

**Exhibit B**

Hojnacki Declaration

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

WESTMORELAND COAL COMPANY, *et al.*,<sup>1</sup>

Reorganized Debtors.

Chapter 11

Case No. 18-35672 (DRJ)

(Jointly Administered)

**DECLARATION OF MARK W. HOJNACKI IN SUPPORT OF WLB DEBTORS’  
APPLICATION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE RETENTION  
AND EMPLOYMENT OF MCKINSEY RECOVERY & TRANSFORMATION SER-  
VICES U.S., LLC AND CERTAIN OF ITS AFFILIATES AS PERFORMANCE IM-  
PROVEMENT ADVISORS FOR THE WLB DEBTORS EFFECTIVE NUNC PRO TUNC  
TO THE PETITION DATE AND (II) GRANTING RELATED RELIEF**

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I, Mark W. Hojnacki, declare as follows:

1. I am a Practice Leader in the professional services firm of McKinsey Recovery & Transformation Services U.S., LLC (“RTS”) with an office at 55 East 52nd Street, New York, NY 10055. I am also employed as a partner at McKinsey & Company, Inc. United States (“McKinsey US”). McKinsey & Company, Inc. (“McKinsey & Co.”) is the ultimate parent company of RTS and the Retained Affiliates (as defined below, and such Retained Affiliates collectively with RTS, the “Proposed Professionals”). I am duly authorized to make this Declaration on behalf of the Proposed Professionals in support of the application (the “Application”)<sup>2</sup> of Westmoreland Coal Company and certain of its affiliates—other than Westmoreland Resource

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<sup>1</sup> Due to the large number of debtors in these chapter 11 cases, which are consolidated for procedural purposes only, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent in these chapter 11 cases at [www.donlinrecano.com/westmoreland](http://www.donlinrecano.com/westmoreland). Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings set forth in the Application or the Engagement Letter, as applicable.

Partners GP LLC and Westmoreland Resource Partners, LP and its subsidiaries—as reorganized debtors in the above-captioned chapter 11 cases (collectively, the “WLB Debtors”) for entry of an order authorizing the employment and retention of the Proposed Professionals as performance improvement advisors for the WLB Debtors, effective *nunc pro tunc* to the Petition Date, under the terms and conditions set forth in the postpetition engagement letter dated October 9, 2018 (the “Engagement Letter”), attached as Exhibit 1 to Exhibit A to the Application. I submit this Declaration (the “Hojnacki Declaration”) in accordance with sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014(a), 2016, and 5002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2014-1 and 2016-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

2. Except as otherwise noted, the statements set forth herein are based on knowledge I have from my employment position and diligence undertaken by me or professionals reporting to me and, if called and sworn as a witness, I would testify competently thereto.

### **Engagement Team**

3. The WLB Debtors seek to retain the Proposed Professionals as performance improvement advisors to the WLB Debtors as contemplated in the Engagement Letter. As used in this Declaration, the “Engagement Team” means consultants of (a) RTS; (b) McKinsey US; (c) McKinsey and Company Africa (Pty) Ltd. (“McKinsey Africa”); (d) McKinsey Knowledge Centre India Private Limited (“McKinsey India”); (e) McKinsey & Company Canada/McKinsey & Compagnie Canada (“McKinsey Canada”); and (f) McKinsey & Company LME Limited (“McKinsey LME”) and, collectively with McKinsey US, McKinsey Africa, McKinsey India, and McKinsey Canada, the “Retained Affiliates”), who comprise the working group that directly

provided the services for which the WLB Debtors are seeking to retain the Proposed Professionals.<sup>3</sup>

### **Qualifications of the Proposed Professionals**

4. The WLB Debtors seek to retain the Proposed Professionals as their performance improvement advisors based on their qualifications, skill, and expertise. RTS is a global, full-service advisory firm that supports companies through all aspects of transformation. Its professionals, along with their colleagues from the Retained Affiliates, have extensive experience in improving the operational performance of financially troubled companies. RTS has deep experience in working with clients to execute transformation plans that are focused on improving top-line, bottom-line, capital expenditures, and working capital. RTS has been involved in numerous large and complex restructurings, including but not limited to: *In re Toys “R” Us, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va.) (*ad hoc* lenders’ committee); *In re GenOn Energy, Inc.*, 17-33695 (DRJ) (Bankr. S.D. Tex.) (debtor); *In re Sun Edison, Inc.*, 16-10992 (SMB) (Bankr. S.D.N.Y.) (debtor); *Alpha Natural Resources, Inc.*, 15-33896 (KRH) (Bankr. E.D. Va.) (debtor); *The Standard Register Company*, 15-10541 (BLS) (Bankr. D. Del.) (debtor); and *NII Holdings, Inc.*, 14-12611 (SCC) (Bankr. S.D.N.Y.) (debtor).

5. In addition, when relevant to a particular engagement, RTS utilizes the expertise of colleagues in the Electric Power and Natural Gas (“EPNG”) and Basic Materials industry practices. Certain members of the Engagement Team are affiliated with the EPNG and Basic Materials industry practices. The EPNG practice serves integrated electric utilities, independent

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<sup>3</sup> Although the Houston Disclosure Protocol contemplates excluding personnel that only episodically provide such services, personnel serving the WLB Debtors were not excluded from the definition of the Engagement Team on this basis. *See* Dkt. No. 1907, Ex. A, Defined Terms (defining “Proposed Professional Personnel” as the “primary working group within a Proposed Professional entity that directly provides the services for which the Proposed Professional is retained in the particular bankruptcy case, and excludes personnel that only episodically provide such services”).

power producers, renewable players, new entrants, and transmission, distribution, and natural gas players. The practice had carried out approximately 2,000 projects in the sector over the five years prior to the Petition Date. The EPNG practice helps clients shape leading growth strategies at a time of disruption in the industry, transform operational performance, achieve step-change in efficiency, and build an agile organization and culture for the future. The EPNG practice also has proprietary power market analysis tools, providing rigorous strategic insights into forward-looking market demand by segment, region, market structure, and expected shifts in operating margins across the value chain. The EPNG practice has helped clients drive significant cash improvement by driving best-practices in supply chains (contractor productivity, asset/maintenance, repair, and operations procurement), power plant improvements, and lean corporate centers. The EPNG practice has also helped clients optimize back-office general and administrative expenses and improve capital excellence and productivity across the enterprise.

6. As of the Petition Date, the Basic Materials practice, which covers global metals and mining activity, has been engaged by clients to carry out nearly 1,000 projects in the mining industry over the last five years and has served the majority of the world's top major diversified mining companies as well as many of the leading specialist mining companies (including many of the top coal producers). This experience gives the Engagement Team a unique understanding of industry trends and of possible key success factors for the WLB Debtors' business. As of the Petition Date, the Basic Materials practice includes a dedicated team of nearly 100 technical experts supporting a group of nearly 500 consultants continuously serving our clients around the globe. These experts include numerous mine engineers, metallurgists, geologists, and business managers, each with deep operational experience in mining. The practice is backed by an extensive program of proprietary research, high-impact management tools, and information experts

who (i) provide insight into industry structure and dynamics (including supply, demand, trade flows, and future prospects for all major mining commodities), and (ii) ensure that consulting teams have access to the latest thinking, approaches, and analyses on financial, market, operational, organizational, and strategic matters. The Basic Materials practice has also implemented several knowledge development initiatives in the mining sector, including multi-year research projects addressing the most urgent client topics. These initiatives, projects, and benchmarks ensure that the Basic Materials practice remains at the forefront of industry information and trends.

7. The EPNG and Basic Materials practices include general consultants, dedicated practice consultants, and experts with relevant industry experience and academic backgrounds. The practices are backed by dedicated research and information experts who provide insight into industry structure and dynamics and ensure that teams have access to the latest approaches and analyses on financial, market, operational, organizational, and strategic matters for the consulting teams. The Proposed Professionals, including the members of the Engagement Team affiliated with the EPNG and Basic Materials practices, thus possess extensive knowledge and expertise related to the WLB Debtors' business. All members of the EPNG or Basic Materials industry practice groups that were part of the Engagement Team are employed by one of the Proposed Professionals.

8. Given this substantial experience, the WLB Debtors retained RTS prior to the filing of these chapter 11 cases to serve as their performance improvement advisor pursuant to an agreement dated July 17, 2018 (the "Prepetition Agreement"), which engagement was principally for the purpose of providing an initial diligence assessment to rapidly test areas of performance improvement and to suggest performance improvement initiatives with the intention to

enhance the WLB Debtors' performance. The scope of the services provided under the Prepetition Agreement also included developing the infrastructure to support a broader execution program, supporting the WLB Debtors in their discussions with the ad hoc group of the WLB Debtors' first lien creditors, by being available to answer questions regarding the services contemplated within the scope of the Prepetition Agreement, and providing other advisory services mutually agreed upon by the WLB Debtors and RTS. The support related to discussions with the ad hoc group of the WLB Debtors' first lien creditors did not relate to negotiations or agreements with them. Under the Prepetition Agreement, these services were provided by members of the Engagement Team (and others, prepetition).

9. As a result of the prepetition work performed on behalf of the WLB Debtors, the Engagement Team became familiar with the WLB Debtors and their businesses, including the WLB Debtors' financial affairs, debt structure, operations, employee groups, cost structures, and related matters. Members of the Engagement Team worked closely with the WLB Debtors' management and other professionals on numerous tasks related to performance-improving opportunities, revenue drivers, and cost reduction opportunities. The Engagement Team also gained substantial knowledge of the WLB Debtors' and non-WLB Debtor subsidiaries' operating assets. Therefore, the Engagement Team had the skills, expertise and relevant knowledge to assist the WLB Debtors with performance improvement efforts, which efforts continued following the WLB Debtors' filing of their chapter 11 petitions.

#### **Terms and Scope of Engagement**

10. On the Petition Date, the WLB Debtors and RTS entered into the Engagement Letter to set forth the terms of the WLB Debtors' retention of RTS during the WLB Debtors' chapter 11 cases (except as such terms might be explicitly modified in any order granting the

Application). As contemplated by Section 12 of the Engagement Letter, the WLB Debtors have filed the Application to request approval of the Engagement Letter, *nunc pro tunc* to the Petition Date. The Engagement Letter was negotiated between the parties at arm's length and in good faith, and reflects the parties' mutual agreement as to the substantial efforts required during the course of the engagement.

11. The WLB Debtors seek to retain the Proposed Professionals in connection with their performance of a broad range of services during these chapter 11 cases aimed at preserving or enhancing the value of the WLB Debtors, including, without limitation, the following:<sup>4</sup>

- a. Operational Improvement Planning – Assist the WLB Debtors with identifying and planning detailed initiatives to support improvements in operating performance in mining operations, corporate functions, and commercial agreements.
- b. Operational Support – Provide the WLB Debtors with hands-on support to implement the detailed initiatives to support operational improvements.
- c. Business Plan – Support the WLB Debtors and their restructuring advisor, Alvarez & Marsal North America, LLC, in incorporating the operational improvement plans into the WLB Debtors' business plan, disclosure statement, and plan(s) of reorganization.
- d. Constituent Management – Assist in developing supporting diligence materials and presentations for use in various stakeholder meetings, attend diligence sessions and working meetings with various stakeholders and constituents, and provide related *ad hoc* support to the management team on matters related to the operational improvement plans.
- e. Other Operational Services – As appropriate, assist the WLB Debtors with other matters as requested by the WLB Debtors and mutually agreed upon between RTS and the WLB Debtors, subject to further Court order.

12. The services provided by the Engagement Team were necessary to enable the WLB Debtors to maximize the value of their estates. Specifically, both prior to and during the

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<sup>4</sup> Any references to, or descriptions of, the Engagement Letter herein are qualified by the express terms of the Engagement Letter, which shall govern in the event of any conflict between the Engagement Letter and the descriptions provided herein.

course of these cases, the Engagement Team was instrumental in helping the WLB Debtors develop and implement initiatives related to significant operational improvements.

13. The Engagement Team coordinated with the WLB Debtors and their other retained professionals to avoid unnecessary duplication of services. In particular, the Proposed Professionals were engaged to provide and carry out unique functions not duplicative of the work performed by Centerview Partners LLC or Alvarez & Marsal North America, LLC.

**Fee and Expense Structure**

14. Subject to Court approval, the WLB Debtors will compensate the Proposed Professionals in accordance with the terms and conditions of the Engagement Letter, which provides a compensation structure (the “Fee and Expense Structure”) as outlined below.

15. Hourly Rates: The Proposed Professionals’ fees are to be based on the hours worked by members of the Engagement Team at the following hourly billing rates:

<u>Title of Professional</u> <sup>5</sup>	<u>Hourly Rate</u>
Practice Leader:	\$995-\$1,150
Senior Vice President:	\$735-\$925
Vice President:	\$640-\$735
Senior Associate:	\$530-\$615
Associate:	\$425-\$515
Analyst:	\$300-\$425
Paraprofessional:	\$250-\$275

16. Expenses: The WLB Debtors will reimburse the Proposed Professionals for all reasonable and necessary out-of-pocket expenses incurred in connection with the engagement, such as, but not limited to, travel, consultants, case administrators, lodging, postage, and communications charges following Proposed Professionals’ standard expense reporting.

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<sup>5</sup> These titles are specific to RTS only. Titles used by Retained Affiliates may vary, but the hourly rate structure and amount for such Retained Affiliates correspond to the tiered structure for RTS listed here.

17. As the Proposed Professionals' clients frequently request that their professionals travel to their offices and work there for extended periods of time, the Proposed Professionals follow an official company reimbursement policy with respect to professionals' documentation of expenses (the "McKinsey Reimbursement Policy"). More specifically, pursuant to the McKinsey Reimbursement Policy, professionals seek reimbursement for expenses over thirty-five dollars (\$35) that (i) have been charged on a McKinsey-provided corporate credit card or are reflected in a receipt, and (ii) in the case of lodging, are reflected in a receipt. For amounts under thirty-five dollars (\$35), professionals seek reimbursement when exact amounts are submitted, with or without a receipt. Pursuant to the policy, the Proposed Professionals (or the members of the Engagement Team on their behalf) maintain detailed documentation of their professionals' actual and necessary costs and expenses, including during the course of chapter 11 cases.

18. Consistent with the scope of services to be provided by the Engagement Team, the WLB Debtors and RTS negotiated and agreed upon the Fee and Expense Structure described above. I believe that the Fee and Expense Structure is reasonable and market-based and consistent with RTS's normal and customary billing levels for comparably sized and complex cases, both in and out of court, involving the services the Engagement Team was engaged to provide to the WLB Debtors. To the best of my knowledge, the compensation arrangement reflected herein is typical of arrangements entered into by other advisory firms rendering similar services to clients such as the WLB Debtors.

19. Pursuant to the Prepetition Agreement, the WLB Debtors paid RTS a retainer in the amount of \$1,500,000 (the "Retainer") on August 1, 2018 in connection with prepetition services to be performed by RTS. The Prepetition Agreement further provided that the WLB Debtors would pay RTS the amount of \$325,000 per week in exchange for the services set forth there-

in. On or about September 17, 2018, the parties entered into an oral agreement (the “Oral Agreement”) to increase the weekly compensation payable to RTS to \$480,000 based upon additional services related to a bottom-up planning analysis that RTS agreed to provide. Accordingly, pursuant to the Prepetition Agreement, RTS was paid \$325,000 per week for the period from July 23, 2018 through and including September 16, 2018, and pursuant to the Oral Agreement, RTS was paid \$480,000 per week from September 17, 2018 through and including October 5, 2018.

20. RTS periodically invoiced the WLB Debtors for prepetition services. The Retainer was applied to RTS’s prepetition invoices in accordance with the table set forth below, and such payments were used to replenish the Retainer. As of the Petition Date, the Retainer balance was \$1,500,000.

21. During the ninety (90) days prior to the Petition Date, the WLB Debtors paid RTS a total of \$5,540,000 (inclusive of the Retainer and reimbursable expenses), in connection with prepetition services, as set forth below.

Date of invoice	Date of payment receipt	Description	Transaction Type	Billed	Payment/Application	Fee Advance Balance
July 27, 2018	August 1, 2018	Fee Advance	ACH		\$1,500,000	\$1,500,000
August 29, 2018	September 17, 2018	Services through 7/27/2018	Bill	\$325,000	-\$325,000	\$1,175,000
August 29, 2018	September 17, 2018	Services through 8/3/2018	Bill	\$325,000	-\$325,000	\$850,000
August 29, 2018	September 17, 2018	Services through 8/10/2018	Bill	\$325,000	-\$325,000	\$525,000
August 29, 2018	September 17, 2018	Services through 8/17/2018	Bill	\$325,000	-\$325,000	\$200,000
August 29, 2018	September 17, 2018	Fee Advance	ACH		\$1,300,000	\$1,500,000
September 21, 2018	October 5, 2018	Services through 8/24/2018	Bill	\$325,000	-\$325,000	\$1,175,000
September 21, 2018	October 5, 2018	Services through 8/31/2018	Bill	\$325,000	-\$325,000	\$850,000
September 21, 2018	October 5, 2018	Services through 9/7/2018	Bill	\$325,000	-\$325,000	\$525,000
September 21, 2018	October 5, 2018	Services through 9/14/2018	Bill	\$325,000	-\$325,000	\$200,000
October 3, 2018	October 5, 2018	Services through 9/21/2018	Bill	\$480,000	-\$480,000	-\$280,000
October 3, 2018	October 5, 2018	Services through 9/28/2018	Bill	\$480,000	-\$480,000	-\$760,000
October 3, 2018	October 5, 2018	Services through 10/5/2018	Bill	\$480,000	-\$480,000	-\$1,240,000
September 21, 2018	October 5, 2018	Fee Advance	ACH		\$1,300,000	\$60,000
October 3, 2018	October 5, 2018	Fee Advance	ACH		\$1,440,000	\$1,500,000

22. To the best of my knowledge, none of the Proposed Professionals received any other payments from the WLB Debtors during the ninety (90) days immediately preceding the

Petition Date. The Retainer shortfall for the prepetition work noted above resulted from delays of days or weeks in payments or invoicing for work performed by RTS. To resolve preference issues, RTS disclosed the shortfall and subsequently returned \$1,240,000 to the relevant Debtor in December 2018.

23. As of the Petition Date, the WLB Debtors owed RTS \$96,000 in fees and expenses incurred prior to the Petition Date (the “Prepetition Balance”).<sup>6</sup> RTS previously agreed to waive the Prepetition Balance.

24. To the best of my knowledge, the Proposed Professionals have not shared or agreed to share any of their compensation from the WLB Debtors with any other person, other than as permitted by section 504 of the Bankruptcy Code. Specifically, all of the Proposed Professionals (except for McKinsey India) are party to an intercompany agreement governing the computation of fees for engagements where, as here, consultants from multiple McKinsey entities serve a client. A particular entity’s fees are computed as the product of the actual hours and rates worked by its various consultants on the engagement, along with the related reimbursable expenses, and the entity’s share of any overall surplus or deficit in connection with the engagement. McKinsey India provides research related services to McKinsey US at cost plus basis in relation to the particular engagement.

### **Record Keeping and Fee Applications**

25. Following their retention and subject to any order of this Court, the Proposed Professionals intend to apply to this Court for allowance of compensation for professional services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the guidelines es-

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<sup>6</sup> Specifically, the Prepetition Balance is comprised of fees for services provided and expenses incurred by the Proposed Professionals on behalf of the WLB Debtors as of October 8, 2018.

tablished by the United States Trustee, and any other applicable procedures and orders of the Court.

26. The Proposed Professionals' fee application will include time records setting forth, in reasonable detail, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the WLB Debtors. The Engagement Team was instructed to maintain, and will file, contemporaneous time records in one-tenth hour (.1) increments. The Proposed Professionals are also required to maintain detailed records of any actual and necessary costs and expenses incurred in connection with the services as discussed above.

#### **Indemnification Provisions**

27. As part of the overall compensation payable to the Proposed Professionals under the terms of the Engagement Letter, the WLB Debtors have agreed to certain indemnification and contribution provisions described in the Engagement Letter (the "Indemnification Provisions"). Subject to the terms of the Order, the Indemnification Provisions provide that the WLB Debtors will indemnify, hold harmless, and defend RTS (including its past, present, and future affiliates) and each of their directors, officers, managers, shareholders, partners, members, employees, agents, representatives, advisors, and controlling persons (each, an "Indemnified Party," and collectively, the "Indemnified Parties") against liabilities arising out of (directly or indirectly) the Engagement Letter and/or RTS's retention by the WLB Debtors in these chapter 11 cases, except for any liabilities judicially determined by a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of any of RTS or the other Indemnified Parties in connection with the services provided under the Engagement Letter. In addition, if indemnification or reimbursement obligations are held to be unavailable by any court (other than

in circumstances where a court determines that liability is from the willful misconduct or gross negligence of the Indemnified Party), the Engagement Letter allocates contribution obligations based on the relative benefits and faults of RTS and the WLB Debtors. The Engagement Letter further sets forth that RTS's aggregate liability shall be no more than the amount of its fees actually received under the Engagement Letter.

28. Notwithstanding the foregoing, to the best of my knowledge, no Indemnified Party is intending to seek reimbursement or indemnification from the WLB Debtors for any fees or expenses of legal counsel incurred in connection with the Proposed Professionals' retention by the WLB Debtors in these chapter 11 cases.

#### **Houston Disclosure Protocol**

29. In February 2019, following a global mediation in these cases, RTS and the WLB Debtors entered into an agreement (the "Mediation Agreement"). Pursuant to the Mediation Agreement, the WLB Debtors stated their belief that "McKinsey has provided unvarnished and independent advice to Westmoreland in these cases," and that they "ha[ve] observed no conflict [of interest] and believe[] that [they have] received unconflicted advice" from the Engagement Team. Mediator's Notice to Court, Ex. B at ¶ 2, Dkt. 1406. Under the terms of the Mediation Agreement, RTS agreed to retain an expert to work with it to develop new disclosure procedures and to apply such new procedures in these chapter 11 cases. *Id.* ¶ 3. The agreement provided that, once the Proposed Professionals prepared new disclosures, the WLB Debtors would seek Court approval of their retention. *Id.* Pending completion of this process, the Proposed Professionals have not sought nor received any fees from the WLB Debtors for services performed during the WLB Debtors' chapter 11 cases.

30. In accordance with the Mediation Agreement, RTS engaged D.J. (Jan) Baker to develop its new disclosure procedures. RTS later also engaged Berger Singerman LLP to assist Mr. Baker. The process undertaken by Mr. Baker and Paul Singerman and his colleagues to prepare such disclosure procedures was documented in periodic status reports filed with the Court and culminated in the Houston Disclosure Protocol, which was filed with this Court on May 31, 2019.

31. To the best of my knowledge, the Proposed Professionals have followed the guidance in the Protocol to generate the disclosures set forth herein. The process used by the Proposed Professionals to follow the Houston Disclosure Protocol is set forth in the Declaration of Dmitry Krivin in Support of this Application and the report of Ernst & Young LLP attached thereto.

*[Remainder of page left intentionally blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: July 3, 2019  
Houston, TX

By: /s/ Mark W. Hojnacki

Mark W. Hojnacki  
Practice Leader