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*Exempt from filing fees pursuant to
Government Code section 6103*

**Electronically FILED by
Superior Court of California,
County of Los Angeles
10/16/2024 3:42 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Bolden, Deputy Clerk**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

12 **TANISHA BOGANS,**
13 **Plaintiff,**
14 **v.**
15 **CALIFORNIA DEPARTMENT OF**
16 **CANNABIS CONTROL; and DOES 1**
17 **through 25, inclusive**
18 **Defendants.**

Case No. 24STCV23203
**DEFENDANT CALIFORNIA
DEPARTMENT OF CANNABIS
CONTROL'S ANSWER TO PLAINTIFF
TANISHA BOGANS' UNVERIFIED
COMPLAINT; DEMAND FOR JURY
TRIAL**
Dept: 58
Judge: The Honorable Bruce Iwasaki
Trial Date: TBD
Action Filed: September 9, 2024

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20 Defendant CALIFORNIA DEPARTMENT OF CANNABIS CONTROL (“Defendant”)
21 answers the Unverified Complaint for Damages (“Complaint”) filed by Plaintiff Tanisha Bogans
22 (“Plaintiff”) as follows:

23 **GENERAL DENIAL**

24 Pursuant to Code of Civil Procedure section 431.30, subdivision (d), Defendant denies
25 generally and specifically each and every allegation contained in Plaintiff’s unverified Complaint.
26 Defendant further denies that Plaintiff has been damaged in any sum, or at all, by reason of any
27 act or omission on the part of Defendant or on the part of any of its representatives, partners,
28 agents, servants, or employees.

1 **AFFIRMATIVE ALLEGATIONS**

2 1. Defendant is a Department in the Business, Consumer Services, and
3 Housing Agency. (Bus. & Prof. Code, § 26010.) Defendant has the power, duty, purpose,
4 responsibility, and jurisdiction to regulate commercial cannabis activity. (Bus. & Prof. Code, §
5 26010.5, subd. (d).) Protection of the public is the Defendant’s highest priority in exercising
6 licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code, § 26011.5)

7 2. At all relevant times, Plaintiff’s employment as Defendant’s Deputy Director of
8 Laboratory Services was classified as a Career Executive Assignment (CEA) B. Relevant to this
9 action, the regular civil service provisions governing examination, selection, classification, and
10 tenure do not apply to CEA's. (Gov. Code, § 19889.2.) Although civil service provisions
11 regarding “punitive actions” apply to CEA's, section 19889.2 explicitly states that termination of
12 a CEA is not a punitive action. A CEA does, however, have a right to appeal the termination of a
13 CEA assignment when the termination was based on whistleblower retaliation or for reasons
14 prohibited by Chapter 10 of the State Civil Service Act (Gov. Code, §§ 18500 et seq.), which
15 prohibits discrimination on the basis of, *inter alia*, age, race, religion, disability, gender, gender
16 identity, and sexual orientation. (Gov. Code, § 19889.2.) Plaintiff’s Complaint does not allege
17 that she was terminated for reasons prohibited by Chapter 10 of the State Civil Service Act, and
18 she was not terminated for such a reason, nor was she terminated in retaliation for engaging in
19 protected whistleblower activity.

20 3. At all relevant times, Plaintiff was subject to Defendant’s Telework Policy. However,
21 during a substantial period of Plaintiff’s tenure, she falsely represented that she resided in
22 California, while residing and working remotely from the state of Arizona, in conflict with the
23 requirements of her employment, and without authorization.

24 4. At all relevant times, Plaintiff was responsible for, among other things, combining
25 scientific and leadership skills to administer and oversee every aspect of the Laboratory Services
26 Division. This included supervision of subordinate staff of the Division within the regulatory and
27 laboratory branches, development and implementation of Division policies and procedures,
28 ensuring the regulatory oversight of cannabis testing laboratories, and directing the development

1 and implementation of compliance inspection processes, complaint management, and
2 investigations. Furthermore, Plaintiff was responsible for administering, overseeing, monitoring,
3 and guiding the work of the reference laboratory in a way that reflected Defendant's strategic
4 goals and met Defendant's statutory and regulatory mandates. Plaintiff was also responsible for
5 working closely and collaboratively with colleagues and superiors in Defendant's Executive
6 Division to develop and achieve Defendant's compliance and enforcement objectives.

7 5. During Plaintiff's tenure, she failed to competently execute her employment duties
8 and responsibilities. Defendant received numerous complaints from Plaintiff's subordinates
9 alleging that Plaintiff fostered a hostile work environment, was unprofessional, dishonest, and an
10 absentee supervisor who lacked management skills. Additionally, subordinates reported that
11 Plaintiff failed to visit the lab she oversaw in person, and thus lacked an understanding of the
12 work of the scientists under her supervision and the time required for completion of various tasks
13 within the lab. Plaintiff declined her supervisor's request that Plaintiff attend in-person meetings
14 at Defendant's headquarters. At no time did Defendant communicate to Plaintiff verbally or in
15 writing that she was "exceeding expectations." Rather, Plaintiff's superiors identified multiple
16 areas in which they expected to see progress from Plaintiff, including in Plaintiff's ability to
17 collaborate and effectively communicate with Executive Division colleagues to develop and
18 achieve Defendant's regulatory objectives.

19 6. At all relevant times, Plaintiff was aware that her CEA position required her to travel
20 throughout an assigned geographical area by various methods of transportation. Plaintiff has
21 reimbursed Defendant for all expenditures submitted by Plaintiff to Defendant for
22 reimbursement, and to which she was entitled.

23 7. At all relevant times, Defendant received correspondence from licensees and industry
24 associations alleging illegal activities of state licensed laboratories. At all relevant times,
25 Defendant was receptive to the correspondence, engaged cooperatively with the corresponding
26 party, and complied with its statutory mandate to regulate the commercial cannabis industry. At
27 all relevant times, it was Defendant's policy and practice to address, in good faith, any actionable
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1 complaints according to Defendant's procedures for investigation and enforcement, as
2 appropriate.

3 **AFFIRMATIVE DEFENSES**

4 Defendant asserts the following separate additional defenses to Plaintiff's unverified
5 Complaint. Defendant cannot fully anticipate all defenses that may be applicable to the action.
6 Accordingly, Defendant reserves the right to amend this Answer to assert additional defenses, to
7 the extent that such defenses are applicable and appropriate, after further discovery is conducted.

8 **FIRST AFFIRMATIVE DEFENSE**

9 **(Failure to State a Cause of Action)**

10 Plaintiff's unverified Complaint, and each cause of action therein, is barred, in whole or in
11 part, because it fails to state facts sufficient to state a cause of action against the Defendant upon
12 which relief may be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Legitimate, Non-Retaliatory Business Reason)**

15 Plaintiff's unverified Complaint, and the first and second causes of action therein, is
16 barred, in whole or in part, in that legitimate, non-retaliatory business purposes exist for
17 Defendant's decision to terminate Plaintiff's CEA classified employment.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Fraud)**

20 Plaintiff's unverified Complaint, and each cause of action therein, is barred, in whole or in
21 part, because Plaintiff made false representations about material facts relating to her employment
22 with Defendant, including misleading Defendant to believe she was adhering to Defendant's
23 telework policy, when Plaintiff was in fact working out-of-state from Arizona, and Defendant
24 relied on the false representation during the course of Plaintiff's employment to its detriment.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Good Faith Belief)**

27 Plaintiff's unverified Complaint, and each cause of action therein, is barred, in whole or in
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1 part, because decisions made by Defendant with respect to Plaintiff's CEA classified employment
2 were reasonably based on the facts as Defendant understood them at the time.

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4 **FIFTH AFFIRMATIVE DEFENSE**

5 **(Unclean Hands)**

6 Plaintiff's unverified Complaint, and each cause of action therein, is barred, in whole or in
7 part, by virtue of Plaintiff's unclean hands in connection with the events described in the
8 Complaint.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 **(Immunity)**

11 Defendant is immune from suit, either directly or indirectly, including but not limited to,
12 discretionary immunity pursuant to Government Code section 820.2, prosecutorial immunity
13 pursuant to Government Code section 821.6, agency immunity pursuant to Government Code
14 sections 815, 815.2, 818.8, California Civil Code section 47, and common law immunities and
15 privileges. In addition, Defendant has complete immunity and/or qualified immunity because its
16 agents, representatives, and employees were acting within the scope of their official capacities
17 and/or discretionary duties.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Vague and Uncertain)**

20 Plaintiff's unverified Complaint, and each cause of action therein, is vague and uncertain.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 **(Justification)**

23 Defendant's actions with respect to the subject matter in each of the alleged causes of
24 action were undertaken in good faith and for good cause, with the absence of malicious intent to
25 injure Plaintiff, and constitute lawful, proper, and justified means to further Defendant's purpose
26 to engage in and continue its regulatory oversight, while conducting a thorough, ongoing and
27 discretionary investigation of claims made by third-parties, and ensuring that its employees are not
28 in violation of departmental policy. By reason thereof, Plaintiff is barred, in whole or in part, from

1 recovery on any of the alleged causes of action.

2 **NINTH AFFIRMATIVE DEFENSE**

3 **(No Protected Activity)**

4 Plaintiff is not entitled to whistleblower relief because the unverified Complaint fails to
5 allege Plaintiff engaged in any activity protected under Labor Code section 1102.5.

6 **TENTH AFFIRMATIVE DEFENSE**

7 **(Same Decision – Lab. Code, § 1102.6)**

8 To the extent that Plaintiff’s first cause of action alleges that activity protected under
9 Labor Code section 1102.5 was a contributing factor in a contested employment action, the alleged
10 retaliatory employment action(s) complained of by Plaintiff is permissible and not a violation of
11 the Labor Code because Defendant would have taken the action(s) in question for legitimate,
12 independent reasons even had the Plaintiff not engaged in alleged protected activity(ies). (Lab.
13 Code, § 1102.6; see *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 718.)

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 **(Respondeat Superior)**

16 Plaintiff’s unverified Complaint, and each cause of action therein, is barred, in whole or in
17 part, because Defendant is not vicariously liable for any act or omission by any other person by
18 way of respondeat superior or otherwise, including those of private entities who were and continue
19 to be actively investigated by Defendant for regulatory noncompliance.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 **(Limitation on Remedies – After-Acquired Evidence)**

22 Plaintiff’s claims for damages or equitable relief asserted in the unverified Complaint, and
23 for each cause of action therein, are barred, in whole or in part, by the after-acquired evidence
24 doctrine.

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 **(Causation by Plaintiff)**

27 Plaintiff’s unverified Complaint, and each cause of action therein, is barred, in whole or in
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1 part, because any damages or injuries that Plaintiff allegedly suffered were caused by Plaintiff's
2 own conduct and actions.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 **(Attempt to Enlarge Upon Administrative Claim)**

5 Plaintiff's unverified Complaint, and each cause of action therein, are barred, in whole or
6 in part, to the extent that they attempt to enlarge upon the facts, identities, and/or contentions
7 (including, but not limited to, acts and omissions) alleged in the administrative charges filed with
8 the Government Claims Program, or any other administrative claim, if any.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Failure to Exhaust Administrative Remedies)**

11 Plaintiff's unverified Complaint, and each cause of action therein, is barred, in whole or in
12 part, because Plaintiff failed to exhaust administrative remedies, including but not limited to,
13 timely filing a complaint, claim, charge, or other applicable grievance or appeal with the
14 appropriate government agency or agencies.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 **(Statute of Limitations)**

17 Plaintiff's unverified Complaint, and each cause of action therein, are not subject to
18 equitable tolling, and are barred by the applicable statutes of limitations, including but not limited
19 to, California Code of Civil Procedure sections 335.1, 340 and 342, and Government Code section
20 810 et seq.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 **(Exclusive Remedy – Worker's Compensation Act)**

23 Plaintiff's unverified Complaint, and each claim for relief, is barred, in whole or in part,
24 by the exclusive remedies of the Workers' Compensation Act, Labor Code section 3200 *et seq.*

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 **(Failure to Exercise Ordinary Care)**

27 Plaintiff's unverified Complaint, and each cause of action therein, is barred in whole or in
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1 part, by Plaintiff's failure to exercise ordinary care, caution, and prudence in connection with the
2 events and acts alleged in the Complaint. Plaintiff is therefore barred entirely from recovery
3 against Defendant or alternatively, Plaintiff should have the recovery, if any, proportionately
4 reduced.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 **(Pre-Existing Conditions or Alternative Cause)**

7 To the extent that Plaintiff's unverified Complaint alleges that Plaintiff suffered any
8 mental or emotional distress or injury, such injury was the result of pre-existing physiological or
9 psychological conditions or alternative causes. It did not result from any acts, if any, allegedly
10 performed by Defendant.

11 **TWENTIETH AFFIRMATIVE DEFENSE**

12 **(Failure to Mitigate)**

13 Plaintiff's unverified Complaint, and each cause of action therein, is barred, in whole or in
14 part, because Plaintiff failed to mitigate her damages and injuries, if any.

15 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

16 **(Collateral Source Rule)**

17 As to Plaintiff's unverified Complaint, and each cause of action therein, pursuant to
18 Government Code section 985, Plaintiff's recovery, if any, shall be reduced by the amounts paid,
19 or obligated to be paid, to Plaintiff prior to the commencement of trial by any collateral source.
20 Defendant is entitled to set-off any amounts paid by collateral sources and reimbursement.

21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 **(Prompt and Corrective Action – Knowledge / Notice)**

23 As to the fifth and sixth causes of action in Plaintiff's unverified Complaint, the injuries
24 and damages alleged by Plaintiff were caused without any knowledge or prior notice to Defendant,
25 and once known, this answering Defendant took prompt and adequate remedial action that was
26 reasonably calculated to end any of the alleged acts of retaliation.

27 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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(Prompt and Corrective Action – Reasonable Care)

Plaintiff’s unverified Complaint, and the fifth and sixth causes of therein, are barred, in whole or in part, because at all relevant times, Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Offset for Sums paid)

As to Plaintiff’s unverified Complaint, and each cause of action therein, Defendant is entitled to an offset for sums paid by this answering Defendant and received by Plaintiff including, but not limited to, monies representing disability or workers’ compensation benefits to Plaintiff.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff’s unverified Complaint, and each cause of action therein, is barred, in whole or in part, on the grounds that Plaintiff’s course of conduct while in the employ of defendant constituted a waiver of the claims asserted in the Complaint.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Acts of Plaintiff and Third Parties)

Plaintiff’s unverified Complaint, and each cause of action therein, is barred, in whole or in part, because the alleged damages, if any, suffered by Plaintiff were not caused by the Defendant but were the result of Plaintiff’s own actions or breaches with respect to her employment agreement, or acts of third parties over which this answering Defendant had no control.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Defendant is not a “Person” Amenable to Suit)

Plaintiff’s unverified Complaint, and the third cause of action therein, is barred, in whole or in part, because the Defendant is a government agency within the State of California and is not a “person” amenable to suit under section 17200. (*Trinkle v. California State Lottery* (1999) 71 Cal.App.4th 1198, 1202-1205.)

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

1 **(Lack of Standing)**

2 Plaintiff lacks standing to assert a claim for Unfair Business Practices in Violation of
3 Business and Professions Code section 17200.

4 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

5 **(Unconstitutional – Excessive Penalties)**

6 1. Plaintiff is barred from recovering on any claim for civil penalties asserted in
7 Plaintiff's unverified Complaint, and each cause of action therein, because such claim is arbitrary,
8 excessive, and unreasonable, thereby exceeding the constitutional limits imposed by due process.

9 **THIRTIETH AFFIRMATIVE DEFENSE**

10 **(Failure to State a Separate Cause of Action)**

11 Plaintiff's unverified Complaint, and the sixth cause of action therein, is barred, in whole
12 or in part, because it is not a separate tort or cause of action and fails to state sufficient facts to
13 show any negligent act by Defendant for which Plaintiff is entitled to relief. (*Molien v. Kaiser*
14 *Foundation Hospitals* (1980) 27 Cal.3d 916, 928.)

15 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

16 **(At-Will Employment)**

17 Plaintiff's unverified Complaint, and each cause of action therein, is barred, in whole or in
18 part, on the grounds that Plaintiff's employment was terminable at will pursuant to California
19 Labor Code section 2922, such that Plaintiff has no claim or cause of action based upon the
20 termination of Plaintiff's employment.

21 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

22 **(No Implied Covenant)**

23 Plaintiff's unverified Complaint, and each cause of action therein, is barred, in whole or in
24 part, because the relationship between the Plaintiff and the Defendant did not give rise to an
25 implied covenant of good faith and fair dealing or an implied in fact covenant to terminate only for
26 just cause, and, to the extent that any such covenants existed, they were not breached.

27 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

28 **(Attorneys' Fees and Costs)**

1 Plaintiff's unverified Complaint, and each cause of action therein, fails to state facts upon
2 which attorney's fees can be granted against Defendant. To the extent that Plaintiff's unverified
3 Complaint, including each cause of action therein, is found to be frivolous, unreasonable, or
4 groundless, Defendant is entitled to recover its reasonable attorney's fees and costs under section
5 12965 of the Government Code to be made upon separate motion pursuant to section 1021.5 of the
6 California Code of Civil Procedure.
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8 WHEREFORE, the answering Defendant prays:

- 9 1. That Plaintiff's unverified Complaint, and each and every cause of action therein, be
10 dismissed against Defendant;
- 11 2. That Plaintiff taking nothing by reason of her unverified Complaint;
- 12 3. That Plaintiff be granted no relief in this action;
- 13 4. That Judgment be entered in favor of Defendant and against Plaintiff;
- 14 5. That Defendant recover costs of suit incurred herein;
- 15 6. That the court find the action was frivolous, unreasonable, or groundless when
16 brought, or in the alternative, that Plaintiff continued to litigate after it clearly became so;
- 17 7. That Defendant recover reasonable attorney's fees and costs, including expert witness
18 fees, incurred herein, pursuant to Government Code Section 12965, subdivision (b); and
19 8. For such other relief as this court may deem just and proper.
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1 Dated: October 16, 2024

Respectfully Submitted,

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ROB BONTA
Attorney General of California

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GARY S. BALEKJIAN
Supervising Deputy Attorney General

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/s/ Ina Rechdouni

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INA RECHDOUNI
Deputy Attorney General

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*Attorneys for Defendant
California Department of Cannabis
Control*

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1 **DEMAND FOR JURY TRIAL**

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3 Defendant California Department of Cannabis Control hereby requests jury trial of all

4 matters triable to a jury at common law and by statute.

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8 Dated: October 16, 2024

Respectfully Submitted,

9 ROB BONTA
Attorney General of California
10 GARY S. BALEKJIAN
Supervising Deputy Attorney General

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13 /s/ Ina Rechdouni
INA RECHDOUNI
14 Deputy Attorney General
Attorneys for Defendant
15 *California Department of Cannabis*
Control

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DECLARATION OF SERVICE BY FACSIMILE AND E-MAIL

Case Name: Bogans, Tanisha v. Department of Cannabis Control

Los Angeles County Superior Court Case No.: 24STCV23203

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business address is 300 S. Spring Street, Los Angeles, California 90013. My facsimile machine telephone number is (916) 731-2119.

On **October 16, 2024** at 3:33 PM., I served the attached **DEFENDANT CALIFORNIA DEPARTMENT OF CANNABIS CONTROL'S ANSWER TO PLAINTIFF TANISHA BOGAN'S UNVERIFIED COMPLAINT**; Demand for Jury Trial by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306. The facsimile machine I used complied with Rule 2.306, and no error was reported by the machine. Pursuant to rule 2.306(h)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration. In addition, I served a copy via electronic mail addressed as follows:

Mohamed Eldessouky, Esq. Eldessouky Law 8605 Santa Monica Blvd., Unit 90793 West Hollywood, CA 90069 E-mail: mohamed@eldessoukylaw.com Fax #: (562) 461-0998	Maria E. Garcia, Esq. Eldessouky Law 8605 Santa Monica Blvd., Unit 90793 West Hollywood, CA 90069 E-mail: maria@eldessoukylaw.com Fax #: (562) 461-0998
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **October 16, 2024**, at Los Angeles, California.

Esperanza Noj-Chajon

Declarant

Esperanza Noj-Chajon

Signature

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