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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 8:13-CV-00081-JLS-RNB

FINAL ORDER AND JUDGMENT

JEFFERY ETTER; SUSAN ETTER;
PAUL KAHLER; FRAN CURTIS;
MICHELLE CURTIS; LESLIE
CRAWSHAW; RICHARD KAYLOR;
BRIAN MCBRIDE; DENNIS OSHA;
JAMES PEARCE; CRAIG POST;
RAYMOND ROLLE, SR; EMIL
VARGO; LEONARD SOMERVILLE;
ORRENE SOMERVILLE; RICHARD
SPEARS; ALICE KNIGHT; ALAN
BURKHART; SANDRA BURKHART;
GEORGE FREDERICK; KATHLEEN
FREDERICK; ALAN GREAGER; and,
LINDA GREAGER, individually, and on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

THETFORD CORPORATION, a
Delaware corporation; NORCOLD, INC.,
a Delaware corporation; THE DYSON-
KISSNER-MORAN CORPORATION, a
Delaware corporation; and, DOES 1 to 50,
inclusive,

Defendants.

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This document also relates to the following related action:

CHARLES CHOW, JOHN ROBINSON, RANDY DUPREE, RAY BURKHEAD, LINDA PIERSON, and, GORDON WILLIAMSON, individually, and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NORCOLD, INC., a Delaware corporation; THETFORD CORPORATION, a Delaware corporation; THE DYSON-KISSNER-MORAN CORPORATION, a Delaware corporation; and DOES 1 to 50, inclusive.

Defendants.

Case No. SACV14-06759

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

2 **I. FINAL APPROVAL OF SETTLEMENT AGREEMENT AND**
3 **DISTRIBUTION OF SETTLEMENT BENEFITS**

4 1. This Court has jurisdiction over the subject matter of litigation
5 captioned *Etter et. al. v. Thetford Corp., Norcold, Inc. and The Dyson-Kissner-*
6 *Moran Corp.*, No. SACV13-00081 JLS (RNBx) (C.D. Cal.) and *Chow et al. v.*
7 *Norcold, Inc., Thetford Corp., and The Dyson-Kissner-Moran Corp.*, No. 2:14-cv-
8 06759 (C.D. Cal.) (collectively, the “Action”), the claims asserted in the operative
9 complaints filed in the Action, and over all parties to this Action, including all
10 Settlement Class Members, as such term is defined in the Settlement Agreement.

11 2. The Court expressly incorporates the Settlement Agreement, including
12 all exhibits thereto, which are attached to the Supplemental Declaration of Hart
13 Robinovitch as Exhibit A filed September 4, 2015 (Doc. 412-1), the Revised
14 Addendum filed November 6, 2015 (Doc. 447-1), and the Stipulation re: Short Form
15 Notice filed April 5, 2016 (collectively, “Agreement” or “Settlement Agreement”),
16 into this Final Order and Judgment. (Doc. 472.)

17 3. On October 14, 2016, the Court held a Final Fairness Hearing allowing
18 the parties and members of the Class to be heard on all issues related to the proposed
19 settlement.

20 4. On October 24, 2016, the Court issued its Order Granting Settling
21 Plaintiffs’ Motion for Final Approval of Class Action Settlement (Doc. 502),
22 Granting in part Settling Plaintiffs’ Motion For Attorneys’ Fees and Costs (Doc.
23 479), and Granting in part and Denying in part Settling and Non-Settling Plaintiffs’
24 Motions For Incentive Awards (Docs. 479, 495). The Court incorporates into this
25 Final Order and Judgment its Order dated October 24, 2016, wherein it found the
26 terms of the settlement embodied in the Settlement Agreement (“Settlement”) are
27 fair, adequate and reasonable to the Class as a whole. (Docs. 539, 540.)
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1 5. The parties are ordered to implement each and every obligation set forth
2 in the Settlement Agreement in accordance with the terms and provisions of the
3 Settlement Agreement without delay. Distribution of the Common Settlement Fund
4 to the Eligible Claimants in the Class, after deduction of the Attorneys' Fees and
5 Expenses and Incentive Awards approved by the Court, shall occur in accordance
6 with the Allocation Plan and Annual Installment payment schedule set forth in
7 Section II(D)(1) and (2) of the Settlement Agreement. The Warranty Period for
8 which the Extended Warranty shall be in effect for Class Members receiving that
9 Settlement benefit, shall be as described in Section II (D)(1)(ii) and (2)(vii) and (viii)
10 of the Settlement Agreement.

11 **II. CERTIFICATION OF THE SETTLEMENT CLASS, CONTINUED**
12 **APPOINTMENT OF THE CLASS REPRESENTATIVES AND CLASS**
13 **COUNSEL**

14 6. For the reasons set forth in the Court's March 29, 2016 and October 24,
15 2016 Orders (Docs. 468, 539, 540), the Court finds the Class meets all applicable
16 requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), and certifies the following Class
17 for settlement purposes only according to those provisions ("Class"):

18 All persons in the United States, who: (i) currently own, or formerly
19 owned, a Norcold 1200 Series Gas Absorption Refrigerator or Cooling
20 Unit that was manufactured during the time period starting January 1,
21 2002, and continuing to and including October 1, 2012; and/or, (ii)
22 currently own a Norcold N6 Series Gas Absorption Refrigerator or
23 Cooling Unit, or N8 Series Gas Absorption Refrigerator or Cooling
24 Unit, that was manufactured during the time period starting January 1,
25 2009, and continuing to and including December 31, 2013.

26 Specifically excluded from the Class are: (a) any officers, directors or
27 employees of Defendants; (b) any judge assigned to hear this case (or spouse or
28 family member of any assigned judge); (c) any employee of the Court; (d) any juror

1 selected to hear this case; (e) any person who had claims against Defendants for
2 personal injury, wrongful death or for damage to property in relation to an alleged
3 defective Gas Absorption Refrigerator or Cooling Unit which were fully resolved by
4 way of settlement, dismissal or judgment prior to July 21, 2014; (f) any person who
5 as of July 21, 2014, had a separate lawsuit pending against Defendants in any state
6 or federal court asserting claims related to an alleged defective Gas Absorption
7 Refrigerator or Cooling Unit; (g) any person who purchased a Norcold Gas
8 Absorption Refrigerator as used equipment, either as a stand-alone product or as a
9 component part of a used RV sale, that no longer had a Norcold Cooling Unit
10 installed at the time of purchase but rather had a cooling unit manufactured by a
11 manufacturer other than Norcold at the time of purchase; and (h) persons who timely
12 and properly exclude themselves from the Class as provided in the Settlement
13 Agreement.

14 7. For reasons set forth in the Court's March 29, 2016 and October 24,
15 2016 Orders: (a) the number of Class Members are so numerous that their joinder in
16 one lawsuit would be impractical; (b) there are some questions of law or fact common
17 to the Class that are sufficient for settlement purposes; (c) the claims of Class
18 Representatives are typical of the claims of the Class Members they seek to represent
19 for purposes of settlement; (d) the Class Representatives have fairly and adequately
20 represented the interests of the Class for settlement purposes and the Class
21 Representatives have retained experienced counsel to represent them, whom the
22 Court finds have satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and 23(g) and
23 are qualified to serve as Class Counsel; (e) the questions of law or fact common to
24 the Class, as pertains to consideration of the Settlement, predominate over any
25 questions affecting any individual Class Member; and, (f) a class action is superior
26 to the other available methods for the fair and efficient adjudication of the
27 controversy through settlement. The Class is ascertainable. Membership in the class
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1 can be determined through objective means. There are no manageability problems.

2 8. The Court confirms the appointment of the following persons as Class
3 Representatives: James Pearce, Craig Post, George Frederick, Kathleen Frederick,
4 John Robinson, Randy Dupree, Ray Burkhart, Linda Pierson and Gordon
5 Williamson.

6 9. The Court confirms the appointment of Hart Robinovitch, Christopher
7 Ridout, Caleb Marker and J. Gordon Rudd, Jr. of Zimmerman Reed, L.L.P. as Class
8 Counsel pursuant to Fed. R. Civ. P. 23(a)(4) and 23(g).

9 **III. THE NOTICE TO CLASS MEMBERS SATISFIES DUE PROCESS**

10 10. The Court finds that the dissemination of the Class Notices appended as
11 exhibits to the Settlement Agreement (the Short Form Notice, the Long Form Notice,
12 the Internet Notice, and the Summary Settlement Notice, as well as the maintenance
13 of the settlement website) were implemented in accordance with the Order granting
14 preliminary approval.

15 11. For the reasons set forth in the Court’s March 29, 2016 and October 24,
16 2016 Orders (Docs. 468, 540), the Class Notice and methodology as described in the
17 Settlement Agreement and in the Declarations of the Claims Administrator (Eric
18 Robin of KCC): (a) meet the requirements of due process and Fed. R. Civ. P. 23(c)
19 and (e); (b) constitute the best notice practicable under the circumstances to all
20 persons entitled to notice; and, (c) satisfy the Due Process Clause of the United States
21 Constitution and all other applicable laws.

22 12. The Court has reviewed the declarations filed by the Claims
23 Administrator (Eric Robin of KCC). The Court finds that, to date, the Claims
24 Administrator has fulfilled its responsibilities as set forth in the Agreement.

25 13. The notice given by Defendants to state and federal officials pursuant to
26 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

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1 **IV. REQUESTS FOR EXCLUSION FROM THE CLASS**

2 14. On August 30, 2016, the Claims Administrator filed a list of all class
3 members who timely submitted a signed request to be excluded from the Class by
4 the August 26, 2016 deadline, complying with all requirements of Section IV of the
5 Settlement Agreement. (See Decl. of Eric Robin, Doc. 510.)

6 15. All persons who timely excluded themselves from the Class and appear
7 on the opt-out list filed by the Claims Administrator are not bound by the Agreement,
8 the Settlement, or the Final Order and Final Judgment, including the Release.

9 16. All Class Members that did not timely exclude themselves from the
10 Class prior to the August 26, 2016 deadline remain members of the Settlement Class
11 and are bound by all terms and provisions of the Settlement Agreement and the Final
12 Order and Judgment, including the Release, whether or not such Class Member
13 objected to the Settlement or submitted a Claim Form.

14 **V. OBJECTIONS TO THE SETTLEMENT**

15 17. Any and all objections presented by Class Members to the fairness,
16 reasonableness, or adequacy of the Settlement; to any award of Attorneys' Fees and
17 Expenses; to any awards to any Class Representative; to certification of the
18 Settlement Class and appointment of Class Representatives and Class Counsel; and
19 any other matter have been duly considered, are found to lack merit, to fail to raise
20 any *prima facie* grounds for questioning the fairness, reasonableness and adequacy
21 of the Settlement, and are all overruled in their entirety. The reasons for overruling
22 these objections are set forth in the Court's March 29, 2016 and October 24, 2016
23 Orders. (Docs. 468, 540.)

24 18. Objections made by persons who are not members of the Class are found
25 to lack standing and/or are otherwise overruled.

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1 **VI. DISMISSAL OF CLAIMS**

2 19. All claims asserted in the *Chow* complaint are dismissed with prejudice.

3 20. All Released Claims in the *Etter* complaint are dismissed with
4 prejudice.

5 21. Specifically preserved and not subject to dismissal with prejudice are:
6 (a) the individual claims of Jeffrey Etter, Susan Etter and Paul Kahler alleged in
7 Counts 7 and 8 of the *Etter* complaint, and (b) the claims of all persons who are not
8 members of the Settlement Class.

9 **VII. RELEASE AND WAIVER**

10 22. The Court approves the Release and Waiver set forth in Section VI of
11 the Settlement Agreement.

12 23. In consideration for the Settlement, the Settling Plaintiffs, Class
13 Representatives, and each Class Member, on behalf of themselves and any other legal
14 or natural persons who may claim by, through or under them, agree to fully, finally
15 and forever release, relinquish, acquit, discharge and hold harmless the Released
16 Parties from any and all claims, demands, suits, petitions, liabilities, causes of action,
17 rights, and damages of any kind and/or type regarding the subject matter of the
18 Action, including, but not limited to, compensatory, exemplary, punitive, expert,
19 and/or attorneys' fees, or by multipliers, whether past, present, or future, mature, or
20 not yet mature, known or unknown, suspected or unsuspected, contingent or non-
21 contingent, derivative or direct, asserted or unasserted, whether based on federal,
22 state or local law, statute, ordinance, regulation, code, contract, common law, or any
23 other source, or any claim of any kind related, arising from, related to, connected
24 with, and/or in any way involving the Action, the subject Gas Absorption
25 Refrigerators, or cooling units, that are, or could have been, defined, alleged or
26 described in the Litigation, including, but not limited to, the design, manufacturing,
27 advertising, testing, marketing, functionality, servicing, sale, lease or resale of the
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1 subject Gas Absorption Refrigerators, or cooling units.

2 24. Notwithstanding the foregoing, the Settling Plaintiffs, Plaintiffs, Class
3 Representatives, and Class Members, are not releasing claims for personal injury,
4 wrongful death or actual physical property damage arising from a leak, fire or other
5 accident involving any Subject Gas Absorption Refrigerator pursuant to this
6 Settlement Agreement. Such claims are considered Reserved Claims and, as such,
7 are expressly reserved by all Settling Plaintiffs, Plaintiffs, Class Members and Class
8 Representatives and excluded from the Release. Defendants retain the right to assert
9 any defense(s) they may have against any Reserved Claim presented by any Settling
10 Plaintiff, Plaintiff, Class Representative, and/or Class Member.

11 25. In consideration for the Settlement, Defendants and their past or present
12 officers, directors, employees, agents, attorneys, predecessors, successors, affiliates,
13 subsidiaries, divisions, and assigns shall be deemed to have, and by operation of the
14 Final Approval Order shall have, released the Settling Plaintiffs, Class Counsel,
15 Class Representatives and each Class Member from any and all causes of action that
16 were or could have been asserted pertaining solely to the conduct in filing and
17 prosecuting the Litigation or in settling the Action, [with the exception of that which
18 may pertain to the prosecution of Released Claims].

19 26. Unless subject to a separate and duly executed release, the Court shall
20 retain jurisdiction over: (a) the Reserved Claims of Jeffrey Etter, Susan Etter, and
21 Paul Kahler, asserted under Counts 7 and 8 of the *Etter* complaint; and (b) the claims
22 in *Etter* of all persons who are not members of the Settlement Class.

23 27. Plaintiffs Raymond Rolle, Leonard Somerville, Orrene Somerville,
24 Richard Spears, Alice Knight, Alan Burkhart, Alan Greager and Linda Greager have
25 resolved and released their individual claims under Counts 7 and 8 of the *Etter*
26 complaint. The Reserved Claims of Raymond Rolle, Leonard Somerville, Orrene
27 Somerville, Richard Spears, Alice Knight, Alan Burkhart, Alan Greager and Linda
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1 Greager are dismissed with prejudice.

2 28. Plaintiffs Dennis Osha and Sandra Burkhart passed away during the
3 pendency of the litigation and their heirs were eligible to file class claims. (Docs.
4 128, 333 at 3.) As part of his individual settlement of Reserved Claims, Alan
5 Burkhart settled and released any individual Reserved Claims of Sandra Burkhart
6 which survived to him as her successor. The Reserved Claims of Sandra Burkhart
7 are dismissed with prejudice. Any Reserved Claims that Dennis Osha's estate or
8 successors have are dismissed without prejudice.

9 29. During the litigation, Plaintiff Les Crawshaw decided not to further
10 pursue his claims or seek to be appointed as a class representative. (Doc. 184, at 7
11 n.2; Doc. 333 at 3.) Any Reserved Claims that Les Crawshaw has are dismissed
12 without prejudice.

13 **VIII. CLAIMS ADMINISTRATION**

14 30. The Court approves the fees and costs to date of the Claims
15 Administrator, KCC, as reported in its Declaration filed September 6, 2016. (Doc.
16 517.) The Court authorizes Administrative Expenses to be paid promptly from the \$2
17 million advance from the First Annual Installment of the Monetary Fund that was
18 funded by Defendants, in accordance with Section II(D)(2)(i), (iii) and (iv) of the
19 Settlement Agreement.

20 31. Pursuant to Section II(D)(2)(iv) of the Settlement Agreement, the
21 Claims Administrator, KCC, shall file with the Court an updated accounting of all
22 professional fees and expenses incurred on a quarterly basis thereafter, starting 90
23 days after the Effective Date until the balance of the Monetary Fund is depleted in
24 accordance with the Agreement and equal to zero (\$0). If on the 1,025th day following
25 the Effective Date, the total Administrative Expenses as calculated by the Claims
26 Administrator, do not exceed the \$2 million, or another amount agreed upon by the
27 Parties and approved by the Court, advanced from the First Annual Installment, as
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1 described in Section II, Paragraph D(2)(i) of the Settlement Agreement, the unused
2 difference shall be added to the Fourth Annual Installment from the Monetary Fund,
3 and distributed proportionally to the Eligible Claimants in proportion to their allotted
4 shares under the Allocation Plan. If on the 1,025th day following the Effective Date,
5 the total Administrative Expenses as calculated by the Claims Administrator, exceed
6 \$2 million, or another amount agreed upon by the Parties and approved by the Court,
7 advanced from the First Annual Installment, as described in Section II, Paragraph
8 D(2)(i), Class Counsel may petition the Court to have the difference paid to the
9 Claims Administrator from the Third Annual Installment, and the third payment to
10 Eligible Claimants from the Third Annual Installment will be reduced proportionally.

11 32. The Court orders the parties to the Settlement Agreement and the
12 Claims Administrator to perform their obligations pursuant to the terms of the
13 Settlement Agreement and the Allocation Plan of the Monetary Fund described
14 therein.

15 33. Consistent with Section X.B.1 of the Settlement Agreement, the Court
16 orders that no payments to Eligible Claimants under the terms of the Settlement
17 Agreement and the Addendum to the Settlement Agreement shall be made until the
18 time to appeal from this Order and Judgment has expired, or this Order and Judgment
19 remains unmodified after the conclusion of any appeal(s).

20 **IX. ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS**

21 34. For the reasons set forth in the Court's Final Approval Order of October
22 24, 2016 Order (Doc. 540), and Order Apportioning the Court's Award for
23 Attorneys' Fees and Expenses dated April 14, 2017 (Doc. 553), the Court awards
24 Class Counsel (Zimmerman Reed L.L.P.) \$7,353,093.47 in total attorneys' fees and
25 expenses; the Law Offices of Terrance Beard \$1,646,906.53 in total attorneys' fees
26 and expenses, and Hagens Berman Sobel Shapiro LLP \$0 in total attorneys' fees and
27 expenses.

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1 35. Any attorneys' fees and expenses awarded shall be distributed to Class
2 Counsel by the Claims Administrator in four installments in accordance with Section
3 VII (D) of the Settlement Agreement.

4 36. Service awards shall be paid by the Claims Administrator in the
5 following amounts to the following Plaintiffs, in accordance with Section VII (E) of
6 the Settlement Agreement and the Court's October 24, 2016 Order: James Pearce,
7 \$6,750; Charles Chow, \$4,415; Ray Burkhead, \$3,250; Randy Dupree, \$7,500; Linda
8 Pierson, \$4,400; Craig Post, \$7,500; Kathleen Frederick, \$7,500; George Frederick,
9 \$7,500; John Robinson, \$7,500; Gordon Williamson, \$1,580; Brian McBride,
10 \$7,500, Emil Vargo, \$7,500; Jeffrey Etter, \$7,500; Susan Etter, \$7,500; Paul Kahler,
11 \$7,500; Richard Kaylor, \$7,500; and Fran Curtis, \$7,500.

12 **X. JUDGMENT**

13 37. The Court orders that Judgment in the Action be entered on the terms of
14 the Settlement Agreement as set forth in this Final Order and Judgment and dismisses
15 all Released Claims and causes of action asserted in *Etter* and *Chow*, on the merits
16 and with prejudice, as to the Class Representatives and all Settlement Class
17 Members, except as to any individual Reserved Claims that have not otherwise been
18 released. Specifically preserved and not subject to the foregoing dismissal with
19 prejudice or any release are (a) the individual claims of Jeffrey Etter, Susan Etter and
20 Paul Kahler alleged in Counts 7 and 8 of the *Etter* complaint, and (b) the claims of
21 all persons who are not members of the Settlement Class. This dismissal is without
22 cost to any party, except as specifically provided in the Settlement Agreement.

23 38. The complaint in *Chow* is dismissed with prejudice.

24 39. Without affecting the finality of this Final Order and Judgment, the
25 Court retains jurisdiction in the Action over: (a) implementation and enforcement of
26 the Settlement Agreement, until such time as the final judgment contemplated hereby
27 has become effective and each and every act agreed to be performed by the parties
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1 hereto shall have been performed pursuant to the Settlement Agreement, including
2 all payments set forth thereunder; (b) any other action necessary to conclude this
3 settlement and implement the Settlement Agreement; (c) the administration,
4 consummation, enforcement, and interpretation of the Settlement Agreement, and for
5 any other necessary purpose; and, (d) (i) the individual claims of Jeffrey Etter, Susan
6 Etter and Paul Kahler alleged in Counts 7 and 8 of the *Etter* complaint, and (ii) the
7 claims of all persons who are not members of the Settlement Class.

8 40. The Court finds that no just reason exists for delay in entering this
9 Judgment and the Clerk is hereby directed forthwith to enter Judgment: (a) in *Etter*,
10 except as to (i) Reserved Claims of Plaintiffs Jeffrey Etter, Susan Etter and Paul
11 Kahler, and (ii) the claims of all persons who are not members of the Settlement
12 Class; and (b) in *Chow* as to all claims.

13 **IX. OTHER PROVISIONS**

14 41. The Court approves Public Citizen as the designated *cy pres* recipient
15 under Section II (D)(2)(vi) of the Settlement Agreement. If any portion of the
16 Monetary Fund goes unclaimed, or checks go uncashed for 180 days and expire, any
17 residual funds shall be distributed by way of *cy pres* to Public Citizen or to an
18 alternative charity as may otherwise be directed and approved by the Court. If for
19 any reason, the *cy pres* award is rejected or otherwise not distributed, the residual
20 funds from the Monetary Fund shall instead escheat to the State of California, after
21 notice to the Court by the Claims Administrator and Class Counsel.

22 42. Class Counsel and Defendants' Counsel are hereby authorized, without
23 needing further approval from the Court, to agree to and adopt non-substantive
24 amendments to, modifications of, and/or expansions of the Settlement Agreement, if
25 such changes are consistent with this Order and do not limit the rights of any person
26 or Class Member entitled to relief under the Settlement Agreement. All substantive
27 amendments, modifications, and/or expansions shall be submitted to the Court in the
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1 form of a joint motion for approval. An example of a non-substantive amendment,
2 modification, and/or expansion includes, but is not limited to, the need to extend a
3 deadline contained in the Settlement Agreement for administrative purposes.

4 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

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8 DATED: May 01, 2017

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10 The Honorable Josephine L. Staton
11 United States District Judge
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