160 Nonimmigrant Visa Form and simultaneously began the process to request an emergency H-1B visa interview, as all U.S. consulates at the time were closed for routine visa appointments due to the worldwide coronavirus pandemic.
20. On June 22, 2020, before Mr. Bhat was able to obtain an H-1B nonimmigrant visa appointment, President Donald J. Trump issued an executive order suspending the issuance of several categories of nonimmigrant visas beginning on June 24, 2020. Because the suspension included H-1B visas, Mr. Bhat remains in Singapore to this day, awaiting the opportunity to apply for an H-1B visa stamp and enter the United States to continue working for 3Q Digital.

21. To date, 3Q has spent over \$36,000 to procure an H-1B visa for Mr. Bhat. We will not be able to recognize any return on that investment until he can return to the United States.

22. It is not possible to overstate the value that Mr. Bhat brings to 3Q, our client service, our teams' productivity and creativity, and our competitive advantage. It is for this reason that we have continued our efforts to bring Mr. Bhat back to the United States to work with our employees and clients here. Our inability to do so thus far has affected 3Q's business plans in the following ways:

- a. As noted above, Mr. Bhat is staffed on one of 3Q's largest and most important client accounts, and his work contributes to the large growth that this client is experiencing. This staffing decision reflects the significant value-add Mr. Bhat brings to 3Q's work for this important client, as well as the value the client has placed on Mr. Bhat's contributions—thanks in large part to the unique client relationship Mr. Bhat has developed. But while Mr. Bhat remains in Singapore, 3Q is unable to obtain the collaboration and synergies we otherwise would be able to recognize if he was in the same country and time zone as the client and the rest of the team members. Such in-person collaboration and innovation cannot be recreated through remote work. Our inability to staff our best team on our top accounts undermines the service we are able to provide and, ultimately, our reputation as a leader in the industry.
- b. Because Mr. Bhat is unable to work the same hours as the rest of the team, he is unable to pursue team management opportunities within the team, to the detriment of 3Q. In our industry, it is unheard of for someone to have as much tenure and experience as Mr. Bhat, but not yet be able to transition into a people-management

role, to teach, mentor, and grow other employees. But Mr. Bhat has not been able to move into such a position and share his knowledge and experience with other people at 3Q, because such mentorship is only truly effective with in-person client and colleague interactions. Because Mr. Bhat cannot be here in the United States, 3Q cannot promote him to a people-manager role, and we are thereby losing the ability to capitalize on his skills and experience, both from a people development standpoint, as well as a higher billable rate to the client, and enhanced revenue for 3Q, should Mr. Bhat advance to such a people management role. We will not be able to truly recognize the value that he can bring to our company until he is able to return to the United States.

- c. Additionally, our U.S.-based team members are sometimes required to work non-standard hours to be able to sufficiently overlap with Mr. Bhat, causing a burden on those individuals that could lead to potential burn-out if it needed to happen for a sustained period of time. Starting work prior to 8 am or scheduling calls well past 5 pm local time is not uncommon for our U.S.-based team.
- d. If Mr. Bhat cannot return to the United States before his H-1B status expires in September 2021, looking for a U.S.-worker replacement for the value that Mr. Bhat brings to the client and 3Q teams would be challenging, to say the least. Because of the skill set Mr. Bhat brings to 3Q, combined with three years of building client relationships and developing detailed knowledge of our client's account, it would be onerous and costly to find someone to adequately step into his shoes. And even then, any replacement would not have the same client relationship and trust that Mr. Bhat has developed.

- e. Because Mr. Bhat is overseas, our ability to enroll him in training and development activities are diminished. This minimizes our ability to invest in the talent we see in Mr. Bhat, to the detriment of 3Q Digital.
- f. Due to the significant time zone differences, Mr. Bhat is only able to overlap with our client and his team members four days per week, and not for the entire workday. Additionally, to have sufficient overlap, Mr. Bhat is working midnight hours, local time. In fact, 3Q Digital ends up expending additional resources in order to make up for the time zone difference, resources that could be more effectively and efficiently deployed elsewhere if Mr. Bhat were in the United States.
- g. As Mr. Bhat is the search engine marketing specialist on the large client account to which he is assigned, 3Q Digital misses out on strategic collaboration that would occur through organic brainstorming. 3Q Digital also misses out on discussions that would otherwise occur through inter-office interactions, which is critical for success.
- h. In short, as long as Mr. Bhat is unable to come to the United States, 3Q's productivity and innovation will be harmed in ways that can never be recouped if our reputation suffers harm as a result.
- i. Due to his non-resident status in Singapore, 3Q has been forced to pursue immigration authorization for Mr. Bhat from the Singapore government, which causes additional administrative and financial burdens that we would not incur if he were back in the United States. In particular, Mr. Bhat's Employment Pass for Singapore will expire in October 2020, and 3Q Digital is currently going through the necessary administrative steps to ensure that he is able to continue working in

Singapore, since it is still unclear when he will be able to return to the United States.

But for the Presidential Proclamation, we would not have to incur these expenses and additional administrative obligation. And once these expenses are incurred, they will be unrecoverable.

23. I am unaware of any reason, aside from the June 22 Proclamation, that would prohibit Mr. Bhat from receiving his visa to the United States.

24. In addition, because of the Presidential Proclamation, Mr. Bhat is unable to be with his family in San Francisco, CA and is having to manage the physical and mental toll that comes from the strain of working irregular hours in Singapore to have at least some overlap with the team and clients. The indeterminate amount of time that Mr. Bhat is left in limbo waiting to hear if/when he will be able to come back to the United States further exacerbates the impact of this order.

25. Apart from depriving us specifically of Mr. Bhat's invaluable contributions to the company, the Presidential Proclamation prevents us from hiring H-1B employees generally. Without H-1B employees, we will have great difficulty maintaining our quality of service and competitive edge. The best employee for a position is not always a U.S. worker, but the Presidential Proclamation limits the candidates we may consider. This harms our ability to remain nimble during a turbulent economic environment, find the best talent, and further harms our diversity and inclusion efforts as a company. Although we are not an H-1B dependent firm, we will hire them when they are the best candidate for an opening. And sometimes, H-1B applicants have been the only acceptable candidate for an opening. For example, we had a job opening for well over a year that was ultimately filled with an H-1B candidate. In an extremely competitive marketplace, the talent we recruit and

retain is how we maintain our industry leadership and our stellar reputation with our clients. We anticipate, for example, movement in our industry in the next six months towards stronger data analytics and also diversity-and-inclusion efforts that support more effective global marketing strategies. We need to be able to remain ahead of these trends by hiring the H-1B professionals who bring these skills and diversity of perspectives to the table. 3Q has specific diversity-and-inclusion metrics to meet by December 2020, and the Proclamation hamstrings our efforts to hire and retain the talent that allows us to be a first-mover on industry developments and meet these internal goals. This is particularly harmful to us at a time when we need every competitive advantage to maintain our success as the largest independently owned digital marketing agency. Without being able to hire employees who require H-1B sponsorship, we will miss out on their talent that enables to give our clients what they demand. This lost opportunity and inability to hire the best candidates will harm our reputation and thus our market share in the industry.

26. The President's ban deprives companies like ours from temporarily employing talented foreign nationals in the manner Congress provided in the immigration laws and regulations. It is difficult for me to understand why the President believes our sponsorship of foreign nationals for H-1B petitions would somehow take away from the United States' economic recovery. Our preference is to hire U.S. workers, but when we are unable to fill key roles that are critical to our own and our clients' success with U.S. workers, we expand our search and often find talented foreign nationals who are fantastic fits for 3Q Digital and who boost our productivity and innovation for our clients—and therefore for the U.S. economy. Just as these foreign nationals contribute to our successes, our inability to recruit and hire these critical workers detracts from our successes and our overall performance.

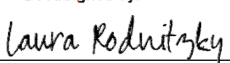
27. 3Q Digital is willing to serve as a class representative on behalf of those who are similarly situated.

28. I know that if the class is certified we will be representing more than our company in this case and would represent the similar interests of a large number of employers with approved nonimmigrant visa petitions that will be subject to the President's Proclamation, and thus cannot have the visas issued to their sponsored employees without meeting new requirements enforced and implemented by the Department of State and other government agencies. I have spoken with the lawyers who represent me about what being a class representative means. I am willing and able to help similarly situated employers because we are all suffering due to the unfair restrictions on the entry of nonimmigrant workers imposed by this Administration.

29. I understand that a class representative has claims that are typical of members of the class. By typical, I understand that our claims against Defendants are like the claims of other U.S. employers in the class because 3Q Digital and each of them has, or will receive the same unlawful treatment pursuant to the Proclamation and its implementation at consulates.

30. On behalf of 3Q Digital, I know of no conflict which would prevent it from being a representative of other U.S. employers in the same situation. I have the authority to state on behalf of 3Q Digital that it is willing to accept this role.

Executed this 23th day of July 2020 at Chicago, IL.

DocuSigned by:

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Laura Rodnitzky, Chief People Officer
3Q Digital