

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SAFOCO, INC.

PLAINTIFF,

v.

KLX ENERGY SERVICES LLC

DEFENDANT.

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CASE NO. 2:22-CV-437-JRG-RSP

JURY TRIAL REQUESTED

PLAINTIFF SAFOCO, INC.'S ANSWERS TO
DEFENDANT KLX ENERGY'S FIRST SET OF INTERROGATORIES

Under Federal Rules of Civil Procedure 33, Plaintiff Safoco, Inc. ("Safoco") serves the following objections and answers to Defendant KLX Energy Services, LLC ("KLX Energy") First Set of Interrogatories. Safoco reserves the right to supplement, revise, amend, or modify its objections and/or answers to KLX Energy's interrogatories; however, Safoco does not assume a continuing responsibility to update any response or objection beyond the requirements of the Federal Rules of Civil Procedure or any applicable Local Rule.

Respectfully submitted,

ANDERSON & CUNNINGHAM, P.C.

/s/David K. Anderson

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was filed electronically and that a copy of this document was served upon all counsel of record by e-mail pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5 on this 20th day of October 2023.

/s/ David K. Anderson

David K. Anderson

GENERAL OBJECTIONS APPLICABLE TO EVERY INTERROGATORY

To the extent they seek to impose additional duties or requirements not provided for in the Federal Rules of Civil Procedure, Safoco objects to the definitions and instructions accompanying these interrogatories. Safoco will conform its responses to those duties and requirements set forth in the Federal Rules of Civil Procedure.

1. Safoco objects to each of the interrogatories to the extent it is overly broad and seeks information beyond that required by the Federal Rules of Civil Procedure.
2. Safoco objects to each of the interrogatories to the extent that it requests information protected from discovery by the attorney-client and work product privileges, consulting expert privilege, and/or party communication privilege.
3. Safoco objects to the interrogatories to the extent that with subparts they exceed the maximum number of allowed interrogatories.

Any specific objection asserted in response to an interrogatory herein is not a waiver of the general objections set forth above. Each of the following responses are made subject to the preceding objections.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify and describe with specificity the acts, events, circumstances and dates regarding the conception and reduction to practice of the subject matter of each Claim-in-Suit.

ANSWER:

In August 2011, Ben Matthews and a team of Safoco interns took a SAMI SSV to Pennsylvania and demonstrated the system to Josh Lewallen (“Lewallen”) at Phoenix Specialty, Inc. (“Phoenix”). Defendant Phoenix had been Safoco’s agent, representative, service provider and distributor for Safoco’s actuated valves and other safety products for several years. The SAMI controller, an automated monitoring and valve control device, had been designed, developed and deployed by Safoco in 2010. Simplistically, the SAMI is an automated computerized system for controlling flow through a piping system by automatically opening and closing valves. Safoco provided promotional literature to Phoenix about the SAMI SSV and Safoco’s hydraulic actuated valves. Safoco also provided Lewallen with promotional material for its frac valves on isolation manifolds.

Around this same time, Lewallen informed Ben Matthews that Phoenix had a customer (undisclosed at that time) that was looking for better way of controlling pressure during frac operations. Lewallen asked Matthews whether the SAMI system could be paired with a rotational valve to control pressure relief during fracturing operations. Matthews responded saying that the SAMI could be used with a ball valve, but Safoco is a gate valve company with a deep background in liner valve technology. He said that he thought Safoco could design a pressure relief system around the SAMI using Safoco’s actuated gate valve technology.

Matthews approached Safoco management about this potential opportunity, and after some discussion, Safoco’s CEO, Dave Lymberopoulos, authorized Matthews to assemble an engineering team to begin designing what would become the Safoco FRV. Safoco began designing a new pressure relief device, based in part on its existing SAMI and hydraulic actuator technology. By October 26, 2011, Matthews and his design team had developed a preliminary design and component layout plan. Matthews described the design layout in an email to Lewallen.

Lewallen arranged for a conference call on or near October 27, 2011 so that he could introduce his customer, Clayton Dale at Universal Well Services, Inc. (“Universal”), to Safoco. During that telephone conference, the parties would have discussed Universal’s interest in buying an electronic pressure relief device, and Lewallen’s interest in acting as the sales agent between Safoco and Universal.

The FRV design was done at Safoco’s shop in Houston, Texas. Ben Matthews took the lead on the hydraulic and mechanical aspects of the project, and Dave Lymberopoulos, Safoco’s CEO, took the lead on valve design and overall coordination of the design. Mike Pry worked to program the Safoco SAMI for the FRV application, designing the electronics in the FRV, and designing/troubleshooting the cabling for data and power transmission. Matthews spent his time working on the hydraulics and actuators.

Operational speed was critical and problematic. In the typical SSV application, the valve did not have to be closed within extreme time intervals. In the FRV application, the valve must open in milliseconds. Upon detection of pressure at dangerous levels as defined in the SAMI programming, the Safoco FRV had to relieve that pressure nearly instantaneously, i.e., within milliseconds. Otherwise, flow iron, wellhead equipment, and equipment downhole would be in jeopardy. The FRV had to operate a thousand to three thousand times faster than was required in other applications. And the SAMI SSV had not been designed to operate at those speeds, and for it to achieve those time specifications entirely new components had to be designed to work with the SAMI controller and the Safoco actuated valves. Safoco went through several design iterations and experienced great difficulty finding a design that worked reliably and consistently at the required speed. Matthews designed a manifold that achieved that worked well in this application. Ultimately, Safoco achieved the desired results.

Dave Lymberopoulos modified the design of an existing valve to work in the abrasive environment encountered during pumping operations on a frac site. After the valve is opened to relieve pressure, it must reseal reliably when the valve is subsequently closed after the line pressure returns to normal levels. The existing valve lines were not well suited for this application. They tended to wash out rather quickly. Lymberopoulos designed a valve to fit this application.

On or about December 14, 2011, Lymberopoulos and Matthews met with Lewallen, Aaron Schnizer, and Clayton Dale in Pennsylvania. Matthews had created the first design drawings for the FRV, dated December 5, 2011, and he brought the drawings to the meeting. In February 2012, Matthews sent updated FRV drawings, pictures of a prototype, and specifications to Lewallen.

By early 2012, Safoco had developed a working prototype that was ready for testing. Safoco's FRV design still had a way to go, but it looked very promising. In March 2012, FRV was pressure tested at a third-party site in Houston. By March 2013, Safoco was ready to release the FRV commercially.

Application No. 15/397,488 was filed on January 3, 2017, now the '794 Patent, which is the continuation of Application No. 15,642,642, filed on September 12, 2016, now the '609 Patent, which is a continuation of Application No. 13/480,704, filed on May 5, 2012, now the '453 Patent, which is a continuation in part of Application No. 13/195,662, filed on August 1, 2011, following Provisional Application No. 61/551,319, filed on October 25, 2011, Provisional Application No. 61/415,238, filed on November 28, 2010, and Provisional Application No. 61/370,721, filed on August 4, 2010.

INTERROGATORY NO. 2:

Identify and describe all Covered Pressure Relief Systems, including in Your response the Person which You believe is responsible for developing, marketing and/or offering to sell such Covered Pressure Relief Systems.

ANSWER:

Plaintiff objects to this interrogatory to the extent that it seeks information protected by the attorney-client and work product privileges. Plaintiff Safoco, with the assistance of counsel,

continues to investigate and analyze whether any additional “pressure relief system technology” is “covered by any inventive concept of any” of the Asserted Patents. All documents and communications between or among Plaintiff and its counsel concerning products, and the information contained therein, other than the Accused Products, that Safoco contends infringe, or may infringe, the Asserted Patents are confidential and privileged and protected by the attorney client and work product privileges. Such communications, documents, and information will not be produced or described.

In an effort to respond to this interrogatory, Safoco offers the following information:

TE3CO: Safoco filed suit against The E3 Company Cause No. 2:21-cv-00346, *Safoco, Inc. v. The E3 Company, LLC*, in the United States District Court for the Eastern District of Texas, alleging that the (1) TE3CO Safety RAT (single hydraulic unit and dual hydraulic unit) (Safety RAT), and (2) TE3CO Safety BAT (single hydraulic unit and dual hydraulic unit) (Safety BAT), infringed one or more claims of the ‘794 Patent and the ‘609 Patent. Initially, Phoenix Specialty, Inc., was responsible for the “development” of the Safety Rat, and the principals of Phoenix Specialty, Inc., formed TE3CO to further “develop,” market, and offer the Safety Rat, and later the Safety BAT, for lease and/or sale.

KLX Energy: The KLX® FRAC Relief Valve Systems infringes the Safoco patents. Pursuant to FED. R. CIV. P. 33(d), Plaintiff Safoco refers Defendant to Plaintiff Safoco’s Initial Disclosure of Asserted Claims and Infringement Contentions, including Exhibit A (‘794 Patent) and Exhibit B (‘609 Patent), and Attachments 1-3, served on February 28, 2023, and Plaintiff Safoco’s Amended Disclosure of Asserted Claims and Infringement Contentions, including Exhibit A (‘794 Patent - KLX), Exhibit B (‘609 Patent – KLX), Exhibit C (‘794 Patent – Telos/OSECO), and Exhibit D (‘609 Patent – Telos/OSECO), and Attachments 1-13, served on August 8, 2023. KLX Energy is responsible for developing, marketing, and/or offering the KLX® FRAC Relief Valve Systems for lease and/or sale.

KLX Energy recently acquired a line of pressure relief valves that were formerly designed, marketed, distributed, and/or leased by Telos Industries, Inc. (“Telos”) and/or Oklahoma Safety Equipment Company, Inc. (“OSECO”). The Telos EPRV was originally developed, marketed, and offered for lease and/or sale by Telos and later marketed for lease and/or sale under a distribution agreement with OSECO. KLX Energy is now offering the Telos PRV and/or the Oseco Telos EPRV units to its customers under the KLX Energy brand, along with its own KLX® FRAC Relief Valve System identified above. Pursuant to FED. R. CIV. P. 33(d), Plaintiff Safoco refers Defendant to Plaintiff Safoco’s Amended Disclosure of Asserted Claims and Infringement Contentions, including Exhibit A (‘794 Patent - KLX), Exhibit B (‘609 Patent – KLX), Exhibit C (‘794 Patent – Telos/OSECO), and Exhibit D (‘609 Patent – Telos/OSECO), and Attachments 1-13, served on August 8, 2023. KLX Energy is now responsible for offering those Telos EPRV for lease and/or sale.

Telos and OSECO: Pursuant to FED. R. CIV. P. 33(d), Plaintiff Safoco refers Defendant to Plaintiff Safoco’s Amended Disclosure of Asserted Claims and Infringement Contentions, including Exhibit A (‘794 Patent - KLX), Exhibit B (‘609 Patent – KLX), Exhibit C (‘794 Patent – Telos/OSECO), and Exhibit D (‘609 Patent – Telos/OSECO), and Attachments 1-13, served on August 8, 2023. The Telos EPRV was originally developed, marketed, and offered for lease and/or

sale by Telos and later marketed for lease and/or sale with the assistance of OSECO under a distribution agreement.

INTERROGATORY NO. 3:

Identify all opinions, evaluations, analyses, or reverse engineering reports, whether written or oral, that Safoco has requested, received or is aware of regarding any Patent-in-Suit or the inventions claimed therein, including, but not limited to, date, author(s), addressee(s), recipient(s) and whether it relates to infringement or noninfringement, validity or invalidity, enforceability or unenforceability, any other affirmative defense or a valuation of any Patent-in-Suit.

ANSWER:

Plaintiff objects to this interrogatory to the extent that it seeks information protected by the attorney-client and work product privileges. This request is not limited to “non-privileged” documents or information. Any documents and communications between or among Plaintiff and its counsel concerning the Asserted Patents, and the inventions claimed therein, are confidential and privileged and protected by the attorney client and work product privileges. The interrogatory is extremely broad and burdensome. Such communications, documents, and information will not be produced or described. Safoco further objects to this interrogatory to the extent that it is subject to expert testimony, and Safoco will provide its expert disclosures and reports by the deadline set forth in the Court’s Docket Control Order.

During the *Safoco v. TE3CO*, patent litigation, Safoco served Plaintiff’s Initial Disclosure of Asserted Claims and Infringement Contentions relating to Defendant TE3CO’s infringement of the ‘794 Patent and the ‘609 Patent. The contentions were prepared by Safoco’s counsel with the assistance of Safoco.

During the *Safoco v. TE3CO* patent litigation, Defendant TE3CO served Defendant’s Invalidity Contentions Pursuant to P.R. 3-3 and 3-4 relating to the ‘794 and ‘609 Patents. The contentions were presumably authored by TE3CO’s counsel.

INTERROGATORY NO. 4:

For each Claim-in-Suit, identify what you contend to be the level of technical knowledge, schooling, experience, training, and expertise of a person having ordinary skill in the art of the subject matter of that claim.

ANSWER:

There is no single path to qualify as a skilled artisan in this technology. Generally, speaking, one of skill in the art would have a deep and extensive background in the relevant fields — hydraulic fracturing operations, valve technology, pressure relief technology, and automated control systems. To acquire the background necessary to qualify as one of skill in the art, one would have a combination of experience and/or education in one or more of these areas, such as experience with hydraulic fracturing, technical knowledge regarding oil field valves, programming

and software architecture regarding automated control systems. A degree in engineering or related scientific fields would be helpful.

INTERROGATORY NO. 5:

For each Claim-in-Suit, explain in detail each objective indicia of non-obviousness, if any, that Safoco contends supports the validity of the claim.

ANSWER:

Safoco objects to this interrogatory to the extent that it is subject to expert testimony, and Safoco will provide its expert disclosures and report by the deadline set forth in the Court's Docket Control Order.

Safoco's patents, like all issued patents, are presumed valid. The burden to prove invalidity by clear and convincing evidence rests with person challenging validity. To answer this interrogatory, Safoco would first need to know why the specific claims in dispute are alleged to be obvious and what art allegedly makes them obvious.

The objective indicia of non-obviousness include, but are not limited to, (1) the commercial success of the Safoco FRV; (2) the long-felt need for such a device; (3) commercial acquiescence; (4) copying by others; (5) failed attempts by others; (6) praise by others; and (7) industry approval. There are numerous examples of each of these listed indicia. Safoco was the first to market with this product, and it has had widespread acceptance and success. So much so that it has been copied by TE3CO, KLX, Telos, and others. TE3CO has had widespread success and acceptance of its products, and it appears that KLX has done so as well. Today, electronic pressure relief in fracturing applications is widespread and common. That was not the case until Safoco introduced the FRV to the industry. There have been attempts to develop and deploy pop-off valves, but those never achieved the functionality of the FRV.

The invention claimed in the '609 and '794 Patents was not only a new product, but it was a new and innovative product in the oil and gas market. Prior to invention, the industry relied on mechanical products, such as burst disks and explosion panels. The legacy products in use at that time were mechanical devices that had common deficiencies. They were imprecise and inaccurate; they had no monitoring capability; repeatability was a concern; they had to be replaced and reinstalled after a failure—"one and done"; they made "a hell of a mess"; and there would be substantial downtime while the new pressure relief device was reinstalled and the system reset.

None of the prior art included the features, nor did the prior art achieve the same benefits, as claimed in the Asserted Patents. The Safoco FRV embodies the claimed features and is coextensive with the patent invention. And the commercial success of the Safoco FRV is related to those features and the invention claimed in the '794 and 609 Patents.

There is clear copying of the Asserted Patents and the Safoco FRV. Competitors in the industry, as well as their customers, strongly desired a device with the features of the Safoco FRV. Companies, including TE3CO and Bulldog Frac Rentals and later KLX Energy, quickly and intentionally copied the features and technology embodied in the Safoco FRV in an effort to

compete with Safoco. TE3CO knew about the Asserted Patents; TE3CO had full and unfettered access to the Safoco FRV and all of the underlying proprietary and confidential design information; and TE3CO then developed a competing product that was virtually identical in form and function. Bulldog Frac Rentals, which was later purchased by KLX Energy, had access to and obtained a Safoco FRV and developed a virtual copy which was then further developed and released by KLX Energy. Telos developed and deployed a copied version of the Safoco FRV.

INTERROGATORY NO. 6:

Describe all facts and circumstances concerning any ownership or licensing interests in any patent, patent application or other intellectual property owned or purported to be owned by Safoco, including, but not limited to, the identification of all persons who have ever owned, licensed, or been offered a license to any Patent-in-Suit and the dates of any ownership, licensing, or offers.

ANSWER:

Safoco objects to this interrogatory because it is impermissibly overbroad in scope to the extent that the interrogatory seeks information regarding any intellectual property owned by Safoco other than the Asserted Patents. The interrogatory would require the disclosure of confidential information included in any pending provisional applications and other pending but not yet published patent applications to a competitor. Safoco will provide information regarding issued patents and published patent applications.

Safoco is the owner of the following intellectual property, including patents and published patent applications:

Patent/App/Publication No.	Name	Issue/Filing/Pub. Date
U.S. Patent No. 6,089,531	Valve Actuator Apparatus	July 18, 2000
U.S. Patent No. 6,250,605	Valve Actuator Apparatus	June 26, 2001
U.S. Patent No. 6,450,477	Valve Actuator Apparatus	September 17, 2002
U.S. Patent No. 6,854,704	Valve Actuator Apparatus	February 15, 2005
U.S. Patent No. 7,004,445	Mechanical Override for Valve Actuator	February 28, 2006
U.S. Patent No. 7,028,986	Valve Actuator Apparatus	April 8, 2006
U.S. Patent No. 7,293,575	Mechanical Override for Valve Actuator	November 13, 2007
U.S. Patent No. 7,677,526	Mechanical Override for Valve Actuator	March 16, 2010
U.S. Patent No. 8,763,983	Safety Valve and Method of Use	July 1, 2014
U.S. Patent No. 8,777,178	Adjustable Valve Actuator System (Array)	July 15, 2014
U.S. Patent No. 8,851,108	Safety Valve and Method of Use	October 7, 2014
U.S. Patent No. 9,057,448	Internal Relief Valve for Valve Actuator	June 16, 2015

Patent/App/Publication No.	Name	Issue/Filing/Pub. Date
U.S. Patent No. 9,103,465	Dual Piston Actuators & Methods of Use	August 11, 2015
U.S. Patent No. 9,163,619	Valve Actuator Control System & Method of Use	October 20, 2015
U.S. Patent No. 9,163,750	Safety Valve & Methods of Use	October 20, 2015
U.S. Patent No. 9,341,279	Magnetic Rotary Actuator (Array)	May 17, 2016
U.S. Patent No. 9,353,775	Cylindrical Liner for Piston Actuator (Array)	May 31, 2016
U.S. Patent No. 9,353,882	Low Profile Hydraulic Actuator (Array)	May 31, 2016
U.S. Patent No. 9,395,015	Rotatable Actuator Shaft (Array)	June 19, 2016
U.S. Patent No. 9,429,241	Energized Packing Retainer (Array)	August 30, 2016
U.S. Patent No. 9,441,453	Safety Valve Control System & Methods of Use	September 13, 2016
U.S. Patent No. 9,518,675	Rotary Stem Position Indicator (Array)	December 13, 2016
U.S. Patent No. 9,671,794	Safety Valve Control System & Methods of Use	June 6, 2017
U.S. Patent No. 9,890,609	Safety Valve Control System & Methods of Use	February 13, 2018
U.S. Patent No. 10,760,705	Dual Piston Pneumatic Actuator (Array)	September 1, 2022
U.S. Patent No. 11,384,876	Fluid Conduit Connector System	July 12, 2022
U.S. Patent No. 11,506,006	Control Valve Systems and Methods for Blow Out of Sand Separation Device and High Integrity Pressure Protection	November 22, 2022
U.S. Patent No. 11,519,536	Fluid Conduit Connector System	December 6, 2022
U.S. Patent No. 11,530,601	Fluid Conduit Connector System	December 20, 2022
CA2806849	Safety Valve Control System & Method of Use	October 13, 2015
CA2485014	Mechanical Override for Valve Actuator	September 11, 2007
US Pub. No. 2012/0031494	Safety Valve Control System & Method of Use (abandoned)	February 9, 2012
US Pub. No. 2023/0243236	Integrated Skid Apparatus & Related Methods for Wellhead Systems	August 3, 2023
US Pub. No. 2023/0243669	Obstruction Detector Assemblies, Systems, and Related Methods for Detecting Obstructions Along Oil & Gas Equipment	August 3, 2023
US Pub. No. 2023/0243438	Actuator Assemblies & Related Methods for Valve Assemblies	August 3, 2023
US Pub. No. 2023/0243437	Actuator Assemblies & Related Methods for Valve Assemblies	August 3, 2023
US Pub. No. 2023/0095353	Fluid Conduit Connector Systems	March 30, 2023
US Pub. No. 2023/0112693	Fluid Conduit Connector Systems	April 13, 2023

Patent/App/Publication No.	Name	Issue/Filing/Pub. Date
US Pub. No. 2023/0243226	Spool Assemblies and Related Methods for Fluidly Connecting Wellheads	August 3, 2023
US Pub. No. 2014/0097364	Adjustable Diaphragm Retainer Plate (Array) (abandoned)	April 10, 2014
US Pub. No. 2014/0097363	Floating Seal Retainer (Array) (abandoned)	April 10, 2014
US Pub. No. 2013/0313451	Diaphragm Actuator (Array) (abandoned)	November 28, 2014
US Pub. No. 2013/0312840	Valve Actuator System (Array) (abandoned)	November 28, 2013
US Pub. No. 2013/0233389	Hydraulic Actuator (Array) (abandoned)	September 12, 2013
US Pub. No. 2013/0214188	Adjustable Stroke Actuators (Array) (abandoned)	August 22, 2013
CA3188078A1	Actuator Assemblies & Related Methods for Valve Systems (pending)	August 3, 2023 (published)
CA3188202A1	Spool Assemblies and Related Methods for Fluidly Connecting Wellheads (pending)	August 3, 2023 (published)
CA3185189A1	Fluid Conduit Connector Systems (pending)	January 13, 2022 (published)
CA3188129A1	Actuator Assemblies & Related Methods for Valve Systems (pending)	August 3, 2023 (published)
WO2023/150431	Integrated Skid Apparatus & Related Methods for Wellhead Systems	August 10, 2023 (published)
WO2022/020041	Control Valve Systems & Methods for Blowout of Sand Separation Device and High Integrity Pressure Protection	January 27, 2022 (published)
WO2022/010631	Fluid Conduit Connector Systems	January 13, 2022

Trademarks: Common law rights to name “Safoco”; common law rights to Safoco mark and logo; common law rights to name “Array Products” (but Array Holdings, LLC retained right to use word “Array” in company name.

Safoco has developed a superior technical and business knowledge of pressure relief in various oilfield applications, including frac applications. This proprietary trade secret information is owned by Safoco. Safoco has enjoyed industry wide success for many reasons, but a primary reason is that Plaintiff Safoco effectively utilizes and implements cutting edge technology, often new technology that Safoco developed. All of this has led to the creation of a large body of proprietary and confidential information-- trade secret information that Safoco has acquired overtime and with considerable expense. This proprietary material provides Safoco with an advantage over its competitors. Through the investment of considerable resources, Plaintiff Safoco has, at great costs and expense over many years, successfully researched, developed, and commercialized a number of innovations in the oil and gas equipment industry:

As a result of these efforts, Plaintiff Safoco has a substantial intellectual property portfolio, which provides distinct advantages over its competition. Plaintiff has invested, and will continue to invest, extensive time, effort, and expense in the development and maintenance of this body of information. It is with this body of proprietary information that Safoco continues to innovate, and thereby add to its body of knowledge.

In addition to an extensive sets of proprietary drawings and schematics, Plaintiff has developed various other types of confidential information, trade secret information, and/or other proprietary material relating to its products and systems, including, but not limited to, operational and rebuild procedures, component specifications, component testing information, testing data, evaluation of product or system performance, customer data, trial and demo agreements, business models, marketing plans, pricing information, customer contacts, vendor contacts, supplier contacts, fabricator contacts, data analysis acquired through product and system operation, materials information, engineering notes, engineering calculations, the specific manufacturing details for the Safoco equipment or system, know-how, negative know-how, trial and error, and lessons learned. Safoco's confidential, trade secret, and proprietary information also includes the combination of, and precise selection and integration of the features of the equipment, and the dimensions, design, geometry, shape, materials, tolerances, and sizes of the components that make up the device, equipment, or system.

The patents, or then pending patent applications, identified as "Array" above, were assigned to Safoco, among other assets, by Array Holdings, LLC under the terms of the Asset Purchase Agreement, executed by Safoco and Array Holdings, LLC on June 24, 2015. The Asserted Patents were not any part of that agreement.

Safoco filed suit against Array Products Company, LLC, in Cause No. 2:05-cv-00253, *Safoco, Inc. v. Array Products Company, LLC*, in the United States District Court for the Eastern District of Texas, Marshall Division, for infringement of U.S. Patent No. 6,854,704 (Actuator Valve Apparatus). The parties executed a Settlement Agreement and License, dated December 14, 2005, granting Array Products Company, LLC, a non-exclusive, non-transferable license to U.S. Patent Nos. 6,089,531, 6,250,605, 6,450,477, 6,854,704, and authorizing Array to make, to have made, to use, to sell and offer to sell the Licensed Products, as defined by the agreement, and subject to the restrictions in the agreement and in exchange for payments of a royalty to Safoco during the term of the agreement on gross sales of the licensed products.

Safoco filed suit against Cameron International Corporation f/k/a Cooper Cameron Corporation in Cause No. 4:05-CV-00739, *Safoco, Inc., v. Cameron International Corporation f/k/a Cooper Cameron Corporation*, in the United States District Court for the Southern District of Texas, Houston Division, for infringement of U.S. Patent Nos. 6,089,531, 6,250,605, 6,450,477, 6,854,704, and 7,028,986 (Actuator Valve Apparatus). The parties entered into a settlement, dated August 12, 2009, in which Cameron agreed (1) to immediately lift a moratorium on purchases of Safoco actuators by Cameron, (2) to commit to purchasing its needs of actuators from Safoco for four years as long as Safoco was competitive as to price and delivery, (3) to immediately pay the agreed lump sum amount, and (4) to not return to its pre-January 2006 actuator designs, in exchange for Safoco's agreement and covenant not to sue Cameron or its customers on any further claims or suits regarding the family of asserted patents and for Safoco's agreement that a specific Cameron actuator design did not infringe the asserted actuator patents.

Safoco filed suit against The E3 Company, LLC, Phoenix Specialty, Inc., Clayton Dale, Aaron Schnizer, John Glud, and Rick Troyer, in Cause No. 2018-30805, *Safoco, Inc. v. The E3 Company, LLC, et al.*, in the 269th Judicial District Court for Harris County, Texas, alleging misappropriation of trade secrets, breach of contract, breach of fiduciary duty, fraud, fraudulent misrepresentation, unfair competition, breach of confidential and special relationships, computer abuse and improper access, and conspiracy.

Safoco filed suit against The E3 Company, LLC in Cause No. 2:21-cv-00346, *Safoco, Inc. v. The E3 Company, LLC*, in the United States District Court for the Eastern District of Texas, alleging that the (1) TE3CO Safety RAT (single hydraulic unit and dual hydraulic unit) (Safety RAT), and (2) TE3CO Safety BAT (single hydraulic unit and dual hydraulic unit) (Safety BAT), infringed one or more claims of the ‘794 Patent and the ‘609 Patent.

The parties entered into a settlement agreement, dated June 6, 2022, resolving both the trade secret and patent infringement cases, as well as the declaratory judgment case brought by Clayton Dale. The settlement agreement includes mutual releases of claims among the parties, as well as other covenants, in exchange for lump sum payments to Safoco.

After Telos approached Safoco regarding the Telos device and the Asserted Patents, Safoco had discussions with Telos regarding a license for the Asserted Patents. At some point during the discussions, Telos made an offer to Safoco including stock ownership in Telos and a royalty, but Safoco declined the offer.

INTERROGATORY NO. 7:

For each Patent-in-Suit, identify and describe all efforts to satisfy the marking requirements of 35 U.S.C. § 287.

ANSWER:

The Safoco FRV has been marked with the ‘794 Patent since the patent was issued in June 6, 2017: “This assembly is patented under the United States Patent US Pat. 9 671 794.” Safoco has recently initiated marking the Safoco FRV with the ‘609 Patent. The patent marking has provided constructive notice of Safoco’s patent rights and notice to potential infringers, but it is Safoco’s position that KLX Energy has had actual notice of its infringement of the Asserted Patents. Safoco informed KLX Energy in October 2017 that the KLX® FRAC Relief Valve System infringed Safoco’s FRV Patents.

INTERROGATORY NO. 8:

Identify the first date that You came to the belief that KLX infringes or may infringe any of the Claims-in-Suit and the circumstances by which you came to that belief.

ANSWER:

Safoco attended and exhibited its FRV at an industry trade show in San Antonio, Texas, in October 2017. The Safoco booth was located in fairly close proximity to the KLX Energy booth

which featured the KLX® FRAC Relief Valve System, and Safoco employees observed the KLX system. During the trade show, a group of Safoco employees were approached by a former KLX Energy employee, Sean Mackiewicz, who informed them that KLX Energy had intentionally copied the Safoco FRV when developing its KLX® FRAC Relief Valve System. The former employee stated that “KLX is infringing on [Safoco’s patents]. I’m the engineer who designed it, so I know.” The former employee stated that “KLX intentionally copied” the Safoco FRV system.

During that industry trade show, Safoco representatives went to the Defendant’s booth to look at the Defendant’s Infringing Product. The KLX Energy booth was located near the Safoco booth, and KLX had its “FRV” unit displayed. The Safoco representatives noted that the Defendant’s infringing product was virtually identical, a “mirror image” or “replica” of the Safoco FRV. The representatives also noted that KLX was referring to the device as the “FRV” or “FRVS” and that KLX Energy was using those terms in its marketing and promotional materials. While the valves used by the Defendant were double-acting, the valves utilized on the Infringing Product were gate valves.

Dave Lymberopoulos, the CEO of Safoco, introduced himself to the on-site KLX Energy representatives, which included an employee identified as a company Vice-President. Mr. Lymberopoulos informed the Defendant’s representatives that the Defendant’s “FRV” was a copy of the “Safoco FRV” and that KLX was infringing Safoco’s patent. One of the Defendant’s representatives responded by asking, “Well, do you have any recommendations how to make [the KLX Energy] unit better?” Mr. Lymberopoulos responded by requesting that KLX Energy remove the copied KLX Product from the market.

INTERROGATORY NO. 9:

Identify and describe in detail any discussions, whether electronic, written, verbal, or otherwise, You or anyone on Your behalf has had either internally or with any third party regarding or concerning the allegations in the Complaint (including any belief that KLX infringes any of the Patents-in-Suit or has engaged in false advertising), identifying the dates of such discussions, the persons involved, and a description of the discussions.

ANSWER:

Safoco objects to this interrogatory because it is impermissibly overbroad and burdensome, and it is not designed to lead to admissible evidence. Safoco further objects to the extent that this interrogatory requires the disclosure of “any discussion . . . You or anyone on Your behalf has had . . . internally . . . regarding or concerning the allegations in the lawsuit” because the request is not limited to “non-privileged” documents or information. Any documents and communications between or among Plaintiff and its counsel concerning the Asserted Patents, the inventions claimed therein, and/or Safoco’s false advertising claims, are confidential and privileged and protected by the attorney client and work product privilege and party communication privilege. Such communications, documents, and information will not be produced or described.

See answer above. During a trade show in San Antonio in October 2017, a group of Safoco employees were approached by a former KLX Energy employee who informed them that KLX Energy had intentionally copied the Safoco FRV when developing its KLX® FRAC Relief Valve

System. The former employee, Sean Mackiewicz, stated that “KLX is infringing on [Safoco’s patents]. I’m the engineer who designed it, so I know.” The former employee stated that “KLX intentionally copied” the Safoco FRV system.

Dave Lymberopoulos had a conversation with Aaron Schnizer and John Glud, Phoenix Specialty, Inc. during which Schnizer and Glud raised the issue of the KLX® FRAC Relief Valve System. Schnizer and Glud asked why Safoco was pursuing claims against TE3CO and Phoenix but not pursuing infringement claims against KLX Energy when the KLX Energy device was virtually identical to the Safoco FRV. This conversation took place sometime in 2019 or 2020.

During the *Safoco v. TE3CO* litigation, James Amberg, Safoco’s Business Unit Leader, was questioned during his deposition by Defendants’ counsel about the KLX Energy device. Mr. Amberg testified that he saw the KLX Energy device at a trade show in October 2017; that his initial impression was that the unit looked a lot like the FRV and that KLX Energy had chosen to use FRV with a “S” tagged on at the end for the device’s name; that the name was similar to that of the Safoco FRV; that a gentlemen named Sean approached the Safoco booth and said “Hey, I used to work for KLX as an engineer, and they copied – they intentionally copied your unit.” And that Sean’s exact words were “And KLX is infringing on your patent. I’m the engineer who designed it, so I know.” Mr. Amberg recalled that Mr. Lymberopoulos and other Safoco employees walked over to the KLX Energy booth; that a KLX Energy employee asked how KLX could improve the KLX Energy device; and that Mr. Lymberopoulos informed one of the onsite KLX Energy representatives that KLX Energy was infringing Safoco’s technology.

During the *Safoco v. TE3CO* litigation, Dave Lymberopoulos, Safoco’s CEO was asked during his deposition about the KLX Energy device. Mr. Lymberopoulos testified that he believed that KLX Energy was infringing the Asserted Patents; that he saw the infringing product at a trade show and that, although it used a different valve, it was virtually identical, a “mirror image” or “replica” of the Safoco FRV; and that he informed the on-site KLX Energy representatives that the Defendant’s “FRV” was a copy of the “Safoco FRV” and that KLX Energy was infringing Safoco’s patent.

Mr. Lymberopoulos further testified that he was approached at the trade show by Telos employees and who were also former KLX Energy employees, one of whom told him that KLX Energy was infringing the Asserted Patents. They also told Mr. Lymberopoulos that Telos was infringing the Asserted Patents, and the Telos employees asked Mr. Lymberopoulos if they could obtain a license to use Safoco’s patented technology.

INTERROGATORY NO. 10:

Identify and describe the Factual Basis for Your contention that KLX infringes or has infringed the Patents-in-Suit, including an identification and description of any admissions by or on behalf of KLX which you contend have taken place.

ANSWER:

Pursuant to FED. R. CIV. P. 33(d), Plaintiff Safoco refers Defendant to Plaintiff Safoco’s Initial Disclosure of Asserted Claims and Infringement Contentions, including Exhibit A (‘794

Patent) and Exhibit B ('609 Patent), and Attachments 1-3, served on February 28, 2023, and Plaintiff Safoco's Amended Disclosure of Asserted Claims and Infringement Contentions, including Exhibit A ('794 Patent - KLX), Exhibit B ('609 Patent - KLX), Exhibit C ('794 Patent - Telos/OSECO), and Exhibit D ('609 Patent - Telos/OSECO), and Attachments 1-13, served on August 8, 2023.

Safoco attended and exhibited its FRV at an industry trade show in San Antonio, Texas, sometime in 2017. During the trade show, a group of Safoco employees were approached by a former KLX Energy employee, Sean Mackiewicz, who informed them that KLX Energy had intentionally copied the Safoco FRV when developing its KLX® FRAC Relief Valve System. The former employee stated that "KLX is infringing on [Safoco's patents]. I'm the engineer who designed it, so I know."

During that industry trade show, Safoco representatives went to the Defendant's booth to look at the Defendant's Infringing Product. The KLX Energy booth was located near the Safoco booth, and KLX had its "FRV" unit displayed. The Safoco representatives noted that the Defendant's infringing product was virtually identical, a "mirror image" or "replica" of the Safoco FRV. The representatives also noted that KLX was referring to the device as the "FRV" or "FRVS" and that KLX Energy was using those terms in its marketing and promotional materials. While the valves used by the Defendant were double-acting, the valves utilized on the Infringing Product were gate valves.

Dave Lymberopoulos, the CEO of Safoco, introduced himself to the on-site KLX Energy representatives, which included an employee identified as a company Vice-President. Mr. Lymberopoulos informed the Defendant's representatives that the Defendant's "FRV" was a copy of the "Safoco FRV" and that KLX Energy was infringing Safoco's patent. One of the Defendant's representatives responded by asking, "Well, do you have any recommendations how to make [the KLX Energy] unit better?" Mr. Lymberopoulos responded by requesting that KLX Energy remove the copied KLX Product from the market.

While at the trade show in October 2017, Mr. Lymberopoulos was approached by several Telos representatives and employees and who were also former KLX Energy employees, one of whom told Mr. Lymberopoulos that KLX Energy was infringing the Asserted Patents. They also told Mr. Lymberopoulos that Telos was infringing the Asserted Patents, and the Telos employees asked Mr. Lymberopoulos if they could obtain a license to use Safoco's patented technology.

Mr. Lymberopoulos later spoke with Dustin Adams, the then President of Telos, and during several conversations, Mr. Adams again admitted and acknowledged to Mr. Lymberopoulos that he was aware of the Asserted Patents and that the frac relief device marketed, leased, and/or sold by Telos infringed on or more claims of the Asserted Patents. After Telos approached Safoco regarding the Telos device and the Asserted Patents, Mr. Lymberopoulos had some discussions with Mr. Adams regarding a license for the Asserted Patents. At some point during the discussions, Telos made an offer to Safoco including stock ownership in Telos and a royalty, but Safoco declined the offer. No specific royalty was discussed between the parties.

INTERROGATORY NO. 11:

Identify and describe the Factual Basis for Your contention that KLX has committed false advertising, including in Your response an identification and description of all materials you contend to constitute or support any allegation of false advertising against KLX made by You in this Lawsuit.

ANSWER:

Defendant made false and misleading statements regarding the KLX Energy FRV, about Defendant KLX Energy, and about Defendant KLX Energy's activities. Such false and misleading statements include, but are not limited to the following:

- a. Defendant advertising and representing that the KLX Energy FRV utilizes a "proprietary "'fail-open' design and self-reporting diagnostic alert to ensure total field safety." ¹
- b. Defendant advertising and representing that the company offers "[p]roprietary technologies such as the KLX Automated Frac Relief Valve System – an automated alternative to conventional pop-off valves. This new solution brings more assurance, reliability and redundancy to pressure control." ²
- c. Defendant representing that "[w]e have enhanced our hydraulic fracturing valve fleet line through the internal development of next generation technology, including our proprietary, patent pending hydraulic fracturing relief valve ("FRV"). Introduced in 2016, the FRV was built and designed to replace older 'pop-off' systems. When tied into a hydraulic fracturing core (pumps), the FRV gives customers a safer and more reliable method for relieving surface pressure in the event of an unforeseen pressure event. By doing this, we believe we minimize operational risk, as well as greatly reduce health, safety and environmental ("HSE") concerns that are associated with hydraulic fracturing operations." ³
- d. Defendant describing the KLX Energy FRV as an "innovative alternative to the standard popoff valve that offers more control over pressure during hydraulic fracturing operations."
- e. Defendant advertising and representing that the "system was designed to offer ZERO reduction of the unit's inside diameter running from the 1502 iron to the primary relief valve itself. This means that the system's pressure dump is almost instantaneous once it reaches the unit's pre-programmed parameters. Pressure release takes less than a quarter of a second." ⁴

¹ <https://www.klxenergy.com/ProductsServices/FracRelief> (last accessed November 10, 2022).

² <https://www.klxenergy.com/ProductsServices/PressureControlServices> (last accessed November 10, 2022).

³ See KLX Energy Services Holdings, Inc., Form 10-K, for fiscal year ending January 31, 2019, at p. 7; KLX Energy Services Holdings, Inc., Form 10-K, for fiscal year ending January 31, 2021 at p. 10.

⁴ See "KLX Frac Relief Valve System, Engineered Product," KLX Energy Services.

- f. Defendant advertising and representing that the “system was designed to eliminate the possibility of catastrophic pressure buildup during normal operation. It comes equipped with a secondary back-up valve that can be engaged to ensure zero downtime.”⁵
- g. “*Many oilfield service processes haven’t changed much in the last 50 years.* At KLX Energy Services, we’re re-examining the way everyday operations are performed across the lifecycle of a well—looking for *new value-added technology*” [Emphasis added];⁶ and
- h. “Our experienced field engineers understand what needs to happen in the field, and can approach *new innovations* with an eye for practical, real-world perspective. The real key to KLX Energy Services’ most value-added field innovations is our customers. We listen carefully to the needs of operators in the field, and their various challenges in eliminating avoidable NPT across every phase of the well’s operation. As a result, we can arm our crews with *exclusive, proprietary tools and technology not available through any other oilfield service partner.* From *new levels of pressure control automation* to downhole tools that help better manage operational risk, *we’re dedicated to pushing what’s possible in oilfield service efficiency.* Market downturns don’t affect our commitment to developing these *new innovations.* In fact, leaner times are when the industry most needs every operational and financial advantage possible.” [Emphasis added].

INTERROGATORY NO. 12:

State Your contentions, to the extent You have contentions, regarding the appropriate remedy or remedies for KLX’s alleged infringement of the Patents-in-Suit, should KLX be found to infringe one or more of the Patents-in-Suit, including, without limitation, what you contend is the appropriate amount of a reasonable royalty, the amount of Safoco’s lost profits, whether Safoco is entitled to an injunction against further infringement, and all factual and legal bases for those contentions.

ANSWER:

Safoco objects to this interrogatory to the extent that it is subject to expert testimony, and Safoco will provide its expert disclosures and report by the deadline set forth in the Court’s Docket Control Order.

Safoco asserts that Defendant is liable for damages in this case because Defendant infringes one or more claims of the Asserted Patents and all asserted claims of the Asserted Patents are valid. Without waiving any such arguments or defenses, Safoco states that Defendant is liable for, but not limited to, reasonable royalties, lost profits, treble damages, pre- and post-judgment interest, as well as Safoco’s costs, expenses, and reasonable attorneys’ fees in bringing this lawsuit.

⁵ “KLX Frac Relief Valve System, Engineered Product,” KLX Energy Services.

⁶ “KLX Frac Relief Valve System, Engineered Product,” KLX Energy Services.

Safoco reserves the right to rely on a damages expert in this case. Safoco will supplement this answer with the computation of its damages and the production of the documents or other evidentiary material on which such damages computation is based in accordance with the deadlines and requirements of the Court's Docket Control Order and Discovery Order.

INTERROGATORY NO. 13:

State Your contentions, to the extent You have contentions, regarding the appropriate remedy or remedies for KLX's alleged false advertising, should KLX be found to have falsely advertised as alleged by Safoco, including, without limitation, what you contend to be the amount of Safoco's lost profits, and all factual and legal bases for those contentions.

ANSWER:

Safoco objects to this interrogatory to the extent that it is subject to expert testimony, and Safoco will provide its expert disclosures and report by the deadline set forth in the Court's Docket Control Order.

Safoco asserts that Defendant is liable for damages because as a direct and proximate result of Defendant's false and misleading statements, Defendant has been unjustly enriched, Defendant has made profits to which it is not entitled in law or in equity, and Safoco has sustained competitive harm in its business, reputation and goodwill. Safoco states that Defendant is liable for, but not limited to lost profits, disgorgement of Defendant's profits, costs of corrective advertising, and/or harm to goodwill, treble damages, pre- and post-judgment interest, as well as Safoco's costs, expenses, and reasonable attorneys' fees in bringing this lawsuit.

Safoco reserves the right to rely on experts in this case, including a damages expert. Safoco will supplement this answer with a description and computation of its damages and the production of the documents or other evidentiary material on which such damages computation is based in accordance with the deadlines and requirements of the Court's Docket Control Order and Discovery Order.

INTERROGATORY NO. 14:

Identify and describe any and all Communications and Documents exchanged among and/or between You and KLX or any predecessor of KLX.

ANSWER:

See earlier answers. Safoco attended and exhibited its FRV at an industry trade show in San Antonio, Texas, sometime in 2017. During the trade show, a group of Safoco employees were approached by a former KLX Energy employee, Sean Mackiewicz, who informed them that KLX Energy had intentionally copied the Safoco FRV when developing its KLX® FRAC Relief Valve System. The former employee stated that "KLX is infringing on [Safoco's patents]. I'm the engineer who designed it, so I know."

During that industry trade show, Safoco representatives went to the Defendant's booth to look at the Defendant's Infringing Product. The KLX Energy booth was located near the Safoco booth, and KLX had its "FRV" unit displayed. The Safoco representatives noted that the Defendant's infringing product was virtually identical, a "mirror image" or "replica" of the Safoco FRV. The representatives also noted that KLX was referring to the device as the "FRV" or "FRVS" and that KLX Energy was using those terms in its marketing and promotional materials. While the valves used by the Defendant were double-acting, the valves utilized on the Infringing Product were gate valves.

Dave Lymberopoulos, the CEO of Safoco, introduced himself to the on-site KLX Energy representatives, which included an employee identified as a company Vice-President. Mr. Lymberopoulos informed the Defendant's representatives that the Defendant's "FRV" was a copy of the "Safoco FRV". One of the Defendant's representatives responded by asking, "Well, do you have any recommendations how to make [the KLX Energy] unit better?" Mr. Lymberopoulos responded by requesting that KLX Energy remove the copied KLX Product from the market.

While at the trade show in October 2017, Mr. Lymberopoulos was approached by several Telos representatives and employees and who were also former KLX Energy employees, one of whom told Mr. Lymberopoulos that KLX Energy was infringing the Asserted Patents. They also told Mr. Lymberopoulos that Telos was infringing the Asserted Patents, and the Telos employees asked Mr. Lymberopoulos if they could obtain a license to use Safoco's patented technology.

Mr. Lymberopoulos later spoke with Dustin Adams, the then President of Telos, and during several conversations, Mr. Adams again admitted and acknowledged to Mr. Lymberopoulos that he was aware of the Asserted Patents and that the frac relief device marketed, leased, and/or sold by Telos infringed on or more claims of the Asserted Patents. After Telos approached Safoco regarding the Telos device and the Asserted Patents, Mr. Lymberopoulos had some discussions with Mr. Adams regarding a license for the Asserted Patents. At some point during the discussions, Telos made an offer to Safoco including stock ownership in Telos and a royalty, but Safoco declined the offer. No specific royalty was discussed between the parties.

INTERROGATORY NO. 15:

Identify and describe any and all non-privileged Communications and Documents exchanged among and/or between You and any Person other than KLX concerning, regarding or referring to this Lawsuit or Your allegations in this Lawsuit or the Factual Basis for the same.

ANSWER:

This interrogatory is duplicative of Interrogatory No. 9. See the Answer to Interrogatory No. 9.

Safoco attended and exhibited its FRV at an industry trade show in San Antonio, Texas, sometime in 2017. During the trade show, a group of Safoco employees were approached by a former KLX Energy employee, Sean Mackiewicz, who informed them that KLX Energy had intentionally copied the Safoco FRV when developing its KLX® FRAC Relief Valve System. The

former employee stated that “KLX is infringing on [Safoco’s patents]. I’m the engineer who designed it, so I know.”

While at the trade show in October 2017, Mr. Lymberopoulos was approached by several Telos representatives and employees and who were also former KLX Energy employees, one of whom told Mr. Lymberopoulos that KLX Energy was infringing the Asserted Patents. They also told Mr. Lymberopoulos that Telos was infringing the Asserted Patents, and the Telos employees asked Mr. Lymberopoulos if they could obtain a license to use Safoco’s patented technology.

Mr. Lymberopoulos later spoke with Dustin Adams, the then President of Telos, and during several conversations, Mr. Adams again admitted and acknowledged to Mr. Lymberopoulos that he was aware of the Asserted Patents and that the frac relief device marketed, leased, and/or sold by Telos infringed on or more claims of the Asserted Patents. After Telos approached Safoco regarding the Telos device and the Asserted Patents, Mr. Lymberopoulos had some discussions with Mr. Adams regarding a license for the Asserted Patents. At some point during the discussions, Telos made an offer to Safoco including stock ownership in Telos and a royalty, but Safoco declined the offer. No specific royalty was discussed between the parties.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SAFOCO, INC.

PLAINTIFF,

v.

KLX ENERGY SERVICES, LLC

DEFENDANT.

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CASE NO. 2:22-CV-437-JRG-RSP

JURY TRIAL REQUESTED

VERIFICATION

I, Dave Lymberopoulos, am an officer of Safoco, Inc., the Plaintiff in the above-styled and numbered cause. I am authorized to make this verification on behalf of Safoco, Inc. I have read Plaintiff's Safoco's Answers to Defendant KLX Energy Services, LLC's First Set of Interrogatories to which this verification is attached. The factual statements made therein are, based on reasonable inquiry, true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on Oct 10, 2023.



DAVE LYMBEROPOULOS