No. 23-55144, 23-55193

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEXINGTON INSURANCE COMPANY,
Plaintiff-Appellant-Cross-Appellee,

v.

MARTIN A. MUELLER and DOUG WELMAS,
Defendants-Appellees-Cross-Appellants.

ON CROSS-APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
DISTRICT COURT CASE NO. 5:22-CV-00015

HON. JOHN W. HOLCOMB, DISTRICT JUDGE, PRESIDING

REPLY BRIEF
OF DEFENDANTS MUELLER AND WELMAS

Glenn M. Feldman
Racheal M. White Hawk
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
8355 E. Hartford Drive, Suite 207
Scottsdale, AZ 85255
Telephone: 480.682.4312
Facsimile: 619.235.0398

Attorneys for Defendant DOUG WELMAS, in his official capacity as Chief Judge of the Cabazon Reservation Court

George Forman
Jay B. Shapiro
Margaret C. Rosenfeld
FORMAN SHAPIRO & ROSENFELD LLP
5055 Lucas Valley Road
Nicasio, CA 94946
Telephone: 415.491.2310

Attorneys for Defendant MARTIN A. MUELLER, in his official capacity as Judge of the Cabazon Reservation Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

FEDERAL STATUTES, REGULATIONS, AND RULES

INTRODUCTION

In their opening brief, Defendant tribal court judges Doug Welmas and Martin A. Mueller demonstrated why Lexington's complaint against them should have been dismissed in its entirety on the strength of *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021). In response, Lexington argues that this Court is bound by earlier decisions allowing *Ex parte Young* actions against tribal judges; that tribal court judges are functionally different from state court judges; that prohibiting direct suits against tribal court judges would affect its ability to seek federal court review, causing it "irreparable harm" and that the district court erred in dismissing Chief Judge Welmas from the case. In fact, none of these arguments withstands close scrutiny.

ARGUMENT

I. THIS COURT CAN AND SHOULD ORDER THE DISMISSAL OF LEXINGTON'S COMPLAINT ON THE BASIS OF WHOLE WOMAN'S HEALTH

A. Prior Decisions Are Not Controlling Because They Did Not Consider the "Case or Controversy" Question Presented Here.

Lexington argues that this panel is bound by earlier decisions of the Court that allowed actions under *Ex parte Young*, 209 U.S. 123 (1908), to proceed against tribal court judges, and that any further consideration of the continued validity of those

cases is unwarranted and impermissible. Lex. Resp. Br. at 5. Lexington is incorrect in both contentions.

Rather, this Court should resolve the present case as it did in *Ordonez v. United States*, 680 F.3d 1135 (9th Cir. 2012). In *Ordonez*, the Court was presented with the specific issue of whether the United States' sovereign immunity barred an action for money damages by a criminal defendant against the government under Federal Rule of Criminal Procedure ("Rule") 41(g) when the government was unable to return the prisoner's property because it had been lost or destroyed. 680 F.3d at 1136. In an earlier case involving essentially identical facts, *United States v. Martinson*, 809 F.2d 1364, 1370 (9th Cir. 1987), the Court had held that the prisoner could seek damages under those circumstances. And notably, the *Martinson* holding had been cited and followed in later Ninth Circuit decisions. *Ordonez*, 680 F.3d at 1139 n.4.

Yet, when presented with the specific jurisdictional question of whether sovereign immunity barred such Rule 41(g) claims for damages, the *Ordonez* court held that it was not bound by the *Martinson* precedent. As *Ordonez* noted:

> In reaching [the conclusion that damage claims were permissible], *Martinson* did not address directly the issue of sovereign immunity. And accordingly, we are not now barred by *Martinson* in considering the sovereign immunity issue here.

Ordonez, 680 F.3d at 1139. In support of its holding that it was not bound by prior Circuit precedent on the same issue, the *Ordonez* panel cited and relied on *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 119 (1984):

> When questions of jurisdiction have been passed on in prior decisions sub silentio, a court is not bound when a subsequent case finally brings the jurisdictional issue to the forefront.

Id. (cleaned up). On this basis, the *Ordonez* court held that "[t]o the extent *Martinson* has been read as holding that sovereign immunity does not bar a claim for money damages under Rule 41(g), *we now clarify that reading is incorrect*." *Id*. at 1139 n.4 (emphasis added). And then, writing on what it described as a "clean slate," *id*. at 1139, *Ordonez* went on to hold that sovereign immunity did bar such damage claims; a conclusion directly contrary to *Martinson* and its progeny. *Id.* at 1140.

The applicability of the *Ordonez* analysis to this appeal is clear and obvious. Earlier cases in this Circuit have allowed adjudication of *Ex parte Young* actions against tribal court judges. But they did so without considering or addressing the specific jurisdictional issue raised here: whether an Article III case or controversy exists in such circumstances. So, for example, in *Big Horn Cty. Elec. Coop. v. Adams*, 219 F.3d 944, 954 (9th Cir. 2000), the Court permitted an action against tribal executive officials and judges, simply characterizing the defendants as "tribal officers under the *Ex parte Young* framework." Similarly, the Court lumped tribal

officers and judges together as tribal "officials" in what it described as a "routine application" of *Ex parte Young* in *Salt River Project Agric. Improvement & Power Dist. v. Lee*, 672 F.3d 1176, 1177–78 (9th Cir. 2012).[1]

Thus, the situation here is exactly as described by *Pennhurst*: these "questions of jurisdiction have been passed on in prior decisions sub silentio," in which case "a court is not bound when a subsequent case finally brings the jurisdictional issue to the forefront." 465 U.S. at 119.

In light of *Whole Woman's Health*, that specific jurisdictional issue is now squarely presented here for the first time and under *Penhurst* and *Ordonez*, prior decisions of this Court that did not consider that issue are no bar to this Court considering it now. And if, as we contend, *Whole Woman's Health* in fact bars Lexington's action against tribal court judges, this Court can and should hold, as it did in *Ordonez*, that to the extent those prior decisions were read to allow such actions, those readings were "incorrect." *Ordonez*, 680 F.3d at 1139 n.4.

B. The Rule and Reasoning of *Whole Woman's Health* are Equally Applicable to Tribal Court Judges.

Lexington has offered no argument that would preclude this Court from applying the holding of *Whole Woman's Health* to tribal court judges.

---

[1] The cases from the Sixth, Eighth and Tenth Circuits cited by Lexington, Lex. Resp. Br. at 7–8, are likewise inapposite because none of them considered the "case or controversy" question presented here.

First, Lexington offers no response to the fact that this Court's prior decisions allowing *Ex parte Young*-based suits against tribal court judges stand on very questionable grounds to begin with. As *Ex parte Young* itself admonished:

> the right to enjoin an individual, even though a state official, . . . does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature . . . . The difference between the power to enjoin an individual from doing certain things, and the power to enjoin courts from proceeding in their own way to exercise jurisdiction, is plain, and no power to do the latter exists because of a power to do the former.

209 U.S. at 163.

Given the Supreme Court's clear statement on the issue, there can be little doubt that this Circuit's prior decisions allowing *Ex parte Young* actions to proceed against tribal court judges impermissibly expanded the scope of the *Ex parte Young* holding. Moreover, those earlier decisions did so without any discussion or explanation of why they were ignoring the Supreme Court's admonition against enjoining judicial proceedings.

Lexington is also incorrect in arguing that *Miller v. Gammie*, 335 F.3d 889 (9th Cir. 2003) (en banc), bars this Court from finding that the rule and reasoning of *Whole Woman's Health* applies equally to tribal court judges. Lex. Resp. Br. at 10. Under *Gammie*, "the issues decided by the higher court need not be identical in order to be controlling" if that decision "undercut the theory or reasoning underlying the

prior Circuit precedent in such a way that the cases are clearly irreconcilable." 335 F.3d at 900.

That is the case here. While Lexington is correct that state courts and tribal courts derive their authority from different sources, Lex. Resp. Br. at 13–14, that difference is unrelated to the rule and reasoning of *Whole Woman's Health*. When the Supreme Court ruled that "no case or controversy exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute" because "[j]udges exist to resolve controversies about a law's meaning or its conformance to the [governing] constitutions, not to wage battle as contestants in the parties' litigation," *Whole Woman's Health*, 595 U.S. at 40 (internal quotation marks omitted), that reasoning was not based on characteristics unique to state court judges. Rather, the judges were not proper defendants because they were being sued merely for performing their judicial function of applying a statute or legal doctrine and deciding cases as presented to them. That same reasoning applies equally to tribal court judges.

Lexington has offered no meaningful basis for distinguishing between the two, and as the district court correctly noted, "as tribal courts are the judicial

instruments of a sovereign entity, there are substantial similarities between tribal courts and state courts." 1-ER-17.[2]

Likewise, there is no meaningful distinction between the roles of tribal court judges and state court judges in the *Whole Woman's Health* context. Both are charged with impartially interpreting the law and deciding issues and cases as presented to them; issues that sometimes involve determining the jurisdiction of their courts to hear particular matters. And when making those jurisdictional determinations, tribal court judges are no more "adverse" to the litigants than a state or federal court judge would be in making a comparable decision. Stated more colloquially, tribal court judges have no more "dog in the fight" on a question of jurisdiction than their state or federal counterparts.

---

[2] It is beyond dispute that tribal courts play the same crucial role in the effective operation of tribal governments as do state courts in state governments. *See Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14–15 (1987) ("Tribal courts play a vital role in tribal self-government and the Federal government has consistently encouraged their development.") (citation omitted); *United States v. Wheeler*, 435 U.S. 313, 332 (1978) (recognizing that "tribal courts are important mechanisms for protecting significant tribal interests"); *FMC Corp. v. Shoshone-Bannock Tribe*, 942 F.3d 916, 930 (9th Cir. 2019) ("As we consider questions of tribal jurisdiction, we are mindful of the federal policy of deference to tribal courts and that the federal policy of promoting tribal self-government encompasses the development of the entire tribal court system.") (cleaned up); *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 808 (9th Cir. 2011) (per curiam) (acknowledging that "tribal courts are competent law-applying bodies"); *see also* Indian Tribal Justice Support Act of 2009, 25 U.S.C. § 3601(5) (Congress recognizing "tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring . . . the political integrity of tribal governments.").

In addition, this Court has equated tribal court judges to state court judges in a context that is directly applicable to the matter at issue here. In *Acres Bonusing, Inc. v. Marston*, an Indian tribe had sued non-Indian parties in tribal court over a business dispute. 17 F.4th 901, 905 (9th Cir. 2021). After the non-Indian defendants won in the tribal court, the non-Indians "sued in federal court nearly everyone involved in the tribal court case, including the tribal court judge." *Id.* On appeal, this Court was presented with the issues of immunity defenses available to the tribal court judge. *Id.* The Court held that the tribal court judge was entitled to "the same absolute judicial immunity that shields state and federal court judges." *Id*. at 915 (citation omitted).

What is significant for the present case is that the *Acres Bonusing* court cited and relied upon *Mireles v. Waco,* 502 U.S. 9 (1991) (per curiam), a case involving the immunity available to a California state court judge, and which did not mention tribal courts or tribal judges, in holding that the tribal court judge in *Acres* was entitled to the same immunity. The *Acres Bonusing* court also cited and quoted from *Penn v. United States*, 335 F.2d 786 (8th Cir. 2003) for the same conclusion and, notably, *Penn* also cited to *Mireles* in support of its holding. *Id*. at 789.

The point here is that in *Acres Bonusing*, the court had no hesitancy in applying a Supreme Court precedent involving only state court judges to tribal court

judges. Accordingly, this Court can and should do the same in its application of *Whole Woman's Health* in this case.

Finally, Lexington contends that "no reason not to" is not the proper standard to be applied here. Lex. Resp. Br. at 17. But Lexington does not dispute and cannot deny that when the Ninth Circuit first applied the *Ex parte Young* doctrine to Indian tribes, it did so because, as the Court expressly stated, there was "no reason for not applying this rule to tribal officials" in the absence of any controlling authority. *Burlington N. Railway Co. v. Blackfeet Tribe*, 924 F.2d 899, 901 (9th Cir. 1991). Now, having applied the *rule* of *Ex parte Young* (which made no mention of tribes) to Indian tribes because there was no reason not to, it seems appropriate that the Court would also apply the *limitation* on *Ex parte Young* set forth in *Whole Woman's Health* to tribal judges. And, as discussed above, the Court now has ample reason to do so.

C. Lexington Will Still Have Effective Remedies Available to it if This Court Orders the Dismissal of its Complaint.

Lexington contends that if the Defendants' motion to dismiss were granted, it and other similarly situated non-Indians might be deprived of their ability to have a federal court review the tribal court's assertion of jurisdiction or, at best, would suffer "irreparable harm" having to proceed with its claims before a definitive ruling on tribal court jurisdiction was rendered. Lex. Resp. Br. at 14–15. In fact, neither contention is persuasive.

Even if Lexington is precluded from directly suing tribal court judges to contest tribal court jurisdiction, it would still have a federal court remedy available for such a challenge. In *Coeur d'Alene Tribe v. Hawks*, the tribe brought an action in federal court seeking to enforce a tribal court judgment against a non-Indian couple. 933 F.3d 1052, 1053 (9th Cir. 2019). The district court found that it lacked subject matter jurisdiction over the action because the complaint failed to raise a federal question, as required under 28 U.S.C. § 1331. *Id.*

On appeal, the Ninth Circuit reversed. *Id.* at 1053–54. The Court held that the tribe's complaint did raise a substantial question of federal law because an examination of the tribal court's jurisdiction is a necessary threshold inquiry in any suit to enforce a tribal court judgment against a nonmember. *Id.* at 1060. Thus, before a federal court could enforce a tribal court judgment against a nonmember, the federal court would necessarily have to conduct a careful inquiry into whether the tribal court had jurisdiction to award the judgment. *Id.* at 1056, 1060.[3]

Thus, any concern that precluding direct suits against tribal court judges will leave non-Indian litigants without a federal court remedy is unwarranted.

[3] The fact that this is a meaningful remedy is evidenced by *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997). In *Marchington*, the Court refused to enforce a tribal court judgment because it found that the tribal court was without jurisdiction over the non-Indian parties on the basis of *Strate v. A-1 Contractors*, 520 U.S. 438 (1997). *Marchington*, 127 F.3d at 813–15.

Second, Lexington's claim of "nonmembers suffering [] irreparable harm," Lex. Resp. Br. at 15, is easily shown to be spurious. As an initial matter, the law already countenances the likelihood of a nonmember having to defend a claim on the merits in tribal court before challenging the tribal court's jurisdiction in federal court. That is the holding of *Iowa Mut. Ins. Co. v. LaPlante*, where the Supreme Court ruled that if a tribal court system does not allow for interlocutory review of a jurisdictional decision by the trial court, the non-Indian party, to satisfy the exhaustion requirement, must litigate the merits of its claim in tribal court and seek appellate review of the entire case (including jurisdiction) only after the tribal court judgment is rendered. 480 U.S. 9, 16–17 (1987); *see also Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 847 (9th Cir. 2009) (affirming district court's dismissal for failure to exhaust tribal court remedies when tribal appellate court lacked jurisdiction to consider interlocutory appeals).

In addition, outside Indian Country, a denial of a motion to dismiss for lack of jurisdiction ordinarily is not a "final decision" and thus is not immediately appealable. *See* 28 U.S.C. § 1291; *Figueroa v. United States*, 7 F.3d 1405, 1408 (9th Cir. 1993) ("Ordinarily, the denial of a 12(b)(6) motion is not a reviewable final order; it is only when a question of immunity is involved that we use the collateral order doctrine to exercise jurisdiction."). It is therefore common for a party to endure the possible inconvenience of first litigating the merits in tribal court even if

jurisdiction might ultimately be found lacking. What Lexington complains of is an ordinary aspect of civil litigation throughout the judicial system and is not a compelling policy reason to avoid applying *Whole Woman's Health* to tribal court matters.

Lexington also knows from very recent experience that its "irreparable harm" contention is untrue. In July 2020, the Jamul Indian Village ("Jamul") brought a business interruption insurance claim against Lexington in its tribal court virtually identical to the Cabazon Band's claim against Lexington at issue in this case. Lexington's motion to dismiss Jamul's complaint for lack of jurisdiction was denied by the tribal court in February 2021 and Lexington's petition for interlocutory appeal of that ruling was denied by the tribal court of appeals in April 2021. Lexington then proceeded to litigate the merits of Jamul's claim in tribal court and, in November 2021, the tribal court *granted* Lexington's motion to dismiss Jamul's claim on the merits.

This outcome demonstrates two things. First, in getting a favorable decision on the merits in less than nine months, Lexington can hardly claim to have suffered "irreparable harm" from the process. Second, and equally important, the result demonstrates that litigating in tribal court does not mean that the tribe always wins.

As Lexington can readily attest, tribal courts offer all litigants—Indian and non-Indian—fair and impartial justice.[4]

II.
THE DISTRICT COURT CORRECTLY DISMISSED CHIEF JUDGE WELMAS FROM THE CASE

Lexington contends that the district court erred in dismissing Chief Judge Welmas from the case. Lex. Resp. Br. at 17–20. Lexington does not dispute the controlling Ninth Circuit standard applicable here. Rather, it contends that the facts presented in *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697 (9th Cir. 1992), are more closely analogous to the facts of the present case than those of *Snoeck v. Brussa*, 153 F.3d 984 (9th Cir. 1998), the case upon which the district court relied. But upon analysis, it is clear that the district court correctly applied the rule applicable to both *Eu* and *Snoeck* and reached the proper conclusion, dismissing the Chief Judge.

Eu involved a suit by the Los Angeles County Bar Association challenging the constitutionality of a California statute that capped the number of judges that could be assigned to each county in the State. The Bar Association sought a

[4] Arguments questioning the competency and neutrality of tribal courts have been a mainstay in attacks on tribal jurisdiction by non-Indians and have been consistently rejected by the Supreme Court, this Court, and its sister circuits. *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18–19 (1987); *FMC Corp. v. Shoshone-Bannock Tribes*, 942 F.3d 916, 943 (9th Cir. 2019); *Norton v. Ute Indian Tribe of the Uintah & Ouray Reservation*, 862 F.3d 1236, 1249–50 (10th Cir. 2017).

declaration that the statutory limits as applied to Los Angeles County created a shortage of judges, thus creating delays that violated litigants' federal and state constitutional guarantees. *Eu*, 979 F.2d at 699–700. An order in the plaintiff's favor would have required the mandatory appointment of additional judges to the bench. *Id*. at 701. Defendants, California Governor Wilson and California Secretary of State Eu, asserted immunity under the Eleventh Amendment, arguing they could not be sued pursuant to *Ex parte Young* because they lacked a sufficient "connection with enforcement of the challenged statute." *Id.* at 704.

This Court rejected that argument. "Under *Ex parte Young*, the state officer sued must have some connection with the enforcement of the [allegedly unconstitutional] act. This connection must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." *Id*. at 704 (citation omitted). The Court then held that Wilson and Eu had that necessary direct connection to the challenged law to be sued under *Ex parte Young* because "Wilson ha[d] a duty to appoint judges to any newly-created judicial positions, and Eu ha[d] a duty to certify subsequent elections for those positions." *Id*.

If the *Eu* decision has any relevance to our case, it is to highlight how differently situated Chief Judge Welmas is to Wilson and Eu and thus to underscore the correctness of the district court's order dismissing Chief Judge Welmas. In this

case, Lexington is contesting the Cabazon Court's assertion of jurisdiction. As the judge presiding over the Cabazon Band's suit against Lexington, Judge Mueller arguably had a "fairly direct" connection to the enforcement of tribal court jurisdiction that is at the heart of Lexington's suit. But Chief Judge Welmas' role in that proceeding is completely peripheral. He did not appoint Judge Mueller, 3-ER-329, he played no role whatsoever in the Lexington litigation, 3-ER-329, he has no authority to remove Judge Mueller, 3-ER-329, and he would play no role in enforcing any judgment issued by Judge Mueller. At most, the Chief Judge can be said to have general administrative responsibility for the operation of the tribal court, 2-ER-300 at § 9-104(b). Thus, whereas Wilson and Eu would have had direct roles in carrying out the relief sought by the plaintiff in *Eu*, here Welmas has only "a general supervisory power over the persons responsible for enforcing the challenged provision," which both *Eu* and *Snoeck* hold is insufficient for purposes of granting relief under *Ex parte Young*. *Eu,* 979 F.2d at 704; *see also Snoeck*, 153 F.3d at 986 (quoting *Eu*).

In sum, the district court's holding that "Chief Judge Welmas' general supervisory responsibilities over the Tribal Court are too attenuated from the enforcement of tribal jurisdiction to establish standing," 1-ER-19, properly applied applicable Circuit precedent and this Court should not disturb that ruling on appeal.

CONCLUSION

The district court erred in failing to grant Defendants Mueller and Welmas' motion to dismiss. Prior Ninth Circuit cases allowing *Ex parte Young* actions to proceed against tribal court judges did not consider the "case or controversy" question presented here. As a result, under *Pennhurst* and *Ordonez*, those cases do not preclude this Court from addressing that issue now.

Nor does *Miller v. Gammie* bar this Court from applying the holding of *Whole Woman's Health* to tribal court judges. Nothing in that holding makes it unique to state court judges and in *Acres Bonusing*, this Court showed no hesitancy in applying a Supreme Court ruling involving only state court judges to tribal court judges; precisely what Defendants Mueller and Welmas are asking the Court to do here.

The Court should reverse the district court's denial of Defendants' motion to dismiss and instruct the district court to enter an order granting that motion.

Dated: October 16, 2023

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

By: */s/ Glenn M. Feldman*
Glenn M. Feldman
Racheal M. White Hawk
Attorneys for Defendant DOUG WELMAS

Dated: October 16, 2023

FORMAN SHAPIRO & ROSENFELD LLP

By: */s/ Jay B. Shapiro*
George Forman
Jay B. Shapiro
Margaret C. Rosenfeld
Attorneys for Defendant MARTIN A. MUELLER

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Circuit Rule 28.1-1(d) because it contains 3,865 words, excluding the portions exempted by Rule 32(f) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5)(A) and (a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word in 14 point Times New Roman font.

Dated: October 16, 2023

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

By: */s/ Glenn M. Feldman*
Glenn M. Feldman
Racheal M. White Hawk
Attorneys for Defendant DOUG WELMAS

Dated: October 16, 2023

FORMAN SHAPIRO & ROSENFELD LLP

By: */s/ Jay B. Shapiro*
George Forman
Jay B. Shapiro
Margaret C. Rosenfeld
Attorneys for Defendant MARTIN A. MUELLER

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using appellate CM/ECF system on October 16, 2023.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 16, 2023

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

By: */s/ Glenn M. Feldman*
Glenn M. Feldman
Racheal M. White Hawk
Attorneys for Defendant DOUG WELMAS

Dated: October 16, 2023

FORMAN SHAPIRO & ROSENFELD LLP

By: */s/ Jay B. Shapiro*
George Forman
Jay B. Shapiro
Margaret C. Rosenfeld
Attorneys for Defendant MARTIN A. MUELLER