

Case No. F084763 (consolidated with F085102 & F085220)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

V Lions Farming, LLC, et al.,
Plaintiffs and Appellants,

v.

County of Kern, et al.,
Defendants and Respondents,

California Independent Petroleum Association, et al.,
Real Parties in Interest and Respondents.

Appeal from Kern County Super. Ct., No. BCV-15-101645-GP
(consolidated with Nos. BCV-15-101666-GP, BCV-15-101679-GP, BCV-
21-100533-GP, and BCV-21-100536-GP)

Honorable Gregory A. Pulskamp, Judge

**PROPOSED AMICUS CURIAE BRIEF OF H. BRADLEY SHAFFER
IN SUPPORT OF APPELLANTS COMMITTEE FOR A BETTER
ARVIN ET AL.**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rule 8.208 of the California Rules of Court, there are no interested parties or entities to list in the certificate. (Cal. Rules of Court, rule 8.208 (d)(3).)

Dated: June 30, 2023

Respectfully,

By: /s/ Andria So
Andria So

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IDENTITY AND INTERESTS OF AMICUS CURIAE

H. Bradley Shaffer, Ph.D. is a Distinguished Professor in the Department of Ecology and Evolutionary Biology and founding Director of the UCLA La Kretz Center for California Conservation Science at the University of California, Los Angeles. He is one of California's leading experts in the evolutionary biology, ecology, and conservation biology of amphibians and reptiles. Dr. Shaffer's scientific publications include a book entitled *California Amphibian and Reptile Species of Special Concern* that focuses on amphibians and reptiles determined by the state of California to be Species of Special Concern, including the species at issue in this brief, the Temblor legless lizard ("Temblor"). He has previously filed an amicus brief alongside other experts in fields relating to the management of endangered and threatened species in a case before the U.S. Supreme Court on the scientific understanding of habitat in the implementation of the federal Endangered Species Act.

As a prominent scientist with expertise in conservation biology and ecology, Dr. Shaffer supports the argument of Appellants Committee for a Better Arvin et al. ("Appellants") that the County of Kern unlawfully ignored new information and changed circumstances concerning the effects of Kern County Ordinance No. G-8992 (the "Ordinance") on the Temblor. Dr. Shaffer's expertise is relevant to the question of the importance of the new information to understanding the Ordinance's potential harm to the Temblor. To aid the Court's understanding of the scientific matters at issue in this case, this brief clarifies the background of the Temblor, the recent expansion of knowledge concerning the species' habitat, and the importance of this new information in light of CEQA's requirement to

adequately and accurately inform the public and decisionmakers about the potential effects of the Ordinance.

AMICUS CURIAE BRIEF¹

I. Introduction

The California Environmental Quality Act (“CEQA”) has two basic purposes, one substantive and the other procedural. Substantively, it prevents significant and avoidable damage to the environment. Procedurally, it accurately informs the public and decisionmakers about trade-offs the government is proposing to make in approving a project with environmental effects. (CEQA Guidelines, § 15002(a).)² The County of Kern (the “County”) has failed to fulfill either mandate in its approval of the Supplemental Recirculated Environmental Impact Report (“SREIR”) for the Ordinance No. G-8992 (the “Ordinance” or the “Project”) at issue in this case, which would streamline oil and gas development throughout the County.

This brief focuses on the SREIR’s deep flaws in its disclosure of information about the potential effects of the Ordinance on the Temblor legless lizard (“Temblor”), a small, imperiled reptile whose range in the Project Area is entirely restricted to a sliver of land that lies mostly along the County’s western border. Despite being presented with significant new information about the species’ range that was discovered after the County’s 2015 Environmental Impact Report (“2015 EIR”) was published (AR518-

¹ No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, and no one other than *amicus*, and his counsel of record, made any monetary contribution intended to fund the preparation or submission of the brief.

² As used throughout this brief, references to the CEQA Guidelines are to Cal. Code Regs., tit. 14, § 15000 et seq.

2393)—information that fundamentally alters the analysis of how the Ordinance will likely affect the species—the County failed to update its analysis of the Ordinance’s effects on the Temblor in the SREIR, making its analysis woefully inaccurate and misleading.³

The Temblor is a protected species at risk of extinction. It is extremely vulnerable to harms caused by oil and gas development. The parties in this case do not dispute that the Ordinance, if enacted, would significantly harm the Temblor without mitigation. But they disagree vehemently about whether the County accurately describes the potential harm to the Temblor from the Ordinance. In fact, the County does not and cannot accurately describe that harm, because it failed to update its 2015 EIR to assess or analyze **the only study ever to systematically model** the Temblor’s range (“2019 Study”), a study commissioned and funded by the California Department of Fish and Wildlife in advance of the SREIR. (AR203302-31.) Rather than assessing and analyzing this important new information, the County rests on the outdated science in the 2015 EIR, which wrongly considers the range of the Temblor in the Project Area to be almost five times larger than that indicated by the new 2019 Study.

The County’s CEQA documents therefore incorrectly inform the public and decisionmakers that the Temblor’s range is relatively large, and that less than 10 percent of the Temblor’s high-quality habitat range is at risk from activities under the Ordinance. But we know that those conclusions are unfounded. We know this because the 2019 Study, which was available

³ The SREIR makes a cosmetic clarification in response to comments that all legless lizard species, including the Temblor, are sensitive resources under Mitigation Measure 4.4-3. (See AR208244, 208876.)

and known to the County before its preparation of the SREIR, shows a much smaller range, and furthermore shows this range to be concentrated in the Western Subarea of the Project Area—the very area that will bear the vast majority of new oil and gas activity under the Ordinance. If it had considered the 2019 Study, the County would have had to grapple with this vastly smaller range for the Temblor; analyze and disclose a different set of facts about risks to the Temblor, given its much smaller range and its highly impacted location; and consider and perhaps adopt additional mitigation measures responsive to the newly analyzed risks.

Instead of doing so, the County simply declined to meaningfully assess the 2019 Study. This failure violates CEQA’s requirements for subsequent or supplemental review when new information shows that a project will have new or substantially more severe significant effects than previously disclosed in the EIR, or constitutes a substantial change to the Project’s circumstances requiring major revisions to the EIR. (Pub. Resources Code, § 21166(b), (c); CEQA Guidelines, § 15162(a)(3)(A), (B); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449.) The County’s refusal also violates CEQA’s requirement to inform the public accurately about effects of the Project and facilitate meaningful public participation. (See *Mira Monte Homeowners Ass. v. County of Ventura* (1985) 165 Cal.App.3d 357, 365.)

The County gives no good reasons—but gives some very bad ones—to justify this omission. In *post-hoc* litigation rationalization, it mischaracterized the 2019 Study as “good news” for the Temblor (Real Parties in Interest Opp’n To Pet’rs Com. For a Better Arvin et al. Opening Br. at pp. 35, 38 (Mar. 20, 2020) (submitted in this litigation in the lower court by Real Parties)), when in fact the study shows Temblor habitat to be

much smaller than the 2015 EIR assumes, meaning that the species is almost certainly less abundant and its survival more precarious than the 2015 EIR suggests. The County also creates a red herring by comparing the 2019 Study to an earlier study that did not aim to quantify Temblor habitat systematically, rather than comparing the 2019 Study to the obsolete information presented in the 2015 EIR. (See J. Opposition Br. of County Respondents and Real Parties in Interest Answering Arvin Appellants (“Opp’n to Arvin Br.”) at pp. 53-54.) This merely obscures the core point: The information presented in the 2015 EIR about the Temblor is outdated and inaccurate, whereas new information, directly on point, shows that the effects of the Ordinance on the Temblor species are likely much more severe than the 2015 EIR concludes. Yet the County persists in repeating its out-of-date analysis and fails to account for new information. The lizard’s limited range and exacting habitat requirements within that range only increase its vulnerability to oil and gas development, and the County’s failure to assess this new information renders the SREIR fundamentally inadequate.

II. Factual Background

A. Basic Temblor Legless Lizard Biology

The Temblor (scientific name *Anniella alexanderae*) is a species that is entirely restricted to California, and whose known range mostly lies within the County. The Temblor is a small, slender lizard that grows to a length of

four to seven inches excluding its tail.⁴ Covered in shiny scales, the lizard has a light gray underside and a pale olive backside with orange sides and black stripes. (AR53517-18.)⁵ The Temblor was distinguished as its own species in 2013, at which point it was only known from sightings at a couple of localities. Additional field work and specimens allowed for its range to be appropriately modeled only in 2019. (AR203302-31.)

The Temblor, like other legless lizard species, is fossorial, burrowing in soil and primarily residing underground.⁶ Legless lizards in California are usually found a few inches below the surface, but have been found as deep as 20 inches.⁷ The lizard “swims” through dry and loose sand with wave-like body undulations, taking advantage of its smooth scales to reduce friction.⁸ The quality of the soil and sand, particularly the moisture level, is critical to its ability to regulate temperature and shed; like all lizards, if the

⁴ California Herps, *Temblor Legless Lizard – Anniella alexanderae* <<https://californiaherps.com/lizards/pages/a.alexanderae.html>> (as of June 27, 2023).

⁵ Center for Biological Diversity, *Petition to List the Temblor Legless Lizard (Anniella alexanderae) as a Threatened or Endangered Species Under the Endangered Species Act and to Concurrently Designate Critical Habitat* (October 20, 2020) at p. 6 (hereafter *Petition to List the Temblor Legless Lizard*).

⁶ Jennings & Hayes, *Amphibian and Reptile Species of Special Concern in California* (November 1, 1994) at p. 108.

⁷ Thomson et al., *California Amphibian and Reptile Species of Special Concern* (2016) at p. 188.

⁸ Stebbins & McGinnis, *Field Guide to Amphibians and Reptiles of California* (2012) 103 Cal. Nat. Hist. Guides at p. 333; Miller, *Ecologic Relations and Adaptations of the Limbless Lizards of the Genus Anniella* (July 1944) 14 Ecological Monographs 273, at p. 277.

Temblor is unable to shed, it will become sluggish and starve.⁹ When it does breach the surface to feed or mate, the lizard conceals itself beneath cover objects such as leaf litter and duff in loose top soil to hide from predators and to feed.¹⁰ As a species that spends much of its existence underground, the lizard locates its prey predominately by sensing vibrations through the ground.¹¹

For these reasons, soil composition—particularly its sand content—and compaction, moisture, temperature, and level of mechanical disturbance can greatly affect the Temblor’s survival. As a burrowing species, changes in the soil’s moisture and compaction can inhibit the lizard’s ability to burrow, feed, and shed. Disturbances to the soil and cover can hinder its movement and hunting. Changes in temperature beyond the Temblor’s preferred range of 50 to 80 degrees Fahrenheit can also be lethal to the species.¹² Finally, noise and vibrations can interfere with the lizard’s ability to locate prey.¹³

All legless lizard species of the genus *Anniella* are limited to various regions in California and Baja California. Of these species, the Temblor is one of the most restricted in terms of suitable habitat and known range. It is found only in the southwestern San Joaquin Valley, California. Specifically, the 2019 Study observed the Temblor at only four survey sites that accounted for seven distinct locations. Two of those four sites are currently

⁹ Jennings & Hayes, *supra*, at p. 111; see Thomson, *supra*, at p. 189; see Miller, *supra*, at p. 277.

¹⁰ See Stebbins & McGinnis, *supra*, at pp. 333-32.

¹¹ Miller, *supra*, at p. 280.

¹² *Id.* at p. 285.

¹³ See *id.* at p. 280.

fragmented habitat patches due to ongoing oil and gas extraction. (See AR203315.)¹⁴ A third site is in close proximity to multiple oil fields.¹⁵

B. Evolution of Our Understanding of the Temblor Species and Its Habitat

The first study to distinguish the Temblor as a species distinct from other California legless lizard species was published in 2013 (“2013 Study”). (AR53511-27.) Previously, all California legless lizard populations (genus *Anniella*) were considered to comprise a single species; the 2013 Study distinguished five unique species, including the Temblor. (AR53511.) The goal of the study was to formally describe each species, assess species differentiation including genetic and morphological differences between the five species, and summarize the limited information available on their biology. It concluded that the Temblor was, in fact, a unique species distinct from the silvery Legless Lizard (*Anniella pulchra*) and others with which the Temblor had previously been classified.

The 2013 Study left significant open questions about the Temblor’s range in the San Joaquin Valley, including in Kern County, because its focus was on species differentiation, not range determination. It did not shed much light, for example, on where the five California legless lizard species could be found within Kern County. Although the authors documented two nearby sites where they encountered the Temblor, those encounters were not meant to delimit the range of the species, and the authors of the study acknowledged the limitations of their work about the

¹⁴ See *Petition to List the Temblor Legless Lizard* at p. 10.

¹⁵ *Id.*

Temblor's full habitat range and that further research was needed. (AR53511.) Therefore, while the 2013 Study documented an admittedly limited demonstrable range for the Temblor, it also left completely unresolved significant questions about the potential range of the species.

To fill these gaps in our knowledge, the California Department of Fish and Wildlife (the "Department") commissioned the 2019 Study to better understand the distribution of all five *Anniella* species in California, including the Temblor. (AR203302-31.) A major objective of the 2019 Study was to conduct field surveys of the distribution of California *Anniella* species, including the Temblor, and establish species range boundaries. (AR203308.) The study concentrated its surveys within Kern County, therefore establishing the Temblor's habitat range within Kern County with reasonable accuracy. (*Id.*)¹⁶ The 2019 Study used all available information at the time to model the ranges of all five species based on a widely used modeling technique. The 2019 Study is the most accurate and up-to-date science on the habitat range of the lizard, and it is the only study to date that has attempted to systematically characterize the Temblor's range.

The 2019 Study concluded that the Temblor's range is extremely limited, one of the smallest ranges of the *Anniella* species (*id.*, fig.2), and one of the smallest lizard species ranges in California. Its estimated range totals only about 1,720 square kilometers, less than one-thirtieth the size of the range of the most wide-ranging *Anniella* species, the silvery legless

¹⁶ The study states that "[m]ost of the surveys took place in Kern County because it includes all five of the species known from the USA (including all four of the newly described species) and therefore the contact zones among them." (*Id.*)

lizard. (AR203315, tbl. 1.).¹⁷ After conducting field surveys at suspected sites where the legless lizards might reside, the 2019 Study’s authors found the Temblor at only seven locations within four survey sites. (AR203312, 203315.).¹⁸ The 2019 Study projected the maximum geographic extent of the species range to be a thin sliver of land sandwiched between the Temblor Mountain Range and a highway. (AR203312, fig.2.) The Department has acknowledged information that the Temblor has “a very small range and limited distribution, making its continued existence especially vulnerable to threats.”¹⁹

C. Conservation Status and Threats to the Lizard

The Temblor is critically imperiled,²⁰ the highest imperiled ranking among the California *Anniella* species, considered to be at a “very high risk of extinction or collapse due to very restricted range, very few populations

¹⁷ The total range of the silvery legless lizard is over 56,000 square kilometers.

¹⁸ See *Petition to List the Temblor Legless Lizard* at p. 10.

¹⁹ California Department of Fish and Wildlife, *Report to the Fish and Game Commission; Evaluation of the Petition from the Center for Biological Diversity to List the Temblor Legless Lizard (Anniella alexanderae) as Threatened or Endangered Under the California Endangered Species Act* (March 25, 2022) at p. 14 (hereafter *CDFW Report*).

²⁰ This ranking is measured by a nonprofit conservation organization that the U.S. Fish and Wildlife Service routinely partners with known as NatureServe. NatureServe, *Anniella Alexanderae: Temblor Legless Lizard* <https://explorer.natureserve.org/Taxon/ELEMENT_GLOBAL.2.960627/Anniella_alexanderae> (as of June 27, 2023).

or occurrences, very steep declines, very severe threats, or other factors.”²¹ Before the division of *Anniella* into five species was accepted, all California *Anniella* legless lizards were designated as Species of Special Concern, and all are now at considerably greater risk given their more restricted ranges. The Temblor in particular is now under formal consideration as threatened or endangered under the California Endangered Species Act.²² This designation entitles the Temblor to the same legal protections under California law as an endangered or threatened species. (Fish & G. Code, §§ 2074.2, 2085.) The Temblor is also under review for protection under the federal Endangered Species Act.²³

The Temblor faces many threats. Habitat loss and a small habitat range are, in and of themselves, major risk factors for an imperiled species like the Temblor. Indeed, size of range alone is an indispensable factor in determining a species’ conservation status. For example, the International Union for Conservation of Nature’s Red List of Threatened Species, a valuable compilation on the global extinction risk status of species, lists “[g]eographic range size, and fragmentation, few locations, decline or fluctuations” and “[v]ery small population or very restricted distribution” as two of its five criteria for determining whether and to what extent a species

²¹ NatureServe, *Statuses: Conservation Status Categories* <<https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories>> (as of June 27, 2023).

²² California Fish and Game Commission, *Notice of Findings: Temblor Legless Lizard (Anniella alexanderae)* (June 20, 2022).

²³ Endangered and Threatened Wildlife and Plants; 90-Day Findings for Two Species, 86 Fed.Reg. 32,241 (June 17, 2021).

is threatened.²⁴ In California, range size and distribution trend (that is, decreases in range size) are two of the eight Risk Metrics used to determine whether or not a species is potentially listed as a Species of Special Concern.²⁵ Range sizes are considered small, and therefore carry the greatest risk, if they are less than 10 percent of the area of the state. The maximum range of the Temblor is 0.4 percent of the area of California, one twenty-fifth the aforementioned 10 percent cutoff.

A smaller range exacerbates overall risks to species. A species with a smaller range is less resilient for many reasons; a greater percentage of its total population may be affected by any localized threat, including climate extremes, industrial accidents, and invasive species to name just a few. For the Temblor, oil and gas development is already among the greatest threats to its survival and its habitat. Nearly every aspect of the extractive process disrupts the lizard's ability to carry out vital functions and causes habitat loss, fragmentation, and degradation. The consequences of oil and gas development are therefore concentrated and worsened for the Temblor, given its limited range.

Oil and gas development activities threaten the Temblor in myriad ways. First, extractive techniques by their very nature alter the soil in ways that make it uninhabitable for the Temblor. Unconventional forms of extraction are common in Kern County and involve pumping water, steam, sand, and

²⁴ IUCN Standards and Petitions Committee, *Guidelines for Using the IUCN Red List Categories and Criteria: Version 15.1* (July 2022) <https://nc.iucnredlist.org/redlist/content/attachment_files/RedListGuidelines.pdf> at p. 14.

²⁵ See Thomson, *supra*, at pp. 9-10.

chemicals into the ground to crack rock formations and release oil and gas.²⁶ The County contemplates these techniques under the Ordinance, particularly well stimulation treatments including hydraulic fracturing, frac-packing, and acid fracturing and acid matrix stimulation. (AR171001-04.) These techniques cause the ground to shift or collapse, compacting the loose sand the lizard requires for burrowing. Not only do these processes directly affect the soil in which the Temblor resides, they also contribute to surface and groundwater contamination; air, noise, and light pollution; and other ecological effects that create heightened risks for sensitive species like the Temblor.²⁷

Second, the construction associated with oil and gas development activity, particularly the paving of roads with dense materials, compacts the surrounding land. Again, this interferes with the Temblor's ability to move and burrow. These activities also destroy the loose substrate that the lizard requires when on the surface and reduce the lizard's ability to avoid predators, find foraging sites, and regulate its temperature.

Third, the mechanical disturbances and noise pollution created from oil and gas development interfere with the Temblor's ability to sense the minute vibrations in the ground necessary for the species to locate its food. The construction of extraction sites, the drilling and extraction process, and

²⁶ Wolf et al., *Oil Stain: How Dirty Crude Undercuts California's Climate Progress* (November 2017) at p. 5.

²⁷ See Souther et al., *Biotic impacts of energy development from shale: research priorities and knowledge gaps* (2014) 12 *Frontiers Ecology and Env't* 315; see also Adams, *Land Application of Hydrofracturing Fluids Damages a Deciduous Forest Stand in West Virginia* (April 26, 2011) 40 *J. of Env'tl. Quality* 1340.

the passage of trucks to and from sites all generate harmful and persistent noise and vibration.

Fourth, the oil and wastewater that is produced during extraction can kill the lizards and destroy their habitat. During an oil spill, rising oil will inundate any lizard in the ground nearby, suffocating, burying, and otherwise killing these vulnerable lizards. Because Temblors reside beneath the surface, there could be no visible indications of their presence before such a devastating spill. Water spills also negatively affect the species by altering the soil's moisture level to a level the Temblor cannot tolerate. Oil and gas extraction requires a tremendous amount of water and produces much wastewater that may spill.²⁸ Even in the absence of any accidental spills, the storage of produced water onsite in pits or its injection underground can seep into the soil to the lizard's detriment.

Fifth, through these produced water pits, spills, injected water, and contaminated groundwater, pollutants from the oil and gas extraction—and the chemicals often used to aid in extraction—may be introduced into the Temblor's habitat.²⁹ These pollutants can include toxics, carcinogens, and

²⁸ Conventional wells generally use water to facilitate drilling of the well; unconventional wells require even more water, because the water is mixed with chemicals and injected into the ground to create or expand fractures in the rock or to increase pressure and production. (Scanlon et al., *Comparison of Water Use for Hydraulic Fracturing for Unconventional Oil and Gas versus Conventional Oil* (Sep. 18, 2014) 48 *Envtl. Sci. & Tech.* 12386 <<https://pubs.acs.org/doi/pdf/10.1021/es502506v>> at p. 12387; Allison & Mandler, *Water in the Oil and Gas Industry: An overview of the many roles of water in oil and gas operations* (2018) Am. Geosciences Inst. <https://www.americangeosciences.org/sites/default/files/AGI_PE_WaterIntro_web_final.pdf> at p. 2-1.)

²⁹ See Souther et al., *supra*, at pp. 331-33.

endocrine disruptors.³⁰ Endocrine disruptors are particularly troubling and can interfere with, and sometimes completely destroy, a reptile's reproductive ability by radically altering sexual development, mating behavior, parental behavior, and more.³¹

Beyond oil and gas development, the Temblor also faces a host of other threats to its habitat and survival. The lizard is threatened by urbanization and other industrial projects, climate change, wildfires, and invasive species. Already, the Temblor's habitat likely has been restricted by urban development. (AR203317, 203322-23.) Due to climate change, temperatures may rise to a level not tolerated by the lizard, drought and flooding can disrupt soil moisture or drown the lizard, and wildfires can drastically alter the brush habitat that it depends on or outright kill individual lizards.³² As the habitat undergoes these changes, species that can better tolerate or even thrive in the new conditions can reduce the quality of habitat and prey for the lizard.³³

D. Treatment of the Lizard in the 2015 EIR and SREIR

At the time of the 2015 EIR, as discussed above, information about the range of the Temblor was sparse. The 2015 EIR acknowledged the “extremely limited distribution information available” for the Temblor, and

³⁰ Pitchel, *Oil and Gas Production Wastewater: Soil Contamination and Pollution Prevention* (February 14, 2016) Applied and Env'tl. Soil Sci. at p. 2.

³¹ See Norris & Lopez, *Hormone and Reproduction in Amphibians and Reptiles* (2018) 6 Reference Module Life Sci. 374.

³² *Petition to List the Temblor Legless Lizard* at pp. 17-18.

³³ *Id.*

it listed the Temblor as among those species for which “modeling data was not available to quantify and analyze potential Project impacts.” (AR1065.)

By contrast, modeling data on the silverly legless lizard, a similar but distinct species, was available. (AR1123.) Thus, in its 2015 EIR, the County took the unconventional approach of lumping these two recognized species, along with the Bakersfield legless lizard, together for some analytical purposes. (AR1122.) Most notably, the County assumed the Temblor to have the same range as the silverly and Bakersfield legless lizards, which are widespread in the Project Area. (*Id.*) In fact, the 2015 EIR assumed that these three relevant species of legless lizards—silverly, Bakersfield, and Temblor—each had identical ranges within the area of the Project. It also assumed these ranges to be huge, extending throughout essentially all of the Project Area. The Project Area is approximately 2.051 million acres in size (AR1210), and the County treated the range of the Temblor as nearly that same size, at almost 2 million acres. (AR1123.)³⁴

Using this approach and treating the Temblor range as identical to that of the silverly legless lizard, the County concluded that the Project would impact only 9.9 percent of total high-quality modeled Temblor habitat in the Project Area over 25 years, and 6.2 percent of poor- to moderate-quality modeled habitat. (AR1231.)

By the time of the preparation of the SREIR in 2021, we were in a different world with respect to our understanding of the Temblor’s range.

³⁴ Combining the silverly legless lizard’s total high-quality and poor- to moderate-quality habitat results in 1,937,885 acres, which can be attributed to the Temblor due to being lumped together with the silverly and Bakersfield legless lizard.

Specifically, we knew the Temblor’s range was very significantly smaller than the 2 million acres modeled in the 2015 EIR. We knew this because the 2019 Study had been commissioned by the California Department of Fish and Wildlife and had been completed. It characterized the Temblor range as much smaller than that of the silvery legless lizard—and, in fact, smaller than that of almost any other *Anniella* species. It provided new evidence that, rather than existing throughout the entirety of the Project Area, the historical range of Temblor lizards is wedged into a relatively small area in the Western Subarea of the Project—precisely the area within which the County expects the most intensive oil and gas activity to occur under the Ordinance. (AR1207.) The actual occupied range may well be smaller, given the impacts already discussed.

Notwithstanding the new evidence provided by the 2019 Study—the only robust study ever to have been performed to characterize the range of the Temblor—the County failed to supplement its analysis of impacts from the 2015 EIR. The County instead stands by its 2015 EIR, which (a) treats the range of the Temblor as identical to the ranges of the silvery and Bakersfield legless lizards; (b) asserts that the Temblor range extends throughout nearly 2 million acres of the Project Area; and (c) on those bases, concludes that less than 10% of the Temblor’s high-quality habitat is likely to be degraded by the Project. Each of these conclusions conflicts with the findings of the 2019 Study.

III. New Information About the Temblor Legless Lizard's Habitat Range Is Significant and a Substantial Change in Project Circumstances

As described above, new information was discovered about the Temblor's limited habitat range after the County certified its EIR in 2015 but before it circulated its draft SREIR in 2020. The new information contained in the 2019 Study represents the only effort ever made to systematically model the Temblor's range, particularly in Kern County. By showing the Temblor's range to be very limited and centered in the area of the most intensive Project impacts, the 2019 Study shows that the Project will have new or substantially more severe significant effects than previously analyzed in the 2015 EIR and constitutes a substantial change to the Project's circumstances requiring major revisions to the 2015 EIR. As such, the County was required to undertake subsequent or supplemental review on the Temblor. (Pub. Resources Code, § 21166(b), (c); CEQA Guidelines, § 15162(a)(3)(A), (B); *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041 (new information that a Species of Special Concern, the coastal cutthroat trout, was observed in a nearby creek warranted supplemental environmental review, despite being anecdotal evidence); *Mira Monte Homeowners Association v. County of Ventura, supra*, 165 Cal.App.3d 357 (holding that a supplemental EIR is required when new information shows further encroachment of project into a rare species' habitat than original EIR contemplated, despite the EIR's preexisting mitigation measures to reduce project impact on that habitat).)

Moreover, an EIR is adequate only when it sufficiently facilitates informed agency decision-making and public participation. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 513; see also CEQA Guidelines, §

15121(a) (an EIR is an “informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project”).) An EIR that uses scientifically outdated information is not a reasoned and good faith effort to inform decisionmakers and the public. (See *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1367, as mod. on reh. den. (Sept. 26, 2001).) Only by utilizing accurate and up-to-date science can the public fully participate in agency decision-making, and failure to do so makes an EIR, and this SREIR, inadequate.

For these reasons, the County’s failure to address the new information and changed circumstances to reanalyze the effects of the Project to the Temblor was unlawful, and the SREIR is inadequate in failing to incorporate accurate and available science into its analysis of impacts.

A. New Information Provides a More Accurate Habitat Range for the Temblor Legless Lizard Distinct from Other *Anniella* Species that Is Centered in the Project’s Area of Most Intensive Development

The 2019 Study filled a key gap in our understanding of the Temblor’s range. Following almost complete uncertainty as to its distribution throughout Kern County and the Project Area after the 2013 Study, the 2019 Study was the first to systematically assess the Temblor’s range, and it found the range to be very limited and distinct from that of the silvery and Bakersfield legless lizards and other *Anniella* species. The 2019 Study projected the Temblor’s total range to be about 1,720 square kilometers, or 425,021 acres—under half a million acres. (AR203315.) This is in stark

contrast from its potential range of millions of acres left largely undefined in the 2013 Study, and under one-thirtieth of the range of the silvery legless lizard—with which the Temblor had been lumped for analysis in the 2015 EIR.

In addition, the new information indicates that rather than potentially populating the entire San Joaquin Valley and occurring throughout Kern County, the range of the Temblor is concentrated along the western border of Kern County, extending north into Kings and Fresno Counties. Before the 2019 Study, it was unknown where in the County the Temblor could be found. But the 2019 Study has shown that within the Project Area, the species is located only in the Western Subarea, rather than being spread throughout the nearly 2 million acres of the entire Project Area, as stated in the 2015 EIR. We also now know that the area of the Temblor's range coincides precisely with the area of most intensive Project impacts, where the County predicts that almost three-fourths of the total projected disturbance from oil and gas activity under the Ordinance will occur, more than three times any other subarea of the Project. (AR1207.)

B. The County's Failure to Address New Information and Changed Circumstances Was Unlawful

The 2019 Study contains exactly the kind of data that requires an update to an EIR if it strongly suggests new and more substantial harm to the species. (See *Mira Monte Homeowners Ass. v. County of Ventura*, *supra*, 165 Cal.App.3d 357 (holding that a discovery of a more intensive encroachment into a rare plant species' habitat just four days prior to certification of an EIR required a subsequent or supplemental environmental impact report).) Yet the County has failed to account for

impacts to the species in light of this new information and changed circumstances. In contrast to the 2015 EIR, the SREIR was drafted and circulated at a time when the Temblor's habitat range had been systematically studied for the first time. But the SREIR did not conduct supplemental analysis of the Temblor, despite advances in the available science.

In *Mira Monte*, the discovery of more intensive potential effects on an important plant species triggered a revised EIR, even where those effects were shown to be merely an intensification of an impact that had already been identified and addressed in the EIR. (*Supra*, 165 Cal.App.3d at pp. 364-66.) The court held that a revised EIR was required because of the substantial change in project circumstances that put the plant at further risk of harm. (*Ibid.*)

Similarly, here, the accurate delimitation of the Temblor's range shows that the Ordinance poses much greater risks to the species than were disclosed in the 2015 EIR. Negative effects from the Ordinance will be amplified, affecting a greater proportion of the Temblor's habitat and population. In addition, the discovery that the Temblor's range within the Project Area is focused entirely within the Western Subarea, where the majority of new wells will be drilled under the Ordinance, means that the Ordinance will likely disturb far more habitat than the 2015 EIR predicted. In fact, the 2019 Study shows that more than 90 percent of the Temblor's range within the Project Area falls within Tiers 1 or 2 as defined by the County, which the County projects will bear more than 96 percent of new habitat disturbance under the Ordinance. (See AR 203312, fig. 2; AR1207,

tbl. 4.4-71.) For these reasons, the amplified risk of harm is a new and substantially increased significant effect.³⁵

Indeed, had the County used the 2019 Study to estimate the Project’s risk to Temblor habitat, it would almost certainly have significantly revised its estimate of affected Temblor habitat—likely to more than *double* the level of habitat disturbance reflected in the 2015 EIR. Though it is not the job of the public to attempt this reassessment, we have done our own analysis of how much of the Temblor’s range would be disturbed by the Ordinance, mimicking the County’s analytical approach but updating the numbers to reflect the 2019 Study’s findings. Using the County’s own methodology, we found that the Ordinance will disturb more than twice the high-quality and poor- to moderate-quality Temblor habitat as found in the 2015 EIR.³⁶ Needless to say, the County may quibble with or object to

³⁵ Given the high habitat specificity of the Temblor to certain restricted soil and moisture conditions, and the resulting likelihood that it is unevenly distributed across the Tier 1 and Tier 2 impact areas, the potential for a greater than currently modeled impact on the species is high, and further argues in favor of robust and accurate environmental impact review.

³⁶ To conduct this assessment, we used the same methodology as employed by the County in the 2015 EIR to assess habitat disturbance to the Temblor. (See AR1207-11.) We relied on the County’s disclosure of disturbed acres by tier and subregion (see AR1207, tbl. 4.4-71), and we employed standard Graphical Information System (GIS) mapping tools to determine the number of acres of Temblor habitat in each Project subarea and tier, using Temblor habitat maps from the 2019 Study. (AR203312, fig. 2.) We found that the Ordinance would disturb 34,995 acres of Temblor habitat in the Western Subarea over the 25-year timeline contemplated by the 2015 EIR. (AR1231, tbl. 4.4-83.) This accounts for roughly 14 percent of the 250,608 acres of Temblor habitat in the Project Area under the 2019 Study. Because the 2019 Study does not distinguish between “high” and

aspects of our analysis here. This would merely underscore the need for the County to update its own analysis to take account of the findings of the 2019 study, and to make that analysis public.

As noted previously, much of the Temblor’s already restricted range is concentrated in the Project Area and subject to myriad other threats, making the Temblor particularly vulnerable to habitat fragmentation. (See Part I.C, *supra*.) Thus, a more than two-fold increase in the Temblor’s potential habitat disturbance represents a serious threat to the species.

C. The County’s Failure to Account for This New Information Undermines CEQA’s Goal of Informed Public Participation

The County’s refusal to address the new information and changed circumstances introduced by the 2019 Study—and its continued embrace of inaccurate conclusions instead—undermines CEQA’s fundamental purpose of facilitating informed public participation in agency decision-making. The purposes of CEQA include facilitating informed self-government by alerting the public and responsible officials to environmental consequences

“poor to moderate” quality habitat, we could not make that distinction in our analysis.

This compares to the County’s 2015 EIR figures that suggest only about 6 percent total habitat degradation for the Temblor. Although the 2015 EIR did not provide an estimate for total combined (“high” and “poor to moderate”) quality habitat disturbance for the Temblor, we were able to calculate this figure by adding both categories of habitat for each tier and subarea disclosed in the 2015 EIR, ultimately finding that—under the County’s estimates—only 6.2 percent of Temblor habitat would be disturbed by the Ordinance. (See AR1123, tbl. 4.4-42 (giving acreage disturbance for overall legless lizard habitat, which the 2015 EIR treats as identical to the Temblor habitat range).)

before they occur. (*Martis Camp Community Assn. v. County of Placer* (2020) 53 Cal.App.5th 569, 603.) Only by utilizing accurate information in an environmental assessment can an environmental impact report ensure that the public fully participates in agency decision-making. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at p. 449 (a lead agency’s failure to address a substantial new impact in an environmental impact report deprived the public of meaningful participation); see also *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-93 (“Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance.”).)

Here, the County has failed to fulfill its most basic obligation to fully inform the public of the potential environmental consequences of streamlining oil and gas permitting and development within the county. The public is therefore ignorant that the potential effects of the Ordinance on the Temblor are much more significant than the County concluded, given the species’ precarious conservation status, small range, and concentration in the area with the greatest amount of projected oil and gas development. As such, neither the agency *nor the public* has considered “the full range of effectiveness of alternatives and mitigation measures” to prevent harm to the Temblor. (*Mira Monte Homeowners Assn. v. County of Ventura*, *supra*, 165 Cal.App.3d at p. 365.) This failure has utterly deprived the public of meaningful participation. (*Ibid.*)

The 2019 Study shows that the County’s assumptions—and therefore, its conclusions—regarding potential harm to the Temblor are inaccurate in a

few important respects. Critically, continuing to rely on the 2015 EIR vastly inflates the Temblor’s range beyond the range revealed in the 2019 Study. While this may have been understandable in 2015 based on information then available, including the 2013 Study, it was no longer acceptable after the release of the 2019 Study. Whereas the 2015 EIR assumes and assesses impacts to the Temblor as if its habitat mirrors that of the silvery legless lizard, the 2019 Study establishes a range for the Temblor distinct from—and less than a thirtieth the size of—the silvery legless lizard’s. (AR203312, fig. 2.) In contrast to the habitat range of almost 2 million acres assumed in the SREIR (AR1123, tbl. 4.4-42), the Temblor’s total range—not just in the Project Area—is estimated to be less than half a million acres.³⁷ This limited habitat range means the Temblor is less resilient to harms from oil and well development.³⁸

Without updating this inflated range, the SREIR and 2015 EIR also mislead the public with inaccurate estimates of how much the Ordinance will impact that range. The County acknowledges that the majority of new wells would be located in the Project’s Western Subarea.³⁹ The 2019 Study shows that the Temblor’s range lies entirely within that Western Subarea, along the County’s western edge. In other words, the new wells and

³⁷ The 2019 Study estimates the total range to be 1,719.54 square kilometers, equivalent to 424,907.59 acres. (AR 203315, tbl. 1.)

³⁸ To the extent that the ecological niche models for the two species do overlap, these maps are by the authors’ own admission an “overprediction” into areas that lack actual suitable habitat. (AR203306.) The models are focused entirely on suitable climate, and so fail to account for land use, soil type, and other important factors that distinguish the ranges of the two lizards. (See AR203309.)

³⁹ 64% of new wells would be located in the Western Subarea of the Project. (See AR1206.)

associated development will be concentrated exactly where the Temblor's habitat exists. This strongly suggests that the 2015 EIR's estimate that only about 10 percent of high-quality Temblor habitat would be impacted by the Ordinance is unfounded and incorrect.

The County has acknowledged that the Ordinance would have significant potential impacts to wildlife without mitigation. (AR1237.) But the Temblor's limited range and the high volume of new wells that will be located within and in proximity to that range means that the Project will affect a greater percentage of its habitat and members of the species. The harms to the Temblor will therefore likely be magnified beyond those estimated in the 2015 EIR. As previously discussed, oil and gas activities disrupt the Temblor's vital functions and degrade its habitat by compacting soil, loose sand, and leaf litter; generating noise pollution; altering soil water content; and contaminating the habitat, all of which may devastate the species.

Because a fundamental purpose of CEQA is to foster informed public participation, it is irrelevant whether the County would have arrived at the same ultimate outcome in its SREIR after considering the new information and changed project circumstances. (*Mira Monte Homeowners Assn. v. County of Ventura, supra*, 165 Cal.App.3d at p. 365.) "In deciding whether a failure to comply with CEQA is prejudicial error, courts do not determine whether the agency's ultimate decision would have been different if the law had been followed. They focus on whether the violation prevented informed decisionmaking or informed public participation." (*Martis Camp Community Assn. v. County of Placer, supra*, 53 Cal.App.5th at pp. 606-07.) An evaluation of whether the County's original mitigation measures are appropriate to mitigate potential impacts to the Temblor in light of this

new information and changed circumstances is therefore unnecessary for the legal argument. Nevertheless, it bears noting that a more accurate assessment of the significant risks to the Temblor posed by the Project might, and perhaps should, lead to consideration of more robust mitigation measures to help reduce risks to this already imperiled species.

IV. The County’s Arguments for Its Failure to Consider the 2019 Study Are Nonsensical and Lack Substantial Evidence

None of the County’s reasons for refusing to consider the 2019 Study make much sense or are supported by substantial evidence. The County has refuted that the study raises “either substantial changes in circumstances or new information requiring supplemental analysis under CEQA.” (AR208694.) It asserts that it remains “appropriate to treat the legless lizard species together,” by which it means to treat the Temblor’s range as being the same as the range of two much more widespread legless lizard species—including the silvery legless lizard—which we now know to be incorrect. (*Id.*) Its justifications for this stance rely on a mix of mischaracterizations of the 2019 Study and misleading arguments.

First, the County asserts that its underlying reasons for assuming that the Temblor’s range stretches across the Project Area remain valid. (See AR208694; see also Opp’n to Arvin Br. at p. 51.) But it fails to recognize that its original basis for lumping the legless lizard species together into a single habitat range—namely, that there existed in the literature, in 2015, no reliable characterization of the Temblor’s range—is no longer true. The County originally characterized the Temblor as a species “for which modeling data was *not available* to quantify and analyze potential Project

impacts.” (AR1065.)⁴⁰ This is now plainly incorrect; the 2019 Study has provided exactly this modeling for this species. Not only are modeling data available for the Temblor, but the data demonstrate that its habitat range is distinct from, and much smaller than, that of the silvery legless lizard and very different from the range presented in the 2015 EIR.

By persisting in using the silvery and Bakersfield legless lizards’ data in place of the new, Temblor-specific findings commissioned by the Department, the County falsely concludes that the range of the Temblor stretches across the Project Area. But the Temblor’s range is much smaller than the range of most other California *Anniella* species, particularly the silvery and Bakersfield legless lizards that also populate the Project Area. As a result, the County vastly overestimates the Temblor’s range and states, falsely, that the Temblor has significant range in the Eastern and Central Project Subareas, when current evidence indicates that Temblor range is limited to the western-most border of Kern, where the most intensive oil and gas activities will be concentrated.

The County also falsely characterizes its analytical approach to the Temblor and its range as “conservative.” (Opp’n to Arvin Br. at p. 48-49.) But considering the Temblor as having the same range as the silvery legless lizard is not a conservative approach at all—quite the opposite. Stating that the Temblor has a much larger range than is supported by current science is

⁴⁰ The County listed the Temblor as a Category 2 species (AR1155), which is reserved for those “plants and animals that are known or likely to occur in the Project Area for which modeling data was *not available* to quantify and analyze potential Project impacts.” (AR1065 (emphasis added).)

the opposite of conservative because it gives the impression that the species is more widespread—and more robust—than it is. It is neither conservative nor liberal—it is simply incorrect. It also minimizes the potential effect of the Project on the overall species by suggesting—wrongly—that there are large areas of the Temblors’ habitat that will not be as affected by the Project.⁴¹

Second, the County justified its failure to consider the 2019 Study in part by characterizing that study as “good news” for the species and as *expanding* the Temblor’s range. (Real Parties in Interest Opp’n To Pet’rs Com. For a Better Arvin et al. Opening Br. at pp. 35, 38 (Mar. 20, 2020).) This fundamentally misunderstands and mischaracterizes the 2019 Study and its relationship to earlier literature. The 2019 Study was neither good nor bad news, nor should it be characterized as expanding the habitat range of the Temblor. Rather, the 2019 Study defined, for the first time, the range of the species.⁴² Before the 2019 Study, it was not yet known whether the

⁴¹ Neither is it conservative to assume the Temblor to be a special status species, as the County claims. (Opp’n to Arvin Br. at p. 48.) In fact, the Temblor has now been accepted for consideration as threatened or endangered, which entitles the species to greater protections under California law as its petition for consideration is pending. (California Fish and Game Commission, *Notice of Findings: Temblor Legless Lizard (Anniella alexanderae)* (June 20, 2022); Fish & G. Code, §§ 2074.2, 2085.) The petition to list the Temblor was submitted by the Center for Biological Diversity in October of 2020, prior to the circulation of the revised draft SREIR. (*Petition to List the Temblor Legless Lizard.*) The petition alone illustrates that the conservative, most protective approach would have been to grant the Temblor the provisional protections of listed species that California requires for species with pending petitions.

⁴² And even the 2019 Study’s habitat range is likely an overestimate, given that legless lizards are very particular about their habitats, requiring loose and fine blown sand amongst other factors. These conditions may not

Temblor could be found throughout the County—and, in fact, the 2015 EIR assumed that it could be found that widely. But most of that area is dominated instead by the silvery legless lizard and the Bakersfield legless lizard, with the Temblor residing elsewhere. The 2019 Study has shown the Temblor to be found only in a thin strip of land east of the Temblor Mountain Range. (AR203312, fig. 2.)⁴³

The County also argues that the 2019 Study did not demonstrate substantially more severe impacts, characterizing the 2019 Study as an expansion of the range determination in the prior 2013 Study. (See Opp'n to Arvin Br. at pp. 53-54.) However, the 2013 Study did not aim to model the California *Anniella* species' ranges; it aimed to distinguish new California *Anniella* species that were not previously recognized. In pursuing that scientific goal, it also reported, rather informally and incidental to its primary objective, the only two sites where the authors encountered the Temblor during their work. (AR53518.) The 2013 Study did not systematically sample legless lizard species' ranges across the region, using a formal statistical modeling procedure to construct a range map, as was done in the 2019 Study. Indeed, in the 2013 Study itself, the authors caution against reading too much into the study's estimated range for the Temblor, noting that the lizard's habitat range was "poorly characterized." (AR53511.) This is why, notably, the Department then commissioned and

occur in most of the Temblor's estimated range. An overlay of the 2019 Study's model over a map of the region's sandy soil would provide a more accurate range, and is precisely the type of environmental impact analysis from which the project could benefit.

⁴³ The figure's yellow range indicates the silvery legless lizard, and the purple range the Bakersfield legless lizard.

supported the 2019 Study aimed at gathering precisely the information we had lacked on Temblor and other legless lizard species ranges.

Furthermore, the comparison between the habitat ranges proposed in the 2013 Study and in the 2019 Study is beside the point. The relevant analysis is whether the 2019 Study introduced important new information about the Temblor's range that suggests new or more significant impacts than were disclosed in the County's 2015 EIR (and, by extension, the SREIR). And the fact remains that the 2019 Study provides important new information that significantly changes our understanding of how the Project interacts with Temblor habitat and what risks the Ordinance poses, showing that the 2015 EIR's analysis is wrong and misleading in important respects, and that the SREIR must account for that new information.

Similarly, the County argues that the 2019 Study is a mere confirmation of information that the County had already accounted for, citing *Silverado Modjeska Recreation & Park Dist. V. County of Orange* (2011) 197 Cal.App.4th 282. (Opp'n to Arvin Br. at p. 56.) But the 2019 Study is not a mere observation, nor is it consistent with the SREIR. The study provides new and better data on the limits of the Temblor's range, data that are flatly inconsistent with prior County assumptions and analytical approaches. Rather than affirming an extension of the range, the study illustrates that the species is *not* found as broadly as the County modeled.

Rather than incorporating the new information and changed circumstances in its environmental assessment, the County obfuscated.⁴⁴ The County has relied upon outdated circumstances, overinclusive estimates, and an inaccurate understanding of the new information.

V. Conclusion

The Temblor is a fragile species with a very limited habitat range. Already, most of its range is threatened by oil and gas extraction, and the County's Ordinance will only accelerate the species' decline. What could be excused in 2015 as ignorance can no longer be dismissed, given our accurate understanding of the Temblor's range. CEQA safeguards against exactly this situation in requiring the County to account for new information and changed circumstances, yet the County has instead failed to provide any substantive update to its assessment of effects of the Ordinance on the Temblor species. By failing to adequately inform the public of the advances in scientific knowledge on the Temblor, the County has also circumvented CEQA's safeguards for informed self-government.

Even beyond its consequences for the Temblor and this Ordinance, this case has broader implications for the use of accurate and up-to-date science in agency decision-making. CEQA's procedural requirements serve to ensure that agencies account for new information, rather than relying upon outdated studies. To allow the County to forgo updating its analysis to account for the 2019 Study heralds a future where agencies are emboldened

⁴⁴ The County's assertion that it did consider the information submitted by Arvin in the Final SREIR is only true to the extent it declined to consider it. (See Opp'n to Arvin Br. at p. 51; AR208694.)

to disregard advances in scientific knowledge when approving projects that may have dire effects, not only on species of plants and wildlife, but on all aspects of the environment, including public health. The public has an abiding interest in ensuring agencies and local governments use and disclose accurate information when analyzing projects with such large potential ramifications.

Dated: June 30, 2023

By: /s/ Andria So

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c), I hereby certify that this brief contains 10,695 words using 13-point Times New Roman font, including footnotes, which is less than the total words permitted by the California Rules of Court. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By: /s/ Andria So
Andria So

DECLARATION OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 405 Hilgard Avenue, Los Angeles, California 90095. My electronic service address is soa.elc@law.ucla.edu. On June 30, 2023, I served the within documents:

APPLICATION OF H. BRADLEY SHAFFER FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANTS COMMITTEE FOR A BETTER ARVIN ET AL.

PROPOSED *AMICUS CURIAE* BRIEF OF H. BRADLEY SHAFFER IN SUPPORT OF APPELLANTS COMMITTEE FOR A BETTER ARVIN ET AL.

- VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.
- VIA OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package designated by an overnight delivery carrier with delivery fees paid or provided for and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- VIA ELECTRONIC SERVICE THROUGH TRUEFILING.** Based on a court order or an agreement of the parties to accept service by electronic transmission through TrueFiling, I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 30, 2023, at Los Angeles, California.

By: /s/ Andria So
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