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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ANDY NGO,

Plaintiff,

v.

ROSE CITY ANTIFA, an unincorporated association; BENJAMIN BOLEN, an individual; JOHN HACKER, an individual; CORBYN (KATHERINE) BELYEA, an individual; JOSEPH CHRISTIAN EVANS, an individual; MADISON LEE ALLEN, an individual; DOES 1-50,

Defendants.

Case No.: 20CV19618

**PLAINTIFF’S REPLY IN SUPPORT OF HIS CROSS-MOTION TO STRIKE TESTIMONY AND EXHIBITS FILED IN SUPPORT OF DEFENDANT’S MOTION TO STRIKE**

Plaintiff Andy Ngo (“Plaintiff” or “Ngo”), through undersigned counsel, hereby replies to Defendant Benjamin Bolen’s (“Defendant” or “Bolen”) Response (“Def.’s Resp.”) to Plaintiff’s Cross-Motion to Strike Testimony and Exhibits in Support of Defendant’s Special Motion to Strike as follows:

**I. Preliminary Statement**

The salient inquiry before the Court is whether Ngo’s claims for assault, battery, and intentional infliction of emotional distress are based on conduct protected under ORS 31.150<sup>1</sup>. Ngo filed this Cross-Motion to Strike the Declarations of Benjamin Bolen and Shane Burley (collectively, “Declarants”) for two principal reasons: *first*, the Declarations include testimony concerning matters outside the scope of relevant inquiry and therefore constitute irrelevant evidence pursuant to OEC

<sup>1</sup> Bolen alleges Ngo filed suit against him in violation of ORS 31.150(d): “Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

1 401. **Second**, the Declarations are not helpful to the Court in ruling on Bolen’s anti-SLAPP motion  
2 and OEC 701 prohibits unhelpful lay witness testimony from being admitted into evidence.

3 **II. The Declarations Fail to Satisfy OEC 401, and Bolen’s Reliance on *Voits* is Misguided.**

4 OEC 401 defines “relevant evidence” as “evidence having any tendency to make the existence  
5 of any fact that is of consequence to the determination of the action more probable or less probable  
6 than it would be without the evidence.” The only relevant evidence is that which makes more or less  
7 probable the fact that punching Ngo in the stomach is not conduct protected by ORS 31.150. Bolen  
8 attempts to enlarge the scope of relevancy in relying on *State v. Voits*, 186 Or. App. 643 (2003),  
9 erroneously arguing that the Declarations in a criminal case provided “contextual and background”  
10 information that had “independent relevance” to an issue in the case. Def.’s Resp. at 2. The  
11 Declarations are offered in support of a Motion to Strike; not as evidence of "state of mind" at a  
12 murder trial. Unlike trials, the scope of relevancy for Bolen’s anti-SLAPP motion is limited to  
13 evidence that addresses whether physical assault and its natural sequelae are protected conduct under  
14 ORS 31.150.

15 The facts of *Voits* and the facts of this case are entirely unrelated. In *Voits*, the issue is whether  
16 a letter written by a murder victim was admissible to show the victim’s state of mind prior to being  
17 killed. 186 Or. App. at 655-56. The Court held the letter was properly admitted “because it assisted  
18 in establishing the relevance of the victim’s declarations of her own state of mind or future intentions.”  
19 *Id.* at 655. *Voits* is entirely different than this case – here, neither parties’ state of mind is at issue, and  
20 both Declarants are available to be witnesses at trial, if their testimony is otherwise relevant. Thus,  
21 while contextual information may be admissible on grounds of independent relevance in some cases,  
22 it is not subject to reasonable dispute that *this* alleged “contextual background information” is  
23 irrelevant and inadmissible in support of Bolen’s anti-SLAPP motion. Accordingly, the Declarations,  
24 or at a minimum, the testimony included in the Declarations described in Section IV of this Reply,  
25 must be struck.

1 **III. The Declarations Do Not Constitute Permissible Lay Witness Testimony.**

2 OEC 701 requires that the proponent of lay opinion testimony establish that the proposed  
3 testimony is both rationally based on the witness's perceptions **and helpful to the trier of fact.** *State*  
4 *v. Lawson*, 352 Or. 724, 754 (2012) (emphasis added). Here, testimony must be helpful to the Court  
5 in determining whether punching someone in the stomach is protected speech conduct under ORS  
6 31.150(d). If the testimony does not assist the Court in making this determination, the proposed  
7 testimony fails to satisfy the second prong of OEC 701 – helpful to the trier of fact – and is therefore  
8 inadmissible. *See Lawson*, 352 Or. 754 (lay witness testimony must be “helpful to a clear  
9 understanding of testimony of the witness or the determination of a fact in issue.”). Because there is  
10 no legal or factual basis for Bolen to assert that punching someone in the stomach constitutes  
11 protected speech conduct within the meaning of Oregon’s anti-SLAPP law, the challenged testimony  
12 is unhelpful to the trier of fact and must be struck.

13 **IV. Irrelevant, Inadmissible Testimony Must Be Struck from the Declarations.**

14 For the reasons stated above, (1) statements that do not constitute lay witness testimony  
15 pursuant to OEC 701 and (2) statements that are irrelevant because they do not make more or less  
16 probable the assertion that punching someone is protected conduct under ORS 31.150, must be struck.

17 Specifically, Ngo has moved this Court to strike the following information on the bases  
18 identified as follows:

19 BENJAMIN BOLEN DECLARATION

20 **He appears at these rallies in an effort to dox leftists, which means to uncover**  
21 **their identity and then publicly post personal identifying information online so**  
22 **white nationalist or other right wing groups can access the information and use**  
23 **it to target leftists and their families with harassment, threats, and sometimes**  
24 **even violence. Bolen Decl. ¶ 9.**

25 Paragraph 9 states Bolen’s subjective opinion as to why Ngo attends at political rallies. Ngo  
26 testified he has never appeared at a rally in an effort to “dox” leftists, he has never targeted anyone  
with a story because of his or her personal beliefs, nor has he ever published an article with the intent

1 to incentivize harassing, threatening, or violent behavior. Ngo Decl. ¶18. Bolen’s subjective opinion  
2 is dispositively false, irrelevant as to whether his punching Ngo is protected conduct under ORS  
3 31.150 in violation of OEC 401, and unhelpful to the Court in violation of OEC 701.

4  
5 **It is well known to people who attend rallies in Portland, Oregon that [the  
6 conduct in paragraph 9] is what Andy Ngo does. Bolen Decl. ¶ 10.**

7 Paragraph 10 states Bolen’s subjective opinion about rally attendees know. This statement is  
8 untrue, *supra* at 3, l. 16-19, and therefore irrelevant and unhelpful in violation of OEC 401 and OEC  
9 701, respectively.

10 **Ngo feeds on [the] attention [of boos, jeers and contempt from the crowd]. Ngo  
11 attempts to unmask or identify members in the crowd, and he then posts this  
12 personal identifying information online for white nationalist groups to consume.”  
13 *Id.*; “Ngo raises money online by getting as much attention as he can, so he attends  
14 the rallies and provokes confrontations with people in the crowd to provide him  
15 material to post online to get more views and more donations. Bolen Decl. ¶ 11.**

16 Paragraph 11 must be struck because this statement addresses Bolen’s subjective opinions as  
17 to the extent of what people know constitutes hearsay without exception. This statement is irrelevant  
18 as to whether punching someone is protected conduct under ORS 31.150 in violation of OEC 401 and  
19 therefore, unhelpful to the Court in violation of OEC 701.

20 **Ngo believes that racially motivated crimes are hoaxes. Ngo posts dozens of tweets  
21 on Twitter nearly every day, and nearly every one of those tweets relates to Antifa  
22 or Black Lives Matter, and in particular, his posts reveal identifying information  
23 about people with whom Mr. Ngo disagrees. The information in Ngo’s tweets is  
24 presented in a manner designed to build hatred or resentment of leftists, Black  
25 Lives Matter supporters and Antifa. Ngo engages in stochastic terrorism by both  
26 demonizing leftists and posting their personal identifying information online. He  
27 knows that this information is used to target his opponents. Bolen Decl. ¶ 12.**

28 Paragraph 12 must be struck because this statement addresses Bolen’s subjective beliefs as to  
what Ngo believes and regardless of whether such statement is true or false, Ngo’s opinions about  
racially motivated crimes are irrelevant as to whether punching someone is protected conduct under  
ORS 31.150 in violation of OEC 401 and therefore, unhelpful to the Court in violation of OEC 701.

1 **Mr. Ngo has a working relationship with right wing or white nationalist groups**  
2 **like the Proud Boys, Patriot Prayer, The Three Percenters and potentially**  
3 **Atomwaffen. He has a practice of embedding with a group of people from one of**  
4 **these groups and reaches agreements with them whereby they provide him**  
5 **protection while they instigate a skirmish or physical confrontation that Mr. Ngo**  
6 **films and deceptively edits in a manner to further his agenda. Bolen Decl. ¶ 14.**

7 Paragraph 14 must be struck because this statement is speculation and conjecture as to what  
8 Bolen believes is Ngo’s relationship, if any, to groups not involved in this action. Regardless of  
9 whether Ngo “has a working relationship with” any of these groups – Ngo does not – such  
10 involvement is irrelevant as to whether punching someone is protected conduct under ORS 31.150 in  
11 violation of OEC 401, and unhelpful to the Court in violation of OEC 701.

12 **Mr. Ngo facilitates harassment and threats from white nationalist groups**  
13 **targeting leftists. Bolen Decl. ¶ 15.**

14 Paragraph 15 must be struck because this statement is Bolen’s subjective opinion as to what  
15 causes white nationalist groups to allegedly harass and threaten alleged leftists. Regardless of whether  
16 Ngo facilitates this conduct – which Ngo does not – Bolen’s opinion is nevertheless irrelevant as to  
17 whether punching someone is protected conduct under ORS 31.150 in violation of OEC 401, and  
18 unhelpful to the Court in violation of OEC 701.

19 **A video widely circulated online [ ] shows Mr. Ngo with the group of Proud Boys**  
20 **while they planned their attack. Bolen Decl. ¶ 16.**

21 Paragraph 16 must be struck because this statement is speculation and conjecture as to whether  
22 Ngo “was with” a group of alleged Proud Boys members and further speculates as to what the Proud  
23 Boys were doing at the time Ngo was spotted in their vicinity. Regardless of whether Ngo was with  
24 or near a group of alleged Proud Boys members at an incident not at issue in this lawsuit, is irrelevant  
25 as to whether punching someone is protected conduct under ORS 31.150 in violation of OEC 401,  
26 and unhelpful to the Court in violation of OEC 701.

27 **Ngo films in a manner designed to make it look like leftists are violent or**  
28 **provoked the fight, and that the white nationalist group he has embedded with**  
**are hapless victims. Mr. Ngo does not care about the truth or about being**  
**accurate. Ngo is using this lawsuit as a means to raise money. Bolen Decl. ¶ 17.**

1 Paragraph 17 must be struck because this statement is Bolen's false, subjective belief as to  
2 Ngo's filming style and editing. Such statement is irrelevant as to whether punching someone is  
3 protected conduct under ORS 31.150 in violation of OEC 401, and unhelpful to the Court in violation  
4 of OEC 701.

5 **So long as it fits Mr. Ngo's narrative, he publishes information without regard to**  
6 **whether it is true. Deception and misinformation are Mr. Ngo's specialty. Bolen**  
7 **Decl. ¶ 18.**

8 Paragraph 18 must be struck because this statement is Bolen's false, subjective belief as to  
9 Ngo's discretion in determining what he publishes online and Ngo's alleged journalistic specialties.  
10 Such statement is irrelevant as to whether punching someone is protected conduct under ORS 31.150  
11 in violation of OEC 401, and unhelpful to the Court in violation of OEC 701.

12 **Mr. Ngo was discharged from his position at the student newspaper at Portland**  
13 **State University while I attended the college because he disseminated false or**  
14 **misleading information regarding speakers who had presented at the college.**  
15 **[Portland State University] found that Mr. Ngo had breached his ethical**  
16 **obligations in several respects. Bolen Decl. ¶ 19.**

17 Paragraph 19 must be struck because this statement allegedly pertains to Ngo's prior  
18 employment in college. Such statement is irrelevant as to whether punching someone is protected  
19 conduct under ORS 31.150 in violation of OEC 401, and unhelpful to the Court in violation of OEC  
20 701.

21 **Ngo repeatedly uses his online platform to publish misinformation in his attempt**  
22 **to malign Antifa. Bolen Decl. ¶ 20.**

23 Paragraph 20 must be struck because this statement is Bolen's false, subjective belief as to the  
24 manner in which Ngo uses his online platform and the motivation for why Ngo uses his online  
25 platform in a given manner. Such statement is irrelevant as to whether punching someone is protected  
26 conduct under ORS 31.150 in violation of OEC 401, and unhelpful to the Court in violation of OEC  
27 701.

1           **Twitter is Ngo’s primary method of doxing people he disagrees with. Bolen Decl.**  
2           **¶ 23.**

3           Paragraph 23 must be struck because this statement is a false assertion that Ngo doxes people  
4           on Twitter. Not only is doxing undefined, but Ngo has also dispositively rebutted Bolen’s false  
5           statement by testifying he posts publicly available, identifying information online to increase public  
6           awareness of the threat Antifa and its followers pose to public safety. Ngo Decl. ¶ 13. Bolen’s  
7           statement is false; however, even if true, this statement irrelevant as to whether punching someone is  
8           protected conduct under ORS 31.150 in violation of OEC 401, and unhelpful to the Court in violation  
9           of OEC 701.

10           **Mr. Ngo has rushed to judgment with faulty information in an effort to demonize**  
11           **someone with political views that differ from his own.” Bolen Decl. ¶ 30.**

12           Paragraph 30 must be struck because this statement is Bolen’s false, subjective belief as to  
13           why Ngo publishes information. Ngo’s motive in publishing any given content is irrelevant as to  
14           whether punching someone is protected conduct under ORS 31.150 in violation of OEC 401 and  
15           unhelpful to the Court in violation of OEC 701.

16           **Mr. Ngo has named me as a defendant in this lawsuit because I am a leftist. Mr.**  
17           **Ngo does not care about being accurate with his allegations, so long as it is a**  
18           **leftist, or someone he thinks holds antifascist views that he names as a defendant.**  
19           **Mr. Ngo has a record of being reckless with information, and even intentionally**  
20           **spreading misinformation designed to malign or harm people with political views**  
21           **that differ from his own. Naming me as a defendant in this lawsuit is simply one**  
22           **more instance of this conduct. Bolen Decl. ¶ 32.**

23           Paragraph 32 must be struck because this statement is Bolen’s false, subjective belief as to  
24           why Ngo sued him. Paragraph 32 also includes false statements as to the due care with which Ngo  
25           handles and disseminates information, and the motives as to why Ngo disseminates information. Each  
26           and every allegation in paragraph 32 is irrelevant as to whether punching someone is protected  
27           conduct under ORS 31.150 in violation of OEC 401, and unhelpful to the Court in violation of OEC  
28           701.

THE DECLARATION OF SHANE BURLEY

**Ngo has used innuendo, bigoted characterizations, and outright mischaracterizations to build a career on stoking the fears of a largely conservative base with hyperbolic accusations of the malfeasance of left-wing activists. Andy Ngo uses his clout and funding to identify people leads to a sequence of threats, slanders, and attacks. Burley Decl. ¶ 6.**

Paragraph 6 must be struck because this statement is Burley's subjective characterization as to why Ngo publishes information and what Burley erroneously believes is the resulting effect of Ngo's publications. What Ngo publishes, nor what results from Ngo's publications, if anything, is irrelevant as to whether punching someone is protected conduct under ORS 31.150 in violation of OEC 401, and unhelpful to the Court in violation of OEC 701.

**Ngo takes an incident, usually something fairly innocuous like a fiery speech at a political rally or a disagreement on social media, and then traces far reaching allegations mixed with his opponent's personal information. Burley Decl. ¶ 7.**

Paragraph 7 must be struck because this statement is Burley's opinion about the content of Ngo's publications. Whether Ngo publishes information about speeches or individuals is irrelevant as to whether punching someone is protected conduct under ORS 31.150 in violation of OEC 401, and unhelpful to the Court in violation of OEC 701.

**Ngo was fired from the Portland State University's Vanguard for mischaracterizing a Muslim student's statements, he has been widely denounced for articles that use bigoted depictions, and he has singled out journalists and activists with wild accusations of malfeasance. Burley Decl. ¶ 9.**

Paragraph 9 must be struck because this statement pertains to Ngo's prior employment. Such statement is irrelevant as to whether punching someone is protected conduct under ORS 31.150 in violation of OEC 401, and unhelpful to the Court in violation of OEC 701.

**Ngo continues to use a pattern that makes these people appear as threats to basic decency simply for speaking a position he disagrees with, and the ensuing mob of acolytes does the dirty work. Activists fear for their lives because Andy Ngo wants to make a name for himself. Burley Decl. ¶ 10.**

1 Paragraph 10 must be struck because this statement is Burley’s subjective belief as to Ngo’s  
2 publication methods. The manner in which Ngo publishes and whether people fear for their lives  
3 because their criminal conduct is posted online are entirely irrelevant as to whether punching someone  
4 is protected conduct under ORS 31.150 in violation of OEC 401 and unhelpful to the Court in  
5 violation of OEC 701.

6 **I know when I suddenly start seeing threatening words online directed at me, my**  
7 **ethnic background, my sexual orientation, or my lifestyle, there is often one**  
8 **source for it: Andy Ngo decided to Tweet about me again.” Burley Decl. ¶ 12.**

9 Paragraph 12 must be struck because Burley’s reaction to words he reads online and subjective  
10 belief as to the origin of those words is irrelevant as to whether punching someone is protected  
11 conduct under ORS 31.150 in violation of OEC 401 and unhelpful to the Court in violation of OEC  
12 701.

13 **Mr. Ngo regularly tries to discredit my work. Burley Decl. ¶ 17.**

14 Paragraph 17 must be struck because whether Ngo discredits a self-purported journalists work  
15 is irrelevant as to whether punching someone is protected conduct under ORS 31.150 in violation of  
16 OEC 401 and unhelpful to the Court in violation of OEC 701.

17 \* \* \*

18 All of this testimony is also objectionable as material obviously intended to "unfairly  
19 prejudice, [cause] confusion of the issues, and mislead . . ." within the meaning of ORE 403.

## 20 **V. The Above-Mentioned Testimony Does Not Constitute Personal Knowledge**

21 While personal knowledge may consist of the testimony of the witness pursuant to OEC 602,  
22 affidavits in support of a Motion to Strike must satisfy the requirements of Rule 47, *Oregon Educ.*  
23 *Ass’n v. Parks*, 253 Or. App., 558, 567 (2012), which is only satisfied if, “from the content of the  
24 affidavit read as a whole, an objectively reasonable person would understand that statements in the  
25 affidavit are made from the affiant's personal knowledge and are otherwise within the affiant's  
26 competence.” *West v. Allied Signal, Inc.* 200 Or. App. 182, 190 (2005).

1 The testimony of Bolen and Burley does not meet these requirements. They obviously have  
2 no personal knowledge of plaintiffs' motivations and beliefs, and their descriptions of his conduct,  
3 and even the conduct of unknown and identified third parties, are not based on personal observation,  
4 but speculation. The Declarations fail to satisfy the standard set forth by Rule 47, which is the same  
5 requisite standard affidavits must satisfy when filed in support of a motion to strike. For this reason,  
6 and in addition to the reasons stated above, this Court must strike the Declarations Bolen and Burley.

7 The lack of personal knowledge on the part of Bolen and Burley is usefully contrasted with  
8 the testimony included in Ngo's affidavit regarding Bolen's identity, which *is* based on personal  
9 knowledge. Ngo testified as to his personal observations of objective facts: Mr. Bolen was wearing  
10 a brimmed, black beanie, white-framed glasses, a dark bandanna with white patterning, and black  
11 gloves with hard extensions near the knuckle area and was carrying a distinctive skateboard. Ngo  
12 Decl. ¶ 6. Ngo personally recorded a video of Bolen depicting the exact attire and skateboard  
13 mentioned above, and Ngo personally encountered Bolen again shortly after the incident. *Id.* ¶¶ 6-7.  
14 The testimony of a witness concerning identification is relevant and admissible even if the  
15 perpetrator's face is masked and identification is made through other personally-perceived means.  
16 *Cf., e.g., In re Tracy J.*, 94 Cal. App. 3d 472, 478, 156 Cal. Rptr. 512, 515 (1979) (although "the  
17 [eyewitness] did not see the face of the . . . individual, the [eyewitness] did see his person and might  
18 well have noticed other things about him that would distinguish him from other persons, whether  
19 related to him or not").

20 **VI. Judicial Notice is Inappropriate as to Irrelevant Speculation.**

21 Finally, Defendant lodges a last chance "Hail Mary" and asks this Court to take judicial notice  
22 of "the fact that it is widely reported in the media that plaintiff doxes people attending the protests,  
23 and that the people attending the protests are aware of this." Def.'s Resp. at 4. Such request is  
24 improper because "widely reported" and "doxes people" are undefined terms and therefore cannot  
25 constitute "judicially noticed facts" as defined by OEC 201(b).

1 A “judicially noticed fact” as defined by OEC 201(b), “must be one not subject to reasonable  
2 dispute,” *Arlington Educ. Ass’n v. Arlington School Dist. No. 3*, 34 P.3d 658, 663 (Or. App. 2001),  
3 and either “(1) generally known within the territorial jurisdiction of the trial court; or (2) capable of  
4 accurate and ready determination by resort to sources whose accuracy cannot be reasonably  
5 questioned.” *Id.* A judicially noticed fact must, of necessity, be judicially cognizable.” *Id.*

6 The argumentative assertion for which Bolen requests judicial notice is very much subject to  
7 reasonable dispute. It is impossible to cognize what Bolen means by “widely reported”. Moreover,  
8 there are numerous definitions of “doxing” – none of which are provided by Bolen. Third, Bolen  
9 cannot state, as a matter of fact, what knowledge those who attend the protests do or do not have.  
10 Bolen does not provide the names of people, the number of people, or of what the people who attend  
11 these protests are aware. Asking this court to take judicial notice of “the fact that it is widely reported  
12 in the media that plaintiff doxes people attending the protests, and that the people attending the  
13 protests are aware of this” is an easily disposable argument: Opinions do not constitute judicially  
14 notable facts and the meanings of vague, ambiguous terms are, by definition, subject to reasonable  
15 dispute.

16 Bolen notes that “Courts may take judicial notice of publications introduced to ‘indicate what  
17 was in the public realm at the time’...”, Def.’s Resp. at 4, but fails to articulate the publications for  
18 which he requests judicial notice. Here, numerous points raised by Bolen are unequivocally subject  
19 to reasonable dispute, including: (1) what constitutes “widely reported”; (2) the definition of “doxing”  
20 (e.g., whether the publisher has malicious intent or not); and (3) whether the people (e.g., all people,  
21 some people, a few people) are aware of the undefined “wide reporting” that Ngo allegedly “doxes”  
22 people who attend the protests. Accordingly, Defendant’s request for judicial notice is not cognizable,  
23 and therefore the Court must deny the request pursuant to OEC 201(b).

24 **VII. Conclusion**

25 The Declarations of Benjamin Bolen and Shane Burley filed in support of Bolen’s anti-SLAPP  
26

1 motion constitute inadmissible lay witness testimony in violation of OEC 701, offer testimony that  
2 addresses matters beyond scope of the salient inquiry of Bolen’s Motion to Strike in violation of OEC  
3 401, and the “contextual nature” exception articulated in *Voits* does not apply. Therefore, this Court  
4 must strike the Declarations, or alternatively, strike all testimony articulated in Section IV of this  
5 Reply.

6 Ngo also requests that this Court deny Bolen’s request for judicial notice of “the fact that it is  
7 widely reported in the media that plaintiff doxes people attending the protests, and that the people  
8 attending the protests are aware of this” because this disputed “fact” does not satisfy the requirements  
9 set forth in OEC 201(b).

10 Dated: October 22, 2020.

11 Respectfully submitted,

12  
13 /s/ James L. Buchal  
14 JAMES L BUCHAL (OSB #921618)  
15 counsel@buchal.com  
16 3425 S.E. Yamhill, Suite 100  
17 Portland OR 97214  
18 Telephone: 503-227-1011  
19 Facsimile: 503-573-1939

20 HARMEET K. DHILLON\*  
21 (CA Bar No.: 207873)  
22 harmeet@dhillonlaw.com  
23 DHILLON LAW GROUP INC.  
24 177 Post Street, Suite 700  
25 San Francisco, California 94108  
26 Telephone: (415) 433-1700  
27 Facsimile: (415) 520-6593  
28 *Pro hac vice\**

*Attorneys for Plaintiff Andy Ngo*

1 **CERTIFICATE OF SERVICE**

2 I, Carole Caldwell, hereby declare under penalty of perjury under the laws of the State of  
3 Oregon that the following facts are true and correct:

4 I am a citizen of the United States, over the age of 18 years, and not a party to or interested  
5 in the within entitled cause. I am an employee of Murphy & Buchal LLP and my business address  
6 is 3425 SE Yamhill Street, Suite 100, Portland, OR 97214.

7 On October 22, 2020, I caused the following document to be served:

8 **PLAINTIFF'S REPLY IN SUPPORT OF HIS CROSS-MOTION TO STRIKE TESTIMONY**  
9 **AND EXHIBITS FILED IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE**

10 in the following manner on the parties listed below:

11 Hilary Boyd, Esq. ( ) (BY FEDERAL EXPRESS)  
12 Jonathan Hendersion, Esq. ( ) (BY FIRST CLASS US MAIL)  
13 DAVIS ROTHWELL EARLE & XÓCHIHUA, P.C. (X) (BY E-MAIL)  
14 200 SW Market Street, Suite 1800 ( ) (BY FAX)  
15 Portland, OR 97201 ( ) (BY HAND)  
16 Tel: 503-222-4422  
17 Fax: 503-222-4428  
18 [hboyd@davisrothwell.com](mailto:hboyd@davisrothwell.com)  
19 [jhenderson@davisrothwell.com](mailto:jhenderson@davisrothwell.com)

20 David D. Park, Esq. ( ) (BY FEDERAL EXPRESS)  
21 ELLIOTT & PARK, P.C. ( ) (BY FIRST CLASS US MAIL)  
22 324 S Abernethy Street (X) (BY E-MAIL)  
23 Portland, OR 97239-8529 ( ) (BY FAX)  
24 Tel: 503- 227-1690 ( ) (BY HAND)  
25 [dave@elliott-park.com](mailto:dave@elliott-park.com)

26 Michelle R. Burrows, Esq. ( ) (BY FEDERAL EXPRESS)  
27 MICHELLE R. BURROWS, P.C. ( ) (BY FIRST CLASS US MAIL)  
28 1333 Orenco Station Parkway# 525 (X) (BY E-MAIL)  
Hillsboro, OR 97124 ( ) (BY FAX)  
Tel: 503-241-1955 ( ) (BY HAND)  
michelle.r.burrows@gmail.com

1 David F. Sugerman, Esq.  
2 SUGARMAN LAW OFFICE  
3 707 SW Washington St., Ste. 600  
4 Portland, OR 97205  
5 Tel: 503-228-6474  
6 [david@sugermanlawoffice.com](mailto:david@sugermanlawoffice.com)

( ) (BY FEDERAL EXPRESS)  
( ) (BY FIRST CLASS US MAIL)  
(X) (BY E-MAIL)  
( ) (BY FAX)  
( ) (BY HAND)

5 Christopher A. Larsen, Esq.  
6 PICKETT DUMMIGAN MCCALL LLP  
7 210 SW Morrison St., 4th Fl.  
8 Portland, Oregon 97204  
9 Tel: 503-223-7770  
10 [chris@pdmlegal.com](mailto:chris@pdmlegal.com)

( ) (BY FEDERAL EXPRESS)  
( ) (BY FIRST CLASS US MAIL)  
(X) (BY E-MAIL)  
( ) (BY FAX)  
( ) (BY HAND)

10 Gabriel Chase, OSB # 142948  
11 CHASE LAW, P.C.  
12 621 S.W. Alder St., Ste. 600  
13 Portland, OR 97205  
14 Tel: 503-294-1414  
15 [gabriel@chaselawc.net](mailto:gabriel@chaselawc.net)

( ) (BY FEDERAL EXPRESS)  
( ) (BY FIRST CLASS US MAIL)  
(X) (BY E-MAIL)  
( ) (BY FAX)  
( ) (BY HAND)

14 Jane L. Moisan, OSB # 181864  
15 PEOPLE'S LAW PROJECT  
16 818 S.W. 4th Ave. #221-3789  
17 Portland, OR 97204  
18 Tel: 971-258-1292  
19 [peopleslawproject@gmail.com](mailto:peopleslawproject@gmail.com)

( ) (BY FEDERAL EXPRESS)  
( ) (BY FIRST CLASS US MAIL)  
(X) (BY E-MAIL)  
( ) (BY FAX)  
( ) (BY HAND)

18 Joe Piucci, OSB # 135325  
19 Stephen Piucci, OSB #821056  
20 PIUCCI LAW LLC  
21 900 SW 13th Ave., Ste. 200  
22 Portland, OR 97205  
23 Tel: 503-228-7385  
24 Fax: 503-228-2571  
25 [joe@piucci.com](mailto:joe@piucci.com)  
26 [steve@piucci.com](mailto:steve@piucci.com)

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25 /s/ Carole A. Caldwell