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HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PILRANG BAE OWA,

Plaintiff,

v.

FRED MEYER STORES (Western
region subsidiary Corp. of THE
KROGER COMPANY);
ADVANCED FRESH CONCEPTS
FRANCHISE CORPORATION,

Defendants.

CASE NO. 2:16-cv-1236-RAJ

ORDER

This matter comes before the court on Defendant Advanced Fresh Concepts Franchise Corporation’s motion to confirm an arbitration award. Dkt. # 151. For the reasons that follow, the Court **GRANTS** the motion.

BACKGROUND

Plaintiff Pilrang Bae Owa was the sole member and operator of Sakura Foods Everett, L.L.C., a limited liability company engaged in the production and sale of sushi and other raw fish products. *See* Dkt. # 92-1 at 17–20. On December 20, 2012, Plaintiff, in her individual capacity, entered into a franchise agreement with Defendant. Dkt. # 34-2

1 at 2. The franchise agreement permitted Plaintiff to operate a full-time food service
2 counter selling sushi inside of a Fred Meyer grocery store in Everett, Washington. *Id.* at
3 34. The franchise agreement also included an agreement between Plaintiff and Defendant
4 to arbitrate “any dispute that arises out of or relates directly or indirectly to this
5 Agreement or the relationship of the parties hereto.” *Id.* at 28. On January 23, 2013—a
6 month after signing the franchise agreement in her personal capacity—Plaintiff created
7 “Sakura Foods Everett, L.L.C.” to execute the provisions of the franchise agreement. Dkt.
8 # 34-3 at 8–11. On February 13, 2013, Plaintiff obtained a business license for her
9 operation under the name “Sakura Foods Everett LLC.” *Id.* at 13. The Washington
10 Secretary of State administratively dissolved Plaintiff’s limited liability company on May
11 1, 2014, but Plaintiff continued operating the business until Defendant terminated the
12 franchise agreement on April 26, 2016. *See* Dkt. ## 170 at 1, 81-1 at 9.

13 On April 25, 2016—the day before Defendant terminated the franchise
14 agreement—Plaintiff filed a lawsuit in the Superior Court for King County, Washington,
15 alleging that Defendant and Fred Meyer violated state and federal anti-discrimination
16 laws and committed common-law torts. Dkt. ## 1, 1-2 at 1–26. Plaintiff first amended her
17 lawsuit on May 5, 2016, and again on July, 29, 2016. Dkt. # 1 at 2. On July 19, 2016,
18 Defendant responded to Plaintiff’s first amended complaint by filing an arbitration
19 demand with the American Arbitration Association (AAA). Dkt. # 32 at 5. Defendant
20 sought an arbitral declaration that Plaintiff was an independent business owner, and not
21 an employee, to negate Plaintiff’s ability to make a prima facie case for employment
22 discrimination. *See id.* On August 5, 2016, Fred Meyer removed the case to federal court
23 in accordance with 28 U.S.C. §§ 1332 and 1441. *Id.* On August 23, 2016, AAA agreed to
24 arbitrate the dispute between Plaintiff and Defendant, noting that the relief sought by
25 Defendant was within the scope of franchise agreement’s arbitration provision. *See id.*

26 On September 1, 2016, with arbitration pending and the case removed to federal
27 court, Defendant notified the Court of the anticipated arbitration. Dkt. # 22. On

1 September 22, 2016, Defendant petitioned the Court to either 1) compel arbitration and
2 stay Defendant’s participation in the case until completion of arbitration or 2) dismiss
3 Plaintiff’s complaint against Defendant outright. Dkt. # 32 at 5. On December 15, 2016,
4 the Court granted Defendant’s motion to compel arbitration, agreeing to stay Defendant’s
5 involvement in the case until the completion of arbitration. Dkt. # 66.

6 On June 29, 2017, Arbitrator Mary S. Jones issued a partial final award in favor of
7 Defendant, finding that Plaintiff was not employed by Defendant. Dkt. # 81-1 at 22.
8 Accordingly, the arbitrator dismissed Plaintiff’s state and federal employment
9 discrimination claims against Defendant. *Id.* at 23. The arbitrator did not rule on
10 Plaintiff’s tort claim in the partial final award; instead, the arbitrator reserved the
11 disposition of the tort claim and assignment of liability for attorney’s fees until the
12 comprehensive final award. *Id.*

13 On November 28, 2017, the arbitrator issued the comprehensive final award. Dkt.
14 # 92-1. The comprehensive final award denied Plaintiff relief for her intentional infliction
15 of emotional distress (IIED) claim. *Id.* at 8–9. The final award also awarded fees to
16 Defendant, as the prevailing party, in accordance with the franchise agreement and
17 California law. *Id.* at 9–10; *see also* Cal. Civ. Code § 1717(a) (fees shall be awarded to
18 the prevailing party where a contract provides for attorney’s fees). Plaintiff claimed
19 \$71,000 of attorney fees for the arbitration, and Defendant claimed legal fees totaling
20 \$439,787. *Id.* at 10. Because of the disparity in expenditures, the arbitrator indicated that
21 she gave “careful and serious consideration . . . [evaluating] the reasonableness of the
22 attorney’s fees and costs incurred by” Defendant. *Id.* When deciding how much to award
23 Defendant, the arbitrator cited consideration of

- 24 1) the numerous causes of action and contrary positions taken
25 by . . . [Plaintiff] at various times over the course of this
26 dispute, 2) . . . [Defendant’s] need for local Washington State
27

1 counsel, and 3) the very different practice, presentation,
2 preparation and organizational styles of each party's counsel.

3 *Id.* The arbitrator also noted that Defendant faced a claim of \$6.8 million in punitive
4 damages, and that Defendant could not take that potential liability "lightly." *Id.*
5 Ultimately, the arbitrator awarded Defendant \$373,126.98 in fees, basing her decision on
6 "the totality of the circumstances in this case, the reasonableness of the fees . . . and the
7 clear and unambiguous requirement in the Agreement mandating a fee [award] . . . to the
8 prevailing party[.]" *Id.* at 10–11.

9 On November 29, 2017, AAA transmitted the signed comprehensive final award
10 by e-mail to Plaintiff and Defendant. Dkt. # 152-1 at 86. On December 1, 2017,
11 Defendant filed an arbitration status report informing the Court of the final arbitration
12 award. Dkt. #92. On the same day, Plaintiff filed her own status report, informing the
13 Court of her intention to move to vacate the arbitration award due to the arbitrator's
14 partiality, corruption, and manifest disregard for the law. Dkt. # 94 at 1–2. On December
15 4, 2017, Plaintiff filed an additional status report reasserting her intention to move to
16 vacate the award, claiming the arbitrator failed to give sufficient weight to Plaintiff's
17 emotional state when deciding the IIED claim. Dkt. # 95. In addition to filing status
18 reports with the Court, Plaintiff also petitioned AAA for a modification of the final
19 arbitration award. *See* Dkt. # 152-1 at 80. On December 12, 2017, the arbitrator declined
20 to modify the award, noting that "the merits on all the claims presented in this matter
21 have already been decided." *Id.* AAA transmitted this decision to the parties on
22 December 13, 2017. *Id.* at 88.

23 On March 15, 2018, Defendant filed the current motion to confirm the arbitration
24 award. Dkt. # 151. Defendant argues that the comprehensive final arbitration award is
25 conclusive on all issues between Plaintiff and Defendant, and that confirmation of the
26 award is proper and in accordance with the Federal Arbitration Act (FAA). *Id.* at 7–9.
27 Importantly, Defendant argues that any argument against confirmation of the award is

1 moot because Plaintiff failed to move to vacate, modify, or correct the award within
2 statutory guidelines. *Id.* at 8.

3 Plaintiff's reply challenges the current motion, arguing that confirmation of the
4 arbitration award is improper because 1) judgment against Sakura Foods, L.L.C. cannot
5 be supported because the corporate entity no longer exists; and 2) the arbitrator exceeded
6 her powers by granting attorney's fees on the IIED claim. Dkt. # 160 at 1–2. Plaintiff's
7 reply also renews the allegations made in her post-arbitration status report that the
8 arbitrator was partial, corrupt, and exhibited a manifest disregard for the law. *Id.* at 2–6;
9 *see also* Dkt. # 94 at 1–2. Plaintiff supports those claims with a detailed declaration
10 outlining numerous objections to the arbitration proceedings. *See* Dkt. # 159-2. Despite
11 these allegations, Plaintiff notes that she “does not seek award vacatur” and only asks the
12 Court “to use its inherent equity powers and on ground of public policy to vacate an
13 award representing an extreme miscarriage of justice.” Dkt. # 160 at 2.

14 Defendant's response simply asserts that Plaintiff's disagreement with the
15 arbitrator's findings of facts or conclusions of law does not prohibit confirmation of the
16 arbitration award. Dkt. # 162 at 3–5. Defendant also moves to strike several of Plaintiff's
17 filings as irrelevant, arguing that Plaintiff waived these arguments because they were not
18 filed in accordance within the temporal limitations of 9 U.S.C. § 12. *Id.* at 5–6. Plaintiff's
19 surreply restates her grievances with the arbitration process, argues that judgment against
20 Plaintiff's LLC is improper because the entity was administratively dissolved, and moves
21 to strike several statements in Defendant's reply (Dkt. # 162) as false. *See* Dkt. # 169.

22 **LEGAL STANDARD**

23 When parties agree to arbitrate disputes, they agree to forego “the procedures and
24 opportunity for review of the courtroom for the simplicity, informality, and expedition of
25 arbitration.” *Mitsubishi Motors Corp. v. Soley Chrysler-Plymouth, Inc.*, 474 U.S. 614,
26 628 (1985). Arbitrators have limited authority, though, only having jurisdiction over
27 issues 1) contractually agreed upon as topics for arbitration or 2) mutually submitted by

1 the parties for arbitration. *See Schoenduve Corp. v. Lucent Techs., Inc.*, 442 F.3d 727,
2 732 (9th Cir. 2006); *Coutee v. Barrington Capital Grp., L.P.*, 336 F.3d 1128, 1136 (9th
3 Cir. 2003) (arbitrator may award attorney’s fees if both parties submit the issue to
4 arbitration). If an arbitrator has jurisdiction over an issue, “[f]ederal law takes an
5 expansive view of . . . [the arbitrator’s] authority to decide disputes and fashion
6 remedies.” *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1064 (9th Cir.
7 1991)

8 Congress limits the power of federal courts to review arbitration decisions to avoid
9 “unnecessary public intrusion into private arbitration procedures.” *Kyocera Corp. v.*
10 *Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997–98 (9th Cir. 2003); *see also*
11 *Schoenduve Corp.*, 442 F.3d at 731 (Congress limits the power to review arbitration
12 awards “to protect the overall purpose of arbitration and to avoid any tendency of a court
13 to impute its own strict and rigid practices onto arbitration proceedings.”). When
14 reviewing arbitration awards, courts employ a “highly deferential” standard. *Coutee v.*
15 *Barrington Capital Grp., L.P.*, 336 F.3d 1128, 1132 (9th Cir. 2003) (citing *Sheet Metal*
16 *Workers’ Int’l Ass’n, Local Union No. 359 v. Madison Indus., Inc.*, 84 F.3d 1186, 190
17 (9th Cir. 1996)).

18 Courts must grant motions to confirm arbitration awards unless the FAA
19 prescribes a method for vacating, modifying, or correcting the award. *See* 9 U.S.C. § 9;
20 *Schoenduve Corp.*, 442 F.3d at 731; *G.C. & K.B. Investments, Inc. v. Wilson*, 326 F.3d
21 1096, 1105 (9th Cir. 2003). A party wishing to challenge an arbitration award must
22 petition the court and notify and serve the adverse party “within three months after the
23 award is filed.” 9 U.S.C. § 12; *see Sheet Metal Workers’ Intern. Ass’n, Local No. 252 v.*
24 *Standard Sheet Metal, Inc.*, 699 F.2d 481, 483 (9th Cir. 1983) (failure to challenge
25 arbitration award within statutory time limitation bars assertion of any defenses in later
26 proceedings). The challenging party must limit its complaint to the statutorily-permitted
27 grounds enumerated in §§ 10 and 11 of the FAA. 9 U.S.C. § 9.

1 Section Ten of the FAA describes when a court may vacate an arbitrator's
2 decision. *See* 9 U.S.C. § 10. A district court may make an order vacating an arbitration
3 award where: the award was procured by corruption or fraud; the arbitrator was partial or
4 corrupt; the arbitrator refused to hear material evidence; or the arbitrator exceeded his
5 powers. *Id.* Arbitrators exceed their powers when making an arbitration award that is
6 either “completely irrational” or exhibits a “manifest disregard” for the law. *Kyocera*
7 *Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003) (citations
8 omitted); *see also* *Coutee*, 336 F.3d at 1132. An arbitrator’s decision is completely
9 irrational “where [the arbitration decision] fails to draw its essence from the agreement.”
10 *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009) (quoting
11 *Hoffman v. Cargill Inc.*, 236 F.3d 458, 461–62 (8th Cir. 2001)). An arbitrator’s decision
12 manifestly disregards the law when it is “clear from the record that the arbitrator
13 recognized the applicable law and then ignored it.” *Id.* at 1290 (quoting *Mich. Mut. Ins.*
14 *Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th Cir. 1995)).

15 Section Eleven of the FAA provides the court with the power to modify or correct
16 an arbitration award. *See* 9 U.S.C. § 11. A district court may modify or correct an
17 arbitration award where: there was a miscalculation of figures or an evident mistake in
18 the award; the arbitrator awarded on an issue not submitted for arbitration; or the award is
19 imperfect in form without affecting the merits of the dispute. *Id.*

20 An arbitrator’s “factual determinations and legal conclusions” are generally
21 upheld as long as they derive from the “essence” of the agreement. *Carpenters’ Local*
22 *Union No. 1478 v. Stevens*, 743 F.2d 1271, 1275 (9th Cir. 1984) (citation omitted). A key
23 exception to this standard is that courts give no deference to arbitration awards that
24 violate a “well-defined and dominant public policy.” *Id.* When determining whether an
25 arbitration award violates public policy, courts must look to laws and legal precedents
26 instead of “general considerations of proposed public interest.” *W.R. Grace & Co. v.*
27 *Local Union 759*, 461 U.S. 757, 766 (1983). The power to set aside arbitration awards on

1 public policy grounds is very limited, though. *See United Paperworkers Intern. Union,*
2 *AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 43 (1987) (*W.R. Grace* does not “sanction a broad
3 judicial power to set aside arbitration awards as against public policy.”). The court must
4 determine whether the “relief ordered by the arbitrator would conflict with other laws and
5 legal precedents and *clearly violate an identifiable public policy.*” *ESCO Corp. v.*
6 *Bradken Resources Pty Ltd.*, No. 10-788-AC, 2011 WL 1625815 at *9 (D. Or. Jan 31,
7 2011) (emphasis added).

8 Accordingly, the court takes a “narrow view” when considering whether to vacate
9 an arbitrator’s award on public policy grounds. *Stead Motors of Walnut Creek v. Auto.*
10 *Machinists Lodge No. 1173, Int’l Ass’n of Machinists and Aerospace Workers*, 886 F.2d
11 1200, 1211 (9th Cir. 1989); *see also Arizona Elec. Power Co-op., Inc. v. Berkeley*, 59
12 F.3d 988, 992 (9th Cir. 1995) (“the public policy regarding fee collection by unethical
13 lawyers is so fact-specific suggests that it is not sufficiently ‘well defined and dominant’
14 to fall within the public policy exception”); *Belves Co. v. Teamsters Local 986*, 791 F.2d
15 1391, 1392 (9th Cir. 1996) (the public policy of discouraging unlawful immigration is not
16 a sufficient reason to overturn an arbitral award of reinstatement and back pay for
17 terminated employees, notwithstanding the undocumented status those employees); *Iowa*
18 *Elec. Light and Power Co. v. Local Union 204 of Int’l Bhd. of Elec. Workers (AFL-CIO)*,
19 834 F.2d 1424, 1425–27 (8th Cir. 1987) (public policy requiring “strict adherence to
20 nuclear safety rules” meets the “narrow public policy exception” and warrants reversal of
21 an arbitrator’s order to reinstate an employee terminated for violating federal nuclear
22 regulations). The party seeking to vacate an arbitration award on the grounds of public
23 policy bears the burden of showing that “the award violates an explicit, well-defined, and
24 dominant public policy.” *Id.* (citing *Ministry of Defense of the Islamic Republic of Iran v.*
25 *Gould, Inc.*, 969 F.2d 764, 770 (9th Cir. 1992)).

1 challenge procedurally deficient; Plaintiff thereby waives all claims challenging the
2 arbitration award. *See Sheet Metal Workers' Intern. Assn, local No. 252*, 699 F.2d at 483.

3 **b. Validity of the Arbitration Award**

4 Plaintiff does not seek to vacate the arbitration award; instead, Plaintiff appeals to
5 the Court's equitable powers to overrule the arbitration award on public policy grounds.
6 Dkt. # 160 at 2. Even if Plaintiff properly served a motion to vacate or modify the
7 arbitration award, her subsequent filings do not meet the threshold required for the Court
8 to overrule the arbitrator's award. Plaintiff claims that the arbitrator was partial, corrupt,
9 exceeded her powers by granting a "massive award of attorney fees," and exhibited a
10 manifest disregard for the law. *See* Dkt. # 160 at 2–6. Additionally, Plaintiff claims that
11 the arbitration award is improper because Plaintiff's business entity was defunct at the
12 time of the award. *See* Dkt. # 159 at 1 (Sakura Foods Everett LLC tax account closed on
13 April 27, 2016); Dkt. # 169 at 1 (Sakura Foods Everett, L.L.C. was administratively
14 dissolved on May 1, 2014). After careful review, the Court finds that none of these claims
15 are meritorious.

16 First, the record does not support Plaintiff's allegations involving arbitrator
17 partiality and corruption. Plaintiff alleges arbitrator corruption because the arbitrator took
18 time during a pre-arbitration conference call to discuss her fees, the arbitrator did not
19 allow the live testimony of one of Plaintiff's witnesses, and the Plaintiff's attorney saw
20 Defendant's attorney speak to the arbitrator during a break. Dkt. # 160 at 2–5. None of
21 these, without more, indicate corruption. First, Plaintiff does not provide any evidence
22 regarding the nature of the ex parte communications between Defendant's attorney and
23 the arbitrator, nor does she allege any prejudice resulting from the ex parte
24 communication. *See Employers Ins. Of Wasau v. Nat'l Union Fire Ins. Co. of Pittsburgh*,
25 933 F.2d 1481, 1490 (9th Cir. 1991); *see also Mutual Fire, Marine & Inland Ins. Co. v.*
26 *Norad Reinsurance Co., Ltd.*, 868 F.2d 52 , 57 (3d Cir. 1989) (a party that fails to
27 demonstrate prejudice from ex parte communication with an arbitrator cannot support an

1 action for award vacatur). Second, Plaintiff is mistaken in her assertion that the arbitrator
2 would not “permit the testimony” of witness Twiggy Lee because it was “inconvenient.”
3 Dkt. # 160 at 4. Dr. Lee testified telephonically on September 5, 2017. Dkt. # 92-1 at 3.
4 Finally, the Court finds no fault—and certainly no corruption—with an arbitrator
5 explaining her fees to the parties during a teleconference.

6 Similarly, the record does not support Plaintiff’s claims of arbitrator partiality.
7 Plaintiff alleges that the arbitrator allowed Defendant to file late pleadings, sustained
8 every objection made by Defendant’s attorney during the arbitration, and forced her
9 attorney to make closing arguments before examination of all of Plaintiff’s witnesses.
10 Dkt. # 160 at 3–6. Again, Plaintiff fails to present any evidence supporting these claims
11 in her numerous filings opposing award confirmation. Arbitrations are more informal
12 than judicial proceedings, and Plaintiff’s arguments regarding partiality are unavailing
13 because her complaints stem from the very informality and expediency that make
14 arbitration an attractive dispute resolution mechanism. *See Mitsubishi Motors Corp.*, 474
15 U.S. at 628.

16 Second, the record does not support Plaintiff’s claims that the arbitrator abused her
17 power by awarding a large amount of attorney’s fees. Plaintiff claims that the franchise
18 agreement provision concerning attorney’s fees only concerned fees for contract
19 disputes—not for disputes involving torts. Dkt. # 160 at 1. The franchise agreement,
20 though, states that the arbitrator has the power to resolve “[a]ny dispute that arises out of
21 or relates directly or indirectly to this Agreement or the relationship of the parties.” Dkt.
22 #34-2 at 28. This includes disputes in contract and in tort. Additionally, the franchise
23 agreement explicitly provides the arbitrator with the power to award fees and costs to the
24 prevailing party in an arbitration. *Id.* at 30.

25 Plaintiff makes another argument regarding the fees, denominating them as
26 “privatized injustice.” Dkt. # 160 at 2. Plaintiff attempts to make a public policy
27 argument regarding the size of the Defendant’s award for attorney’s fees. This argument

1 is unpersuasive. Plaintiff fails to provide any justification demonstrating that an award of
2 fees to a prevailing party in arbitration is an “explicit, well-defined, and dominant public
3 policy” demanding the Court’s reversal of the arbitration award. *See Stead Motors of*
4 *Walnut Creek*, 886 F.2d at 1211. The Court does not favor the levy of large awards of
5 attorney’s fees against indigent parties, but when considering whether to overturn an
6 arbitrator’s determination, the Court must look to “laws and legal precedents instead of
7 ‘general considerations of proposed public interest.’” *See W.R. Grace & Co.*, 461 U.S. at
8 766. Plaintiff presents no law or legal precedent absolving her from contractual liabilities
9 resulting from arbitration. *See* Dkt. # 159 at 2 (describing Plaintiff as “thoroughly
10 destitute”). The Court, giving due deference to the arbitrator’s decisions, upholds the
11 arbitrator’s award of Defendant’s attorney’s fees because 1) arbitrators have broad
12 authority to fashion remedies and 2) the award derives from the “essence” of the
13 franchise agreement. *See Carpenters’ Local Union No. 1478*, 743 F.2d at 1275; *Todd*
14 *Shipyards Corp.*, 943 F.2d at 1064.

15 Third, the record does not support Plaintiff’s claims that the arbitrator exhibited a
16 “manifest disregard for the law.” Plaintiff alleges that the arbitrator ignored the Ninth
17 Circuit standard for proving an IIED claim. Dkt. # 160 at 6; *see also Miller v. Fairchild*
18 *Industries*, 797 F.2d 727, 737 (9th Cir. 1986) (prima facie case for IIED). Plaintiff is
19 incorrect. Despite testimonial evidence that Plaintiff suffered emotional distress, it was
20 within the arbitrator’s power to rule in favor of Defendant if Plaintiff did not prove that
21 Defendant’s conduct was outrageous. Therefore, the Court does not find that the
22 arbitrator manifestly disregarded the law. *See* Dkt. # 92-1 at 15.

23 Finally, the argument that the arbitration award is improper because Plaintiff’s
24 business entity, Sakura Foods Everett, L.L.C., was defunct at the time of the award is
25 incorrect. Plaintiff entered into the franchise agreement in her individual capacity on
26 December 20, 2012, over a month before registering her limited liability company
27 (Sakura Foods Everett, L.L.C.) and obtaining a business license to operate as Sakura

1 Foods Everett LLC. *See* Dkt. # 34-2 at 32–33 (signed franchisee agreement and guaranty
2 obligating Plaintiff personally for all franchisee obligations under the franchise
3 agreement). Additionally, Plaintiff continued to perform duties under the franchise
4 agreement for nearly two years after the administrative dissolution of the LLC. This
5 course of performance under the franchise agreement undercuts Plaintiff’s argument that
6 the LLC, and not Plaintiff individually, is the proper subject of the arbitration award.

7 **CONCLUSION**

8 For the foregoing reasons, the Court **GRANTS** the motion to confirm the
9 arbitration award. Dkt. # 151. In light of the confirmation of the arbitration award, the
10 Court **DENIES** each party’s motion to strike over-length, false, and irrelevant filings as
11 moot. Dkt. ## 162, 169.

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13 Dated this 29th day of May, 2018.

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16 The Honorable Richard A. Jones
17 United States District Judge
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