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NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

BOARD MEETING

VIA VIDEO CONFERENCE

100 Church Street, New York, New York

December 8, 2022

9:31 a.m. to 10:12 a.m.

December 8, 2022

MEMBERS PRESENT:

Asim Rehman, Esq. - Commissioner/Chief Administrative Law Judge, OATH, Chair/Executive Director, OATH ECB
Shamonda Graham - Department of Buildings (DOB)
Joseph Gregory, Esq. - New York City Fire Department (FDNY)
Elizabeth Knauer, Esq. - Appointed Member (Water)
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)
Jorge Martinez, Esq. - Department of Health and Mental Hygiene (DOHMH)
Russell Pecunies, Esq. - Department of Environmental Protection (DEP)
Matthew Schneid, Esq. - Appointed Member (Real Estate)
Thomas D. Shpetner, Esq. - Appointed Member (Business)
Matthew Smith, Esq. - New York City Police Department (NYPD)
Douglas S. Swann - Appointed Member (Air)
Jarrold Whittington - Appointed Member (Noise)

ALSO PRESENT:

Rachel Amar - Senior Advisor to Commissioner, OATH
Cindy Chen - Analyst, Office of Management and Budget (OMB)
Kelly Corso, Esq. - Assistant Commissioner/Hearings Division Adjudications, OATH
Svetlana Iosilevich, Esq. - Executive Agency Counsel, Business Integrity Commission (BIC)
Timothy Jones, Esq. - Senior Counsel, OATH
David C. Kim, Esq. - Assistant General Counsel, OATH
Peter Schulman, Esq. - Deputy Commissioner/Appeals Division, OATH
Frances Shine - Secretary to the Board, OATH
Tom Southwick, Esq. - Assistant Commissioner/Appeals Division, OATH
Olga Statz, Esq. - Deputy Commissioner/General Counsel, OATH

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2 (The board meeting commenced at 9:31
3 a.m.)

4 ASIM REHMAN, ESQ., COMMISSIONER/CHIEF
5 ADMINISTRATIVE LAW JUDGE, OATH, CHAIR/EXECUTIVE
6 DIRECTOR, OATH ECB: And I'd like to call the
7 December 8, 2022, ECB Meeting to order. Would
8 the GC Unit kindly conduct the roll?

9 DAVID C. KIM, ESQ. - ASSISTANT GENERAL
10 COUNSEL, OATH: Okay. Good morning, all. We'll
11 start with Commissioner Asim Rehman?

12 MR. REHMAN: Here. Present.

13 MR. KIM: Shamonda Graham? I can see
14 Shamonda. Shamonda Graham?

15 OLGA STATZ, ESQ., DEPUTY COMMISSIONER /
16 GENERAL COUNSEL, OATH: Shamonda, are you on
17 mute?

18 MR. KIM: I see Shamonda, but she
19 doesn't answer.

20 MS. STATZ: Let's skip over - let's do
21 her last and -

22 MR. KIM: Okay.

23 MS. STATZ: Okay.

24 MR. KIM: Joseph Gregory?

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2 JOSEPH GREGORY, ESQ., NEW YORK CITY FIRE
3 DEPARTMENT (FDNY): Present. I'm sorry.

4 MR. KIM: Elizabeth Knauer? I can see
5 Elizabeth Knauer. I think she is here.

6 [CROSSTALK] [09:32:01] [00:01:01]

7 MS. STATZ: Elizabeth.

8 MR. KIM: It's muted, yeah.

9 ELIZABETH KNAUER, ESQ., APPOINTED MEMBER
10 (WATER): Hi, I'm present.

11 MR. KIM: Okay, thank you. Madelynn
12 Liguori?

13 MADELYNN LIGUORI, ESQ., DEPARTMENT OF
14 SANITATION (DSNY): Present.

15 MR. KIM: Okay. Jorge Martinez?

16 JORGE MARTINEZ, ESQ., DEPARTMENT OF
17 HEALTH AND MENTAL HYGIENE (DOHMH): I'm here.
18 Good morning.

19 MR. KIM: Thank you. Russell Pecunies?

20 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
21 ENVIRONMENTAL PROTECTION (DEP): Present.

22 MR. KIM: Matthew Schneid?

23 MATTHEW SCHNEID, ESQ., APPOINTED MEMBER
24 (REAL ESTATE): Present.

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2 MR. KIM: Thomas Sphetner? Matthew
3 Smith?

4 MATTHEW SMITH, ESQ., NEW YORK CITY
5 POLICE DEPARTMENT (NYPD): Present.

6 MR. KIM: Douglas Swann?

7 DOUGLAS S. SWANN, APPOINTED MEMBER
8 (AIR): I'm here.

9 MR. KIM: Thank you. Jarrod
10 Whittington?

11 JARROD WHITTINGTON, APPOINTED MEMBER
12 (NOISE): Present.

13 MR. KIM: Okay. I'll call Shamonda
14 Graham again. Shamonda Graham? Let me call
15 Thomas Shep- Shpetner?

16 THOMAS SHPETNER, ESQ., APPOINTED MEMBER
17 (BUSINESS): Present.

18 MR. KIM: Thank you. I think Shamonda
19 Graham is on this meeting, so we have a quorum,
20 12 out of 12.

21 MR. REHMAN: Thank you. Let's proceed
22 with the first item of our agenda, which is the
23 adoption of the minutes for the October 13, 2022,
24 Board Meeting. I hope that everyone has had an

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2 opportunity to review them. Does anyone have any
3 corrections or changes to those minutes? Hearing
4 no corrections, I'd like to ask for a motion and
5 a second to adopt the minutes of the October 13,
6 2022, meeting. I see a motion from Matt Smith.
7 Is that a second from Madelynn? Thank you.
8 Could the GC Unit please call for a vote?

9 MR. KIM: Okay. Are there any
10 objections to the motion approving the minutes of
11 the October 13, 2022, ECB Meeting? Hearing none,
12 seeing none, the motion is approved unanimously.

13 MR. REHMAN: Thank you. Okay. We'll
14 next turn the floor over to DEP Special - Senior
15 Enforcement Counsel, Russ Pecunies, who is on the
16 agenda with a request for a cease and desist
17 order. Mr. Pecunies?

18 MR. PECUNIES: Yes, thank you. Thank
19 you. Good morning. First, I'd like to thank the
20 OATH staff for arranging to get this on the
21 agenda at the last minute. This was just sent to
22 me by our enforcement folks on Tuesday, so it's
23 great that we can get this in front of the Board
24 today instead of having to have this over to the

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2 next Board meeting in February.

3 So, DEP is asking the Board to issue an
4 order to cease and desist against Orange Grove
5 Ventures, LLC. They are the operators of a
6 restaurant located at 39 Grove Street in
7 Manhattan. I believe the name of the
8 establishment is Emmett's. And DEP has received
9 complaints regarding odors and noise from the
10 kitchen exhaust at this establishment. DEP first
11 inspected in July of this year, and there was a
12 finding of excessive noise from the kitchen
13 exhaust on July 13th. A summons was issued, which
14 the respondent stipulated to in September and has
15 paid in full.

16 The next inspection was conducted on
17 September 22nd, and that resulted in another
18 finding of excessive noise from the kitchen
19 exhaust, as well as a finding of odors in
20 violation of 24-141 of the Air Pollution Control
21 Code. The noise summons was returnable on
22 November 15th, and the respondent defaulted. And
23 the air summons was also returnable on November
24 15th, and respondent defaulted as to that, as

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2 well.

3 The next inspection took place on
4 November 2nd, and that did not result in a noise
5 summons, but did result in another odor related
6 summons under the Air Code. That summons is
7 scheduled to be heard on January 10th.

8 And then, most recently, just a few days
9 ago on November 30th, there was another
10 inspection, which resulted in the issuance of
11 summonses for both noise and odor. And those
12 summonses are returnable on January 24th.

13 Because the, because the inspections
14 have shown that the respondent has not corrected
15 this condition and that there continues to be
16 excessive noise and unlawful odors being
17 generated by the kitchen exhaust at this
18 location, DEP is asking that the Board issue an
19 order to cease and desist, directing respondent
20 to comply with both section 227 of the Noise Code
21 and section 141 of the Air Code.

22 And I'll be happy to take any questions,
23 if anyone has any.

24 MR. REHMAN: Does anyone have any

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2 questions for Russ? I have a few, but let me
3 open the floor to others.

4 MR. SCHNEID: Yeah, I have a question.

5 MR. REHMAN: Go ahead, Matt.

6 MR. SCHNEID: I guess I wasn't
7 following. So they, they never appeared in court
8 at all? Is that what happened? It looks like
9 they appeared at least one time. Is that right?

10 MR. PECUNIES: Yeah, they appeared on
11 the first noise summons in September. They did
12 appear and stipulate, and they have paid that
13 summons, the fine on that summons. The
14 subsequent summonses, they have not. The ones
15 that were - well, the, the one air summons and
16 one air summons that were scheduled for November
17 15th, they have not appeared for. And, then, the,
18 the summonses that were issued in November are
19 scheduled for, for next month.

20 MR. SCHNEID: And when they -

21 MR. REHMAN: Russ - I'm sorry, go ahead.
22 Go ahead, go ahead, Matt.

23 MR. SCHNEID: And when they came for the
24 first appearance, did they have an explanation or

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2 course of action they were going to take? Or
3 they just agreed to the fine?

4 MR. PECUNIES: When you stipulate, there
5 is no defense presented or any other evidence.
6 They just accepted the stipulation offer.

7 MR. REHMAN: But, on that, and this,
8 this was one of the questions I had. For the
9 first one, for the first event, it, it appears to
10 me, if I'm looking at the chronology correctly,
11 in July, the, there was only one summons issued,
12 and that was a noise summons, as opposed to in
13 September where both air and noise were issued.
14 And in July, when the noise summons was issued
15 and there was a stipulation, it's a zero fine.
16 So they stipulated -

17 MR. PECUNIES: No. No, no. It's not a
18 zer-, it's not a zero fine. Stipulation on a
19 Noise Code summons is for the, the guideline
20 first offense penalty. It's not a, it's not a
21 zero stip for noise cases. Un- unless - there
22 are certain, well, I mean I, I could be wrong on
23 that. Hang on, because 227 actually can be
24 mitigated to zero. That is correct.

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2 MR. REHMAN: So, I, I was looking at the
3 attachments, which note that for, for that
4 summons from July, 288440R, it says balance due,
5 zero, and I was not sure -

6 MR. PECUNIES: Right.

7 MR. REHMAN: -- if that meant, in this
8 case, there was an actual zero, zero penalty
9 because it's a first offense. If you have that -

10 [CROSSTALK] [09:41:44] [00:10:44]

11 MR. PECUNIES: But it, it indicates that
12 it's paid in full.

13 MR. REHMAN: Okay.

14 MR. PECUNIES: So that, I think,
15 indicate, would indicate that there was a, a
16 penalty imposed.

17 MR. REHMAN: Thank you. The other
18 question that I had was, in addi-, in the
19 December 8th memo from DEP to the Board, there's a
20 request for a cease and desist order, but there's
21 also a que-, a request that the Board direct
22 respondent to appear at a special hearing to show
23 why its kitchen exhaust should not be sealed and
24 that an additional penalty of \$875.00 times - for

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2 two days, total \$1,750.00, should be, be imposed.
3 Is there any additional context you'd like to
4 provide on that second request?

5 MR. PECUNIES: Yeah. That's the
6 standard language that's been in cease and desist
7 order requests forever. The, the main, the main
8 thing here is that there be a cease and desist
9 hearing. And, at the cease and desist hearing,
10 they would need to show why the equipment should
11 not be sealed.

12 MR. REHMAN: Understood.

13 MR. PECUNIES: The, the, the sanction
14 here with a cease and desist order is that, if
15 they default on the hearing, if they don't show
16 up for the cease and desist hearing or if they
17 fail to show that the condition has been
18 corrected, the equipment can be sealed. The,
19 the, the piece about an additional penalty for
20 two days, that is, again, language that it comes
21 from the admini-, the enforcement section in the
22 Air Code. It's, it's, it's standard language for
23 these requests.

24 But the judge, when, when the, when the

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2 OATH hearing officer makes recommendations to the
3 Board after the cease and desist hearing,
4 normally, if the respondent has shown that the
5 violating condition has been corrected, the
6 hearing officer will recommend waiver of any
7 additional penalty. And so, generally, there is
8 no additional penalty beyond the ones that are
9 imposed at the hearings on the summonses.

10 MR. REHMAN: Thank you. And, and -

11 MR. PECUNIES: Yeah, but that's just
12 standard, you know, kind of boilerplate language.
13 We, we even tried to take it out at one point,
14 and I believe we were told that, because it's in
15 the statute, that we need to keep it in.

16 MR. REHMAN: Thank you. And, and do we
17 have any information right now, at this meeting,
18 about how much the fine was for the first summons
19 ending in 440R?

20 MR. PECUNIES: I think the first offense
21 penalty for 227 is \$440.00, but I do not have a
22 Noise Code penalty schedule in front of me. And
23 because it's paid in full, ticket finder does not
24 show, does not show the penalty that was imposed

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2 because it's, it was paid, so it's now zero. But
3 I believe the first offense penalty for 227 is,
4 is, is \$440.00.

5 PETER SCHULMAN, ESQ., DEPUTY
6 COMMISSIONER/APPEALS DIVISION, OATH: So it, so
7 it was stipulated to \$220.00.

8 MR. REHMAN: Thank you, Peter. I have
9 no other questions. And -

10 MR. PECUNIES: Okay. So it's \$220.00?
11 Thank you. Okay.

12 MR. REHMAN: Sure. Elizabeth?

13 MS. KNAUER: I was just wondering if the
14 stipulation agreement included any agreement to
15 undertake mitigation, like any physical measures?
16 And -

17 MR. PECUNIES: Well, the stipulation
18 includes, because the judge - the, the hearing
19 officer will then send them a decision and order
20 reflecting the stipulation, and the stipulation,
21 the, the decision and order from the judge
22 includes an order to comply forthwith. So, since
23 that stipulation, they have been under an order
24 to comply forthwith.

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2 In addition, the defaults in, in
3 November, the defaults on November 15th also
4 involved an order to comply forthwith. There
5 would not have been - again, because they
6 stipulated to it, they wouldn't have, there
7 wouldn't have been - it's not part of - it is
8 part of the stipulation agreement that they have
9 to come into compliance forthwith, but there's no
10 specific, you know, document that says they're
11 going to do specific things to comply.

12 MS. KNAUER: So, but, but I mean, is it
13 standard practice that if someone is stipulating,
14 that they've presented a proposal to the
15 Department explaining how they intend to comply -

16 MR. PECUNIES: No, no.

17 MS. KNAUER: Okay.

18 MR. PECUNIES: No.

19 MR. REHMAN: Thanks, Russ.

20 MR. PECUNIES: No. To my knowledge, we
21 have not been contacted by these folks or
22 received, have, have - I don't think we, you
23 know, we don't have any information from them
24 about what they're doing or, you know, how they

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2 intend to come into compliance. That, that's up
3 to them, how they come into compliance. And, and
4 we don't approve plans on how people get into
5 compliance. It's, it's up to them to figure out
6 how to do it and do it.

7 MR. SWANN: Hi, Russ. I just wanted to
8 ask you, is the timeline for the sealing in this
9 type of case, is this typical? Because it seems
10 to be pretty quick. And, if it is, is it because
11 of the stipulation?

12 MR. PECUNIES: Normally, we wait until a
13 third summons has been issued and with at least
14 one having been adjudicated before we ask for a
15 cease and desist order. That is by agreement
16 with OATH staff for, basically forever, that
17 cease and desist requests need three summonses.
18 And since three have been issued and, on the
19 noise side, two of them have been adjudicated,
20 this is - we, we considered this timely to bring
21 before the Board at this point.

22 And, again, it was just fortuitous that
23 they brought this to my attention this week when
24 we, we had a Board meeting today. Otherwise,

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2 this would have not been brought before the Board
3 until February. And I think that it's important,
4 also, to keep in mind that there is a complainant
5 who, at least one complainant who is presumably
6 being affected by these conditions on a daily
7 basis.

8 MR. REHMAN: Other questions for DEP?

9 Okay. I'd like to open it up for general
10 discussion amongst the Board members on their
11 views on DEP's request. Well, I would note that
12 I think the, the question around timing here is,
13 is, is an interesting one, because the summonses
14 that are open right now are returnable for a
15 hearing date on the 24th of January. That would
16 possibly be just two weeks, arguably, before our
17 next Board meeting. So, if we, if we grant the
18 request, we grant the request. If we don't grant
19 the request, at the next meeting we would know -
20 we may not have the decision, the OATH decision
21 on that hearing if there, if the respondent does,
22 in fact, appear, but we would definitely know if
23 the respondent did appear or if there was another
24 default. So, it looks like our, you know, our

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2 options on the table here are to grant the
3 request that was submitted or to hold over until
4 the next meeting. Elizabeth?

5 MS. KNAUER: I, I, I definitely, I see
6 that point. But I, I think I would advocate for
7 issuing the cease and desist now, just because it
8 is affecting someone on a daily basis,
9 apparently, and they will have an opportunity to
10 come forward, you know, at a cease and desist
11 hearing, as well, to, to prove that they're in
12 compliance. So it, it's not that that's the -
13 we're, we're not, we're not voting to immediately
14 seal the equipment. We're giving them another
15 opportunity to - for due process. So I, I think
16 that especially in the wintertime, if you're,
17 especially with the odor issues, and if it's
18 getting into somebody's apartment, that could be
19 really unpleasant. So I, I would advocate for,
20 for issuing it now.

21 MR. REHMAN: I agree. Particularly
22 since it's not a sealing directive, it's an
23 opportunity for the parties to come forward.
24 Other, other questions or views? Okay. I'd like

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2 to offer a motion to approve the request from DEP
3 and a second. I see a motion from Elizabeth.
4 And is that a second from Tom? Okay. Could the
5 GC Team kindly call for a vote on the DEP's
6 request for a cease and desist order?

7 MR. KIM: Okay. Are there any
8 objections to approving the cease and desist,
9 desist order? Seeing none, hearing none, the
10 motion is approved unanimously.

11 MR. REHMAN: Thank you very much,
12 everyone. Thank you, Mr. -

13 MR. PECUNIES: Alright. Thank, thank
14 you. Thank you to everyone for reviewing this
15 on, on such short notice.

16 MR. REHMAN: You're welcome. Okay.
17 We'll proceed to the next agenda item, which is
18 the, which are the pre-sealing reports to be
19 presented by Kelly Corso from OATH.

20 KELLY CORSO, ESQ., ASSISTANT
21 COMMISSIONER/HEARINGS DIVISION ADJUDICATIONS,
22 OATH: Kelly Corso, Assistant Commissioner of
23 Adjudications for OATH. And we only have one
24 pre-sealing report today for the Board. We had

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2 to pull a second one that was originally
3 distributed because there was an error in it. So
4 that will be corrected and redistributed for the
5 next Board meeting.

6 The one that we are presenting to the
7 Board today is a backflow violation case. And in
8 this case, the hearing officer did agree with
9 DEP's recommendation that the equipment not be
10 sealed and there be no further action taken
11 because the respondent has complied with the
12 Water Code. The respondent presented evidence at
13 the last hearing that the premises now has the
14 required equipment installed. And that's it.

15 MR. REHMAN: Thank you, Ms. Corso.
16 Since two were circulated, could you just clarify
17 which is the one that's on the table?

18 MS. CORSO: Sure. The one that's on the
19 table - let me just get it up here. It is the
20 Carlos Betancourth [phonetic] case, and that's
21 cease and desist No. 2016-0202.

22 MR. REHMAN: Thank you very much.

23 MS. CORSO: Sure.

24 MR. REHMAN: Any questions for Ms.

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2 Corso? Any points of discussion? Okay. Do we
3 have a motion to approve and second the pre-
4 sealing report?

5 MR. SCHNEID: Motion.

6 MR. REHMAN: And I see a motion from
7 Matt, and I see a second from Madelynn. Will the
8 GC Team kindly call a vote?

9 MR. KIM: Okay. Are there any
10 objections to approving the pre-sealing reports?
11 Seeing none, hearing none, the motion is approved
12 unanimously.

13 MR. REHMAN: Thank you.

14 MS. CORSO: Thank you.

15 MR. REHMAN: I'd like - thank you, Ms.
16 Corso. I'd like to ask for a motion to go into
17 executive session to discuss new decisions listed
18 in the judicial report. I see a motion from
19 Madelynn, a second from Elizabeth. GC, call for
20 a vote, please.

21 MR. KIM: Are there any objections to
22 the Board's going into executive session at this
23 time? Seeing none, hearing none, the motion is
24 approved.

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2 [OFF THE RECORD]

3 [ON THE RECORD]

4 MR. REHMAN: Thank you. Before we move
5 on to selecting dates for our next Board meeting,
6 are there any other matters of business or any
7 other questions for members of the Board? Seeing
8 none, we can turn to selecting a date for our
9 next meeting. Would someone from the GC Unit
10 please propose a date?

11 MR. KIM: Okay. We have two options for
12 the next Board meeting. The possible dates are
13 February 2, 2023, or February 9, 2023.

14 MR. REHMAN: Does anyone have any
15 concerns or scheduling issues with either of
16 those dates, the 9th or the 2nd of February?

17 SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS
18 (DOB): Shamonda Graham, DOB. I'm actually
19 booked on the 9th, so the 2nd would be much
20 appreciated.

21 MR. REHMAN: Any, any objections to the
22 2nd? Alright. Seeing agreement, let us put down
23 the 2nd in the minutes as our date for the next
24 meeting.

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2 Alright. May I have a motion to adjourn
3 today's meeting? I see a motion from Elizabeth
4 and a second from Tom. GC Unit, please?

5 MR. KIM: Are there any objections to
6 adjourning the meeting at this time? Seeing
7 none, hearing none, the motion is approved.

8 MR. REHMAN: Thank you very much. I
9 wish you all a happy holiday season and a warm
10 New Year. And I look forward to seeing you all
11 in 2023. Appreciate all that you bring to the
12 table. Thank you very much.

13 MR. GREGORY: Thank you.

14 MS. GRAHAM: Same to you. I miss you
15 guys.

16 MS. KNAUER: Thank you.

17 MR. GREGORY: Take care, everyone.

18 MS. LIGUORI: Thank you.

19 MR. REHMAN: Bye-bye.

20 (The board meeting concluded at 10:12
21 a.m.)

22

23

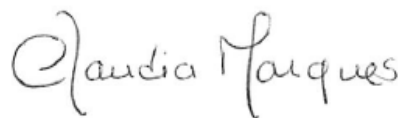
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Environmental Control Board, 12/8/2022

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on December 8, 2022, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: December 15, 2022

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018

Reviewed and corrected by OATH General Counsel

office. December 23, 2022