

Page 1	Page 3
<p>1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 2 IN AND FOR THE COUNTY OF MARICOPA 3 4 GALLERY COMMUNITY ASSOCIATION, an Arizona non-profit corporation, 5 6 Plaintiff, 7 8 vs. 9 10 K. HOVNIANIAN AT GALLERY, LLC, an Arizona limited liability company; 11 K. HOVNIANIAN ARIZONA OPERATIONS, 12 LLC, an Arizona limited liability company; K. HOVNIANIAN DEVELOPMENTS 13 OF ARIZONA, INC., an Arizona corporation; K. HOVNIANIAN COMPANIES 14 OF ARIZONA, LLC, an Arizona limited liability company; JOHN 15 DOES I-X AND JANE DOES I-X, WHITE 16 CORPORATIONS I-X; BLACK 17 PARTNERSHIPS I-X; AND GRAY LIMITED 18 LIABILITY COMPANIES I-X, 19 20 Defendants. 21 22 K. HOVNIANIAN AT GALLERY, LLC, an 23 Arizona limited liability company; 24 K. HOVNIANIAN ARIZONA OPERATIONS, 25 LLC, an Arizona limited liability company; K. HOVNIANIAN DEVELOPMENTS OF ARIZONA, INC., an Arizona corporation; K. HOVNIANIAN COMPANIES OF ARIZONA, LLC, an Arizona limited liability company; Third-Party Plaintiffs, vs. CHAS ROBERTS AIR CONDITION, INC., an Arizona corporation; DESERT VISTA, INC., an Arizona corporation; GOTHIC LANDSCAPING, INC., a California corporation; HOME BUILDERS SITE SERVICES OF</p>	<p>1 APPEARANCES OF COUNSEL 2 On Behalf of the Plaintiff Gallery Community Association: 3 Grace Osberg, Esq. Penny Manship, Esq. 4 BURG SIMPSON ELDRIDGE HERSH & JARDINE P.C. 8310 South Valley Highway, Suite 270 5 Englewood, Colorado 80112 (303) 792-5595 6 gosberg@burgsimpson.com 7 8 On Behalf of the Defendants/Third-Party Plaintiffs K. Hovnianian at Gallery, LLC; K. Hovnianian Arizona Operations, 9 LLC; K. Hovnianian Developments of Arizona, Inc.; K. Hovnianian Companies of Arizona, LLC: 10 Louis W. Horowitz, Esq. LORBER, GREENFIELD & POLITO, LLP 11 3930 East Ray Road, Suite 260 Phoenix, Arizona 85044 12 (602) 437-4177 lhorowitz@lorberlaw.com 13 14 On Behalf of the Third-Party Defendant LeBlanc Building Co., Inc.: 15 16 Michael A. Ludwig, Esq. JONES, SKELTON & HOCHULI, P.L.C. 17 40 North Central Avenue, Suite 2700 Phoenix, Arizona 85004 18 (602) 263-7357 mludwig@jshfirm.com 19 20 On Behalf of the Third-Party Defendant Liberty Constructors: 21 22 Scott Zerlaut, Esq. SHORALL MCGOLDRICK ZERLAUT 1232 East Missouri Avenue 23 Phoenix, Arizona 85014-2912 (602) 230-5400 scott@shorallmgoldrick.com 24 25</p>
<p>1 ARIZONA, LLC, an Arizona limited liability company; LEBLANC BUILDING 2 CO., INC., an Arizona corporation; LIBERTY CONSTRUCTORS, LLC, an 3 Arizona limited liability company, dba LIBERTY ARIZONA; RENCO LLC, an 4 Arizona limited liability company, dba RENCO ROOFING; R/S SERVICE & 5 SUPPLY, INC., an Arizona corporation; SARGON MASONRY 6 CONSTRUCTION, LLC, an Arizona limited liability company; and DOES 7 1-50., 8 9 Third-Party Defendants. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Angela Fritts, RPR, Arizona Certified Reporter, No. 50615</p>	<p>1 APPEARANCES OF COUNSEL (Continued) 2 On Behalf of the Third-Party Defendants Renco Roofing and Desert Vista, Inc.: 3 4 Rina Rai, Esq. Marcus McGillivray, Esq. 5 RAI DUER HUFF, P.C. 3033 North Central Avenue, Suite 500 Phoenix, Arizona 85012 6 (602) 476-7100 rrai@raiduer.com 7 8 -AND- 9 10 Paul Frame, Esq. FRAME LAW, PLLC (2901 North Central Avenue, Suite 1600 Phoenix, Arizona 85012 11 (480) 508-7282 12 13 * * * 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1 INDEX OF EXAMINATION

2 WITNESS: Todd Jones

3 EXAMINATION PAGE

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5 By Ms. Osberg 81

6 * * *

7

8 E X H I B I T S

EXHIBITS	DESCRIPTION	MARKED
10 Exhibit 108	Notice of Deposition of Rule 30(b)(6) Designee of Desert Vista, Inc., aka Todd Jones	13
12 Exhibit 109	5/3/2016 K. Hovnanian Homes Memorandum, Bid Notification - The Gallery (DV000130 - 000131)	24
14 Exhibit 110	June 10, 2016 K. Hovnanian Homes Memorandum Bid Award - The Gallery (DV 000132)	31
16 Exhibit 111	Master Subcontract Agreement - Desert Vista, Inc. (KHOV00000414 - 00000467)	31
18 Exhibit 112	7/21/2016 Work Agreement - Desert Vista, Inc. (DV 000168 - 000169)	44
19 Exhibit 113	7/21/2016 Work Agreement - Desert Vista, Inc. (KHOV00000947 - 00000948)	48
21 Exhibit 114	K. Hovnanian Homes, Standard Specifications, The Gallery (DV 000139 - 000167)	68
23 Exhibit 115	ICC-ES Evaluation Report - ESR-2407 (DV 001176 - 001177)	85

24 * * *

25

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1 TODD JONES,

2 having been first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 THE REPORTER: Thank you. Please proceed.

5

6 E X A M I N A T I O N

7 BY MR. HOROWITZ:

8 Q. All right. We introduced ourselves before, but

9 could you please state your full name for the record?

10 A. Todd Jones.

11 Q. All right. Mr. Jones have you ever had your

12 deposition taken before?

13 A. Yes.

14 Q. Okay. When did you have that taken?

15 A. It's been some time. I don't recall exactly

16 when.

17 Q. Okay. What I'm going to do is go through the

18 instructions for the deposition. You might have heard

19 some of these things already from your attorneys, but give

20 me the opportunity to go through everything so you know

21 what to expect and how the process works.

22 If you've got a question for me about these

23 instructions or about any of the questions that I ask you,

24 let me know and give me a chance to explain. Is that

25 fair?

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1 DEPOSITION ON TODD JONES

2 September 1, 2022

3 P R O C E E D I N G S

4 THE REPORTER: Good afternoon. My name is

5 Angela Fritts, I am a Certified Court Reporter for the

6 State of Arizona. My certification number is 50615.

7 This deposition is being held via

8 videoconferencing equipment. The witness and the reporter

9 are not in the same room. The witness will be sworn in

10 remotely pursuant to agreement of all parties. The

11 parties stipulate that the testimony is being given as if

12 the witness was sworn in person.

13 Does everyone agree? Noticing attorney

14 first, please.

15 MR. HOROWITZ: I agree, this is Lou

16 Horowitz for Defendants.

17 MS. OSBERG: I agree, this is Grace Osberg,

18 counsel for Gallery Community Association.

19 MR. LUDWIG: Agreed, Michael Ludwig for

20 LeBlanc Framing.

21 MR. ZERLAUT: Scott Zerlaut for Liberty

22 Constructors, I agree.

23 MS. RAI: And Rina Rai for RenCo and Desert

24 Vista, agreed.

25

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1 A. Yes.

2 Q. Okay. So, I'm going to ask you a series of

3 questions today. The court reporter is going to take down

4 all parts of my questions, all parts of your answers, and

5 anything else that's said in the room. Other attorneys

6 will probably have questions for you afterwards.

7 This is just like testimony that you might have

8 give in a court of law. The main difference is we are

9 here on our own time and we don't have the judge and jury

10 with us and waiting on us.

11 (Ms. Manship joins the proceedings.)

12 Q. The court reporter is taking down everything to

13 be used to generate a transcript that might be used for

14 any kind of purpose in the lawsuit between the

15 Gallery HOA, KHOV, and subcontractors.

16 Since we don't have a judge or jury here

17 listening, if there are objections we're not going to

18 argue them today. You're going to hear from time to time

19 your attorney or some of the other attorneys here say

20 "form" or "foundation." They're going to be making

21 objections for the record. We will not argue those on

22 your time. If anybody ever tries to use that part of the

23 transcript for any purpose then the attorneys and the

24 judge will work out whether or not that is an

25 objectionable, you know, that's an objectionable question.

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1 the numbers as far as my computer would let me go back.
2 Q. Okay. I'm going to ask you more about that and
3 we'll definitely get to that a bit more. For now, I'm
4 going to keep going through this document, because there
5 are other things here.
6 You see I'm highlighting the top of this page it
7 says, "Exhibit A to Master Subcontract, Form of Work
8 Agreement, To Follow"?
9 Do you see that?
10 A. Yes.
11 Q. And next page is 21 of the PDF, looks like an
12 exemplar of the work agreement. Is that what it looks
13 like to you?
14 A. I don't know what you mean by "exemplar."
15 Q. Like this page 20 says "Form of Work Agreement"
16 and as far as I can tell, what this is, is a blank work
17 agreement. It looks to me like a form work agreement or
18 sample work agreement.
19 Can you tell by looking at the document if
20 that's what it is?
21 A. Appears the same way to me. It's a blank
22 document, but they are referencing all of their
23 subdivisions on it not just the one. This is six years
24 before Gallery even started.
25 Q. Right. It looks like you signed this on 3/10.

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1 It looks like this is something that would have been
2 included in that master services agreement or that Master
3 Subcontract Agreement that you got and signed in March of
4 2010, right?
5 A. I guess, yeah. It looks like my signature.
6 Q. Yeah. And then next the next page of the
7 document says, "Exhibit A to Work Agreement, Scope of
8 Work." Do you see that?
9 A. I do.
10 Q. Okay. And then the next page of this is
11 page 23, looks like it's got at the top a DocuSign
12 envelope ID.
13 Do you see that?
14 A. I can see that, yeah.
15 Q. Okay. And then in the lower right-hand corner
16 it says, "One-Coat Lath Stucco Scope 9.1.16."
17 Do you see that?
18 A. I do.
19 Q. Okay. And in the lower left-hand corner there's
20 space for signatures by the contractors and the
21 subcontractors. Does that look to you like a DocuSign
22 type signature with the shape around it?
23 A. Can you zoom in on it?
24 Q. I can do that. I can't do that with a stack of
25 papers, but today I can do that.

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1 See what I'm talking about here?
2 A. That doesn't look like my signature at all.
3 Q. Well, it says "TJ." Do you see that? Or it
4 looks like --
5 A. Well, I see it.
6 Q. Sorry, I couldn't hear what you said.
7 A. I can see it.
8 Q. Okay. This does not look like it's your
9 signature?
10 A. That's not my personal signature, no.
11 Q. Okay. Do you know -- Okay. can you tell my
12 looking at this document, especially by looking at the
13 notation at the top with the DocuSign envelope ID and
14 looking at these brackets around the initials, whether or
15 not this is a document that you DocuSigned at some time?
16 A. I do not recall.
17 Q. Okay.
18 A. I mean, I use DocuSign now. I might have been
19 using it at that point there, too.
20 Q. Is this the document that you reviewed in your
21 own file that you were just mentioning?
22 A. I'm not completely sure. I don't remember it
23 being 16 pages long.
24 Q. Do you remember or do you know if your files
25 contain any versions of the stucco scope of work from

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1 K. Hovnanian Homes?
2 A. So, if I'm understanding what this is actually
3 looking like, this is a general scope of work for lath and
4 stucco. If that's the case, they would have had one that
5 we had signed probably when we initially started doing
6 work for them, which looks like it was all the way back to
7 2010. And then it looks like this is one, I have to see
8 the date again.
9 Q. Well, you'll see some different dates. The date
10 in the lower right-hand, the printed date in the lower
11 right-hand corner is 9/1/16.
12 A. Okay.
13 Q. And I can go through the document or I'll tab
14 through the document. Let me know if there's a page you
15 want to look at right now. I'm just trying to get to the
16 end, because I want to show you something. I want to be
17 very clear. On the 16th page this particular version
18 appears to have a signature from Barbara Clark dated
19 2/22/2018. Do you know who Barbara Clark is?
20 A. No.
21 Q. Is that somebody from your company?
22 A. No.
23 Q. Okay. It looks like -- oh, I'm looking at the
24 wrong page. If I go to 447 it looks like it says
25 "DocuSigned by Todd Jones 2/22/2018." Do you see that?

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1 telling us what we were required on the job.
2 Q. Okay. This isn't the document you thought you
3 saw that said that you --
4 A. No.
5 Q. -- disregard certain parts of the plans and
6 designs.
7 A. Sorry, I read it and I'd have to go try to track
8 down where it is where I actually read that. But on this
9 subdivision if you look there is stuff even right there in
10 that spec where it's telling everybody to use QuickFlash,
11 that the electrician, all these guys they put the
12 QuickFlash in. That's a complete different process than
13 what the details of the plans were showing. And I'd have
14 to read the whole document to look.
15 MS. RAI: I think it might be on page one,
16 Lou, of the specs.
17 Q. Where it says, "Standard Specifications override
18 plans, if there are any questions contact the purchasing
19 department."
20 A. Yeah.
21 Q. This document is the standard specifications,
22 right?
23 A. That is the specifications for the Gallery, yes.
24 Q. And the standards specifications are the items
25 that we read through or that you read through at page 26

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1 of 29 and page 27 of 29, correct?
2 A. Correct.
3 Q. And it's a number of bullet points:
4 Scaffolding, Amerimix PRE-MIXED stucco standard; sand
5 texture; square corner aid; electrical/low
6 voltage/mechanical/plumbing trades responsible for their
7 own flashing (QuickFlash); pop outs with Silica sand
8 finish; some pop outs by stucco sub and some pop outs by
9 the framer; penetrations through lath to be caulked with
10 Butyl caulk; weep metal to be installed per current IBC
11 code; Diamond Lath behind all the masonry areas; and caulk
12 weep metal to so sole plate exterior wall.
13 Those are all the items in the stucco section of
14 the standard specifications, correct?
15 A. Correct.
16 Q. Are there any other standard specification items
17 or do any of these things contradict -- you know, I don't
18 need to ask that.
19 But this is definitely the document you're
20 thinking of, page 21 and anything on this page 26 or
21 page 27 that contradicts the plans?
22 A. Correct.
23 Q. Okay. I didn't see anything about weep screeds.
24 I didn't see anything about whether or not to put a weep
25 screed in the soffit in that page 26 or 27, did you?

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1 A. You're asking me?
2 Q. Yeah.
3 A. No. The only reference to the weep screed there
4 is at the bottom plate.
5 Q. Yeah --
6 A. And the bottom --
7 Q. And when you do it, per current IBC, right?
8 A. Pardon me?
9 Q. And that it needs to be per current IBC, right?
10 A. Correct.
11 Q. You're aware the plaintiff and its expert are
12 critical of the weather-resistant barrier used here,
13 correct?
14 A. Correct.
15 Q. Who supplied and installed the weather-resistant
16 barrier on the Gallery project?
17 A. I believe we were using MDC materials, it might
18 have been ATKO materials at the time.
19 Q. Was it within your scope of work to provide and
20 install the weather-resistant barrier at Gallery?
21 A. Yes.
22 Q. Was it within your scope of work to provide all
23 weeps and weep screeds at the Gallery project?
24 A. At the sole plate, yes.
25 Q. Well, was anybody else providing or installing

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1 weep screeds at Gallery?
2 MS. RAI: Form, foundation.
3 Q. Let me ask a different way.
4 If there's a weep screed in the stucco at
5 Gallery would that have been within your scope of work or
6 within someone else's scope of work?
7 A. What I can answer is that I know that weep
8 screed at the sole plate was in our specifications to be
9 done, but as to what others were required to do, I don't
10 know.
11 Q. I'm not asking what -- I'm not asking where a
12 weep screed is required, I'm asking who did them. Did
13 framers install any weep screeds at the project?
14 A. I have no idea.
15 Q. Did KHOV self-install any weep screeds at the
16 project?
17 A. That, I can't tell you either.
18 Q. Did any part of your scope of work exclude any
19 of the weep screeds that were necessary to be installed
20 and integrated into the stucco system or the one-coat
21 system at the project?
22 A. I don't know.
23 Q. You're aware that plaintiff and its expert are
24 critical of the EPS insulation foam boards that were
25 installed at the project, correct?

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1 A. I am.
2 Q. Okay. Was the installation of EPS foam board
3 within Desert Vista's scope of work?
4 A. Yes.
5 Q. Okay. You're aware that plaintiff and its
6 expert are critical regarding the self-adhered membrane
7 under horizontal portions of the stucco system, correct.
8 A. I'm sorry, could you say that again?
9 Q. Sure.
10 Are you aware that plaintiff and its expert are
11 critical about the self-adhered membrane installed under
12 horizontal parts of the stucco system?
13 A. Yes.
14 Q. Okay. Was the installation of the self-adhered
15 membrane part of Desert Vista's scope of work?
16 A. I don't completely recall, but I would think
17 it -- I don't know. It's not on the specifications listed
18 here and it's been a while.
19 Q. Okay. If there is weather-resistant barrier
20 that goes over the top of a wall or a parapet wall and
21 self-adhered membrane that's supposed to be integrated
22 with that, do you know if that's something that would be
23 within your scope of work or not?
24 A. I don't know.
25 Q. No, you don't know or, no, it didn't?

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1 A. No, I don't know. It depends on the
2 circumstances, I guess, of where on the building it is.
3 Q. What if it's on a parapet wall?
4 A. Well, the parapet walls I'm not sure. I'm not
5 sure who did it on those.
6 Q. What if it's under stucco?
7 A. That doesn't mean somebody else couldn't have
8 put it on before we got there.
9 Q. But you don't know if that's within your scope
10 of work?
11 A. No, I don't know if we were the ones that were
12 required to install it or not. Kind of like I was saying,
13 the metal flashing was supposed to be on top of our work
14 out there.
15 Q. Was it within your scope of work to install
16 control joints or movement joints in the stucco?
17 A. Yes, per plan.
18 Q. Now, you're aware that plaintiff and its expert
19 are critical of the placement and extent of the control
20 and movement joints, correct?
21 A. I'm aware of this, yes.
22 Q. I'm not asking if you disagree or agree with
23 their comments.
24 Do you agree that it is within your scope of
25 work to install control joints in your stucco product?

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1 A. Per plan.
2 Q. Okay. We spoke about the issues with plans,
3 designs, and constructability in the course of discussions
4 of the bid and contract documents. I want to ask you, I'm
5 just trying to clarify that this next question is a little
6 different.
7 Do you recall during the construction of Gallery
8 there being any issues that you or anyone else from
9 Desert Vista became aware of in the plans, in the designs,
10 or in the specifications that required clarification,
11 explanation, or additional instructions from K. Hovnanian?
12 A. Nothing specific, no.
13 Q. Okay. Do you recall any issue where you ever
14 needed any kind of clarification, additional instruction,
15 or, you know, or an RFI where you didn't get it?
16 A. Well, if I didn't get it I wouldn't know.
17 Q. Well, if you asked for something, if you asked
18 for something from K. Hovnanian did you get it?
19 A. Honestly, I don't recall. I wasn't on this
20 subdivision.
21 Q. Okay. Do you have any records of any kind of
22 written request for information being made?
23 A. Not that I'm aware of.
24 Q. Do you have any information that you got from
25 any of the people who were involved in the construction

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1 about whether or not any requests for information were
2 made in writing or otherwise?
3 A. Not that I recall.
4 Q. Okay. Did Desert Vista ever receive any
5 instructions from K. Hovnanian that Desert Vista believes
6 were improper or incorrect for the construction of the
7 Gallery project?
8 MS. RAI: Form.
9 A. I mean, I personally don't know. They could
10 have talked to my superintendents, which is often how
11 those things during the construction happen. Their
12 supervisor talks to our supervisor and tells him how to do
13 it. Sometimes they bypass our supervisor and go straight
14 to our crews. So, without knowing a specific that you're
15 talking about I've got no idea.
16 Q. Well, I'm not talking about a specific.
17 A. Okay.
18 Q. I want to make sure that I understand what
19 Desert Vista is going to testify about or I want to
20 understand what Desert Vista's position is and you're the
21 designee. And you're the one who's made yourself
22 knowledgeable about the issues on the list if you weren't
23 already; is that fair?
24 A. Yeah, that's fair. I'm knowledgeable about how
25 we do the work and stuff like that, but I'm not on the

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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)
 3 C E R T I F I C A T E
 4 BE IT KNOWN that the foregoing deposition was taken
 before me; that the witness before testifying was duly sworn
 5 by me to testify to the whole truth; that the 88 foregoing
 pages are a full, true and accurate record of the
 6 proceedings, all done to the best of my skill and ability;
 that the proceedings were taken down by me in shorthand and
 7 thereafter reduced to print under my direction.
 8 I CERTIFY that I am in no way related to any
 parties hereto nor am I in any way interested in the outcome
 9 hereof.
 10 [XX] Review and signature was requested.
 [] Review and signature was waived.
 11 [] Review and signature was not requested.
 12 I CERTIFY that I have complied with the ethical
 obligations set forth in ACJA 7-206.
 13
 14 DATED this 19th day of September,
 2022, Phoenix, Arizona.
 15
 16 *Angela Fritts*
 17 _____
 Angela Fritts, RPR
 Arizona Certified Reporter, No. 50615
 18
 19 It is FURTHER CERTIFIED that Esquire Deposition
 Solutions, LLC, Registered Reporting Firm, has complied with
 20 the ethical obligations set forth in ACJA 7-206.
 21
 22 _____/s/_____
 23 Registered Reporting Firm
 Arizona RRF No. R1048
 24
 25

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1 DEPOSITION ERRATA SHEET
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 22 Reason for change: _____
 23 _____
 24 SIGNATURE: _____ DATE: _____
 25 TODD JONES

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1 DEPOSITION ERRATA SHEET
 2
 3 Our Assignment No. J8562241
 4 Case Caption: Gallery Community Association v. K. Hovnianian
 5 Gallery, LLC, et al.
 6
 7 DECLARATION UNDER PENALTY OF PERJURY
 8
 9 I declare under penalty of perjury that I have read the
 10 entire transcript of my deposition taken in the
 11 above-captioned matter or the same has been read to me and
 12 the same is true and accurate, save and except for changes
 13 and/or corrections, if any, as indicated by me on the
 14 DEPOSITION ERRATA SHEET hereof, with the understanding that I
 15 offer these changes as if still under oath. Signed on the
 16 day of month , 2022.
 17
 18 _____
 TODD JONES
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1 DEPOSITION ERRATA SHEET
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 25 TODD JONES