

# Exhibit

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**No. 19-56271**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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Cara O’Callaghan and Jeneé Misraje,

*Plaintiffs-Appellants,*

v.

Michael V. Drake, in his official capacity as President of the  
University of California; Teamsters Local 2010; and Xavier Becerra,  
in his official capacity as Attorney General of California,

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Central District of California  
No. 2:19-cv-02289  
Hon. James V. Selna

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**DECLARATION OF BRIAN K. KELSEY**

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*Attorneys for Appellants*

## DECLARATION OF BRIAN K. KELSEY

I, Brian K. Kelsey, declare as follows:

1. I am a Senior Attorney with the Liberty Justice Center, who is counsel to Appellants, Cara O'Callaghan and Jeneé Misraje, in this appeal.
2. I am licensed to practice law in the State of Tennessee, the Ninth Circuit, and various other federal courts around the country.
3. I have personal knowledge of the facts set forth in this declaration, and if called upon as a witness, I could testify competently as to those facts.
4. Attached as Exhibit 1 to this declaration is a true and correct copy of a letter I sent by e-mail on December 18, 2020 to counsel for Appellee Teamsters Local 2010, responding to his letter dated November 23, 2020.
5. In addition to the e-mail, I directed a staff attorney at Liberty Justice Center, based in our headquarters in Chicago, to send a true and correct hard copy of the letter at Exhibit 1 to counsel for Appellee Teamsters Local 2010, accompanied by the same two physical checks that Appellee Teamsters had sent with their November 23, 2020 letter. I was informed by the staff attorney that these documents were sent earlier today by first-class U.S. mail, postage prepaid.

Dated: December 18, 2020



Brian K. Kelsey  
*Counsel for Appellants*

# Exhibit

1



December 18, 2020

Andrew H. Baker  
Beeson, Tayer & Bodine  
483 Ninth Street, Suite 200  
Oakland, California 94607  
abaker@beesontayer.com

**Via Email and Regular Mail**

*Re: O'Callaghan v. Teamsters*, 9th Cir. No. 19-56271.

Dear Mr. Baker:

I write in response to your letter of November 23, 2020. I have discussed your offer with our clients, and they have instructed us to reject it. Enclosed, please find the checks you included with your communication, which we are returning to you at our clients' instruction.

As the Supreme Court has explained, "an unaccepted settlement offer has no force. Like other unaccepted contract offers, it creates no lasting right or obligation. With the offer off the table, and the defendant's continuing denial of liability, adversity between the parties persists." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 156 (2016). Therefore, we dispute that this last-minute gamesmanship has mooted our clients claims. See *Knox v. SEIU, Local 1000*, 567 U.S. 298, 307 (2012) (rejecting a union's attempt to moot a case by sending checks after the case was already on appeal). Our clients remain entitled to a ruling regarding the constitutionality of your clients' policies, including its policy of trapping nonconsenting employees in union membership for years on end.

Please inform your client of our position, and we look forward to discussing the matter further before the Court.

Yours truly,



Brian K. Kelsey  
Senior Attorney  
bkelsey@libertyjusticecenter.org

2 Enclosures