The City of New York
BUSINESS INTEGRITY COMMISSION
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DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF G & S CARTING INC. (BIC #4187) AND THE REGISTRATION APPLICATION OF CHUNG INDUSTRIES INC. (BIC #4553) TO OPERATE AS TRADE WASTE BUSINESSES

I. INTRODUCTION & BACKGROUND

A. Introduction

On August 27, 2013, G & S Carting Inc. ("G & S") applied to the New York City Business Integrity Commission (the "Commission")[1] for a renewal of its exemption from the Commission's trade waste licensing requirements to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation."[2] See August 27, 2013 G & S Class 2 Registration Renewal Application (the "Instant G & S Application"). Local Law 42 of 1996 ("Local Law 42") authorizes the Commission to review and make determinations on such exemption applications. See Title 16-A, New York City Administrative Code ("Administrative Code" or "Admin. Code") § 16-505(a).

On March 20, 2013, Chung Industries Inc. ("Chung") applied to the Commission for an exemption from the Commission's trade waste licensing requirements to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation." See March 20, 2013 Chung Class 2 Registration Application (the "Instant Chung Application"). As described below, G & S and Chung are intertwined through the sole principal of G & S, Carl Puma: the evidence in this matter demonstrates that he is also an undisclosed principal of Chung. Therefore, the Commission staff has considered the G & S application and the Chung application together in a single recommendation. G & S and Chung are referred to herein collectively as the "Applicants."

After a review of the Applicants' exemption applications, if the Commission were to grant the exemptions from the Commission's trade waste licensing requirements, G & S would be issued a renewal of its registration, and Chung would be issued an initial registration. See id. at § 16-505(a)-(b). The Commission's review of an exemption application focuses on a determination of whether the applicant possesses business integrity, i.e., good character, honesty and integrity. See Title 17, Rules of the City of New York § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin.

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[1] The Commission was formerly known as the New York City Trade Waste Commission.
[2] "Trade waste" or "waste" is defined at Admin. Code § 16-501(f)(1) and includes "construction and demolition debris."

Code § 16-504(a) (empowering the Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); Admin. Code § 16-509(a) (authorizing the Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").

On September 18, 2015, the Commission's staff personally served the principal of Chung, at her residence, the Commission's Notice to the Applicants of the Grounds to Deny the Class 2 Registration Renewal Application of G & S and the Class 2 Registration Application of Chung to Operate as a Trade Waste Business (the "Notice of Denial"). On September 21, 2015, the Commission's staff personally served the principal of G & S the Notice of Denial at his residence. The Applicants were given 10 business days to respond, until October 5 and October 8, 2015, respectively. See 17 Rules of the City of New York ("RCNY") §2-08(a). The Commission did not receive a response from either Applicant. The Commission has now completed its review of the Instant G & S and Instant Chung Applications, having carefully considered the Notice of Denial and the Applicants' lack of response. Based upon the record as to the Applicants, the Commission denies G & S's exemption renewal application and Chung's exemption application based on the following independently sufficient reasons:

1. **The Applicants Provided False and Misleading Information to the Commission on Multiple Occasions; and**

2. **Carl Puma, G & S's Sole Principal and an Undisclosed Principal of Chung, Knowingly Associated with a Member of Organized Crime.**

B. Background and Statutory Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates, known as trade waste. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See, e.g., United States v. Int'l Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante, No. 96 Cr. 466 (S.D.N.Y.); People v. Ass'n of Trade Waste Removers of Greater New York, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that

an industry once overrun by corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. Id. If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a Class 2 registration. Id. at § 16-505(a)-(b). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at § 16-508(b); see also id. at § 16-504(a). An "applicant" for a license or registration means both the business entity and each principal thereof. Id. at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making its determination on an application for a license or registration:

1. failure by such applicant to provide truthful information in connection with the application;

2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at § 16-509(a)(i)-(x). See also id. at § 16-504(a).

The Commission also may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license." Id. at § 16-509(b). See also Elite Demolition Contracting Corp. v. The City of New York, __ N.Y.S.2d __, 125 A.D.3d 576 (1st Dep't 2015); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424 (1st Dep't 2008); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dep't) (Commission may deny an application for an exemption "where the applicant fails to provide the necessary information, or knowingly provides false information"); leave denied 2 N.Y.3d 705 (N.Y. 2004). See also Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at § 16-509(c). See also id. at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at § 16-509(d); see also id. at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) has no entitlement to and no property interest in a license or registration, and the Commission is vested with broad discretion to grant or deny a license or registration

application. Sanitation & Recycling Indus., Inc., 107 F.3d 985, 995 (2d Cir. 1997); see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100 (N.Y. 1997).

II. DISCUSSION

A. Statement of Facts

1. The Applicants' Application History

On or about June 8, 2011, G & S filed an application for a Class 2 Registration with the Commission (the "Original G & S Application"). On September 12, 2011, the Commission granted the application and issued a Class 2 Registration to G & S. See G & S Class 2 Registration Order. G & S's Class 2 Registration was effective on October 1, 2011, and expired on September 30, 2013. Id. On or about August 27, 2013, G & S filed the Instant G & S Application with the Commission. On both the Original G & S Application and the Instant G & S Application, G & S disclosed Carl Puma ("Puma") as the company's 100% owner and President. See Original G & S Application and Instant G & S Application at p.13.

On or about March 20, 2013, Chung filed the Instant Chung Application with the Commission. The Instant Chung Application disclosed Christine Puma ("Christine") as the sole principal of the business. See Instant Chung Application at p.13. Christine is Puma's wife, and her maiden name is Chung. The business address listed on the Instant Chung Application is 4439 Arthur Kill Road, Staten Island, N.Y. 10309. See Instant Chung Application at p.1. This is the same business address listed on the Instant G & S Application. See Instant G & S Application at p.1.

2. Puma as Undisclosed Principal of Chung

There is overwhelming evidence that Puma has been acting as an undisclosed principal of Chung and is actually running the business. On June 15, 2015, Puma testified under oath at the Commission. During that testimony, Puma stated that Christine has no experience in the construction business and that, for as long as he has known her, she has been a pharmacist. See Transcript of Sworn Interview of Puma, June 15, 2015 ("Puma Tr.") at 16:21-24. According to Puma, Christine has worked at CVS as a pharmacist since 2005, and is still currently employed there. Id. at 17:3-5. Puma stated that he runs the Chung business "basically, day-to-day." Id. at 21:18-19. Notwithstanding this fact, Puma acknowledged that he is not disclosed as a principal of the company, nor does he have any ownership interest in Chung on paper or official title with the company. Id. at 72:16-21. Puma stated, "[Christine] would call her shop steward ... and she would say: 'What's the issue?' He would tell her and she would ask me for advice. Listen, I know the majority of the business. She would ask me and I would give her my advice." See id. at 100:9-15. When asked why Chung and G & S share a telephone number and office space, Puma responded, "Should each entity have its own space? I don't know. I feel it's husband and wife . . . . Listen, I know the majority of the business. She would ask me and I would give her my advice." Id. at 99:3-5 and 100:14-15. Puma's own admissions demonstrate that he provided indispensable guidance to Christine in running Chung.

However, the evidence demonstrates that Puma played a larger role in Chung than simply assisting with basic operations. Puma is listed as President and Secretary on a Capital One Bank account application for Chung, an application which was signed by Puma four times. See Chung Industries Inc. Capital One Application, dated November 9, 2011. Furthermore, when confronted with four checks drawn on the Chung account, all of which are signed by Puma, Puma admitted that he was indeed a signatory and has been a signatory the entire time that Chung has been incorporated. Puma Tr. at 177:7-19. Additionally, during his sworn testimony, Puma explained in great detail how he would manage the records, time sheets, and drivers for both G & S and Chung. Id. at 189:20-190:5. Thus, contrary to Puma's assertions, the evidence demonstrates that Puma clearly is a principal of Chung: Puma is a signatory, running the business day-to-day, providing direction and leadership for the business, and is even listed as President on a signed and notarized document with Chung's financial institution. Thus, Puma is an undisclosed principal of Chung.

The apparent motivation for Puma to establish a second company, with Christine as the nominal principal and him as an undisclosed principal, is to obtain contracts which are designated for Minority and Women-Owned Business Enterprises ("MWBEs"). As Puma stated in his sworn interview, "When certain jobs would come up I said to my wife, 'If we had minority status we could have gotten the $10 million job, but now we can't get it.' And she said, 'I'll sign and we'll put it under me.'" Id. at 104:13-17. In order to qualify for New York State certification as a MWBE, an applicant "must be independently owned, operated and controlled by minority members and/or women. The ownership must be real, substantial and continuing, and the minority members and/or women must exercise the authority to independently control the day-to-day business decisions." See Qualifications for New York State MWBE Certification.[3] Puma does not qualify for MWBE certification, as he is neither a woman nor a minority. A business owned by Christine, if that ownership were "real, substantial and continuing," would qualify for MWBE certification, as she meets both MWBE prerequisites. Puma admitted that Chung was incorporated solely for the purpose of gaining access to MWBE work and performing the jobs that G & S could not:

> Q: Again . . . Chung was really incorporated and established so that projects that you had become aware of could do MBE[4] work; is that correct?
>
> A: Yes.
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> Q: Because G & S would not be allowed or be able to do MBE [work]. So, Chung could be – could perform the MBE jobs that G & S could not; is that correct?
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> A: Correct.

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[3] Available online at http://esd.ny.gov/MWBE/Qualifications.html

[4] Throughout his testimony, Puma used a shortened, more colloquial version of MWBE certification, referring to Chung as a company that would have "minority status," or simply as "a minority company." See Puma Tr. at 95:4-5 and 98:14. Similarly, the Commission's questions contained the term "MBE" as shorthand for MWBE.

Id. at 190:22-191:9. Thus, Puma formed Chung with Christine (who is both a woman and a minority) falsely disclosed as the sole principal, but, in fact, Puma controlled the business. Puma and Christine created this arrangement so that Puma could gain access to lucrative MWBE contracts for which he was ineligible.

3. The Relationship Between Carl Puma and Peter Lovaglio

In addition to the issues relating to Puma's involvement in Chung and the reasons for Chung's existence, Puma also has a long-standing relationship with a member of organized crime, Peter Lovaglio ("Lovaglio"). In the Instant G & S Application, Puma attempted to conceal that relationship. Question 11 on the Instant G & S Application asks, "Has the applicant or any of the applicant's principals, employees, affiliates, or representatives knowingly associated in any manner with any member or associate of organized crime?" See Instant G & S Application at p.5. The response provided by G & S was, "No." Id. As described below, the evidence in this matter demonstrates that this answer is clearly false.

Lovaglio has been publicly identified as a member of the Bonanno organized crime family by both the United States Attorney for the Eastern District of New York and the Waterfront Commission of New York Harbor (the "Waterfront Commission"). See Memorandum of Law in Support of Pretrial Detention, United States of America v. Vincent Asaro, Jerome Asaro, Jack Bonventre, Thomas Di Fiore and John Ragano, Docket No. 14-CR-26 (2014) at 18 ("Also in attendance at that meeting were Bonanno family captain Gerald Chilli and Bonanno family soldier Peter Lovaglio.") (emphasis added); see also Waterfront Commission Decision to Remove Lasher Francis Mangano Jr. from the Waterfront, June 23, 2014 ("convicted racketeers, capos, soldiers, and associates of the Bonanno and Colombo Crime Families, including Bonanno Capos Peter Lovaglio and Anthony 'Bruno' Indelicato.") (emphasis added). Further, Lovaglio has been publicly identified as a Bonanno capo in local media, including articles in the New York Post ("Peter Lovaglio, 51, another Bonanno captain").[5]

During his testimony, Puma admitted to knowing that Lovaglio on a superficial level. Puma stated that Lovaglio "went away" to prison and knew that Lovaglio is associated with the Bonanno crime family. Puma Tr. at 132:19-22, 159:1-24. Puma further stated that "[he has known] Mr. Lovaglio for a long time," specifically for over a decade. Id. at 131:9-11, 131:17-19. According to Puma, the two met "in a strip joint . . . in Staten Island." Id. at 131:22-25. Puma testified that he and Lovaglio never speak on the phone, and that, "I don't think I have ever have him [sic] call me direct because he don't have my number [sic]." Id. at 134:3-5. Puma continued, "He don't have my cell phone number. So if anything it was always through another party and I." Id. at 167:21-25. Puma further claimed that he and Lovaglio only see each other when they "bump into each other" at restaurants. Id. at 134:15, 161:4-24. Overall, while Puma admitted to knowing Lovaglio, he minimized his relationship with Lovaglio.

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[5] See, e.g., "Freed Mob Big's Wings Clipped," Mitchel Maddux, May 2, 2013. Available online: http://nypost.com/2013/05/02/freed-mob-bigs-wings-clipped/

Puma's sworn statements were misleading, at best. At worst, his statements were wholly false. Telephone records reveal 17 phone calls between Lovaglio and Puma's cellular telephone.[6] See Records of Telephone Conversations between National Disposal and Peter Lovaglio as obtained by Waterfront Commission. The telephone calls between National Disposal and Lovaglio originated from both parties, with half being outgoing calls from Lovaglio to Puma and the other half from Puma to Lovaglio. Id. Clearly, Lovaglio has Puma's cellular telephone number and has called him several times, facts which are in direct conflict with Puma's testimony before the Commission. Further, this is in conflict with the information provided on the Instant G & S Application.

There also is evidence to suggest that Puma and Lovaglio have some sort of business relationship. During his sworn testimony, Puma stated that Lovaglio owned a company named LLN Lova Inc. Puma Tr. at 135:7-12. Puma claimed never to have done any business with Lovaglio. Id. at 132:5 and 135:9-12. However, the Commission obtained a check drawn on the business account of SWF Trucking (BIC#3375, Denied on March 6, 2015) payable to G & S. See SWF Check to G & S. The check has written on its memo line, "For balance due LLN Lova." Id. When asked why a check written to G & S would reference LNN Lova Inc., Puma stated that "the LLN Lova, I'm telling you I'm 99 percent sure that was not there [when the check was cashed]. It was filled in at a later time. I'm not going to be responsible for somebody doing something like that. No way." Puma Tr. at 138:13-19. This check, taken together with the other evidence described above, establishes that Puma is not being candid with the Commission about the true nature of his relationship with Lovaglio.

B. Basis of Denial for G & S and Chung

1. The Applicants Provided False and Misleading Information to the Commission on Multiple Occasions.

All Applicants must provide truthful and non-misleading information required by the Commission. See Admin. Code § 16-509(a)(i). See also id. at § 16-509(b), § 16-504(a). As discussed above, Puma provided false and misleading information to the Commission on multiple occasions, both on the Instant G & S Application and during his sworn testimony. On the Instant G & S Application, Puma stated that he had not knowingly associated in any manner with a member of organized crime. This is in direct conflict with Puma's testimony concerning his long-standing relationship with Lovaglio. Additionally, Puma falsely denied speaking to Lovaglio on the phone when, in fact, phone records indicate that Puma and Lovaglio spoke on the phone on numerous occasions. It also appears from the G & S check that references Lovaglio's company LLN Lova that Puma and Lovaglio have had some form of business relationship. Therefore, G & S provided false and misleading information to the Commission on the Instant G & S Application. It is likely that Puma sought to hide his connections to Lovaglio because Lovaglio is a member of organized crime, and Puma knew that his association with Lovaglio could jeopardize G & S's registration with the Commission.

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[6] During the course of his sworn testimony, Puma stated that his cellular telephone number is 732-609-2266. Id. at 76:12. Puma also owns a company called National Disposal/Transport Services which operates in New Jersey; this company has the same cell phone number. Id. at 68:22.

With respect to Chung, the Instant Chung Application did not disclose Puma as a principal, stating that Christine was the sole owner and principal of Chung. However, the evidence demonstrates that Puma is, in fact, a principal of Chung. Not only is Puma a signatory on Chung's bank account, but he also runs Chung's day-to-day operations. At no point did Chung correct its application or inform the Commission of Puma's role as a principal. Puma's true role was revealed only through the Commission staff's investigation, including during Puma's sworn testimony. At that point, it became clear that Chung concealed Puma's involvement in the company so that Chung could be perceived as being eligible for MWBE contracts.[7] Thus, Chung provided false and misleading information to the Commission. The Applicants have not disputed these assertions. Thus, the Commission denies the Instant Chung Application and the Instant G & S Application based on this independently sufficient ground.

2. Carl Puma, G & S's Sole Principal and an Undisclosed Principal of Chung, Knowingly Associated with a Member of Organized Crime.

The Commission may refuse to issue a license to an applicant associated with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person. See Admin. Code § 16-509(vi). See also id. § 16-504(a). Lovaglio is a member of the Bonanno crime family, as identified by the United States Attorney for the Eastern District of New York, as well as the Waterfront Commission. The sole owner, president and sole principal of G & S (Puma) is aware of Lovaglio's ties to organized crime and continues to associate with him. Puma has interacted socially with Lovaglio for more than 10 years. Furthermore, as detailed above, Puma lied about the full extent of his relationship with Lovaglio by denying any phone contact. And, as noted above, the G & S check referencing Lovaglio's company indicates a further connection between Puma and Lovaglio. Therefore, the Commission should find that G & S, through its principal Puma, knowingly associated with a member of organized crime. In addition, because Puma is an undisclosed principal of Chung, the Commission should also find that Chung associated with Lovaglio through Puma. The Applicants have not disputed these assertions. Thus, the Commission denies the Instant Chung Application and the Instant G & S Application based on this independently sufficient ground.

III. CONCLUSION

The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record, as detailed above, demonstrates that the Applicants lack those qualities. Accordingly, based on the two independently sufficient grounds set forth herein, the Commission denies the Instant G & S Application and the Instant Chung Application.

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[7] The fact that Puma attempted to defraud the State by incorporating Chung so that it could gain MWBE certification demonstrates that Puma lacks good character, honesty, and integrity.

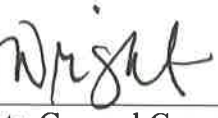
This denial decision is effective immediately with respect to both applicants. Neither G & S nor Chung may not operate as a trade waste business in the City of New York.

Dated: November 9, 2015

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION

Daniel D. Brownell
Commissioner and Chair

Deputy Commissioner Robert Orlin
(Designee)
Department of Sanitation



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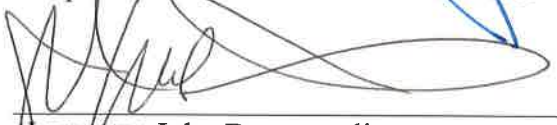

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