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DEPUTY CLERK OF COURT

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

NO.: 651,069

SECTION 22

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF  
LOUISIANA IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH  
COOPERATIVE, INC.

VERSUS

CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED,  
BEAM PARTNERS, LLC, MILLIMAN, INC., BUCK CONSULTANTS, LLC, WARNER L.  
THOMAS, IV, WILLIAM A. OLIVER, SCOTT POSECAI, PAT QUINLAN, PETER  
NOVEMBER, MICHAEL HULEFELD, ALLIED WORLD SPECIAL INSURANCE  
COMPANY a/k/a DARWIN NATIONAL ASSURANCE COMPANY, ATLANTIC  
SPECIALTY INSURANCE COMPANY, EVANSTON INSURANCE COMPANY, RSUI  
INDEMNITY COMPANY, AND ZURICH AMERICAN INSURANCE COMPANY

FILED: \_\_\_\_\_  
DEPUTY CLERK

DECLINATORY EXCEPTION, DEFENSES, AND ANSWER OF MILLIMAN, INC. TO  
SECOND SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR  
DAMAGES AND REQUEST FOR JURY TRIAL

NOW INTO COURT, through undersigned counsel, comes Defendant Milliman, Inc.  
(hereinafter, "Milliman"), who subject to and fully preserving its declinatory exception of lack of  
subject matter jurisdiction (the "Declinatory Exception") and pending writ application for  
supervisory review of the denial of that Declinatory Exception asserts the following Declinatory  
Exception, Defenses and Answer to the Second Supplemental, Amending and Restated Petition  
for Damages and Request for Jury Trial (the "Second Amended Petition") filed on or about  
October 25, 2017 by Plaintiff James J. Donelon, Commissioner of Insurance for the State of  
Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. ("Plaintiff")<sup>1</sup> as  
follows:

DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION

Milliman reasserts its Declinatory Exception of Lack of Subject Matter Jurisdiction  
(including the arguments raised in its supporting Memorandum) as well as its right to seek  
arbitration of Plaintiff's claims against Milliman in accordance with the plain terms of the 2011

<sup>1</sup> Plaintiff's Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial filed on  
or about October 25, 2017 is hereinafter referred to as the "Second Amended Petition."

REC'D C.P.

DEC 18 2017

FR4498198



Consulting Services Agreement (the "Agreement") executed by Louisiana Health Cooperative, Inc. ("LAHC") and Milliman. Milliman previously raised its right to seek arbitration in its Declinatory Exception, which was denied by this Court's September 19, 2017 Judgment (the "Judgment"). On November 3, 2017, Milliman submitted its Application for a Supervisory Writ (the "Application") which seeks review of the Judgment. That Application is pending before the First Circuit. Milliman files the following Defenses and Answer subject to and fully preserving its right to compel arbitration and its Declinatory Exception, and further subject to, without waiving, and fully preserving its pending Application, in accordance with Louisiana Code of Civil Procedure Article 928(A).

#### **AFFIRMATIVE AND OTHER DEFENSES**

##### **FIRST DEFENSE**

All of Plaintiff's claims against Milliman arise out of or relate to and are subject to the terms of the Agreement. Milliman affirmatively pleads, as though set forth herein in full, all terms and conditions of the Agreement, which are fully binding upon Plaintiff as the party vested by operation of law with the contractual rights and obligations of LAHC. If the terms of the Agreement are for any reason not enforced against Plaintiff, Plaintiff's claims are barred due to failure of consideration.

##### **SECOND DEFENSE**

Plaintiff's Second Amended Petition fails to state a cause of action against Milliman.

##### **THIRD DEFENSE**

Plaintiff's Second Amended Petition fails to state a right of action against Milliman.

##### **FOURTH DEFENSE**

Plaintiff's claims are extinguished by prescription, peremption and laches as a matter of law.

##### **FIFTH DEFENSE**

Plaintiff's damages, if any, were caused or contributed to by the negligence, wrongdoing, regulatory misconduct, want of care and fault or comparative fault of the Louisiana Department of Insurance, the Commissioner of Insurance (the "Commissioner"), Billy Bostick as the

Receiver (the "Receiver"), and/or LAHC, and/or each of their respective employees, agents, attorneys, and/or contractors, and/or other parties for whom Milliman is not responsible and over whom Milliman had no control.

**SIXTH DEFENSE**

Plaintiff's claims are barred in whole or in part, by its own actions, omissions, and/or negligence.

**SEVENTH DEFENSE**

Plaintiff's claims are barred by the doctrines of estoppel, waiver, ratification, and acquiescence in that the Commissioner and his employees and agents and/or the Louisiana Department of Insurance reviewed the activities now complained of, and gave explicit or implicit approval of those activities. Milliman relied to its detriment upon those actions of the Commissioner and his employees and agents and/or the Louisiana Department of Insurance.

**EIGHTH DEFENSE**

Plaintiff has failed to mitigate the damages that were incurred, if any.

**NINTH DEFENSE**

The Commissioner, his employees, his agents, and/or the Louisiana Department of Insurance had knowledge of and approved the activities forming the basis of the present claims.

**TENTH DEFENSE**

Plaintiff's claims are barred by the filed rate doctrine.

**ELEVENTH DEFENSE**

Plaintiff's claims are barred by unclean hands.

**TWELFTH DEFENSE**

The negligence, wrongdoing and fault of LAHC and its officers, directors, shareholders, employees, and agents are imputed to Plaintiff and bar the claims presented.

**THIRTEENTH DEFENSE**

Plaintiff's damages, if any, were not caused by Milliman, but were the proximate result, either in whole or in part, of the actions or omissions of persons or entities other than Milliman, including but not limited to, the Louisiana Department of Insurance, the Commissioner, the

Receiver, LAHC, the federal government, third parties, other defendant(s) and/or each such person or entity's respective employees or agents.

**FOURTEENTH DEFENSE**

LAHC did not rely on Milliman in taking the actions complained of, and intended to take the actions complained of regardless of any advice or counseling from Milliman.

**FIFTEENTH DEFENSE**

Milliman at all times complied with all relevant actuarial standards of practice and all applicable standards of care and practice.

**SIXTEENTH DEFENSE**

LAHC expressly waived the right to a trial by jury in the Agreement; therefore, Plaintiff, as the party vested by operation of law with the contractual rights and obligations of LAHC, is not entitled to a trial by jury on any of its claims against Milliman. Milliman preserves its objection to trial by jury, its right to move to strike Plaintiff's jury demand, and/or to seek a bench trial.

**SEVENTEENTH DEFENSE**

Plaintiff's claims and damages, if any, are contractually limited pursuant to the Agreement.

**EIGHTEENTH DEFENSE**

Under the Agreement, Plaintiff has waived and is barred from asserting any claims for lost profits, incidental or consequential damages.

**NINETEENTH DEFENSE**

Plaintiff lacks standing, right or interest to assert claims for losses or damages allegedly suffered by the creditors, providers, policyholders, members, or subscribers of LAHC, or by any other person or entity other than LAHC.

**TWENTIETH DEFENSE**

This dispute must be arbitrated pursuant to the terms of the Agreement.

**ANSWER**

AND NOW, with full reservation of the foregoing Declinatory Exception and defenses, in response to the individually numbered paragraphs of the Second Amended Petition, Milliman avers as follows, denying all allegations not hereinafter specifically admitted:

**JURISDICTION AND VENUE**

2.

Milliman admits that LAHC is a Louisiana Nonprofit Corporation that did business in the State of Louisiana, but Milliman otherwise denies the allegations of Paragraph 2 and avers that this Court lacks jurisdiction over Plaintiff's claims against Milliman, which must be arbitrated.

3.

Milliman denies the allegations of Paragraph 3.

4.

Milliman denies the allegations of Paragraph 4.

**PARTIES**

**Plaintiff**

5.

Milliman admits the allegations of Paragraph 5.

6.

Milliman denies the allegations of Paragraph 6 for lack of sufficient information to justify a belief therein.

7.

To the extent Paragraph 7 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman denies the allegations in Paragraph 7 to the extent they do not comport with the documents referenced therein.

8.

Paragraph 8 asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman admits that Plaintiff may pursue legal remedies available to LAHC and otherwise denies the allegations of Paragraph 8.

**Defendants**

9.

The allegations of Paragraph 9 of Plaintiff's Second Amended Petition require no answer from Milliman.

**D&O Defendants**

10.

Milliman denies the allegations of Paragraph 10 for lack of sufficient information to justify a belief therein.

**TPA Defendants**

11.

Milliman denies the allegations of Paragraph 11 for lack of sufficient information to justify a belief therein.

**Beam Partners, LLC**

12.

Milliman denies the allegations of Paragraph 12 for lack of sufficient information to justify a belief therein.

**Actuary Defendants**

13.

Milliman admits the allegations in Paragraph 13(a). Milliman denies the allegations in Paragraph 13(b) for lack of sufficient information to justify a belief therein.

**Insurer Defendants**

14.

Milliman denies the allegations of Paragraph 14 for lack of sufficient information to justify a belief therein.

**Defined Terms**

**15.**

Milliman admits that Plaintiff purports to define terms as set forth in Paragraphs 15(1)-(7), and Milliman admits so much of Paragraph 15 that alleges that Milliman has provided actuarial services to LAHC but denies the remaining allegations of Paragraphs 15(1)-(7) for lack of sufficient information to justify a belief therein.

**Factual Background**

**16.**

To the extent that Paragraph 16 purports to describe the content of the Patient Protection and Affordable Care Act ("ACA"), the ACA speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to the ACA for its full content and context. Milliman denies any and all other allegations in Paragraph 16 for lack of sufficient information to justify a belief therein.

**17.**

To the extent Paragraph 17 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman admits that LAHC was a CO-OP created pursuant to the ACA; and that at some point, LAHC applied for and received loans from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS"). Milliman denies any and all other allegations in Paragraph 17 for lack of sufficient information to justify a belief therein.

**18.**

Milliman denies the allegations in the first sentence of Paragraph 18 in so far as they pertain to Milliman, and denies the allegations in the first sentence of Paragraph 18 for lack of sufficient information to justify as a belief therein insofar as they pertain to any other Defendant(s). Milliman denies the remaining allegations in Paragraph 18 for lack of sufficient information to justify a belief therein.

19.

Milliman denies the allegations of Paragraph 19 insofar as they pertain to Milliman. Milliman denies the allegations of Paragraph 19 for lack of sufficient information to justify a belief therein insofar as they pertain to any other Defendant(s).

20.

Milliman denies the allegations of Paragraph 20 for lack of sufficient information to justify a belief therein.

21.

To the extent Paragraph 21 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman denies any and all remaining allegations, if any, as set forth in Paragraph 21 for lack of sufficient information to justify a belief therein.

22.

Milliman denies the allegations of Paragraph 22 insofar as they pertain to Milliman. Milliman denies the allegations in Paragraph 22 for lack of sufficient information to justify a belief therein insofar as they pertain to any other Defendant(s).

23.

Milliman denies the allegations of Paragraph 23 insofar as they pertain to Milliman. Milliman denies the allegations in Paragraph 23 for lack of sufficient information to justify a belief therein insofar as they pertain to any other Defendant(s).

**CAUSES OF ACTION**

**Count One: Breach of Fiduciary Duty (Against the D&O Defendants and Insurer Defendants)**

24-41.

No response is required to Count One of Plaintiff's Second Amended Petition because this Count is not directed against Milliman. To the extent, however, that any of the allegations contained in Count One could be construed against Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and



defense it has set forth in response to the other Counts and allegations of Plaintiff's Second Amended Petition as if fully stated herein.

**Count Two: Breach of Contract (Against the TPA Defendants and Beam Partners)**

42-71.

No response is required to Count Two of Plaintiff's Second Amended Petition because this Count is not directed against Milliman. To the extent, however, that any of the allegations contained in Count Two could be construed against Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Second Amended Petition as if fully stated herein.

**Count Three: Gross Negligence and Negligence (Against the TPA Defendants and Beam Partners)**

72-80.

No response is required to Count Three of Plaintiff's Second Amended Petition because this Count is not directed against Milliman. To the extent, however, that any of the allegations contained in Count Three could be construed against Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Second Amended Petition as if fully stated herein.

**Count Four: Professional Negligence and Breach of Contract (Against the Actuary Defendants)**

81.

Milliman asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Second Amended Petition as if fully stated herein.

Milliman

82.

Milliman denies the allegations of Paragraph 82, except admits that it had the expertise needed to provide the actuarial services and advice that it provided to LAHC.

83.

To the extent Paragraph 83 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman otherwise denies the allegations of Paragraph 83 for lack of sufficient information to form a belief therein.

84.

Milliman admits that it prepared a report entitled "Louisiana Health Cooperative, Inc. Feasibility Study and Business Plan Support for Consumer Operated and Oriented Plan (CO-OP) Application" for Louisiana Health Cooperative dated March 30, 2012. To the extent Paragraph 84 purports to describe the content of that report or any other document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context.

85.

Milliman denies the allegations of Paragraph 85.

86.

To the extent Paragraph 86 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Paragraph 86 otherwise states a legal conclusion to which no response is required.

87.

Milliman denies the allegations of Paragraph 87.

88.

Milliman denies the allegations of Paragraph 88.

**89.**

Milliman admits that it performed work related to LAHC's loan application to become a qualified nonprofit health insurance issuer under the Consumer-Operated and Oriented Plan (CO-OP) Program established by Section 1322 of the ACA and applicable regulations. Milliman further admits that in September 2012, LAHC was awarded a loan to become a qualified nonprofit health insurance issuer under the Consumer-Operated and Oriented Plan (CO-OP) Program established by Section 1322 of the ACA and applicable regulations. Milliman otherwise denies any and all allegations in Paragraph 89 for lack of sufficient information to justify a belief therein.

**90.**

To the extent Paragraph 90 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman otherwise denies any and all remaining allegations as set forth in Paragraph 90.

**91.**

To the extent Paragraph 91 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman denies any and all remaining allegations as set forth in Paragraph 91.

**92.**

Milliman denies the allegations of Paragraph 92.

**93.**

Milliman denies the allegations of Paragraph 93.

**94.**

Paragraph 94 of Plaintiff's Second Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of Paragraph 94 insofar as they are inconsistent with the statutes, rules or other authority or obligations governing this dispute.

**95.**

To the extent Paragraph 95 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman denies any and all remaining allegations as set forth in Paragraph 95.

**96.**

Milliman denies the allegations of Paragraph 96.

**97.**

To the extent Paragraph 97 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Paragraph 97 otherwise states a legal conclusion to which no response is required.

**98.**

Milliman denies the allegations of Paragraph 98.

**99.**

Milliman denies the allegations of Paragraph 99.

**100.**

Milliman denies the allegations of Paragraph 100.

**101.**

To the extent Paragraph 101 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Paragraph 101 otherwise states a legal conclusion to which no response is required.

**102.**

Milliman admits that, prior to the conclusion of ACA enrollment, there was uncertainty about the overall size of the overall ACA Marketplace. Milliman further admits that it was aware that some percentage of individual enrollees would be receiving government subsidies. Milliman otherwise denies any and all remaining allegations in Paragraph 102.

103.

Milliman denies the allegations of paragraph 103.

104.

Milliman denies the allegations of paragraph 104.

105.

Milliman denies the allegations of paragraph 105.

106.

To the extent Paragraph 106 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Paragraph 106 otherwise states a legal conclusion to which no response is required.

107.

Milliman denies the allegations of Paragraph 107.

108.

To the extent the first sentence of Paragraph 108 purports to describe the content of any document or statement, said document or statement speaks for itself; Milliman denies any characterizations thereof and respectfully refers the Court to said document or statement for its full content and context. Milliman denies the allegations in the second sentence of Paragraph 108 for lack of sufficient information to justify a belief therein. Milliman denies the allegations in the third sentence of Paragraph 108.

109.

Milliman denies the allegations of Paragraph 109.

110.

Milliman denies the allegations of Paragraph 110.

**Buck**

111–134.

No response is required to Paragraphs 111 through 134 of Plaintiff's Second Amended Petition because these Paragraphs are not directed against Milliman. To the extent, however, that any of the allegations contained in Paragraphs 111 through 134 could be construed against

Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Second Amended Petition as if fully stated herein.

**COUNT FIVE: Negligent Misrepresentation (Against the Actuary Defendants)**

**135.**

Milliman asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Second Amended Petition as if fully stated herein.

**Milliman**

**136.**

Milliman denies the allegations of Paragraph 136, except admits that it had the expertise needed to provide the actuarial services and advice it provided to LAHC.

**137.**

Milliman denies the allegations of Paragraph 137.

**138.**

Milliman denies the allegations of Paragraph 138 for lack of sufficient information to justify a belief therein.

**139.**

Milliman denies the allegations of Paragraph 139.

**140.**

Paragraph 140 asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of Paragraph 140 insofar as they are inconsistent with the statutes, rules or other authority or obligations governing this dispute.

**Buck**

**141-145.**

No response is required to Paragraphs 141 through 145 of Plaintiff's Second Amended Petition because these Paragraphs are not directed against Milliman. To the extent, however, that any of the allegations contained in Paragraphs 141 through 145 could be construed against

Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Second Amended Petition as if fully stated herein.

**PRESCRIPTION AND DISCOVERY OF TORTIOUS CONDUCT**

**146.**

Milliman denies the allegations of Paragraph 146 in their entirety as those allegations relate to Milliman. Milliman denies the allegations of Paragraph 146 for lack of sufficient information to justify a belief therein, as those allegations relate to any other Defendant(s).

**147.**

Milliman denies the allegations of Paragraph 147 in their entirety as those allegations relate to Milliman. Milliman denies the allegations of Paragraph 147 for lack of sufficient information to justify a belief therein, as those allegations relate to any other Defendant(s).

**148.**

Milliman denies the allegations of Paragraph 148.

**149.**

Paragraph 149 asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of Paragraph 149 insofar as they are inconsistent with the statutes, rules or other authority or obligations governing this dispute.

**JURY DEMAND**

**150.**

Paragraph 150 of Plaintiff's Second Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of Paragraph 150 and avers that pursuant to the Agreement, Plaintiff has waived any right to a jury trial and that Plaintiff's claims against Milliman must be arbitrated.

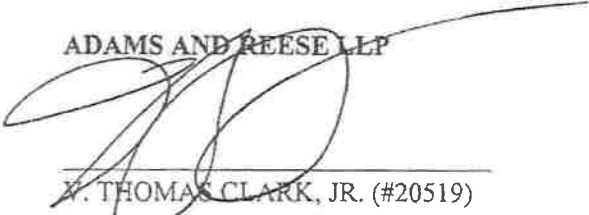
**PRAYER FOR RELIEF**

The Prayer for Relief in Plaintiff's Second Amended Petition requires no response from Milliman. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of the Prayer for Relief and denies that any relief is warranted.

NOW THEREFORE, Defendant Milliman, Inc. prays that its exception, defenses, and answers to Plaintiff's Second Amended Petition be deemed good and sufficient and that, after due proceedings herein, Plaintiff's Second Amended Petition and all prior petitions be dismissed, with prejudice, at Plaintiff's costs, and for such other, different additional, and equitable relief to which Milliman may be entitled.

Respectfully submitted,

**ADAMS AND REESE LLP**



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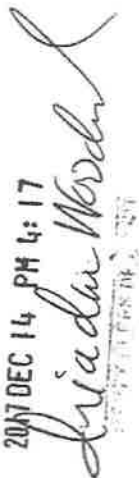
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*Counsel for Milliman, Inc.*

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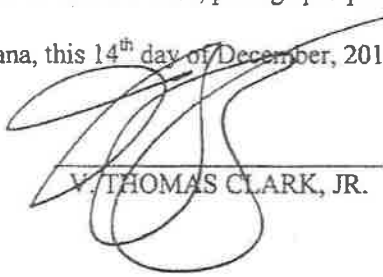


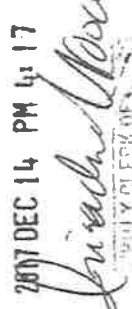


**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Declinatory Exception, Defenses, and Answer of Milliman, Inc. to the Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial filed on or about October 25, 2017 by Plaintiff James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. has been served upon all counsel of record via facsimile, e-mail and/or by placing same in the U.S. Mail, postage pre-paid and properly addressed.

Baton Rouge, Louisiana, this 14<sup>th</sup> day of December, 2017.

  
\_\_\_\_\_  
V. THOMAS CLARK, JR.

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