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 9 STACKLA, INC., STACKLA, LTD., and  
 STACKLA PTY LTD.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

14 STACKLA, INC., a Delaware Corporation,  
 15 STACKLA, LTD., An English Limited  
 16 Company, and STACKLA PTY LTD., an  
 Australian Proprietary Limited Company,

17 Plaintiffs,

18 v.

19 FACEBOOK, INC., a Delaware Corporation,  
 20 INSTAGRAM, LLC, a Delaware Limited  
 Liability Company, and DOES 1-50,

21 Defendants.  
 22

Case No. 3:19-cv-5849

**DECLARATION OF DAMIEN WILLIAM  
 MAHONEY IN SUPPORT OF THE  
 STACKLA PLAINTIFFS' *EX PARTE*  
 MOTION FOR TEMPORARY  
 RESTRAINING ORDER AND ORDER TO  
 SHOW CAUSE RE INJUNCTION.**

**DECLARATION OF DAMIEN WILLIAM MAHONEY**

I, Damien William Mahoney, declare as follows:

1. I am the Chief Executive Officer and a director and shareholder of Plaintiff Stackla Pty. Ltd. (“Stackla Pty”). Stackla Pty is the parent company and sole owner of Plaintiffs Stackla Ltd. and Stackla Inc (“Stackla US”). The three Stackla companies that are plaintiffs in this action are referred to herein collectively as “Stackla.”

2. I submit this declaration in support of Stackla’s *Ex Parte* Motion for Temporary Restraining Order and Order to Show Cause re Injunction. Except where indicated, I have personal knowledge of the following facts and if called as a witness, I could and would testify competently thereto. Stackla seeks emergency relief due to the actions of Defendants Facebook, Inc. (“Facebook”) and Instagram, LLC (“Instagram”) (collectively, “Defendants”) as set forth herein because Stackla has suffered and will continue to suffer irreparable harm. Stackla’s existence is now in jeopardy because Defendants have cut Stackla off from access to Facebook and Instagram, the social media platforms upon which Stackla’s business relies. Without relief, Stackla will be forced to terminate its customer contracts, will be unable to carry on its business, all or most of its employees will lose their jobs, \$18 million USD in investor funds will be lost, and future capital raising efforts and an anticipated initial purchase offering (“IPO”) will be unachievable. As a result, a thriving company will be destroyed, and the market will have lost its premier enterprise player, resulting in less competition.

3. I am the Chief Executive Officer and Co-Founder of Stackla, commencing in the role when the company started in June 2012, I report directly to Stackla’s board of directors, I share responsibility for the company’s overall operations, and I provide strategic direction of the company. In this role, I am familiar with Stackla’s software and application, business model, customer and investor relationships, and Stackla’s business operations around the world.

4. There are six executive managers or VPs in Stackla who report to me. They are responsible for managing specific functions within the company, such as sales, finance and human resources. I actively work with these individuals to ensure their respective departments support Stackla’s strategic plan, and assist them in running their departments as efficiently as possible.

1           5.       The Stackla platform provides a vital service for our customers, allowing them to  
2 source high-quality, branded, public content from their loyal customers from social media sites,  
3 gain approval to use this content, and then re-purpose this content in their own marketing  
4 activities. We work with all of the large social networks such as Facebook, Twitter, YouTube and  
5 Instagram, from which we collect public content. The vast majority of the content Stackla relies  
6 on for its business, however, comes from Facebook and Instagram, which are the world's largest  
7 and most active social media platform.

8           6.       When we started Stackla, we wanted to highlight the quality content that  
9 consumers create daily and post publicly. We acknowledge their efforts, while at the same time  
10 ensuring they have provided our customers with the necessary permissions to use their content.  
11 Our vision is to enable authentic communication and to build trust between the world's top brands  
12 and their consumers.

13                   **The Stackla Companies**

14           7.       Stackla Pty is an Australian proprietary limited company incorporated in 2012 in  
15 New South Wales, Australia, with its principal place of business in Crows Nest, New South  
16 Wales. It is the parent company and sole owner of Stackla Ltd., a limited company incorporated  
17 in England (U.K.) with its principal place of business in London, and Stackla US, a Delaware  
18 company with its principal place of business in San Francisco, California.

19           8.       Stackla Pty, along with Stackla Ltd. and Stackla US, manage the employment of  
20 Stackla personnel in the various regions around the world where the company operates. Each  
21 Stackla entity is a party to and directly executes Stackla client contracts in the region where it  
22 operates:

- 23                   (a)     Stackla Pty executes customer contracts in the Asia Pacific region;
- 24                   (b)     Stackla US executes contract in the North American region; and
- 25                   (c)     Stackla Ltd. executes contracts in Europe, the Middle East and Africa
- 26                               regions.

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1           **Stackla’s Business Requires Access to Facebook and Instagram**

2           9.       Stackla operates a software-as-a-service (SaaS) business. Stackla sells annual  
3 cloud software subscriptions to clients. Stackla is well-known in the industry and has enjoyed an  
4 excellent reputation among its customers. Stackla’s clients include major corporations like  
5 Facebook and numerous mid-market/enterprise business-to-customer brands. Stackla currently  
6 has more than 280 major business clients, including many of the world’s most recognizable  
7 brands, such as McDonalds, Cirque du Soleil, LUSH Cosmetics, Leading Hotels of the World,  
8 and Expedia, to name just a few.

9           10.      Stackla developed and offers an industry leading enterprise-class platform.  
10 Stackla’s platform enables its clients to query Facebook, Instagram, and other social media outlets  
11 to discover the most compelling public content produced by social media users about the brands  
12 of Stackla’s clients. Once this content is identified, Stackla curates the content by applying  
13 metadata, sorting the content by a defined taxonomy, and staging the content for review by  
14 clients. Stackla does not store the original content without explicit approval from the content  
15 creators.

16           11.      Stackla facilitates a process to enable Stackla’s clients to acquire the rights to the  
17 selected content from the social media users who created it through negotiated terms of use.  
18 Then, Stackla’s clients can use rights-approved content in their own marketing and brand  
19 advertising campaigns across the web, in social media posts, digital advertising, e-commerce, and  
20 live event screen/billboard advertising.

21           12.      I am familiar with the Facebook and Instagram social media platforms. I have  
22 used both Facebook and Instagram socially for a number of years, and I have also become  
23 familiar with the platforms through my work at Stackla. Based on my use of and experience with  
24 the platforms and my review of their user Terms of Service or Terms of Use, both Facebook and  
25 Instagram allow individual users to publish content to their pages where it is visible to anyone  
26 who wishes to view the content. The Terms of Service for Facebook and the Terms of Use for  
27 Instagram both specify that the content created by a user on the platforms is owned by the user  
28 but the user grants the platform a non-exclusive license to the content. For example, the

1 Instagram Terms of Use specifically state: “Permissions You Give to Us. As part of our  
2 agreement, you also give us permissions that we need to provide the Service. We do not claim  
3 ownership of your content, but you grant us a license to use it.” Attached hereto as Exhibits A  
4 and B, respectively, are true and correct copies of Facebook’s Terms of Service and Instagram’s  
5 Terms of Use, which I downloaded from their websites at 9:29 a.m. PDT and 9:30 a.m. PDT,  
6 respectively, on September 17, 2019.

7 13. Based on my development and operation of Stackla’s platform and business, the  
8 vast majority of the content collected by Stackla’s clients—approximately 80 percent—comes  
9 from publicly available information created by social media users on Facebook and Instagram.  
10 Stackla’s platform uses an Application Programming Interface (or “API”) to discover content on  
11 Facebook or Instagram for Stackla’s clients. Stackla collects this content on behalf of its  
12 customers via an approved application on Facebook’s Open Graph Application Programming  
13 Interface (“Open Graph API”). Access to the Open Graph API by Stackla’s clients is enabled  
14 only through the clients’ unique access tokens generated via Facebook’s own authentication  
15 process. All content collected through the API is publicly available and sourced via approved or  
16 publicly available endpoints from Facebook and Instagram.

17 14. Stackla’s platform does not interact with, change, or interfere with the user  
18 interfaces for Facebook or Instagram. The Stackla platform uses approved or publicly available  
19 APIs provided by Defendants to identify relevant public content and to display this content to  
20 Stackla’s clients. Stackla does not access private content, such as content that is visible only to  
21 those who are “friends” or “followers” of content creators. Stackla does not copy or retain  
22 information about that content (or the content creator) unless rights to that content have been  
23 granted by the content creator through the rights approval processes that Stackla facilitates for its  
24 clients.

25 15. While other social media platforms exist beyond Facebook and Instagram, they do  
26 not have the same number of users or the same quality and volume of content. Defendants are the  
27 dominant market leaders in social media. Based on my experience working with Stackla’s  
28 clients, virtually all of Stackla’s clients are heavily and almost exclusively reliant on Facebook

1 and Instagram content to derive value from Stackla’s platform. If Stackla does not have access to  
2 Facebook and Instagram content, Stackla’s clients will not use Stackla.

3 16. Without access to Facebook and Instagram, Stackla is cut off from the content  
4 Stackla’s customers expect to be able to review and acquire from the Defendants’ users and  
5 cannot provide the services Stackla has contracted to provide to its customers. If Stackla is not  
6 able to provide those services, Stackla will be required to terminate its customer contracts and  
7 will be irreparably damaged to the point that the business will be unable to continue.

### 8 **Stackla Becomes an Official Facebook Marketing Partner**

9 17. The current situation is shocking to Stackla because Stackla is a vetted Facebook  
10 Marketing Partner, and as recently as late May 2019, Defendants reviewed and approved  
11 Stackla’s application and business model for use with the Open Graph API. Stackla’s core value  
12 proposition is its use of Facebook and Instagram content, and this business model has not  
13 changed since Facebook vetted Stackla just a few months ago.

14 18. On April 14, 2018, Stackla applied to become a Facebook Marketing Partner  
15 (“FMP”). This was an exciting opportunity for Stackla because the Facebook Marketing Program  
16 is “a global community of specialists known for their excellent service and technical skill. The  
17 program offers client matches and gives access to resources that can help fuel the growth of your  
18 business.” *See* <https://www.facebook.com/business/marketing-partners/become-a-partner>.

19 19. On May 25, 2019, Stackla received confirmation that it had been accepted into the  
20 FMP program and was listed on the FMP site as an official marketing partner of Facebook on  
21 May 29, 2019. Stackla was awarded a Facebook Marketing Badge, which is given only to  
22 companies “who meet the highest standards of performance and service. If you’ve got a badge, it  
23 tells everyone you’re among the best at what you do.” *Id.*

24 20. Defendants conducted an extensive review of Stackla’s business model and  
25 application lasting over a year before Stackla was accepted into the FMP program, including  
26 multiple in-application reviews of Stackla:

27 (a) April 14, 2018: Stackla applies for the FMP program;

28 (b) May 9, 2018: Stackla has its first FMP meeting with the Facebook Partner

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- Ecosystem Manager;
- (c) June 23, 2018: Stackla is invited to a Facebook Global Partners event by Facebook;
  - (d) June 30, 2018: Stackla’s FMP Application is approved by Facebook;
  - (e) July 4, 2018: Stackla’s business verification is approved by Facebook;
  - (f) July 5, 2018: Facebook conducts its first in-application review of Stackla and the Stackla application is approved by Facebook;
  - (g) October 10, 2018: Stackla attends a Facebook Global Partners event;
  - (h) November 7, 2018: Stackla requests additional scopes on Facebook’s platform;
  - (i) November 8, 2018: Facebook conducts a review of the Stackla platform;
  - (j) November 8, 2018: Stackla’s application request is approved by Facebook;
  - (k) February 10, 2019: Stackla requests access to the Facebook Marketing API for the Stackla application;
  - (l) February 10, 2019: Facebook conducts further review of the Stackla application;
  - (m) February 11, 2019: Stackla’s application request is approved by Facebook;
  - (n) May 14, 2019: Facebook requests additional documentation from Stackla for FMP approval;
  - (o) May 24 2019: Stackla is approved for the FMP program;
  - (p) May 29, 2019: Stackla is listed as a FMP on the FMP website;
  - (q) May 30, 2019: Stackla requests additional scopes on the Facebook platform;
  - (r) May 31, 2019: Facebook conducts a review of the Stackla platform and application requests, Stackla’s application request is approved.
  - (s) June 27, 2019: Stackla requests support from the FMP team to answer questions regarding Stackla’s use of IG Open Graph API. Facebook does not respond.

1           21.     Among other requirements Stackla needed to meet to join the FMP program,  
2 Stackla was required in December 2018 to demonstrate that customers of Stackla had generated at  
3 least \$100,000 USD in advertising revenue and that more than five Stackla clients had spent over  
4 \$500 during the previous three month period on Facebook and Instagram. Through the FMP due  
5 diligence, Facebook has and had knowledge of Stackla’s valid customer contracts, especially  
6 from the FMP application, vetting, and approval process. Stackla also informed Facebook of its  
7 base of clients during Defendants’ review of Stackla’s business, ensuring such knowledge.

8           22.     In addition to Defendants’ review of Stackla in connection with the FMP program,  
9 Stackla also participated in a Request for Proposals process by Oculus, a virtual reality  
10 technology company that Facebook owns. Stackla won the RFP process, and it passed the  
11 exhaustive Oculus/Facebook internal Infosec process, further validating the compliant and robust  
12 nature of Stackla’s platform and Facebook’s approval of it in early 2018.

13           **August 2019 BusinessInsider.com Articles**

14           23.     From May 2019 until August 2019, there were no issues with Stackla’s  
15 participation in the FMP program or Stackla’s use of the Open Graph API.

16           24.     On or about August 7, 2019, Business Insider—an online news site owned by  
17 Insider Inc. and accessible at <https://www.businessinsider.com>—published an article reporting  
18 that Instagram’s lax privacy practices had allowed another advertising partner to track and store  
19 user location profiles, improperly store user content without permission, and re-sell user profiles  
20 built with Facebook and Instagram data for advertising and/or third party consumer tracking  
21 purposes. I read this article at or about the time it was published, but I concluded that it had no  
22 relevance to Stackla because Stackla does not store original user content or data without the  
23 express permission of the user—nor does Stackla create profiles of end users for the purposes of  
24 selling advertising or selling user profiles to third party advertising or user targeting platforms.

25           25.     On or about August 23, 2019, Business Insider published a second article reporting  
26 that Facebook was reviewing its FMPs over Instagram “data scraping” issues. I was aware of that  
27 article at the time it was published because the journalist who wrote the article contacted Stackla  
28 on or about August 20, 2019. The reporter requested comment from Stackla regarding a



1 purported claim that Stackla was scraping data from Facebook and Instagram. The reporter stated  
2 that, according to Instagram's head of communications, Stackla was allegedly in violation of  
3 Instagram's terms of use and would be "kicked off" the Facebook platform. I strongly denied  
4 these claims to the reporter, and I also asked the journalist not to include Stackla in any article  
5 that included unsubstantiated claims because it would have a material negative impact on  
6 Stackla's business. I substantiated my denial and request on the fact that Stackla had received no  
7 communication from Defendants raising concerns with our methods of accessing data. The  
8 article published on or about August 23, 2019 mentioned Stackla and I was quoted as strongly  
9 denying Business Insider's false assumption that Stackla was scraping Instagram data. Stackla  
10 does not scrape data from Instagram or Facebook. In fact, all content collected through the API is  
11 publicly available and sourced via approved or publicly available endpoints from Facebook and  
12 Instagram.

13 26. I am also aware of a news article stating that Facebook sent emails to FMPs  
14 reiterating rules concerning handling of data. A true and correct copy of the article, which I  
15 downloaded from <[https://www.businessinsider.com/facebook-warns-marketing-partners-against-  
16 scraping-hyp3r-2019-8](https://www.businessinsider.com/facebook-warns-marketing-partners-against-scraping-hyp3r-2019-8)> at 9:50 a.m. PDT on September 17, 2019, is attached hereto as Exhibit  
17 C. Despite being an FMP, Stackla never received this email from Defendants.

18 27. I have reviewed Facebook's definition of "scraping" in its Automated Data  
19 Collection Terms, which defines "scraping" as the process of creating a bot, crawler or spider that  
20 will imitate a web browser session and collect all data from a page in an automated means and  
21 then store this data. Based on Facebook's definition of "scraping," Stackla has never created nor  
22 does it currently use any harvesting bot, spider, robot, or scraper to collect data from Defendants.  
23 On September 17, 2019, I downloaded Facebook's Automated Data Collection Terms, available  
24 at [https://www.facebook.com/apps/site\\_scraping\\_tos\\_terms.php](https://www.facebook.com/apps/site_scraping_tos_terms.php), a true and correct copy of which  
25 is attached hereto as Exhibit D.

26 28. Following the publication of the second BusinessInsider.com article, Stackla made  
27 multiple attempts to contact Defendants to ensure that Defendants understood that Stackla was  
28 not scraping data from Instagram. Stackla has never received a response to any of those

1 communications, despite the following efforts to contact Defendants:

2 (a) On August 22 and 23, 2019, I emailed Elisabeth Diana, Head of  
3 Communications at Instagram. True and correct copies of these emails are  
4 attached hereto as Exhibit E.

5 (b) Stackla executive Seann Birkelund also LinkedIn messaged Ms. Diana on  
6 August 23, 2019. I reviewed Mr. Birkelund's LinkedIn message to Ms.  
7 Diana at or about the time it was sent. A true and correct copy of this  
8 LinkedIn message is attached hereto as Exhibit F.

9 (c) On August 22, 2019, I emailed Mr. Singh and Mr. Gohtra at Facebook,  
10 Stackla's principal contacts for Defendants' vetting and acceptance of  
11 Stackla into the FMP. A true and correct copy of this email is attached  
12 hereto as Exhibit G.

13 (d) On August 28, 2019, Mr. Birkelund emailed Ms. Diana. I reviewed Mr.  
14 Birkelund's message to Ms. Diana at or about the time it was sent. A true  
15 and correct copy of this email is attached hereto as Exhibit H.

16 **Defendants' Cease-and-Desist Letter to Stackla and Denial of Access**

17 29. On August 30, 2019, two Stackla executive and I received a cease-and-desist letter  
18 by email at our San Francisco offices (the "Cease-and-Desist Letter") accusing Stackla of  
19 "scraping and storing Instagram data, including photos and videos, outside of your approved  
20 Instagram application." The Cease-and-Desist Letter asserted that "these activities" violate  
21 Instagram's Terms of Use and Platform Policy and Facebook's Terms of Service and Platform  
22 Policy. For these reasons, Defendants suspended Stackla as a FMP and demanded that Stackla  
23 cease accessing Facebook or Instagram and agree never to do so again in the future. A true and  
24 correct copy of the Cease-and-Desist Letter I received by email is attached hereto as Exhibit I.

25 30. That same day, Stackla's access to the Facebook/Instagram APIs was terminated,  
26 entirely cutting Stackla off from Facebook and Instagram. My individual and personal accounts  
27 with Defendants were also terminated. Stackla's other officers and certain employees and former  
28 employees also reported to me that their individual and personal accounts were cut-off without

1 notice or explanation.

2 31. The Cease-and-Desist Letter states that Defendants had implemented technical  
3 means to cut Stackla off. Defendants disabled Stackla's previously approved application without  
4 notice or explanation, causing immediate and severe business and financial harm to Stackla. This  
5 harm was not unknown to Defendants because Defendants vetted Stackla's business model and  
6 application and are fully aware that Stackla's business and its customer contracts are dependent  
7 on access to the Facebook and Instagram platforms. As of August 30, 2019, Stackla's clients are  
8 no longer able to access any content from Facebook or Instagram via the Stackla platform. As  
9 Stackla sources the vast majority of content for its clients from Facebook and Instagram,  
10 terminating Stackla's access to Facebook and Instagram is destroying Stackla's business. If  
11 injunctive relief is not granted, Stackla will be insolvent in a matter of days or, at best, weeks.  
12 For example, to date, Stackla has received over 100 notices from its clients claiming a material  
13 breach of its agreement with our clients.

14 32. Defendants also contend that Stackla is in violation of a June 2018 Master  
15 Subscription Agreement ("MSA"). The MSA relates to Facebook's client relationship with  
16 Stackla US for the sale of software as a service. Stackla has never collected content using the  
17 information to which it has access under the MSA or violated any of the provisions of the MSA  
18 and there is no basis for terminating Stackla's API access to Defendants based on the MSA. The  
19 MSA has nothing to do with purported data scraping.

20 **Communications with Instagram/Facebook since August 30, 2019.**

21 33. Since receiving the Cease-and-Desist Letter, at my direction, Stackla retained  
22 outside counsel and exchanged multiple letters with Defendants' counsel disputing that Stackla  
23 scraped data from Instagram, demanding reinstatement on Defendants' platforms, and informing  
24 Defendants of the irreparable harm Defendants had caused and were continuing to cause to  
25 Stackla.

26 34. I reached out to Stackla's points of contact at Defendants directly on September 4,  
27 2019, but received no response. These communications included emails to all of the following:

- 28 (a) Konstanino Papamiltiadis, Director, Platform Partnerships, Facebook;

- 1 (b) Virginia Yang, Director, Developer Partnerships and Programs APAC at
- 2 Facebook;
- 3 (c) Gene Alson, VP, Marketing Partnerships at Facebook; and
- 4 (d) Will Easton, Vice President (& Managing Director) - Facebook Australia
- 5 & New Zealand.

6 35. My intent, including the efforts of Stackla to reach out to Defendants before and  
7 after the Cease-and-Desist Letter, was to show that Stackla is willing to cooperate and work with  
8 Defendants to ensure both parties were aligned on Stackla's use of the platforms. Unfortunately,  
9 Defendants never answered our messages and thus never afforded us the opportunity.

10 **Stackla Will Suffer Irreparable Harm If Injunctive Relief is not Granted**

11 36. Facebook and Instagram user content sourced through Stackla is over 80% of the  
12 content curated by Stackla's clients through Stackla's platform. Stackla has now been completely  
13 cut off from Facebook and Instagram. Without injunctive relief, Stackla cannot deliver  
14 contractually promised services to its clients and will be forced to terminate its client agreements  
15 if Stackla's clients do not cancel the agreements first. As of the date of this declaration, a  
16 majority of Stackla's customers have already raised their concerns regarding lack of access and  
17 Stackla's breach. If Stackla is not able to cure the breaches and alleviate concern, Stackla's  
18 customer contracts will be terminated.

19 37. Stackla relies on receivables from its clients to fund its operations, which are  
20 dependent on customers using the Stackla platform to source and acquire content. Access to  
21 Facebook and Instagram content is central to and a business "critical capability for Stackla.  
22 Without continued access to Facebook and Instagram, Stackla will be deprived of its revenue.

23 38. Defendants' decision to revoke Stackla's API access and to bar Stackla from their  
24 platforms without advance notice or dialogue with Stackla has already caused irreparable harm to  
25 Stackla. Among Stackla's clients, those who have not already given notice of material breaches  
26 are asking what recourse they have to cancel contracts and receive refunds for license fees.  
27 Prospective clients are now questioning their decision to select Stackla and instead choosing its  
28 competitors. Stackla's competitors are aggressively prospecting Stackla's clients, claiming that

1 Defendants' revocation of Stackla's access suggests that Stackla is a bad actor in the industry and  
2 the clients should switch to the competitor's offering immediately. Stackla is losing business  
3 every day in which access to Facebook and Instagram is shut off, and this will soon reach a  
4 tipping point where Stackla can no longer operate.

5 39. Recent publicity about Defendants' actions has also jeopardized Stackla's ability  
6 to seek investor financing and led to the suspension of Stackla's IPO, potentially destroying  
7 Stackla's value.

8 40. Defendants are not evenly or consistently applying their damaging actions against  
9 Stackla's competitors. Based on my review of the websites of certain principal competitors of  
10 Stackla and recent news coverage regarding specific cease-and-desist letters sent by Defendants,  
11 Stackla's competitors have not been suspended from Defendants' platforms although they offer  
12 similar services to Stackla based on content sourced from Defendants.

13 41. Allowing Stackla to continue to operate does no harm to Defendants as Stackla is  
14 not engaged in data scraping of Instagram, and it respects user privacy. Stackla only enhances the  
15 use of Facebook and Instagram by global brands, enriches communication and messaging to  
16 consumers on Defendants' platforms, and protects content creators on these platforms by ensuring  
17 that brands have properly requested usage rights before content is re-purposed.

18 I declare under penalty of perjury under the laws of the United States that the foregoing is  
19 true and correct and that this declaration executed this 19th day of September, 2019, in San  
20 Francisco, California.

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22 \_\_\_\_\_  
23 DAMIEN WILLIAM MAHONEY