

No. 26-5083

**IN THE
SUPREME COURT OF THE UNITED STATES**

LARRY GILBERG,
Petitioner,

v.

POWER ARCHITECTS CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeal of California, Sixth Appellate District

**SUPPLEMENTAL BRIEF OF PETITIONER
PURSUANT TO RULE 15.8**

LARRY GILBERG
Petitioner, Pro Se
221 Meridian Avenue, #408
Miami Beach, FL 33139
(408) 472-6859
larrygilberg@comcast.net

RECEIVED

SEP 23 2026

**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

SUPPLEMENTAL BRIEF OF PETITIONER

Petitioner submits this supplemental brief under Rule 15.8 to call the Court's attention to two intervening matters not available when the Petition was filed on June 27, 2026.

THE INTERVENING FEDERAL PROCEEDING

On August 26, 2026, Petitioner commenced *Gilberg v. American Arbitration Association, Inc., et al.*, No. 3:26-cv-08930-TSH, in the United States District Court for the Northern District of California. The action places directly before a federal court the antecedent question underlying the third Question Presented: whether a private arbitral tribunal possessed authority to adjudicate federal property interests that the tribunal itself found had entered a federal bankruptcy estate, to adjudicate the effect of federal criminal-forfeiture proceedings under 21 U.S.C. § 853 upon those interests, and to use those determinations as predicates for shareholder status, corporate authority, and the resulting monetary award. See Supp. App. ¶¶ 1–5, 9–13, 47–49.

The intervening action does not establish that Petitioner now has the federal forum whose absence the third Question addresses. Whether the District Court may reach the antecedent federal-authority question notwithstanding the already-confirmed California judgment is itself unresolved. The intervening proceeding thus does not eliminate the forum problem presented by the third Question; it places that problem directly before a federal court for the first time.

THE BANKRUPTCY COURT'S JULY 8, 2026 STATEMENTS AND SEPTEMBER 2, 2026 ORDER

The second intervening matter arises in the bankruptcy case itself. Petitioner moved to reopen *In re Kesel*, No. 10-41653 (Bankr. N.D. Cal.). At the hearing on July 8, 2026, the Bankruptcy Court stated on the record, in substance, that the Chapter 11 case had been dismissed without any further action and had not adjudicated anyone's rights with respect to the Power Architects shares; that the shares had not been formally abandoned, because they had never been listed; that the case had ended without the assets being accounted for, administered, or

abandoned; and that the bankruptcy court does not retain jurisdiction or power to act with respect to them. (Bankr. Dkt. 112, audio recording of July 8, 2026 hearing.) The court denied reopening by order entered September 2, 2026. (Bankr. Dkt. 120.) Petitioner's motion to alter or amend that order and his appeal from it are pending. (Bankr. Dkt. 123, 126.) No certified transcript has yet been prepared; the foregoing summarizes the recorded proceedings and does not purport to quote them.

The arbitral panel supplied the federal property consequence that the bankruptcy proceeding itself did not adjudicate. It found that the shares had been property of the estate, selected 11 U.S.C. § 349(b)(3) as controlling their disposition upon dismissal, concluded that they had reverted in Kesel, and construed the dismissal order as not having "order[ed] otherwise." Pet. App. G-1 (Award p. 44). The court that entered the dismissal order has now stated that the bankruptcy case made no determination concerning rights in the shares and that it retains no power to make one.

WHY IT BEARS ON THE PETITION

The significance of the intervening proceeding is sharpened by the California Court of Appeal's disposition. In the companion appeal decided with the judgment below, *Kolchinsky v. Power Architects Corp.*, No. H052610 (Cal. Ct. App. Feb. 17, 2026), the court stated that the arbitral tribunal "did not decide in the first instance whether Kesel's shares should be forfeited to the federal government [or] whether Kesel's shares should be included in a bankruptcy estate." It recognized that the tribunal was nonetheless "assessing whether Kesel's shares had in fact been forfeited," and characterized the resulting determination as "a mixed question of fact and law, which we may not review for error."

The federal action is therefore not presented as a second opportunity to obtain review of a federal question the California courts adjudicated. It presents the antecedent federal-authority

question the California appellate court did not review on the merits: whether the private tribunal possessed authority to make the federal property-status determinations that supplied predicates for a monetary judgment the California courts nonetheless confirmed and enforced, while holding that the resulting mixed question of fact and law could not be reviewed for error. Those determinations were not advisory. The federal complaint alleges that without Kesel's approximately 34.62% interest, the largest remaining shareholder held approximately 35%, short of the fifty-one percent the shareholders' agreement requires for shareholder action, so that Kesel's votes supplied the corporate authority by which the arbitration was prosecuted and the \$5,295,929 judgment obtained. See Supp. App. ¶¶ 2, 13.

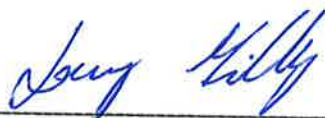
Taken together, the intervening matters present the circumstance the third Question describes. The only tribunal to have determined the federal consequence of the omitted shares is the private panel. The bankruptcy court has stated that its case adjudicated nothing concerning them and that it retains no power to act. The state courts have held the panel's determination unreviewable for error, and whether the District Court may reach the question remains unresolved. Petitioner submits the intervening matters solely for consideration of the third Question Presented. He does not ask the Court to adjudicate the allegations of the federal complaint, to consider either matter as evidence bearing on the merits of the judgment below, or to await any further ruling.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: September 21, 2026

Respectfully submitted,



LARRY GILBERG, Petitioner, Pro Se

221 Meridian Ave. #408, Miami Beach, FL 33139, (408) 472-6859; larrygilberg@comcast.net

No. 26-5083

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY GILBERG,
Petitioner,

v.

POWER ARCHITECTS CORPORATION,
Respondent.

SUPPLEMENTAL APPENDIX
TO THE SUPPLEMENTAL BRIEF OF PETITIONER
PURSUANT TO RULE 15.8

INDEX TO THE SUPPLEMENTAL APPENDIX

The Supplemental Appendix reproduces the intervening federal complaint described in the Supplemental Brief. It is supplied solely to identify the precise nature and scope of that intervening proceeding, not to supplement the record below or to invite adjudication of its allegations.

Complaint for Declaratory Relief and Damages, *Gilberg v. American Arbitration Association, Inc., et al.*, No. 3:26-cv-08930-TSH (N.D. Cal.), filed August 26, 2026 (Docket No. 1)
(file-stamped, 116 pages) Supp. App. 1

SUPPLEMENTAL APPENDIX

Complaint for Declaratory Relief and Damages
Gilberg v. American Arbitration Association, Inc., et al.
No. 3:26-cv-08930-TSH (N.D. Cal.)
Filed August 26, 2026

FILED

AUG 26 2026

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

①
pai
ISS.

LARRY GILBERG

221 Meridian Ave. #408

Miami Beach, FL 33139

Telephone: (408) 472-6859

Email: larrygilberg@comcast.net

Party in Interest, Self-Represented (In Pro Per)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

LARRY GILBERG,

Plaintiff,

v.

AMERICAN ARBITRATION

ASSOCIATION;

FRANCIS J. BURKE, JR.;

HON. CHRIS COTTLE (RET.);

GILDA R. TURITZ;

ALEXANDER MEDNIK;

MARK KESEL; and DOES 1-20,

Defendants.

CV26 08930

Case No.: _____

RELATED PROCEEDINGS:

TSH

United States v. ADLS and Mark Kesel,

Case No. CR-00-40242 CW

In re Mark Kesel, Case No. 10-41653

(N.D. Cal. Bankr.)

**COMPLAINT FOR DECLARATORY
RELIEF AND DAMAGES;**

DEMAND FOR JURY TRIAL

NOTE ON EXHIBITS

The exhibits cited herein are identified in the Index of Exhibits appended to this Complaint, which also shows, where applicable, the corresponding exhibit number assigned in Plaintiff's Motion to Reopen Chapter 11 Case, In re Mark Alexander Kesel, No. 10-41653 WJL (Bankr. N.D. Cal.), Doc. 106 (June 22, 2026). No exhibits are attached to this Complaint at this time; all exhibits cited will be produced in discovery or filed as the Court directs.

PRELIMINARY STATEMENT

1. This action does not ask this Court to correct an ordinary arbitral error. It presents a threshold question of constitutional and statutory authority: whether a private tribunal, whose authority arose solely from a shareholders agreement, could determine ownership and company voting rights of one of four shareholders, Mark Kesel, in property that the tribunal itself found had entered a federal bankruptcy estate, and could adjudicate whether that property had been forfeited or remained subject to a federal criminal-forfeiture order. It further presents whether that private tribunal could derive from the same Agreement authority to alter or waive California statutory protections that the California Legislature expressly prohibited a shareholders' agreement from altering or waiving, including Corporations Code § 500 and Chapter 15 commencing with § 1500.

2. Kesel's status was not an abstraction. Without his approximately 34.62% interest, Mednik held approximately 35% — short of the fifty-one percent the Agreement requires for shareholder action. Kesel's votes therefore supplied the corporate authority by which Plaintiff was removed as an officer and director in February 2019, by which Power Architects prosecuted the claims against him in the arbitration, and by which the \$5,295,929.04 judgment now enforced against him was obtained. Whether those votes existed depended upon the federal property determinations described below.

3. The three-member American Arbitration Association ("AAA") Panel found: "On February 16, 2010, Kesel filed a Chapter 11 petition in the U.S. Bankruptcy Court, Northern District of California, Case No. 10-41653, signing the petition under penalty of perjury. At the time that he filed his petition, Kesel owned PA shares but did not list them on the petition's Schedule B."

1 (EXHIBIT 1, Award p. 43.) The Panel further found that those shares became property of the
2 bankruptcy estate under 11 U.S.C. § 541 notwithstanding the omission. It then selected 11 U.S.C.
3 § 349(b)(3), declined the competing effect urged under 11 U.S.C. § 554(d), treated the shares as
4 having reverted in Kesel, and declared him a legitimate shareholder with voting, dividend, and
5 corporate-control rights. Those federal determinations supplied essential predicates for the Award.

6 4. The Panel also adjudicated Plaintiff's claims arising from Kesel's federal criminal proceedings.
7 Plaintiff alleged that Kesel fraudulently concealed his participation in the ADLS criminal
8 enterprise before executing the August 21, 1998 Shareholders' Agreement and that his asserted
9 ownership interests were affected by the federal criminal forfeiture proceedings. The Panel
10 determined that Plaintiff failed to establish fraudulent concealment, concluded that Plaintiff failed
11 to establish federal forfeiture, and recognized Kesel as a legitimate shareholder. Those
12 determinations became essential predicates for the Award's ownership, voting-rights, dividend,
13 valuation, and damages determinations.

14 5. In reaching those conclusions, the Panel determined that Plaintiff had failed to prove that Kesel
15 knew in July 1998 that he was engaged in the illegal sale of controlled substances before signing
16 the August 21, 1998 Shareholders' Agreement. Yet Kesel had previously entered a binding federal
17 guilty plea admitting that "[b]etween 1998 and 2000 (inclusive), ADLS sales of chemicals and
18 equipment to customers ADLS knew or had reasonable cause to believe would use them to
19 manufacture controlled substances generated approximately \$11,748,771 in gross sales."

20 (EXHIBIT 2.) That admitted period encompasses the date on which Kesel signed the August 1998
21 Shareholders' Agreement. Plaintiff does not ask this Court to determine whether the Panel
22 correctly evaluated that evidence or whether the guilty plea conclusively established Kesel's
23 knowledge in July or August 1998. Rather, Plaintiff alleges that the Panel lacked constitutional
24 and statutory authority to adjudicate those federal criminal and forfeiture issues as predicates to
25 recognizing Kesel as a lawful shareholder.

26 6. The Panel also adjudicated Gilberg's contention that Kesel's shares were subject to the criminal
27 forfeiture proceedings in *United States v. Kesel*, No. CR-00-40242 CW. It concluded that Gilberg
28 had not carried his burden to establish forfeiture, and it adopted the October 23, 2007 transfer

1 from Oleg Sagodeev to Kesel as the controlling \$9.00-per-share benchmark. (EXHIBIT 1, Award
 2 p. 59.) That transfer occurred before Kesel's federal probation term ended on February 4, 2008
 3 (EXHIBIT 38), and Kesel testified that he "didn't pay a penny" for the shares. The Panel
 4 nonetheless applied the \$9.00 figure as Gilberg's price per share to characterize payments to
 5 Gilberg as purchases of 46,055 shares, reducing his holding from his 48,500 actual shares to
 6 2,445 — a 95% reduction in his PA equity. (EXHIBIT 1, Award p. 59.)

7 7. The issue is not whether the Panel's federal-law conclusions were correct. The issue is whether
 8 a private arbitration agreement limited to disputes concerning rights under that agreement
 9 empowered the Panel to bind or displace federal interests belonging to a bankruptcy estate, a
 10 trustee, or the United States. Neither the bankruptcy estate nor the United States was a party to the
 11 shareholders agreement or the arbitration.

12 8. Plaintiff recognizes that arbitral immunity is broad. He pleads facts designed to distinguish
 13 protected adjudicative error from conduct in the clear absence of arbitral authority: conscious
 14 selection among competing federal property statutes; adjudication of a federal forfeiture defense;
 15 use of those determinations as indispensable predicates for ownership and damages; and
 16 administrative continuation of the proceeding after repeated notice that the disputed property
 17 interests belonged to non-consenting federal entities and were reserved to federal forums.

18 THE ABSENT FEDERAL AND CONTRACTUAL INTERESTS WERE NEVER 19 ADJUDICATED

20 9. The jurisdictional problem operates in both directions. The bankruptcy estate, any trustee, and
 21 the United States were not parties to the arbitration, received no notice of it, and were represented
 22 there by no one. Conversely, Plaintiff was a stranger to Kesel's 2010–2011 Chapter 11
 23 proceeding as to the undisclosed PA interest: Kesel omitted his PA shares from Schedule B and
 24 the Shareholders' Agreement from Schedule G, Power Architects did not appear on the notice
 25 matrix, and neither Plaintiff nor PA received notice of the bankruptcy case or its dismissal. Due
 26 process ordinarily does not permit an adjudication to bind persons whose interests were neither
 27 before the tribunal nor adequately represented. *Richards v. Jefferson County*, 517 U.S. 793, 795
 28

1 (1996) (quoting *Hansberry v. Lee*, 311 U.S. 32, 37 (1940)). A judgment “does not conclude the
2 rights of strangers to those proceedings.” *Id.* at 798 (quoting *Martin v. Wilks*, 490 U.S. 755, 762
3 (1989)).

4 10. The nondisclosure implicated Plaintiff’s own contractual interests. Optional Provision 16 of
5 the omitted Agreement provided that upon the specified bankruptcy event the affected shareholder
6 “shall cease to be a Shareholder,” would thereafter be considered in equity “a vendor to the
7 Corporation,” and subjected the affected interest to sequential purchase rights running first to PA
8 and then to the remaining shareholders, including Plaintiff. (EXHIBIT 4.) Plaintiff alleges that
9 those contractual rights constituted state-law property interests. *See Logan v. Zimmerman Brush*
10 *Co.*, 455 U.S. 422, 429 (1982) (“a cause of action is a species of property protected by the
11 Fourteenth Amendment’s Due Process Clause”); *id.* at 430 (the “hallmark of property” is “an
12 individual entitlement grounded in state law, which cannot be removed except ‘for cause’”).
13 Because the shares and Agreement were undisclosed, neither the Bankruptcy Court nor the
14 persons entitled to invoke those contractual rights were presented with the opportunity to address
15 their effect upon Kesel’s interest.

16 11. Plaintiff does not contend that OP 16 necessarily divested Kesel of his shares as a matter of
17 federal bankruptcy law, that Plaintiff’s absence invalidated the dismissal, or that dismissal failed
18 to produce whatever consequences federal law independently assigns to it. The narrower point is
19 that neither the concealed PA shares, the omitted Agreement, nor Plaintiff’s resulting contractual
20 interests received a property-specific adjudication in the Chapter 11 proceeding. Section 349(b)
21 itself provides for its stated consequences “[u]nless the court, for cause, orders otherwise.”

22 Whether the undisclosed shares, the Agreement governing them, or the rights implicated by their
23 concealment warranted different treatment was never presented to the Bankruptcy Court.

24 12. The same nonparty principle applies in the opposite direction to the later arbitration.
25 Plaintiff’s absence from the bankruptcy proceeding could not convert that proceeding’s silence
26 concerning undisclosed property into an adjudication against his contractual rights;
27 correspondingly, the absence of the estate, any trustee, and the United States from the arbitration
28 could not convert the Award into an adjudication binding their independent federal interests.

1 *Richards* recognizes that barring an independent claim may itself deprive its holder of a “chose in
 2 action, which we have held to be a protected property interest in its own right.” 517 U.S. at 804
 3 (citing *Logan*, 455 U.S. at 429–30). Plaintiff alleges that the estate’s claim concerning the
 4 continuing status of undisclosed property under 11 U.S.C. § 554(d) is such an interest, and no
 5 tribunal in which the estate or a trustee appeared has adjudicated it.

6 13. Plaintiff alleges that the Panel nevertheless supplied the property-status determinations those
 7 absent proceedings had not made: it found that Kesel’s shares entered the bankruptcy estate under
 8 § 541, selected § 349(b)(3) over the competing effect asserted under § 554(d), treated the shares
 9 as revested in Kesel, separately rejected Plaintiff’s federal-forfeiture position, and then recognized
 10 Kesel as a “legitimate shareholder” whose ownership and voting authority became predicates to
 11 the Award. The issue presented here is therefore not whether those determinations were correct,
 12 but whether a private tribunal could give binding effect to determinations concerning federal and
 13 contractual interests that had never been adjudicated in a proceeding in which the persons or
 14 entities owning those interests were present or adequately represented.

15 16 NATURE OF THE ACTION

17 14. Plaintiff seeks declarations defining the legal effect of the Award on interests that were not
 18 parties to the arbitration: the bankruptcy estate in *In re Mark Alexander Kesel*, No. 10-41653
 19 WJL, any trustee appointed in that case, and the United States in *United States v. Kesel*, No. CR-
 20 00-40242 CW.

21 15. Plaintiff seeks a declaration that the Award cannot bind the bankruptcy estate, a trustee, the
 22 United States, or the federal courts on whether the PA shares were estate property, remained
 23 estate property, constituted forfeitable proceeds, were transferred through third parties, or were
 24 reachable as substitute property.

25 16. Plaintiff further seeks a declaration that Optional Provision 21 did not authorize the Panel to
 26 bind or displace the independent federal property interests of the bankruptcy estate, a trustee, or
 27 the United States, and that the Panel’s resolution of those questions as predicates — to declaring
 28 Kesel a legitimate shareholder, recognizing his votes, selecting the \$9-per-share benchmark, and

1 imposing monetary liability against Plaintiff — did not constitute a first-instance federal
2 adjudication binding upon those absent interests.

3 17. Plaintiff seeks a declaration that Defendants may not represent or invoke the Award as having
4 finally adjudicated the rights of the bankruptcy estate, a trustee, or the United States, together
5 with such further necessary or proper relief as 28 U.S.C. § 2202 permits. Plaintiff does not request
6 an order directing the bankruptcy court or the criminal court how to decide the underlying federal-
7 property questions.

8 18. In the alternative, and only if Defendants are deemed to have acted under color of state law
9 through compulsion, confirmation, and interstate enforcement of the Award, Plaintiff alleges
10 deprivation of property without a constitutionally adequate tribunal and procedure under 42
11 U.S.C. § 1983.

12 19. Plaintiff also pleads state-law claims in the alternative: against AAA concerning non-
13 adjudicative case administration, against the Arbitrator Defendants for acts alleged to fall outside
14 protected arbitral jurisdiction, and against the private-party Defendants for allegedly concealing
15 material federal-property facts. These claims are subject to the Court's determination of
16 immunity, preclusion, timeliness, and supplemental jurisdiction.

17 18 PARTIES

19 20. Plaintiff Larry Gilberg is a resident of Florida, holds a B.S. in Electrical Engineering from the
20 University of Illinois, pursued graduate studies toward an M.S., and is a founding shareholder,
21 serving as CEO of PA from 1997 through 2019. Plaintiff was a respondent and counterclaimant in
22 AAA Case No. 01-20-0015-0897, consolidated with AAA Case No. 01-21-0002-0117.

23 21. Defendant American Arbitration Association, Inc. is a nonprofit corporation that administered
24 the arbitration. AAA maintained the case file, administered appointment procedures, collected
25 fees, transmitted the parties' communications and submissions, and performed administrative
26 functions in connection with the proceeding.

27 22. Defendant Francis J. Burke, Jr. served as a Panel member. On information and belief, Burke
28 previously served as a federal prosecutor and possessed substantial experience with federal

1 economic-crime and forfeiture matters.

2 23. Defendant Hon. Chris Cottle (Ret.) served as a Panel member and is a retired California
3 judicial officer.

4 24. Defendant Gilda R. Turitz served as Chair of the Panel and signed the Interim and Final
5 Awards.

6 25. Defendant Mark Kesel is, on information and belief, a resident of California. He was the
7 debtor in In re Mark Alexander Kesel, No. 10-41653 WJL (Bankr. N.D. Cal.), a claimant in the
8 arbitration, and is a person who presently asserts ownership of the Power Architects shares that
9 are the subject of the federal estate-property question described herein. He is named as a
10 defendant to Counts I through III because he asserts, and continues to assert, that the Award
11 conclusively established his ownership of those shares, and to Counts VIII and IX.

12 26. Defendant Alexander Mednik is, on information and belief, a resident of California. He was a
13 claimant in the arbitration and a member of the Power Architects board of directors at all relevant
14 times. He is named as a defendant to Counts I through III because he asserts, and continues to
15 assert, the Award and the corporate actions predicated upon Kesel's asserted shareholder status,
16 and to Counts VIII and IX.

17 27. Plaintiff names Kesel and Mednik as defendants to Counts I through III because they are the
18 persons who assert the Award against Plaintiff and who would resist a declaration concerning its
19 effect in federal fora. As to those Counts, Plaintiff seeks declaratory relief only and no damages.
20 Plaintiff does not ask this Court to review or set aside the California judgment as to them, and
21 does not relitigate any question actually decided by the California courts. Any damages sought
22 from Kesel or Mednik are sought solely under Counts VIII and IX, which are pleaded in the
23 alternative.

24 28. Plaintiff does not presently know the names and capacities of DOES 1-20 and will amend
25 when permitted.

26 27 JURISDICTION

28 29. This Court has federal-question jurisdiction under 28 U.S.C. § 1331. Plaintiff's claims arise

1 under federal law, including 28 U.S.C. § 1334(e)(1) and its allocation of exclusive jurisdiction
2 over property of a bankruptcy estate, the federal courts' retained authority in *United States v.*
3 *Kesel*, No. CR-00-40242 CW, and, pleaded in the alternative, 42 U.S.C. § 1983. Plaintiff does not
4 assert a private right of action under 21 U.S.C. § 853 or under 18 U.S.C. §§ 152 or 3284.

5 **30.** Sections 2201 and 2202 of Title 28 supply a remedy rather than an independent basis of
6 jurisdiction. Plaintiff invokes them for the declaratory relief sought in Counts I through III,
7 jurisdiction over which rests upon 28 U.S.C. §§ 1331 and 1334.

8 **31.** The Federal Arbitration Act does not independently confer federal jurisdiction. Plaintiff
9 therefore relies on the federal questions appearing on the face of this Complaint, including the
10 asserted legal effect of 28 U.S.C. § 1334(e)(1), the federal courts' retained authority in the
11 criminal forfeiture proceeding, and the constitutional claim pled in the alternative.

12 **32.** The district court in which a bankruptcy case is commenced has exclusive jurisdiction of
13 property of the debtor and property of the estate as of commencement. 28 U.S.C. § 1334(e)(1).
14 The bankruptcy court acts by reference from this Court under 28 U.S.C. § 157.

15 **33.** Judge Wilken's Final Order of Forfeiture vested title in the United States to the property
16 ordered forfeited and expressly retained jurisdiction to enforce the Order.

17 **34.** This Court also has supplemental jurisdiction over Plaintiff's state-law claims under 28 U.S.C.
18 § 1367(a) because those claims are so related to the claims within this Court's original federal
19 jurisdiction that they form part of the same case or controversy under Article III of the United
20 States Constitution. The state-law claims arise from the same arbitration, the same Shareholders'
21 Agreement, the same challenged federal-property determinations, and the same alleged conduct
22 and resulting injury described in this Complaint.

23 **35.** The state-law claims do not predominate over the federal claims within the meaning of 28
24 U.S.C. § 1367(c)(2), and do not raise novel or complex issues of State law within the meaning of
25 § 1367(c)(1). Counts I through III arise under federal law and are independently within this
26 Court's original jurisdiction; the state-law claims are pleaded in the alternative and depend upon
27 the same federal property determinations. Considerations of judicial economy, convenience,
28 fairness, and comity favor retaining supplemental jurisdiction.

DIVISIONAL ASSIGNMENT

36. Divisional assignment to the Oakland Division is proper under Civil Local Rules 3-2(c) and 3-5(b). A substantial part of the events and omissions giving rise to the claims occurred in Alameda County and elsewhere within the Northern District of California, including the related federal criminal proceeding in Oakland and the administration of the related bankruptcy case in this District. The place of arbitration was also deemed to be San Mateo, California. (EXHIBIT 1, Award p. 3.) Plaintiff requests assignment to the Oakland Division.

VENUE

37. Venue is proper under 28 U.S.C. § 1391 because PA is located in this District, substantial events occurred here, the arbitration was deemed seated in California, the related bankruptcy and criminal cases were filed in the Northern District of California, and multiple Defendants reside or transact business here.

38. Plaintiff acknowledges that Defendants may invoke the Rooker-Feldman doctrine, claim and issue preclusion, arbitral immunity, the Anti-Injunction Act, the Federal Arbitration Act's limitations periods, and California litigation privileges. Plaintiff pleads that the relief sought is directed to independent federal interests and conduct, not appellate review of a state judgment. To the extent any requested remedy would improperly disturb the state judgment, Plaintiff seeks narrower declaratory relief defining what that judgment cannot bind: nonparties, the estate, a trustee, the United States, and federal courts exercising retained jurisdiction.

39. Plaintiff does not seek criminal penalties or private enforcement of federal criminal statutes. Any determination of criminal culpability or federal forfeiture belongs to the United States and to the federal courts. Those statutes are identified only to describe federal interests the Panel treated as predicates to shareholder status; they supply no cause of action here.

STANDING

40. Article III confines the federal courts to actual cases and controversies. "[T]he irreducible

1 constitutional minimum of standing contains three elements. First, the plaintiff must have suffered
2 an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and
3 particularized . . . and (b) ‘actual or imminent, not conjectural or hypothetical.’ . . . Second, there
4 must be a causal connection between the injury and the conduct complained of. . . . Third, it must
5 be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable
6 decision.’” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). *See also Clinton v. City*
7 *of New York*, 524 U.S. 417, 430 n.15 (1998) (a plaintiff “must allege personal injury fairly
8 traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the
9 requested relief”) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)).

10 41. Plaintiff alleges a concrete and continuing personal injury. An obligation of approximately
11 \$8.53 million is presently asserted and enforced against him, including through garnishment
12 proceedings in Miami-Dade County, Florida. The \$5,295,929.04 judgment portion includes
13 \$127,166.00 in arbitrator compensation and \$16,407.50 in AAA administrative fees assessed
14 against him. (EXHIBIT 60, Final Award p. 17.) Plaintiff alleges that the obligation rests upon an
15 Award for which Kesel’s status as a legitimate shareholder—and the voting authority derived
16 from that status—depended upon antecedent determinations concerning the federal status of
17 shares the Panel itself found became property of a bankruptcy estate.

18 42. Plaintiff is therefore not asserting a generalized interest in compliance with federal law or an
19 injury belonging only to the bankruptcy estate or the United States. He challenges determinations
20 used as predicates for an Award imposing liability directly upon him and presently being enforced
21 against his property. *Lujan* distinguishes such direct injury from cases in which “a plaintiff’s
22 asserted injury arises from the government’s allegedly unlawful regulation (or lack of regulation)
23 of someone else”; where the plaintiff is himself “an object of the action . . . at issue . . . there is
24 ordinarily little question that the action or inaction has caused him injury, and that a judgment
25 preventing or requiring the action will redress it.” 504 U.S. at 561–62. Plaintiff alleges direct
26 economic and property injury traceable to the challenged determinations and their use as
27 predicates for the Award.

28 43. Plaintiff’s standing is not defeated because a bankruptcy trustee or the United States may

1 possess separate interests or authority concerning the same property. “Once it is determined that a
 2 particular plaintiff is harmed by the defendant, and that the harm will likely be redressed by a
 3 favorable decision, that plaintiff has standing—regardless of whether there are others who would
 4 also have standing to sue.” *Clinton*, 524 U.S. at 434–35 (quoting *Bowsher v. Synar*, 478 U.S. 714,
 5 721 (1986)). Nor does Plaintiff purport to represent those absent interests. That distinction is
 6 material because due process ordinarily does not permit an adjudication to bind persons or
 7 interests that were neither parties nor adequately represented. *Richards v. Jefferson County*, 517
 8 U.S. 793, 795 (1996) (reaffirming *Hansberry v. Lee*, 311 U.S. 32, 37 (1940)); *id.* at 798 (a
 9 judgment ordinarily “does not conclude the rights of strangers to those proceedings”) (quoting
 10 *Martin v. Wilks*, 490 U.S. 755, 762 (1989)). Plaintiff therefore does not assert the estate’s or
 11 United States’ causes of action; he asserts his own concrete injury allegedly resulting from
 12 Defendants’ use of unresolved federal property-status determinations as predicates against him.
 13 **44.** Plaintiff does not rely upon 18 U.S.C. §§ 152 or 3284, or 21 U.S.C. § 853, as sources of a
 14 private cause of action, as substitutes for Article III injury, or as authority to prosecute or obtain
 15 forfeiture on behalf of the United States. Plaintiff does not seek a determination of criminal
 16 culpability or criminal punishment. Those statutes and the related federal proceedings are pleaded
 17 for a different and limited purpose: to identify federal interests and jurisdictional boundaries
 18 whose legal consequences Defendants allegedly determined or treated as resolved when
 19 establishing Kesel’s shareholder status, voting authority, and predicates to the Award.
 20 **45.** Plaintiff’s asserted federal injury arises from Defendants’ alleged use of those antecedent
 21 federal property-status determinations as predicates for an Award imposing liability directly upon
 22 him. Plaintiff does not ask this Court to vacate the Award, review it for legal error, reverse the
 23 California confirmation judgment, prosecute Kesel, order forfeiture, or **adjudicate claims**
 24 **belonging exclusively to the bankruptcy estate or the United States.** He seeks declaratory
 25 relief concerning whether Defendants possessed authority to make or give binding effect to the
 26 identified federal property-status determinations and what effect those determinations may have
 27 in federal fora on matters Congress committed to federal jurisdiction, including under 28 U.S.C. §
 28 1334(e)(1). Plaintiff alleges that a favorable declaration would redress his own injury by resolving

1 the asserted federal legal effect of predicates presently invoked against him, without requiring
2 appellate review or reversal of the state-court judgment. Specifically, Defendants presently assert
3 those determinations against Plaintiff in enforcement proceedings, including in Miami-Dade
4 County, Florida, and a declaration fixing their permissible federal effect would determine what
5 Defendants may assert concerning the federal status of the shares in this and other federal fora.

6 46. At the pleading stage, general factual allegations suffice. "At the pleading stage, general
7 factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion
8 to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary
9 to support the claim.'" *Lujan*, 504 U.S. at 561.

10 THE CONTROVERSY CONCERNS THE PANEL'S OWN ADJUDICATORY ACT

11 47. The controversy between Plaintiff and Defendants does not rest upon a position independently
12 asserted by Kesel concerning ownership of his shares. The challenged determination was made by
13 Defendants themselves: the Panel found that Kesel's PA shares became property of the
14 bankruptcy estate under 11 U.S.C. § 541, determined that they thereafter "reverted back in
15 ownership to Kesel," declined to give § 554(d) the effect urged by Respondents, and declared
16 Kesel a "legitimate shareholder." Those determinations supplied the predicates for the voting
17 rights, corporate authority, ownership consequences, and monetary liability imposed through the
18 Award.

19 48. The Bankruptcy Court never made that determination. Kesel omitted the shares from Schedule
20 B and the August 1998 Shareholders' Agreement from Schedule G, PA and its shareholders
21 received no notice of the Chapter 11 proceeding, and the case was dismissed without adjudicating
22 the undisclosed shares. Plaintiff does not contend that his own absence rendered the dismissal
23 ineffective. The point is narrower: neither his absence nor the Bankruptcy Court's silence
24 constituted an adjudication that the undisclosed shares revested in Kesel, and the express federal
25 determination came later, from the private Panel.

26 49. Defendants therefore cannot be characterized merely as disinterested former adjudicators from
27 whom Plaintiff seeks an advisory opinion concerning someone else's legal position. Plaintiff
28 challenges the legal authority of Defendants to have made their own federal estate-property

determinations, and the controversy concerns the permissible legal effect of those adjudications in federal fora in which Congress has prescribed jurisdiction over bankruptcy-estate property. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007). The effect of the subsequent California confirmation, the inapplicability of the Rooker-Feldman doctrine, and the analogy to *Stern v. Marshall* are addressed below.

FACTUAL ALLEGATIONS

POWER ARCHITECTS AND ITS SHAREHOLDERS ("PA")

50. PA is a closely held California corporation founded in 1997 that designs and manufactures custom power supplies for the semiconductor and high-technology industries. Throughout the events alleged herein, PA employed fewer than ten employees.

51. Plaintiff Larry Gilberg co-founded PA and served as its Chief Executive Officer from August 2, 1998 until February 7, 2019. During that period, PA's annual revenue increased from approximately \$139,000 to approximately \$9 million.

52. On August 15, 2022, PA was independently appraised at \$12,896,000 by Desmond, Marcello & Amster, LLC, an appraisal commissioned by PA's own counsel, Michael Martinovsky. (EXHIBIT 5.) That valuation represented approximately a 32-fold increase over the \$400,000 valuation of PA implied when Kesel and OSM invested \$100,000 in exchange for a 25% interest in 1998. (EXHIBIT 1, Award p. 31.)

53. Optional Provision 1 of the August Agreement allocated 15,300 shares to Kesel, approximately eleven percent of the shares there allocated. (EXHIBIT 4, OP 1.) The Panel found that on October 23, 2007, 14,089 additional shares were transferred from Sagodeev to Kesel. (EXHIBIT 1, Award p. 59.) Kesel testified that before 2018 he held approximately 35,250 shares. (EXHIBIT 6, Vol. IV, 874–875.)

54. After 2008, PA's four shareholders were Alexander Mednik, Mark Kesel, Larry Gilberg, and Alexander Kolchinsky.

55. The arbitration was two against two: Gilberg (25%) and Kolchinsky (approximately 5.38%) against Mednik (35%) and Kesel (approximately 34.62%). In addition to personal claims, Mednik

1 and Kesel filed claims on PA's behalf. Every individual claim asserted personally by either side
2 failed. The only claims producing the approximately \$5.3 million Award against Plaintiff were
3 claims asserted on behalf of PA by Mednik and Kesel. (EXHIBIT 1, Award p. 68.)

4 **56.** PA's IRS Forms 1120, Schedule G, for tax years 2018 through 2020 identify Mednik at 35%
5 and Gilberg at 25%; they do not separately identify Kesel or Kolchinsky. (EXHIBIT 7.) The
6 Panel's treatment of PA's returns is described below.

7 **57.** Distributions attributable to the concealed interest were not paid to Kesel as shareholder
8 dividends. They were routed through NeoVision, LLC, an entity Kesel owned and which he
9 testified performed no work for Power Architects, with invoices issued "in ... lieu of
10 distributions." (EXHIBIT 8, Kesel Dep. 119:25-120:18.)

11 **58.** The AAA Panel found, based upon Mednik's and Kesel's own sworn testimony, that "Mednik
12 left PA's employment in or around 2001 to work at Supertex (later Microchip), and Kesel was an
13 outside investor not actively involved in the business." (EXHIBIT 1, Award p. 15.)

14 15 THE SHAREHOLDERS' AGREEMENT

16 **59.** On August 21, 1998, the shareholders executed the Shareholders' Agreement governing their
17 contractual rights and obligations. PA itself became a party to that Agreement.

18 **60.** Optional Provision 13(a) requires a 51% majority vote of the shareholders to control corporate
19 affairs. Optional Provision 4(a) does not impose a 76% approval requirement; rather, it
20 presupposes action taken by holders of less than 76% of the outstanding shares and gives a
21 dissenting shareholder a 90-day election to require rescission or a buyout. Other provisions of the
22 Agreement, including Optional Provisions 6(b), 9, 18, and 24, expressly impose 76%
23 supermajority requirements.

24 **61.** The arbitration clause authorizes arbitration only of disputes concerning the parties' rights
25 under the Shareholders' Agreement. It contains no reference to the Bankruptcy Code, federal
26 criminal forfeiture statutes, bankruptcy estate administration, or any authority to adjudicate
27 ownership of property belonging to a bankruptcy estate or subject to federal criminal forfeiture.

28 **62.** The arbitration record establishes that the 76% supermajority requirement was specifically

1 negotiated to preserve Kesel's contractual blocking position despite his minority ownership.

2 63. Mednik testified: "So [Kesel] insisted that if we reduce his interest to 25 percent, then he
3 would need to have a 76 percent vote on the major decisions in that agreement." (EXHIBIT 9.)

4 64. Kesel testified: "Most important was 76 percent that we negotiated for shareholders to make
5 major decision." (EXHIBIT 10.)

6 65. Arbitrator Francis Burke observed: "You were effectively in a blocking position because you
7 had 25 percent and they had to have 76 percent." Kesel responded: "Right." (EXHIBIT 11.)

8 66. The 76% blocking power is not described in the Award, which states only that Gilberg held
9 25% according to PA's tax returns in 2016.

10 67. Power Architects is itself a signatory to the Agreement, not merely the subject of it. The
11 Agreement is made "between Power Architects, a Corporation organized in the state of California,
12 (the 'Corporation') and the six individual shareholders, each identified by name and address. The
13 signature block recites that "the individual parties hereto set their hands and seals, and the
14 Corporation has caused this agreement to be signed by its duly authorized officers and the
15 corporate seal affixed." It was executed on the Corporation's behalf by Plaintiff as Chief
16 Executive Officer and by Mednik as President, and attested by Plaintiff as Secretary. (EXHIBIT
17 4, signature page.) Optional Provision 32 states that "[t]he Corporation is authorized to enter into
18 this agreement by a resolution adopted by the shareholders and directors, dated August 1st, 1998."

19 68. The Agreement imposes obligations on the Corporation directly. Optional Provision 16
20 obligates the Corporation to elect whether to purchase an affected shareholder's interest within
21 forty-five days of a bankruptcy event, and provides that any resulting price "shall be considered a
22 debt owed by the Corporation to that Shareholder or his assignee or trustee." It provides that a
23 shareholder "shall cease to be a Shareholder and shall have no interest or liability in common with
24 the remaining Shareholders of Corporation property" upon any of six specified events, the first of
25 which is that the shareholder "[o]btains or becomes subject to an order or relief under the
26 Bankruptcy Code." It further provides: "From the date of any of the above events, the Shareholder
27 shall be considered in equity as a vendor to the Corporation of his share of the Corporation's
28 assets." (EXHIBIT 4, OP 16.)

69. Optional Provision 4(b) requires that shares first "be offered to the Corporation" before any transfer. Optional Provision 27 provides that the Agreement's terms "shall be binding upon and inure to the benefit of all the Shareholders, their estates, heirs, personal representatives, and assigns." The Corporation is therefore bound by the same instrument that defines the shareholders' voting thresholds and the consequences of a shareholder's bankruptcy.

70. Kesel's February 16, 2010 Chapter 11 petition constituted an order for relief under 11 U.S.C. § 301(b) and was therefore the first of the six specified events. Plaintiff does not allege here that Optional Provision 16 was ultimately enforceable against the bankruptcy estate, or that it operated to divest Kesel of his shares as a matter of federal law. Plaintiff alleges that the provision existed, that the 1998 Shareholders' Agreement was omitted from Kesel's Schedule G and his PA shares from his Schedule B, and that neither the Corporation nor its remaining shareholders had notice of the filing. (EXHIBIT 12.)

71. Plaintiff alleges that the contractual blocking position later attributed to Kesel became central to PA's asserted authority to prosecute claims against Plaintiff.

DISCOVERY OF THE BANKRUPTCY OMISSION

72. On February 7, 2019, Mednik and Kesel convened a shareholders' meeting and voted to eliminate Plaintiff's position as Chief Executive Officer. During that meeting, Plaintiff disclosed Kesel's omission of the PA shares from his bankruptcy schedules, read Optional Provision 16 aloud, and challenged Kesel's authority to vote. (EXHIBIT 14, p. 4.)

73. In January 2019, before that meeting, Plaintiff retained counsel Jeff Wiggs (EXHIBIT 13), who obtained Kesel's Chapter 11 bankruptcy file and discovered that Kesel had omitted his PA shares from Schedule B. (EXHIBIT 12.)

74. Before the meeting, Gilberg had also brought the ADLS money-laundering connection to the attention of the Board and the two remaining shareholders.

75. Mednik responded that the issue could be decided only "in a court of law." Kesel acknowledged: "You have a right to dispute it." Nevertheless, Mednik and Kesel counted Kesel's disputed vote and exercised corporate authority against Plaintiff. (EXHIBIT 14.)

76. Within days, Plaintiff was removed from PA's Citibank authority, and Mednik and Kesel

1 thereafter continued exercising corporate control, including control over corporate resources later
2 used to retain counsel and experts and prosecute PA's arbitration claims.

3 77. Eleven days after the February 7 meeting, Mednik and Kesel, through counsel, issued a cease-
4 and-desist letter asserting that they constituted the corporate majority and that their actions were
5 valid under the Shareholders' Agreement and California law. (EXHIBIT 15.)

6 78. Thus, the controversy concerning Kesel's federal property and voting status existed before
7 AAA was invoked and produced concrete consequences before any Award or state-court
8 judgment.

9 79. Plaintiff does not ask this Court to relitigate the California courts' conclusions concerning the
10 validity of those contractual corporate acts. He alleges them to establish the preexisting
11 controversy and its consequences, while the first-instance federal property-status questions
12 identified by the Court of Appeal remain unresolved.

13 WHY KESEL'S SHARES MATTERED

14 80. Plaintiff alleges that PA's authority to prosecute claims against him depended upon Kesel's
15 voting rights. Without Kesel's approximately 34.62% interest, Mednik held approximately 35%
16 — short of the fifty-one percent majority the Agreement defines for shareholder action, and far
17 short of the seventy-six percent supermajority — the 25% blocking position described by
18 Arbitrator Burke (EXHIBIT 11) — required by Optional Provisions 4(a), 6(b), 9, 18, and 24.

19 81. Every individual claim asserted personally by Mednik and Kesel failed. The only claims
20 producing the approximately \$5.3 million Award against Plaintiff were claims asserted on behalf
21 of PA by Mednik and Kesel. (EXHIBIT 1, Award p. 68.)

22 82. Plaintiff therefore alleges that the Award depended upon one indispensable determination: the
23 Panel's conclusion that Kesel was a "legitimate shareholder" entitled to vote his disputed shares
24 on PA's behalf.

25 83. Plaintiff alleges that the Panel's federal determinations were not isolated rulings on unrelated
26 issues, but a sequential chain leading to that indispensable predicate. The alleged jurisdictional
27 defect is therefore cumulative.

84. UNITED STATES v. ADLS, ET AL., CR-00-40242 CW (HON. CLAUDIA WILKEN) — KESEL AS NAMED CO-DEFENDANT.

85. The federal criminal records cited in this section were retrieved by Plaintiff from the National Archives at San Bruno in June of 2021, after the archived case file in United States v. Kesel, CR-00-40242 CW, was recalled to the Oakland Division at the request of Plaintiff; Kesel never disclosed any of them to Plaintiff, the PA Board, or any PA shareholder. (EXHIBIT 16.)

86. Mark Kesel — convicted federal criminal and ADLS managing partner. Between 1998 and 2000 inclusive — the exact period during which Kesel invested in PA — he was managing partner of All Discount Laboratory Supply (“ADLS”), a chemical distribution company of methamphetamine precursor chemicals. On December 8, 2003, Kesel personally signed under penalty of perjury the ADLS Plea Agreement in United States v. All Discount Laboratory Supply and Mark Kesel, et al., CR-00-40242 CW, in which ADLS — through Kesel as its managing partner — admitted:

87. “Between 1998 and 2000 (inclusive), ADLS sales of chemicals and equipment to customers ADLS knew or had reasonable cause to believe would use them to manufacture controlled substances generated approximately \$11,748,771 in gross sales to ADLS.” (EXHIBIT 2, ADLS Plea Agreement at p. 14, lines 16-26.)

88. Kesel personally affirmed those representations. On December 8, 2003, he signed the ADLS Plea Agreement as ADLS’s authorized representative and managing partner, certified that he had read and carefully reviewed the Agreement, and affirmed that its representations were “true to the best of my knowledge and belief.” The Agreement further provided that it was an express package deal that would take effect only if co-defendants Kesel and Kotlyarenko each pleaded guilty pursuant to their respective plea agreements. (EXHIBIT 2, Plea Agreement p. 8.) Kesel’s personal guilty plea was therefore an express condition of the ADLS plea becoming effective. The admitted period—1998 through 2000 inclusive—encompasses the entire period in which Kesel made the \$100,000 OSM investment in PA for a 25% interest in August–September 1998 and ADLS made the \$25,000 loan-conversion investment in PA through its February 28, 2000 promissory note and wire transfer. (EXHIBITS 2, 15, 16.)

1 89. The pre-plea federal investigation documented the scale of ADLS's criminal enterprise. DEA
2 Special Agent John E. Aldine's federal Affidavit in Support of Application for Criminal
3 Complaints, Arrest Warrants, and Search Warrants (December 7, 2000), submitted to and
4 approved by Judge Wilken (EXHIBIT 17), establishes the following facts that the plea later
5 confirmed:

6 90. Kesel as managing partner. "ADLS is a partnership entity, currently consisting of four
7 partners: Mark KESEL, Oleg Sagodeev, Rima Kantore and Elena Kesil. Other than Mark KESEL,
8 the level of involvement of the partners is presently unclear. Vladimir KOTLYARENKO is the
9 day to day manager of ADLS." (EXHIBIT 17, p. 23.) "Around July 1997, partner Mark KESEL
10 became the active partner and hired a day to day manager, Vladimir KOTLYARENKO."
11 (EXHIBIT 17, p. 36.)

12 91. Chemicals sold to customers ADLS knew or had reasonable cause to believe would use them
13 to manufacture methamphetamine: Freon (R-113), red phosphorus, sodium hydroxide, iodine, and
14 glassware/apparatus including 22-liter round-bottom flasks and heating mantles. (EXHIBIT 17,
15 pp. 34–36.)

16 92. Scale of Freon sales (1996–October 27, 2000): volume of Freon "could potentially have been
17 used to manufacture 177,432 pounds (88.7 tons) of methamphetamine." (EXHIBIT 17, p. 41.)

18 93. 1998 volume in the year Kesel invested in PA: "in 1998, ADLS sold approximately 246,330
19 pounds of Freon, or over 16 times that necessary to satisfy the needs of the entire San Francisco
20 Bay area for a year." (EXHIBIT 17, p. 44.)

21 94. Cash payments: ADLS deposits ranged from "\$10,000 to \$50,000 per day" and were
22 "sometimes damp and musty, indicating to bank personnel that it may have been buried
23 underground in a coffee can." (EXHIBIT 17, p. 40, reporting the financial institution's June 30,
24 2000 Suspicious Activity Report to the IRS.)

25 95. DEA notice to ADLS — repeatedly warned: "Between October 1996 and July 2000, ADLS
26 [was] repeatedly informed of their responsibilities in: reporting requirements and record keeping
27 for listed chemicals; what constitutes a suspicious order; and that their failure to report these
28 suspicious transactions to DEA or other law enforcement may subject them to criminal

prosecution." (EXHIBIT 17, p. 36.)

96. Customer profile: Approximately 94.5% of ADLS's Freon sales (January–August 24, 2000) went to drug-trafficking customers, several of whom were later federally indicted on narcotics charges. (EXHIBIT 18, Cummings Decl. ¶¶ 3–4.)

A. The 100% ADLS-PA personnel overlap. DEA Special Agent Aldine identified ADLS in his federal affidavit: "ADLS is a retail chemical company located in Hayward, California which has sold very high volumes of chemicals, including Freon R-113, to individuals suspected partnership entity, currently consisting of four partners: Mark KESEL, Oleg Sagodeev, Rima Kantore and Elena Kesil. Other than Mark KESEL, the level of involvement of the partners is presently unclear. Vladimir KOTLYARENKO is the day of involvement in the manufacture of methamphetamine... ADLS is a to day manager of ADLS." (EXHIBIT 17, Aldine Affidavit p. 23.)

97. The Panel's Award separately documents the ADLS-to-PA financial flow: "It is undisputed that ADLS made two loans of \$25,000 to PA, one of which was fully repaid. The other loan was converted to shares of PA ... the distribution of PA shares from the ADLS \$25,000 loan conversion was to Sagodeev, Kesel, Kesil, Rima Kantarov, and Vlad Kotlyarenko (all affiliated with OSM), with the number of shares to each individual shown." (EXHIBIT 1, Award p. 40, citing RE-276; Vol. V, 1044:5-20 (Kesel).)

98. The Panel found: "Kesel, Oleg Sagodeev ('Sagodeev'), and Boris Kesil ('Kesil'), together members of an investor group they called OSM, collectively invested \$100,000 in PA for a total of 34,000 shares. A Shareholders' Agreement dated July 26, 1998 was signed on August 21, 1998." (EXHIBIT 1, Award p. 11.) The investment was funded by five checks: \$50,000 from Eric Gascoyne — but the shares went to Kesel and the OSM group (August 25, 1998); \$16,980 from Kesel personally (September 8, 1998); \$17,020 from Sagodeev personally (September 8, 1998); \$10,000 from Boris Kesil (September 17, 1998); and a \$6,000 OSM initial deposit (August 17, 1998). (EXHIBIT 19.) The Award's \$150,000 figure is an error. The Award itself confirms "the \$50,000 check from Eric Gascoyne to PA (part of the \$100,000 invested in 1998)." (EXHIBIT 1, Award p. 31.) Kesel and Sagodeev each received 15,300 PA shares out of 34,000 total (EXHIBIT

1 1, Award p. 44) despite personally contributing only \$16,980 and \$17,020 respectively out of
 2 \$100,000 total — together taking 30,600 of 34,000 shares (~90%) for only \$34,000 of the
 3 \$100,000 (~34%).

4 99. OSM was Kesel's personal entity. The Aldine Affidavit identifies it directly: "At
 5 approximately 4:27 p.m., Vladimir KOTLYARENKO called the O.S.M. Company (Overseas
 6 Strategic Marketing Company, located in Albany, California, owned by KESEL) from ADLS and
 7 spoke to Mark KESEL" "from ADLS" at "the O.S.M. Company" — updating Kesel on a Freon-
 8 cans pickup involving Juanita Navarro and Sandoval of the Escobar/Navarro Organization.
 9 (EXHIBIT 17, p. 118.)

10 100. Elena Kesil is Boris Kesil's wife. The individuals who owned ADLS during its 1998–2000
 11 criminal period — four ADLS partners (Kesel, Sagodeev, Rima Kantore, and Elena Kesil) and the
 12 day-to-day manager (Kotlyarenko) — are the same individuals who received PA shares through
 13 Kesel's personally-owned OSM entity. The ADLS ownership and the PA recipients are identical,
 14 and in each instance the shares passed into PA through OSM.

15 B. Kesel's binding federal plea — the criminal period covers the entire window of his PA
 16 investment. On December 8, 2003, Kesel personally pleaded guilty in United States v. All
 17 Discount Laboratory Supply and Mark Kesel, et al., CR-00-40242 CW (N.D. Cal., Oakland
 18 Division) to two federal counts: conspiracy to distribute chemicals and equipment that may be
 19 used to manufacture controlled substances under 21 U.S.C. § 846 (Count Two of the Superseding
 20 Indictment), and conspiracy to launder monetary instruments under 18 U.S.C. § 1956(h). Both
 21 offenses require mens rea — knowing or "reasonable cause to believe" participation in the
 22 conspiracy.

23 101. The plea was a package deal: "ADLS understands that this plea agreement is made pursuant
 24 to a package deal and that it will only have effect if its co-defendants Mark Kesel and Vladimir
 25 Kotlyarenko both plead guilty pursuant to our respective plea agreements." (EXHIBIT 2, Plea
 26 Agreement at p. 18.) The agreement further admitted that ADLS "sold large amounts of
 27 chemicals and equipment to people that the management and employees knew or had reasonable
 28 cause to believe would use them to manufacture drugs." (Id. at p. 4.) Kesel signed it personally on

1 December 8, 2003 — under penalty of perjury — as ADLS's managing partner. (EXHIBIT 2.)

2 **102.** The plea admitted the personal scope of Kesel's role: "Mark Kesel agreed with Vladimir
3 Kotlyarenko to use some of this money to purchase additional Freon, to continue to have
4 inventory to sell to the customers identified above. ADLS agrees that purchasing additional Freon
5 constituted an overt act in furtherance of the agreement to use these proceeds to promote the sale
6 of chemicals and equipment to customers ADLS knew or had reasonable cause to believe would
7 use them to manufacture controlled substances.... Between 1998 and 2000 (inclusive), ADLS
8 sales of chemicals and equipment to customers ADLS knew or had reasonable cause to believe
9 would use them to manufacture controlled substances generated approximately \$11,748,771 in
10 gross sales to ADLS." (EXHIBIT 2, Plea Agreement at p. 14, lines 16-26.)

11 **103.** The plea also directly forfeited Kesel's ADLS-derived ownership interests: "all stocks,
12 bonds, real estate holdings, ownership interests owned by, held for the benefit of, or representing
13 any beneficial interest of ADLS, shall be forfeited." (EXHIBIT 2, Plea at p. 15.)

14 **104.** The PA shares purchased with ADLS proceeds fall within that language: the February 28,
15 2000 ADLS promissory note and the \$25,000 wire transfer sent directly from ADLS into PA's
16 Citibank account funded 4,167 PA shares via the Convertible Note to be issued by June 30, 2000.
17 (EXHIBIT 20.) The Award confirms their ADLS origin: "Gilberg prepared a dividend schedule
18 dated as of March 31, 2005, that included 1,289 shares for Sagodeev of the 4,167 total shares
19 issued to OSM members from the ADLS loan conversion as shown on RE-276." (EXHIBIT 1,
20 Award p. 41.)

21 **105.** The plea period — 1998 through 2000 inclusive — covers the entire window during which
22 both investments were made: the \$100,000 in August 1998 and the \$25,000 in 2000 fall within
23 the "1998 and 2000 (inclusive)" criminal period to which Kesel pleaded guilty. (Decl. ¶¶ 23–32;
24 EXHIBIT 2.) The same plea established the elements of money laundering under 18 U.S.C. §§
25 1956 and 1957, and the February 28, 2000 ADLS wire of \$25,000 into PA's account connects
26 ADLS's criminal proceeds directly to PA. (EXHIBIT 2, Plea at pp. 11–18; EXHIBIT 20.)

27 **106.** On July 25, 1997 — thirteen months before Kesel invested \$100,000 in PA — DEA Agent
28 Nichols and D/I Bell met Kesel face-to-face at ADLS, served him DEA Form 82 (Notice of

1 Inspection), which he signed personally, and handed him the iodine notice warning that
2 distributing any chemical or equipment “knowing... or having reasonable cause to believe” it
3 would be used to manufacture a controlled substance is unlawful. (EXHIBIT 21.)

4 **107.** On April 7, 1998 — four months before his investment — DEA served a second Form 82 on
5 Kotlyarenko, Kesel’s named co-conspirator and ADLS Manager. (EXHIBIT 24.) Agent Aldine’s
6 affidavit confirms ADLS was warned repeatedly from October 1996 through July 2000.
7 (EXHIBIT 17.)

8 THE PANEL’S “NOT PROVEN” FINDING RELIED UPON KESEL’S AAA
9 TESTIMONY DESPITE THE OVERLAPPING FEDERAL PLEA RECORD

10 **108.** Then, the Panel found that Kesel did not know in August 1998, when he signed the
11 Shareholders’ Agreement, what he had already admitted in his Plea Agreement — acting
12 “knowing... or having reasonable cause to believe”:

13 **109.** The Panel ruled: “In their First Cause of Action of their SAC, Respondents assert that Kesel
14 committed fraud by not revealing, before executing the Shareholder Agreement in July 1998, that
15 he was involved in illegal business transactions through his business, ADLS, specifically the sale
16 of freon for production of methamphetamine, for which he was later convicted. ... Respondents
17 have failed to produce evidence that Kesel knew in July 1998 that he was engaging in the illegal
18 sale of controlled substances when he invested in PA or knew that he was under investigation for
19 illegal activities. Vol. III, 651:2-11; 654:13-22 (Kesel). The element of known concealment
20 therefore was not proven.” (EXHIBIT 1, Award pp. 75–76.) That finding rests only on Kesel’s
21 AAA testimony.

22 **110.** Kesel-OSM original 1998–2000 (inclusive) criminal-period capital invested in PA —
23 comprising the \$100,000 Kesel-OSM investment of August 1998 (EXHIBIT 19) and the \$25,000
24 ADLS-to-PA wire transfer of February 28, 2000 (EXHIBIT 20) — has appreciated more than 32-
25 fold to \$4.46 million on PA’s 2022 valuation (34.62% of the appraised \$12,896,000 fair market
26 value). (EXHIBIT 5.) It also generated approximately \$943,337 in documented dividends from
27 2010 through 2022, with distributions continuing in 2022–2025 (EXHIBIT 22).

28 **111.** Under 21 U.S.C. § 853(a)(1), criminal proceeds and property derived from criminal proceeds

— including principal, appreciation, and income — are subject to federal forfeiture. Whether these shares are such proceeds is a determination reserved for Judge Wilken’s retained jurisdiction (EXHIBIT 23, Final Order) and the United States Attorney.

112. Judge Wilken's forfeiture orders, § 853(c) vesting, and retained federal jurisdiction.

113. Plaintiff does not allege that the federal plea, by itself, conclusively established every element of his state-law concealment claim or Kesel’s actual knowledge on a particular day in July 1998. Its significance is that the Panel made its own determination concerning Kesel’s knowledge during an overlapping period while relying upon Kesel’s later AAA testimony and addressing a federal criminal record whose meaning, mens rea consequences, and forfeiture effects arose from proceedings within the federal court’s jurisdiction. The federal forfeiture determinations under § 853 and enforcement of the Final Order—including any application of its substitute-asset provisions—remained within Judge Wilken’s expressly retained jurisdiction; the Order states: “the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order.” (EXHIBIT 23.)

114. Plaintiff was not a party, and the Agreement and Plaintiff’s contractual rights were not before the federal criminal court. Plaintiff does not contend that he had standing to prosecute Kesel or control the Government’s criminal or forfeiture case. The narrower point is that, had Kesel’s PA interest and the Agreement he signed during the period encompassed by the federal plea been presented in that proceeding, the federal court could have determined the effect, if any, of the federal plea and forfeiture upon Kesel’s interest under the Agreement. No such determination was made. “[A] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.” *Richards v. Jefferson County*, 517 U.S. 793, 798 (1996) (quoting *Martin v. Wilks*, 490 U.S. 755, 762 (1989)).

115. The arbitration could not bind the United States as to federal interests never submitted to it. Plaintiff alleges that the Panel nevertheless resolved those federal predicates and used them to reject Plaintiff’s concealment claim and preserve Kesel’s shareholder status.

116. Judge Wilken's April 13, 2004 Preliminary Order of Forfeiture (EXHIBIT 25) expressly invoked § 853(p) substitute-asset jurisdiction:

1 117. "IT IS FURTHER ORDERED that if any of the property subject to forfeiture as a result of
2 any act or omission of the defendant —

3 (1) cannot be located upon the exercise of due diligence;

4 (2) has been transferred or sold to, or deposited with, a third party;

5 (3) has been placed beyond the jurisdiction of the Court;

6 (4) has been substantially diminished in value; or

7 (5) has been commingled with other property which cannot be divided without difficulty;

8 other property shall also be subject to forfeiture, pursuant to Title 21, United States Code, Section
9 853 and the plea agreement."

10 118. The Preliminary Order did not disappear upon entry of the later Final Order. Under Fed. R.
11 Crim. P. 32.2, the preliminary forfeiture order became final as to the defendants, and, because no
12 third-party petitions were filed, became the final order of forfeiture. The Final Order itself
13 confirms that "no petitions have been filed." (EXHIBIT 23.) Thus, the Preliminary Order's
14 express § 853 substitute-asset provisions remained part of the operative federal forfeiture
15 framework and could not simply be disregarded on the ground that "the Final Order ... is
16 controlling."

17 119. The Panel nevertheless undertook to determine what property was encompassed by the
18 federal plea and forfeiture orders. It held: "Gilberg's argument lacks merit because he failed to
19 prove that ADLS ever owned or had any beneficial interest [in] any of Kesel's PA stock.
20 Therefore, the PA stock was not an asset encompassed by the plea agreement or the Final Order,
21 which is controlling." The Panel further determined that "[t]he Final Order did not address assets
22 that had not been disclosed or might be discovered after the fact," and ultimately concluded that
23 "Gilberg has failed to carry his burden to establish forfeiture by Kesel of his PA shares to the U.S.
24 Government." (EXHIBIT 1, Award p. 42.)

25 120. Then the Panel determined: "On its face, the Final Order does not include any PA shares to
26 be forfeited either by ADLS or by Kesel. The Final Order requires Kesel to forfeit \$1,150,000 and
27 his interest in certain glassware and lab apparatus identified in an Attachment A but does not state
28 anything about shares of Power Architects or any company." (EXHIBIT 1, Award p. 41.) But the

1 Preliminary Order became the Final Order under Fed. R. Crim. P. 32.2, and it lists the five
2 specific conditions set forth above.

3 121. The Panel then stated Plaintiff's position: "Gilberg's position is that Kesel was required but
4 failed to disclose his PA shares to the government and they were therefore to be forfeited" —
5 citing the ADLS plea's forfeiture of "all assets in any form, including ... all stocks, ... ownership
6 interests owned by, held for the benefit of, or representing any beneficial interest of ADLS."
7 (EXHIBIT 1, Award p. 42.) But the ADLS/Kesel Final Order itself incorporated the full statutory
8 framework: forfeiture "pursuant to Title 21, United States Code, 853" — without limitation to any
9 subsection, as it relates to both ADLS and Kesel. (EXHIBIT 23, Final Order.)

10 122. In doing so, the Panel treated the later Final Order as dispositive while failing to give effect
11 to the Preliminary Order's express provision—incorporated into the final federal forfeiture
12 framework—that where forfeitable property had been transferred to a third party, placed beyond
13 the Court's jurisdiction, diminished, commingled, or could not be located, "other property shall
14 also be subject to forfeiture, pursuant to Title 21, United States Code, Section 853 and the plea
15 agreement." (EXHIBIT 25.) Most significantly, although the United States was not a party to the
16 arbitration and Judge Wilken had expressly retained federal jurisdiction to enforce the forfeiture
17 Order, the Panel placed upon Gilberg the burden of establishing forfeiture to the United States
18 and then used his asserted failure to satisfy that burden to determine that the PA shares were
19 outside the federal plea and forfeiture orders.

20 123. Plaintiff does not ask this Court to decide that the PA shares were forfeited. The
21 jurisdictional point is the opposite: whether undisclosed, transferred, substituted, or later-
22 discovered PA interests fell within § 853 and Judge Wilken's forfeiture orders was a federal
23 forfeiture question involving the rights of the United States. Plaintiff alleges that the Panel could
24 not acquire authority over that federal interest by assigning the United States' position to Gilberg,
25 adjudicating whether Gilberg proved forfeiture on the government's behalf, and then using his
26 supposed failure of proof to recognize Kesel's ownership.

27 124. Kesel's sworn AAA testimony, given live before the Panel, establishes the factual predicate
28 of Plaintiff's position. Asked directly, "Did you tell the government about your shares in Power

1 Architects?", Kesel could not recall: "All information that they required — I don't remember
 2 what they required — we provided all that information." (EXHIBIT 26, Vol. IV, p. 863:12–18.)
 3 Asked whether he had told his probation officer, Kesel answered: "Probably. I don't remember if
 4 they asked. I don't even remember if they asked or not. If they asked, I told them." (EXHIBIT 26,
 5 Vol. IV, 864:1–4.) When pressed further — "How would the government know to ask about
 6 Power Architects shares?" — Kesel replied: "They didn't ask me about Power Architects shares.
 7 If they ask me, they would ask me to show sources of income and about my assets." (EXHIBIT
 8 26, Vol. IV, 864:15.)

9 125. The Panel found that PA distributions, however, did not reach Kesel directly; they were paid
 10 through other means, including through Kesel's NeoVision, LLC (EXHIBIT 27), and PA's tax
 11 returns did not list Kesel's ownership percentage on Schedule G. (EXHIBIT 1, Award p. 56.)

12 126. Standard Condition 13 of Kesel's Probation in CR-00-40242 CW, set forth on the August 5,
 13 2004 Judgment of Commitment required Kesel to notify third parties of risks from his criminal
 14 record: "As directed by the probation officer, the defendant shall notify third parties of risks that
 15 may be occasioned by the defendant's criminal record or personal history or characteristics, and
 16 shall permit the probation officer to make such notifications and to confirm the defendant's
 17 compliance with such notification requirement." (EXHIBIT 28.) PA was a third party doing
 18 business with Kesel; he was a PA shareholder and insider throughout his 2004–2008 probation
 19 term. PA was never notified — neither by Kesel nor by his probation officer. No federal authority
 20 ever contacted PA regarding Kesel.

21
 22 THE DISSOLUTION DEMAND, FEDERAL TAX-REPORTING CONCERNS, AND
 THE "OUSTER" NARRATIVE

23 127. PA dissolution: Mednik and Kesel demanded company dissolution, which Plaintiff alleges
 24 was the end-phase of the concealment. In his May 23, 2019 email submitted into the arbitration
 25 record, Kesel stated that closing PA and "starting a new S-Corp d.b.a. Power Architects," where
 26 "each shareholder will retain their interest in the new company," was "paramount to our
 27 settlement." (EXHIBIT 29.) As recently as June 4, 2026, Mednik proposed to PA's shareholders
 28

1 that Gilberg and Kolchinsky "both relinquish their interests in the Company," which would leave
2 Mednik and Kesel as PA's sole owners — confirming that the consolidation of ownership around
3 the concealing debtor remains active. (EXHIBIT 30.)

4 128. The documentary record further shows that the proposed dissolution and reincorporation
5 carried identified federal tax-reporting consequences. In a December 12, 2019 email circulated to
6 Gilberg, Mednik, Kesel, Kolchinsky, and counsel, attorney David S. Lee analyzed the proposal to
7 wind up PA and form a new corporation with a new EIN — a step Kesel had called "paramount"
8 to settlement. Lee explained that a Revenue Officer could recharacterize the transaction as a
9 continuation or reorganization because the major client, shareholders, inventory, know-how,
10 engineering, processes, and business location would remain the same. Lee asked: "Just how is
11 Newcorp not a continuation of PA?" (EXHIBIT 31.)

12 129. Lee then identified the federal filings that would accompany the proposed transaction and the
13 risk created by describing a continuing business as a new one. He wrote that forms would be
14 executed under penalties of perjury, specifically identifying Form 966 and Form SS-4. As to
15 Form 966, Lee asked whether failure to report a reorganization could "amount to a willful filing
16 of a fraudulent return." As to Form SS-4, which asks whether the business is new or existing, Lee
17 asked whether claiming Newcorp was new could "amount to a willful misrepresentation since a
18 reorganization is a continuation of an existing business." Lee concluded: "I believe a wind up of
19 PA followed by a transition of the business to Newcorp presents more problems than it solves."
20 (EXHIBIT 31.)

21 130. Optional Provision 21 authorized arbitration of disputes concerning the parties' "rights under
22 any provisions of this agreement." It did not authorize the Panel to require Plaintiff to execute
23 Form 966 or Form SS-4 under penalties of perjury, or to make the representations required by
24 those federal filings — representations that PA's own counsel warned could "amount to a willful
25 misrepresentation" to the IRS.

26 131. The later settlement record made dissolution a stated condition rather than a collateral
27 suggestion. Mednik and Kesel's March 28, 2020 response accepted proposed settlement terms
28 only provided, among other things, that "the Company is dissolved and re-incorporated as an S

1 Corp dba.” (EXHIBIT 32, RC-1693, p. 5 of 7.) That condition tracked Kesel’s earlier statement
2 that closing PA and starting a new S-Corp d.b.a. Power Architects was “paramount” to settlement.
3 132. Mednik’s own written explanation in his court declaration made the alternative explicit.
4 Addressing Gilberg’s objection to dissolution, Mednik wrote: “My argument had no meaning if
5 we don’t agree on the dissolution. In such case, we would have to commence an arbitration to
6 clarify our shareholders’ agreement from this prospective or, if reaching clarity is impossible, rely
7 on CA Corp Code. It would be then up to the arbitrator to instruct us on that. This is exactly what
8 I was suggesting in my letter to you and Regina.” (EXHIBIT 32, p. 4 of 6.) Plaintiff alleges that,
9 read together with Exhibits 29 and 31, the contemporaneous documents show a concrete binary
10 dispute: accept a dissolution/reincorporation structure that Lee had warned could raise the
11 question whether the required IRS filings would amount to a willful filing of a fraudulent return,
12 or proceed to arbitration.

13 133. The chronology further contradicts the premise that the dissolution demand had been
14 abandoned. During the hearing, counsel specifically sought to examine RC-1693, the March 2020
15 email attached to Mednik’s own court declaration concerning his position on dissolution. Counsel
16 requested that “Exhibit RC-1693” be placed on the screen and directed the Panel to the relevant
17 page. (EXHIBIT 33, Vol. VIII, 1943.)

18 134. When counsel then asked whether the email had been attached to Mednik’s court declaration,
19 Arbitrator Burke interrupted: “Again, Ms. Porumbescu, why do we care?” and explained: “Mr.
20 Mednik already testified that Mr. Gilberg was opposed to the dissolution and so they agreed with
21 him and they’re not going to do anything.” (EXHIBIT 33, Vol. VIII, 1944.)

22 135. Exhibit RC-1693 (EXHIBIT 32) is further evidence that the dissolution condition remained
23 operative. On March 28, 2020—approximately three and one-half months after the December 14,
24 2019 position on which Burke’s premise rested—counsel for Mednik and Kesel transmitted a
25 settlement counterproposal still expressly conditioned upon “the Company [being] dissolved and
26 reincorporated as an S Corp dba, to avoid any future problems with Larry’s share reconciliations.”
27 That counterproposal was attached to Mednik’s own court declaration. (EXHIBIT 32, pp. 5–6.)
28 The same proposal contemplated preservation of Mednik’s and Kesel’s shares and corporate

1 positions rather than their ouster by Plaintiff.

2 136. The Panel found: “The evidence indicates that Gilberg had been planning to sue Mednik and
3 Kesel to oust them from PA before the alleged termination.” (EXHIBIT 1, Award p. 27.) The
4 documentary terms materially contradict that narrative. Mednik was offered retention of all
5 48,500 of his shares. Gilberg proposed reducing his own holdings from 48,500 shares to 35,140
6 shares. Kesel was offered continued service as a director while retaining 35,250 shares, and the
7 proposal was sent directly to Kesel. The responsive counteroffer did not object to any reduction of
8 Kesel’s shares because none had been proposed. (EXHIBIT 32, RC-1693.)

9 137. The disputed settlement condition instead concerned dissolution and reincorporation of PA.
10 The settlement documents attached to Mednik’s own court declaration show the opposite of an
11 ouster — Plaintiff proposed terms preserving both men’s shares and Kesel’s directorship. What
12 Plaintiff resisted was the dissolution-and-reincorporation structure that counsel had warned could
13 raise a willful-filing question, and that Kesel had called “paramount” to settlement.

14 138. Plaintiff does not allege that the proposed transaction itself constituted a completed federal
15 tax offense. The significance of the sequence is notice and jurisdictional context: the federal
16 reporting requirements PA’s counsel identified concerned the very transaction upon which
17 settlement remained conditioned; Mednik expressly connected rejection of dissolution to
18 commencement of arbitration; and when counsel attempted to examine later documentary
19 evidence that the condition remained operative, Arbitrator Burke stopped the inquiry on the
20 premise that Mednik and Kesel had already “agreed with” Gilberg and were “not going to do
21 anything” — even though the later settlement proposal remained conditioned upon dissolving PA.

22 139. Respondents offered David Lee to testify that the parties had agreed to treat PA’s past
23 redemptions of Gilberg’s shares as unauthorized and to rescind them. (EXHIBIT 34.) Of
24 particular significance, the Panel did not permit Lee to testify, holding his testimony irrelevant in
25 part because “PA asserts that it has not requested rescission as a remedy.” (EXHIBIT 35.) That
26 assertion was consequential: the rescission Lee would have addressed would have restored the
27 redeemed shares, rather than treating their prior redemption as the basis for ownership loss and
28 resulting damages.

1 140. Plaintiff alleges that PA's ability to take that litigation position cannot be separated from
2 Kesel's disputed voting status. A voting position whose federal validity remained unresolved was
3 used to support PA's refusal to seek rescission of Gilbert's buybacks and thereby restore his
4 original 35% interest. The resulting Award thereafter imposed ownership and damages
5 consequences based upon those same buybacks.

6 141. The Award's treatment of Plaintiff's motive makes the omitted tax issue consequential.
7 Under the heading "Gilbert Was Not Engaging in a Protected Activity, Instead He Was Plotting
8 to Oust the Other Shareholders," the Panel concluded that Plaintiff's conduct reflected a plan to
9 remove Kesel and Mednik rather than protected opposition to unlawful conduct. (EXHIBIT 1,
10 Award pp. 30–32.)

11 142. Plaintiff does not ask this Court to determine that the proposed transaction violated federal
12 tax law, or allege that the Panel held any violation permissible. The narrower allegation is that the
13 Panel's motive analysis rested on the premise that Plaintiff had an available alternative to
14 arbitration, while not addressing that the alternative demanded by Claimants carried the federal
15 tax-reporting concerns counsel had identified. Plaintiff alleges that the Panel could not treat
16 refusal of that transaction as evidence of improper motive without implicitly resolving a federal
17 question the submission did not reach.

18
19 THE 2007–2008 SAGODEEV/KESIL TRANSFERS, THE RESULTING PANEL
20 VALUATION, AND KESEL'S SCHEDULE B OMISSION

21 143. The Panel's valuation and the resulting judgment. The Panel's \$8.53M damages calculation
22 derived from a \$9-per-share valuation, which the Panel drew from 2007–2008 transfers among
23 Sagodeev, Kesil, and Kesel. (EXHIBIT 1, Award p. 60.) Applying \$9 per share, the Panel
24 reduced Plaintiff's interest from his 50,000-share allocation under Optional Provision 1
25 (EXHIBIT 4) to 3,945 shares (EXHIBIT 1, Award p. 60), yielding a \$5.3M award to PA against
26 Plaintiff and a \$3.23M reduction-for-PA-ownership offset, for a total of \$8.53M. The \$5.3M
27 portion was entered as Judgment on August 14, 2024 and is being enforced against Plaintiff in
28 Florida. (Miami-Dade Case No. 2024-020109-CA-01.)

1 144. Plaintiff alleges that the \$9-per-share figure did not arise from a market transaction. The
2 transfers occurred as Kesel's federal supervision was ending, no consideration passed, and the
3 transferors were his ADLS partners. The 2004 Preliminary Order of Forfeiture, incorporated into
4 the Final Order, reaches property "transferred or sold to, or deposited with, a third party."
5 (EXHIBIT 25.) Whether these transfers fall within that provision, and whether a transaction in
6 which no money changed hands during Kesel's federal probation can supply a fair-market
7 benchmark for property subject to the Wilken Orders, are questions reserved to the issuing court
8 and the United States. Plaintiff does not ask this Court to resolve them.

9 145. The Panel stated: "Using the last agreed price from 2007 of \$9 per share... Based upon \$9
10 per share, Gilberg sold 46,055 shares back to PA from 2009 through 2015. C-1049, pp. 10-11.
11 Based on his original share ownership of 50,000, those sales reduce his ownership interest in PA
12 to 3,945 .. [per Oleg] Sagodeev transactions and could not have supported a share price greater
13 than \$9." (EXHIBIT 1, Award p. 60.)

14 146. In 2007 and 2008, ADLS partners Oleg Sagodeev and Boris Kesil — Elena Kesil, also an
15 ADLS partner, is Boris's wife — transferred to Kesel the PA shares they had acquired through
16 OSM in August 1998.

17 147. Kesel testified that he paid nothing for the shares the Panel valued at \$9. He confirmed at the
18 arbitration that he "bought shares from Mr. Oleg Sagodeev" in 2007 and "from Mr. Boris Kesil"
19 in 2008. (EXHIBIT 36, Vol. IV, 867:11–14.) Asked whether he had paid cash, he testified: "I
20 never paid it in cash. ... I didn't pay a penny to Boris or Oleg. But because we had mutual
21 reconciliation, that's how it was sold between us." (EXHIBIT 36, Vol. IV, 867:20–24.) He
22 described the transfers as "reconciliation between our debts to each other."

23 148. Kesel testified that the same no-cash reconciliation also conveyed Sagodeev's interest in a
24 parking building: "Oleg Sagodeev was part owner of a parking building, and I purchase him out
25 without paying money from the purchase. It was a way to reconcile that relationship." (EXHIBIT
26 36, Vol. IV, 868:3–9.) Asked to confirm, he stated: "I had reconciliation, and cash never was
27 exchanged between me and Mr. Sagodeev, never." (EXHIBIT 36, Vol. IV, 869.)

28 149. The Panel found in footnote 35: "There is evidence that both Mednik and Kesel were aware

1 that Gilberg was selling shares ... in lieu of his distributions and compensation,” placing
 2 Mednik’s knowledge in 2009 and Kesel’s in 2011. (EXHIBIT 1, Award p. 57 n.35.)

3 150. That finding places Kesel’s knowledge in the same period as his own nondisclosure. Kesel
 4 knew by 2011 that Plaintiff was reducing his holding through transactions the Panel later
 5 characterized as sales. During that same period Kesel served as debtor in possession, held the
 6 powers and duties of a trustee under 11 U.S.C. § 1107(a), and had not disclosed his own PA
 7 interest on Schedule B in his Chapter 11 filing. (EXHIBIT 12.)

8
 9 THE “ARM’S LENGTH” FINDING AND THE RETROACTIVE APPLICATION OF
 10 THE \$9 BENCHMARK

11 151. The Panel found that “[o]n October 23, 2007, Mr. Gilberg was requested to record the
 12 transfer on the books of PA of 14,089 shares of PA common stock sold by Mr. Sagodeev to Mr.
 13 Kesel at a price of \$9.00 per share. Thus, two arm’s length transactions in the second half of 2007
 established that a fair price for the stock was \$9.00 per share.” (EXHIBIT 1, Award p. 59.)

14 152. Applying that figure, the Panel concluded: “Claimants’ forensic accounting expert, Ip,
 15 recalculated the number of shares sold. Based upon \$9 per share, Gilberg sold 46,055 shares back
 16 to PA from 2009 through 2015. C-1049, pp. 10-11. Based on his original share ownership of
 17 50,000, those sales reduce his ownership interest in PA to 3,945 shares.” (EXHIBIT 1, Award p.
 18 60.)

19 153. Plaintiff alleges that the two transactions the Panel called “arm’s length” were transfers
 20 between ADLS partners during Kesel’s federal probation, in which Kesel testified he “never paid
 21 it in cash” and “didn’t pay a penny to Boris or Oleg,” describing them instead as “reconciliation.”
 22 (EXHIBIT 36, Vol. IV, 867:20–24.) The Panel applied the price derived from those 2007–2008
 23 transfers retroactively to buybacks occurring between 2009 and 2015 — transactions PA had
 24 already recorded on its own federal tax returns, which the Panel itself found “reported Gilberg’s
 25 ownership interest declining from 35% as of 3/31/10 to 25% as of 3/31/16.” (EXHIBIT 1, Award
 26 p. 56.) The result reduced Plaintiff’s recognized holding from 50,000 shares to 3,945.

27 154. Inconsistent positions of record on the same shares. Kesel has treated the same PA interest,
 28

1 at different times and in different forums, as a \$9-per-share asset the Panel adopted (EXHIBIT 1,
2 Award p. 59), as property for which he paid nothing — “I didn’t pay a penny” (EXHIBIT 36,
3 Vol. IV, 867:22–24) — and as an asset he omitted entirely from his January 16, 2010 Chapter 11
4 Schedule B. He then continued to receive PA distributions on that same interest after signing
5 Schedule B; a shareholder collecting payments on his shares does not overlook them. Plaintiff
6 alleges these shifting characterizations as evidence that the omission was knowing. At the
7 hearing, Plaintiff’s counsel placed the forfeiture language before Kesel — “Assets that have been
8 placed beyond the jurisdiction of the Court are also subject to forfeiture pursuant to Title 21” —
9 and Kesel answered: “Okay.” (EXHIBIT 36, Vol. IV.) This Complaint does not ask this Court to
10 resolve, revisit, or disturb the Panel’s valuation.

11 **155. Federal probation and the § 853 forfeiture interest.** The transfers underlying the \$9.00-per-
12 share figure were booked while Kesel remained on federal probation following his conviction on
13 a money-laundering count under 18 U.S.C. § 1956(h). After the original term was due to expire
14 Kesel still owed approximately \$393,700 on his \$1.15 million forfeiture obligation; he paid
15 \$150,000 on October 12, 2007 and the final \$235,000 on January 29, 2008, and probation was
16 terminated by court order on the February 4, 2008 Form 12C report. (EXHIBIT 38.) The
17 Sagodeev transfer was recorded eleven days after the October 12 payment, while \$235,000
18 remained unpaid and Kesel remained under federal supervision. The Panel found that “[o]n
19 October 23, 2007, Mr. Gilberg was requested to record the transfer on the books of PA of 14,089
20 shares of PA common stock sold by Mr. Sagodeev to Mr. Kesel.” (EXHIBIT 1, Award p. 59.)

21 **156. Whether those shares are forfeitable proceeds under § 853, and whether they remained**
22 **property of the estate under § 554(d), are federal questions reserved to Judge Wilken’s retained**
23 **jurisdiction (EXHIBIT 23) and to this Court under § 1334(e)(1). No court with jurisdiction has**
24 **decided either question, and neither is a question an arbitrator construing a private contract could**
25 **resolve. This Complaint does not ask this Court to disturb the Panel’s valuation; the estate’s rights**
26 **in the shares are reserved for a trustee’s future adversary proceeding.**

27 **157. Kesel’s continuous-ownership admission.** Kesel testified under oath that he has held PA
28 shares continuously since 1998, including through his 2010 Chapter 11 case. Asked, “Back in

1 1998 until now, was there ever a time when you did not own any Power Architects shares?", he
 2 answered: "From 1998 I owned all this, some shares of Power Architects." (EXHIBIT 6, Vol. IV,
 3 874:7–11.)

4 **158.** Distributions during the probation term. PA's chief financial officer has declared, from the
 5 Company's own accounting records, that PA paid its shareholders — "including Mr. ... Kesel" —
 6 "in lieu of shareholder distributions." (EXHIBIT 37, ¶¶ 6–7.) Those distributions ran from 2000
 7 through 2008, spanning the entire term of Kesel's federal probation. The amounts Kesel received
 8 on his concealed interest are recorded in PA's ledgers and are properly quantified by a trustee
 9 upon reopening. Whether distributions taken during that period on shares that may constitute §
 10 853 proceeds implicate the United States' forfeiture interest is a question reserved to Judge
 11 Wilken.

12
 13 **THE UNDECIDED FEDERAL QUESTIONS: FORFEITURE UNDER § 853 AND
 ESTATE PROPERTY UNDER § 1334(E)(1)**

14 **159.** On February 17, 2026, the Court of Appeal (Lie, J.), in Section F of its Opinion, confirmed
 15 that the arbitrator "did not decide in the first instance whether Kesel's shares should be forfeited
 16 to the federal government, whether Kesel's shares should be included in a bankruptcy estate, or
 17 whether Kesel could or should be prosecuted for the fraud that Kolchinsky alleges." (EXHIBIT
 18 39, Section F, p. 11.)

19 **160.** Two of those undecided items are matters of exclusive federal jurisdiction: (1) forfeiture to
 20 the federal government, reserved to Judge Wilken's retained jurisdiction under 21 U.S.C. § 853
 21 (EXHIBIT 2); and (2) inclusion in a bankruptcy estate, automatic under 11 U.S.C. § 541 and
 22 reserved to this Court under 28 U.S.C. § 1334(e)(1)'s exclusive federal-bankruptcy jurisdiction.
 23 Neither is a right arising under the August Agreement. Provision 21 limits arbitration to disputes
 24 "as to their rights under any provisions of this agreement" (EXHIBIT 40, p. 8), and the
 25 Agreement contains no reference to 11 U.S.C. § 349, § 541, or § 554, to 21 U.S.C. § 853, or to 28
 26 U.S.C. § 1334(e)(1). Being outside the contractual grant, these federal questions remain open for
 27 this Court. Section F recognizes that limit, and this Court's exclusive jurisdiction under §
 28

1 1334(e)(1) reaches them.

2 **161.** Both undecided federal questions attach to the same 2007–2008 transfer by which Kesel
3 acquired the concealed bloc, and both remain open.

4 **162.** Forfeiture under 21 U.S.C. § 853. The shares trace to a \$125,000 investment in PA — the
5 \$100,000 OSM investment of August 1998 and the \$25,000 ADLS wire of February 28, 2000 —
6 made during the 1998–2000 period to which Kesel pleaded guilty. (EXHIBIT 2; EXHIBIT 17, p.
7 23.) Whether those shares are forfeitable proceeds under § 853 is a federal question committed to
8 the district court, and Judge Wilken retained jurisdiction over the forfeiture for the purpose of
9 enforcing the Final Order. (EXHIBIT 23.) No court with jurisdiction has decided it.

10
11 **UNDER STEEL CO., ADJUDICATORY AUTHORITY MUST EXIST BEFORE THE
FEDERAL ESTATE-PROPERTY QUESTION MAY BE DECIDED**

12 **163.** AAA could not decide the federal question first and then use its own answer as the
13 jurisdictional foundation for having decided it. A tribunal cannot assume adjudicatory authority in
14 order to reach the merits and then use its merits determination to establish the authority it needed
15 at the outset. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94–95, 101–02 (1998),
16 rejected “hypothetical jurisdiction,” explaining that “[f]or a court to pronounce upon” the
17 meaning of federal law when it lacks jurisdiction to do so is “by very definition” an ultra vires act.
18 Plaintiff invokes *Steel Co.* for that structural principle—not to contend that every question arising
19 under the Bankruptcy Code is itself jurisdictional.

20 **164.** That is the alleged bootstrap here. The Panel first found that Kesel's undisclosed PA shares
21 became property of the bankruptcy estate under § 541. It then determined that those same shares
22 “reverted back in ownership to Kesel” upon dismissal under § 349(b)(3), notwithstanding their
23 omission from Schedule B and § 554(d)'s command that estate property “that is not abandoned
24 under this section and that is not administered in the case remains property of the estate.” That
25 was the disputed federal property-status question itself. The Panel could not first resolve that
26 question in Kesel's favor and then treat the resulting personal ownership, shareholder status, and
27 contractual rights as the source of its authority to have resolved it.
28

1 165. The circularity had concrete consequences because Kesel's personal ownership supplied the
2 predicate for his asserted voting rights under the Shareholders' Agreement. Mednik alone held
3 approximately 35% of PA. Beginning in February 2019, Mednik and Kesel relied upon Kesel's
4 disputed voting position to exercise corporate authority against Plaintiff, including the vote used
5 to remove Plaintiff from corporate control, and thereafter controlled corporate resources later used
6 to retain counsel and experts and prosecute PA's arbitration claims. The controversy therefore
7 existed before AAA was invoked and before any Award or state-court judgment.

8 166. Plaintiff does not ask this Court to determine whether § 349(b)(3) or § 554(d) ultimately
9 governs the shares, invalidate the February 2019 corporate actions, or relitigate the California
10 courts' conclusions concerning contractual corporate authority. The narrower question is
11 antecedent: whether the Panel possessed adjudicatory authority to determine the federal estate-
12 property status upon which Kesel's personal ownership and resulting contractual rights depended.
13 Under Steel Co., authority to adjudicate must precede the merits determination; it cannot be
14 manufactured by that determination.

15 167. PA shares were not the only asset omitted from Kesel's schedules and from the arbitration
16 record. The underlying bankruptcy record demonstrates why the issue was substantive rather than
17 hypothetical. Kesel signed his bankruptcy schedules under the federal penalty warning but
18 omitted the PA shares from Schedule B. He also completed Schedule A by identifying his
19 apartment building at 1306 Martin Luther King Jr. Way, Berkeley, while omitting the separate
20 parking-building interest he later testified he acquired from Oleg Sagodeev in the 2007–2008
21 reconciliation. (EXHIBIT 12, Schedule A; EXHIBIT 36.)

22 168. Kesel later testified concerning the parking-building transaction: "Okay. I am not sure I
23 understand. How did you pay for the shares that you bought from Mr. Sagodeev and Mr. Kesel?"
24 Kesel answered: "I think during deposition I clearly stated it was reconciliation between our debts
25 to each other. In this particular transaction, it is handled. Oleg Sagodeev was part owner of a
26 parking building, and I purchase him out without paying money from the purchase. It was a way
27 to reconcile that relationship." (EXHIBIT 36, Vol. IV, p. 868:1–9.) When pressed whether cash
28 had been exchanged, Kesel further testified: "I had reconciliation, and cash never was exchanged

1 between me and Mr. Sagodeev, never.” (EXHIBIT 36, Vol. IV, p. 868:14–17.)

2 169. Thus, the federal property-status issue confronting the Panel concerned assets omitted from
3 completed bankruptcy schedules, not merely an abstract interpretation of the Shareholders’
4 Agreement. Once the Panel itself determined that the undisclosed PA shares had entered the
5 federal bankruptcy estate under § 541, Plaintiff alleges that it could not bootstrap contractual
6 authority from Kesel’s disputed personal ownership to decide whether federal law subsequently
7 returned those same shares to him.

8
9 **I . PER THE COURT OF APPEAL’S FEBRUARY 17, 2026 OPINION, NO COURT**
10 **WITH JURISDICTION HAS DECIDED THE FEDERAL ESTATE-PROPERTY STATUS**
11 **OF THE CONCEALED SHARES — A QUESTION § 1334(e)(1) RESERVES TO THIS**
12 **COURT ALONE.**

13 170. One determination about Kesel’s PA shares has been made, and it was made automatically by
14 operation of federal law: under 11 U.S.C. § 541(a), the shares became property of the estate at the
15 commencement of the case on February 16, 2010 — requiring no tribunal to act, and reaching the
16 unlisted shares notwithstanding the 1998 Agreement. The AAA Panel itself confirmed this
17 inclusion. (EXHIBIT 1, Award p. 44.) Since that moment, no court or tribunal with jurisdiction
18 has decided that the shares left the estate. The Panel purported to revest them in Kesel under §
19 349(b)(3), but the Court of Appeal confirms AAA “did not decide ... whether Kesel’s shares
20 should be included in a bankruptcy estate” — and § 1334(e)(1) commits that question to this
21 Court alone. The shares entered the estate by congressional mandate in 2010 and, no
22 jurisdictionally valid decision having removed them, remain estate property today.

23 171. On February 17, 2026, the Court of Appeal (Sixth Appellate District) issued two opinions
24 arising from the same Santa Clara County Superior Court Case No. 20CV368701 — H052610
25 (Kolchinsky v. Power Architects) and H052611 (Gilberg v. Power Architects) — both authored
26 by Justice Lie, referenced in this Complaint as the “Kolchinsky opinion” (EXHIBIT 39) and the
27 “Gilberg opinion” (EXHIBIT 40). Section F of the Kolchinsky opinion (“Kesel’s Shareholder
28 Status”) states:

172. “AAA’s analysis of the impact of the federal proceedings on Kesel’s status as a shareholder

1 was within the scope of its power as the arbiter of his rights under the August Agreement. AAA
2 did not decide in the first instance whether Kesel's shares should be forfeited to the federal
3 government, whether Kesel's shares should be included in a bankruptcy estate, or whether Kesel
4 could or should be prosecuted for the fraud that Kolchinsky alleges... But AAA was assessing
5 whether Kesel's shares had in fact been forfeited, not whether Kesel had committed uncharged
6 federal offenses or whether federal prosecutors should have taken Kesel's shares from him.
7 Kolchinsky's remaining arguments boil down to his assertion that AAA reached the wrong result
8 — it should have concluded that Kesel had forfeited his shares in the federal criminal proceedings
9 or the bankruptcy. This is a quintessential determination of a mixed question of fact and law,
10 which we may not review for error." (EXHIBIT 39, Section F, p. 11.)

11 173. The Panel had previously stated: "Bankruptcy Code Section 541 defines 'property of the
12 estate' as 'all of a debtor's legal or equitable interests in property, wherever located, as of the
13 commencement of the case.' 11 U.S.C. § 541(a)... Therefore, although Kesel did not list his PA
14 shares in his Chapter 11 case, those shares were part of the bankruptcy estate and reverted back in
15 ownership to Kesel once his Chapter 11 case was dismissed pursuant to Section 349(b)(3) of the
16 Bankruptcy Code." (EXHIBIT 1, Award pp. 44–45.)

17 174. Plaintiff presented the competing statute, 11 U.S.C. § 554(d): "Unless the court orders
18 otherwise, property of the estate that is not abandoned under this section and that is not
19 administered in the case remains property of the estate." The Panel expressly considered that
20 position and stated: "The Panel declines to find a forfeiture under § 554(d) based on the
21 authorities relied on by Respondents." (EXHIBIT 1, Award p. 45.) The Panel therefore selected
22 between competing federal statutes governing property it had already found became estate
23 property.

24 175. Section F now confirms that the second half of that conclusion — the § 349(b)(3) revesting
25 — was a determination AAA did not make "in the first instance."

26 176. In her Opinion, Justice Lie located AAA's authority entirely in the August Agreement: "The
27 trial court compelled Gilberg to arbitrate under the August Agreement. Under that agreement,
28 '[s]hould any dispute arise between any one or more of the parties to this agreement as to their

1 rights under any provisions of this agreement, the parties . . . agree to refer such dispute to
2 [AAA]." (EXHIBIT 40, p. 8.) That clause — limited on its face to disputes "as to rights under
3 any provisions of this agreement" — is the outer boundary of what the parties submitted, and is
4 the only source of authority the Court of Appeal recognized.

5 177. Plaintiff did not submit these disputes to arbitration voluntarily. On January 12, 2021, the
6 Superior Court (Folan, J.) granted the petition to compel and ordered Plaintiff to arbitrate under
7 the August Agreement. (EXHIBIT 58.) The court described the clause as "extremely broad,
8 applying to any dispute between any party to the agreement as to their rights under any provisions
9 of the agreement." (EXHIBIT 58, p. 3.) The breadth the court identified was breadth as to subject
10 matter among the signatories. The clause reaches disputes "between any party to the agreement"
11 — not disputes concerning persons who are not parties to it. Neither the bankruptcy estate, nor
12 any trustee, nor the United States signed the August Agreement. However broadly the clause is
13 read as to subject matter, it reaches no dispute to which those interests are a party, because they
14 are not parties to the agreement at all. The order resolved the arbitrability of Plaintiff's
15 employment and contract claims. It did not address, and was not asked to address, whether the
16 Panel could adjudicate the federal property status of a bankruptcy estate, the interests of any
17 trustee, or the forfeiture interests of the United States — none of which was before the court.
18 Plaintiff alleges that an order compelling arbitration of contractual claims between shareholders
19 could not enlarge the submission to reach interests that were never parties to it.

20 178. The August Agreement, signed by Kesel and Plaintiff on August 21, 1998 (EXHIBIT 4), is
21 silent on every federal statutory regime material to the jurisdictional questions alleged here: 11
22 U.S.C. §§ 349(b)(3), 541, and 554(d); 18 U.S.C. §§ 152 and 3284; 21 U.S.C. § 853; and the
23 federal tax-reporting requirements implicated by Forms 966 and SS-4. (EXHIBIT 4, OP 1–32.)
24 Optional Provision 21 authorized arbitration only of disputes "as to rights under any provision of
25 this agreement." It did not authorize the Panel to determine which federal statute governed
26 concealed bankruptcy-estate property, adjudicate the federal status of property implicated by a
27 criminal-forfeiture proceeding, or require Plaintiff to make federal representations under penalties
28 of perjury or enter the underlying dissolution-and-reincorporation transaction. Those matters do

1 not become contractual “rights under” the Agreement merely because their resolution may affect
2 a shareholder dispute. Congress independently allocated exclusive jurisdiction over property of a
3 bankruptcy estate through 28 U.S.C. § 1334(e)(1), and a private agreement cannot enlarge or alter
4 that statutory allocation. That distinction is consistent with the Court of Appeal’s statement that
5 AAA “did not decide in the first instance ... whether Kesel’s shares should be included in a
6 bankruptcy estate.” (EXHIBIT 39, p. 11.) Plaintiff alleges that the Panel nevertheless made
7 federal property-status determinations as predicates to the Award, notwithstanding that the
8 Agreement itself supplied no authority over those federal interests.

9 179. The right at issue is one no State has power to destroy. “Whether acting through its judiciary
10 or through its legislature, a State may not deprive a person of all existing remedies for the
11 enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded
12 to him some real opportunity to protect it.” *Richards v. Jefferson County*, 517 U.S. 793 (1996)
13 (quoting *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 681–82 (1930)). A claim that
14 concealed property remained property of a bankruptcy estate under 11 U.S.C. § 554(d) arises
15 under federal law and falls within jurisdiction Congress made exclusive. 28 U.S.C. § 1334(e)(1).
16 The Court of Appeal’s statement that AAA “did not decide in the first instance ... whether
17 Kesel’s shares should be included in a bankruptcy estate” is therefore not a holding that the
18 question was resolved against the estate. It confirms that the question remains open, and it is a
19 question on which “the opinion of the state court is not final.” *Id.* (quoting *Brinkerhoff-Faris*, 281
20 U.S. at 681).

21 180. The claim itself, and not merely the shares, is the protected interest. To bar it by a prior
22 adjudication would deprive its holder of a “chose in action, which we have held to be a protected
23 property interest in its own right.” *Richards*, 517 U.S. 793 (citing *Logan v. Zimmerman Brush*
24 *Co.*, 455 U.S. 422, 429–30 (1982), and *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812
25 (1985)). Plaintiff does not ask this Court to determine that the shares remained property of the
26 estate. Plaintiff alleges that the right to have that federal question determined belongs to the estate
27 and to a trustee, that it is protected property, and that it was resolved in a proceeding in which
28 neither appeared.

1 **181.** 21 U.S.C. § 853 — also outside the Agreement, also undecided. Whether the PA interest —
 2 acquired with funds the United States alleges were criminal proceeds during the 1998–2000
 3 conspiracy period underlying his § 1956(h) money-laundering sentence — is subject to § 853(c)
 4 relation-back forfeiture as substitute or traceable property is a federal question no court with
 5 jurisdiction has ever adjudicated. The Wilken court expressly retained jurisdiction "for the
 6 purpose of enforcing" its § 853 forfeiture order. (EXHIBIT 23.) Section F confirms the symmetry:
 7 just as AAA "did not decide ... whether Kesel's shares should be included in a bankruptcy estate,"
 8 it "did not decide ... whether Kesel's shares should be forfeited to the federal government." That
 9 determination belongs to a federal forum, not to an arbitral panel construing a private contract.

10 **182.** The arbitral-finality defense does not reach the federal question — and this Complaint does
 11 not re-litigate that question, because no tribunal with jurisdiction ever decided it. Respondents
 12 will argue the Award is final — confirmed by Rosen, affirmed by the Court of Appeal, review
 13 denied — and the federal-estate question therefore settled. But Justice Lie's own February 17,
 14 2026 Opinion confirms what was not: AAA "did not decide in the first instance ... whether
 15 Kesel's shares should be included in a bankruptcy estate." (EXHIBIT 39, Section F, p. 11.) At
 16 commencement on February 16, 2010, § 541(a) placed the shares in the estate, and no tribunal
 17 with jurisdiction has since removed them. The jurisdiction-first rule Justice Lie herself adopted
 18 confirms why that gap remains open: "reviewing courts must be satisfied of their own jurisdiction
 19 before proceeding to the merits." (EXHIBIT 40, p. 6, citing *Steel Co. v. Citizens for a Better*
 20 *Environment* (1998) 523 U.S. 83, 94–95, and *Kabran v. Sharp Memorial Hospital* (2017) 2
 21 Cal.5th 330, 339.)

22 23 KESEL'S FEDERAL GUILTY PLEA AND THE FORFEITURE QUESTIONS IT LEFT UNRESOLVED

24 **183.** During the arbitration, Plaintiff alleged that Kesel fraudulently concealed his participation in
 25 the ADLS criminal enterprise before execution of the August 21, 1998 Shareholders' Agreement.
 26 The Panel rejected that claim, stating:

27 **184.** "Respondents have failed to produce evidence that Kesel knew in July 1998 that he was
 28

1 engaging in the illegal sale of controlled substances when he invested in PA or knew that he was
2 under investigation for illegal activities.... The element of known concealment therefore was not
3 proven."

4 **185.** The Panel relied principally upon Kesel's arbitration testimony in reaching that determination
5 and thereafter recognized Kesel as a legitimate shareholder entitled to voting rights, dividends,
6 and corporate governance rights.

7 **186.** Plaintiff does not ask this Court to determine whether the Panel correctly evaluated the
8 evidence, or whether the guilty plea conclusively established that Kesel knew of the ADLS
9 conduct before he became a PA shareholder in August 1998 and failed to disclose it to his fellow
10 shareholders. Those issues are not presented here.

11 **187.** Rather, Plaintiff alleges that the Panel necessarily adjudicated federal criminal knowledge
12 and forfeiture issues arising from the same criminal enterprise and the same 1998–2000 period
13 expressly admitted in Kesel's federal guilty plea. Whether those admissions affected ownership,
14 forfeiture, or related federal interests were matters reserved to the United States and the federal
15 courts administering the criminal proceedings, not to a private arbitration panel acting solely
16 under the August 21, 1998 Shareholders' Agreement.

17
18 **THE SAGODEEV TRANSFER DURING FEDERAL SUPERVISION AND THE \$9 BENCHMARK**

19 **188.** The Panel found that on October 23, 2007, PA was requested to record a transfer of 14,089
20 PA shares from Oleg Sagodeev to Kesel at a stated price of \$9 per share.

21 **189.** The transfer was recorded while Kesel remained under federal probation supervision and
22 while the federal forfeiture order remained subject to Judge Wilken's retained enforcement
23 jurisdiction. (EXHIBIT 38; EXHIBIT 23.)

24 **190.** Kesel testified concerning transfers from Sagodeev and another associate that he did not pay
25 a penny and that no cash was exchanged for the PA shares. He gave similar testimony concerning
26 a parking building.

27 **191.** Plaintiff alleges that Sagodeev was an ADLS partner (EXHIBIT 17) associated with the
28

1 same ADLS/OSM investment circle and that the personnel overlap, timing, absence of cash, and
2 retained federal jurisdiction required federal investigation before the transfer could be treated as
3 an ordinary arm's-length market transaction.

4 **192.** The Panel nevertheless characterized the transaction as a sale and used \$9 as the last agreed
5 price for PA shares.

6 **193.** Using \$9 per share, the Panel concluded that payments to Gilberg from 2009 through 2015
7 represented purchases of 46,055 shares and reduced his ownership from 50,000 shares to 3,945
8 shares.

9 **194.** Thus, the Sagodeev transaction was not collateral background. It supplied the valuation
10 premise that directly produced the challenged reduction of Gilberg's ownership.

11
12 **IN RE MARK ALEXANDER KESEL, CASE NO. 10-41653 WJL — CHAPTER 11
BANKRUPTCY**

13 **THE NARROW QUESTION PRESENTED**

14 **195.** This action presents a question of adjudicatory authority, not ordinary arbitral error. Plaintiff
15 does not ask this Court to determine whether the AAA Panel correctly interpreted 11 U.S.C. §§
16 541, 349(b)(3), 554(d), or 365(e), or whether any person committed a federal crime.

17 **196.** The Panel found: "On February 16, 2010, Kesel filed a Chapter 11 petition in the U.S.
18 Bankruptcy Court, Northern District of California, Case No. 10-41653, signing the petition under
19 penalty of perjury. At the time that he filed his petition, Kesel owned PA shares but did not list
20 them on the petition's Schedule B." (EXHIBIT 1, Award p. 43.)

21 **197.** The Panel further determined that Kesel's omission did not prevent the shares from becoming
22 bankruptcy-estate property. It held that "those shares were part of the bankruptcy estate" under 11
23 U.S.C. § 541 and later determined that they "reverted back in ownership to Kesel" when the
24 Chapter 11 case was dismissed. (EXHIBIT 1, Award pp. 44–45.)

25 **198.** The distinction matters because 28 U.S.C. § 1334(e)(1) provides that "the district court in
26 which a case under title 11 is commenced or is pending shall have exclusive jurisdiction ... of all
27 the property ... of the debtor as of the commencement of such case, and of property of the estate."
28

1 Having found that the shares became estate property, the remaining dispute was whether, upon
 2 dismissal, they “revest[ed] ... in the entity in which such property was vested immediately before
 3 the commencement of the case” under § 349(b)(3), or instead remained estate property because
 4 “property of the estate that is not abandoned under this section and that is not administered in the
 5 case remains property of the estate” under § 554(d). Plaintiff alleges that this estate-property
 6 determination fell within the exclusive jurisdiction established by § 1334(e)(1), not within the
 7 authority conferred by the parties' private Shareholders' Agreement.

8 **199.** The Award did not merely apply an existing bankruptcy ruling. The Bankruptcy Court's
 9 December 19, 2011 dismissal order did not identify the omitted PA shares, determine whether
 10 they revested under § 349(b)(3), address § 554(d), or make any finding concerning those
 11 undisclosed assets. Twelve years later, in 2023, the Panel supplied that federal ownership
 12 determination for the first time. The Panel did not determine what happened in 2023; it
 13 determined the legal effect of the 2011 dismissal order.

14 **200.** That determination was indispensable rather than collateral. Absent Kesel's personal
 15 ownership of the shares, Power Architects' authority to prosecute the arbitration depended upon
 16 who lawfully possessed the associated voting rights. The Panel's own findings established that
 17 Mednik held approximately 35% of PA's shares—less than the majority required for major
 18 decisions under Provision 13(a) and insufficient by himself to satisfy the Agreement's separate
 19 supermajority requirements. The federal ownership determination was therefore a predicate upon
 20 which Kesel's voting rights and PA's asserted corporate authority depended.

21 **201.** Even assuming the Panel ultimately selected the correct interpretation of the Bankruptcy
 22 Code, Plaintiff alleges that it lacked authority to make that determination because it concerned
 23 ownership of property the Panel itself found had become property of a federal bankruptcy estate.

24 25 KESEL'S CHAPTER 11 RECORD ON WHICH THE DETERMINATION RESTED

26 **202.** The relevant bankruptcy record includes the February 16, 2010 petition; Kesel's Declaration
 27 Concerning Debtor's Schedules and Schedules A through G, signed under penalty of perjury;
 28 Schedule B, Item 13 listing an Ameritrade stock account of approximately \$5,235 while omitting

1 his PA interest; Schedule G omitting the August 1998 Shareholders' Agreement while listing
2 NeoVision, LLC as a contract counterparty; Schedule A omitting a separate parking-building
3 interest; Kesel's failure ever to amend his schedules; the absence of Power Architects from the
4 matrix from which Form B9E issued on February 17, 2010; and distributions attributable to the
5 omitted PA shares during and after the case. (EXHIBIT 3, Form B9E.)

6 **203.** The bankruptcy proceeding also produced material relief. The Panel found that the filing was
7 triggered by an approximately \$1,427,000 federal judgment that ran against Kesel personally and
8 others. During the case, the Bankruptcy Court approved a compromise under Federal Rule of
9 Bankruptcy Procedure 9019 resolving that liability. The compromise and subsequent dismissal
10 occurred on a record that did not disclose the PA shares. (EXHIBIT 1, Award p. 43 & n.26;
11 EXHIBIT 42, Chapter 11 Dismissal Order.)

12 **204.** Kesel executed the B6 Declaration Concerning Debtor's Schedules on January 16, 2010,
13 declaring under penalty of perjury that he had read the schedules and that they were "true and
14 correct to the best of my knowledge, information and belief." Immediately beneath his signature,
15 the form warned: "Penalty for making a false statement or concealing property: Fine of up to
16 \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571." (EXHIBIT 12,
17 B6 Declaration.)

18 **205.** Schedule B required Kesel to "list all personal property of the debtor of whatever kind."
19 Under Item 13, "Stock and interests in incorporated and unincorporated businesses. Itemize,"
20 Kesel disclosed only a "Stock account - Ameritrade" valued at approximately \$5,235. He did not
21 disclose his PA shares. (EXHIBIT 12, Schedule B.) The omitted interest was not nominal: it
22 represented approximately one-quarter to one-third of PA, was later appraised at approximately
23 \$4.46 million, and carried economic, voting, and corporate-governance rights in an operating
24 corporation.

25 **206.** Kesel never amended Schedule B. Asked at the arbitration, "Did you go to — back to amend
26 your Chapter 11 petition to include Power Architects shares?", he answered: "I think we would
27 have to do it if we would go proceed with the bankruptcy, but I didn't proceed with the
28 bankruptcy, and at the time I had other things on my mind." (EXHIBIT 6, Vol. IV, 898:18–24.)

1 207. The omission extended to Schedule G. Kesel did not check the box indicating that he had no
2 executory contracts or unexpired leases. Instead, he disclosed a property-management agreement
3 with NeoVision, LLC, but did not disclose the August 1998 Shareholders' Agreement governing
4 the PA interest omitted from Schedule B. Kesel also listed NeoVision on the creditor matrix while
5 omitting his own ownership interest in NeoVision from Schedule B, Item 13. (EXHIBIT 12,
6 Schedules B and G; EXHIBIT 3.)

7 208. Schedule A required Kesel to "list all real property in which the debtor has any legal,
8 equitable, or future interest." Kesel listed only his residence at 59 Stratford Road and the
9 apartment building at 1306 Martin Luther King Jr. Way. (EXHIBIT 12, Schedule A.) He did not
10 disclose a separate interest in a parking building that, according to his later sworn arbitration
11 testimony, he had acquired from Oleg Sagodeev before the bankruptcy. Kesel testified: "Oleg
12 Sagodeev was part owner of a parking building, and I purchase him out without paying money
13 from the purchase. It was a way to reconcile that relationship." He further confirmed that "cash
14 never was exchanged between me and Mr. Sagodeev, never." (EXHIBIT 36, Vol. IV, 869:3-17.)

15 209. Plaintiff alleges that this parking-building interest was another asset omitted from his
16 bankruptcy schedules.

17 210. Because the schedules disclosed no interest in Power Architects, PA did not appear on the
18 matrix from which the clerk issued notice. On February 17, 2010, the Bankruptcy Noticing Center
19 issued Form B9E to twenty-one recipients. PA was not among them, and no PA officer or
20 shareholder received notice of the proceeding. (EXHIBIT 3.)

21 211. The nondisclosure also bore on Kesel's status as debtor in possession. A Chapter 11 debtor
22 remains in possession unless a trustee is appointed under § 1104(a), which provides for
23 appointment "for cause, including fraud, dishonesty, incompetence, or gross mismanagement," or
24 where appointment is in the interests of creditors and equity security holders. Eleven days after
25 the petition, Kesel's bankruptcy counsel, Whitman, sought authority "[t]o prepare and verify
26 completeness of schedules and statement of affairs filed in this case." (EXHIBIT 41 ¶ 3(a).) The
27 schedules omitted the PA interest, and Kesel thereafter remained debtor in possession for
28 approximately twenty-two months. Plaintiff does not ask this Court to determine what the

1 Bankruptcy Court would have done had the shares been disclosed. Plaintiff alleges that the issue
2 was never presented because the asset was omitted from the bankruptcy record.

3 **212.** Kesel continued receiving economic benefits attributable to the omitted shares during and
4 after the case. Distributions were routed through NeoVision, LLC. Asked at his June 2, 2022
5 deposition what work NeoVision performed for PA, Kesel answered “Nothing,” and testified that
6 the invoices were issued “in ... lieu of distributions.” (EXHIBIT 27, Kesel Dep. 119:25–120:18.)
7 From 2010 through 2022 those distributions total approximately \$943,337.58, including
8 approximately \$55,775.00 in fiscal 2011 while the bankruptcy remained pending. No
9 authorization was sought or obtained under 11 U.S.C. § 363. Distributions have continued to
10 2025. (EXHIBIT 22.) Plaintiff does not ask this Court to adjudicate the precise amounts; the
11 figures are alleged to show the continuing economic significance of the omitted asset.

12 **213.** The \$943,337.58 figure derives from the Panel's own factual findings and the financial
13 methodology the Panel adopted, not from assumptions supplied by Plaintiff. The Panel found that
14 “PA's records establish that Kolchinsky received profit distributions in the years that such
15 distributions were made to Gilberg, Mednik and Kesel.” (EXHIBIT 1, Award p. 70.) The Panel's
16 table at Award pp. 60–61 reports dividend figures fiscal year by fiscal year from 2011 through
17 2022 and states that they were “based on Mednik's authorized dividends, net of assignment to
18 Kolchinsky, because Gilberg and Mednik were paid the same amounts in dividend distributions
19 through 2019,” using data from PA expert Monica Ip's report. Kesel testified that before 2018 he
20 held approximately 35,250 PA shares, against Mednik's 50,000. (EXHIBIT 6, Vol. IV, 874–875.)
21 Applying an approximate five-sevenths proportion to the Panel's figures yields approximately
22 \$943,337.58.

FISCAL YEAR	ACTUAL DIVIDENDS RECEIVED (AWARD PP. 60–61)	KESEL — CALCULATED AT PANEL'S BASELINE RATIO	NOTE
2011	\$78,085.00	\$55,775.00	DURING CHAPTER 11 CASE
2012	\$16,975.00	\$12,125.00	SHARES STILL UNSCHEDULED
2013–2015	NONE	\$0	NO DISTRIBUTIONS
2016	\$109,125.00	\$77,946.43	
2017	\$133,375.00	\$95,267.86	
2018	\$242,500.00	\$173,214.29	
2019	\$158,110.00	\$112,935.71	
2020	\$179,289.12	\$128,206.51	
2021	\$201,506.74	\$143,933.39	
2022	\$201,506.74	\$143,933.39	
TOTAL	\$1,320,472.60	\$943,337.58	UNSCHEDULED

214. The Panel's figures for fiscal years 2020 through 2022 derive from a different source. The Award states that "Gilberg's actual dividends for FY 2020, 2021, and 2022 were lower than Mednik's," based on Ip's Ex. 8-2a and Ex. 15-2a. (EXHIBIT 1, Award p. 61.) The figures for those years are therefore conservative.

215. On December 19, 2011, the Bankruptcy Court dismissed the case. The dismissal order neither identified the PA shares nor adjudicated their ownership, administration, abandonment, or post-dismissal status. No discharge was entered and none was denied. (EXHIBIT 42.)

216. Congress treated concealment in a bankruptcy case as a continuing wrong. 18 U.S.C. § 3284

1 provides that “[t]he concealment of assets of a debtor in a case under title 11 shall be deemed to
 2 be a continuing offense until the debtor shall have been finally discharged or a discharge denied,
 3 and the period of limitations shall not begin to run until such final discharge or denial of
 4 discharge.” Kesel’s case was dismissed; no discharge was entered and none was denied. Plaintiff
 5 identifies § 3284 for the congressional judgment it reflects. It is a criminal limitations provision,
 6 creates no civil right or remedy, and no relief is sought under it.

7 **217.** Upon commencement of the case on February 16, 2010, Kesel’s PA shares became property
 8 of the estate under 11 U.S.C. § 541(a), whether or not he disclosed them.

9 **THE § 1107(A) FIDUCIARY QUESTION THE PANEL NEVER ADDRESSED**

10 **218.** During the approximately twenty-two months of the Chapter 11 proceeding, Kesel occupied
 11 two legally distinct capacities with respect to the same PA shares. As debtor, he was the person
 12 whose ownership interest became property of the estate under § 541. As debtor in possession,
 13 however, he exercised the rights and powers of a trustee under § 1107(a) and acted as a fiduciary
 14 for the estate. His own bankruptcy counsel represented to the Bankruptcy Court that, because no
 15 trustee had been appointed, Kesel was “the debtor-in-possession with all powers and rights of a
 16 trustee pursuant to 11 U.S.C. § 1107.” (EXHIBIT 41.)

17 **219.** Thus, the federal question was not merely whether § 349(b)(3) ordinarily reverts property
 18 following dismissal. It included whether that provision returned undisclosed estate property
 19 personally to the same Chapter 11 debtor in possession who, under § 1107(a), had exercised the
 20 rights and powers of a trustee while possessing federal disclosure and administration
 21 responsibilities concerning estate property.

22 **220.** The Panel never addressed that question. Its Award contains no analysis of § 1107(a), no
 23 analysis of Kesel’s fiduciary capacity as debtor in possession, and no determination whether a
 24 debtor in possession who failed to disclose estate property could invoke § 349(b)(3) to obtain that
 25 property personally upon dismissal. Instead, the Panel expressly considered it “unnecessary to
 26 resolve” whether Kesel intentionally failed to disclose the shares. (EXHIBIT 1, Award p. 43
 27 n.26.) Plaintiff does not ask this Court to resolve that unanswered federal question. Its
 28 significance here is jurisdictional: the Panel’s declaration that the shares “reverted back in

1 ownership to Kesel” necessarily resolved the ownership consequences of an unresolved federal
2 bankruptcy issue concerning estate property.

3
4 **THE 2011 DISMISSAL ORDER DID NOT DECIDE THE FEDERAL OWNERSHIP QUESTION**

5 **221.** Section 349(b)(3) provides a qualified default: unless the court, for cause, orders otherwise,
6 dismissal reverts property of the estate in the entity in which it was vested immediately before
7 commencement. Section 554(d) provides that, unless the court orders otherwise, estate property
8 neither abandoned nor administered remains property of the estate. Judge Lafferty's December 19,
9 2011 dismissal order simply approved Kesel's motion and ordered that the Chapter 11 case be
10 “DISMISSED”; it preserved the separate Applied Materials compromise, but did not identify the
11 PA shares, mention § 349 or § 554(d), or make any finding concerning undisclosed estate
12 property. (EXHIBIT 42.)

13 **222.** The interaction between §§ 349(b)(3) and 554(d), as applied to the undisclosed PA shares in
14 the dismissed case, was not adjudicated in 2011. Because the shares were not disclosed, the
15 Bankruptcy Court was never asked whether the circumstances supplied cause to order otherwise
16 under § 349(b), whether § 554(d) preserved the shares as estate property, or whether any other
17 treatment was warranted.

18 **223.** On June 22, 2026, Plaintiff moved to reopen the Chapter 11 case under 11 U.S.C. § 350(b).
19 The Bankruptcy Court (Lafferty, J.) heard the motion on July 8 and July 29, 2026, and denied it.
20 (EXHIBIT 61, Minute Entries, July 8 and July 29, 2026.) The denial rested on the court's
21 conclusion that the case was not statutorily subject to reopening. No written order had been
22 entered as of the filing of this Complaint, and the court made no finding concerning the PA
23 shares, their status as property of the estate, abandonment, or the effect of § 349(b)(3).

24 **224.** That omission is material because § 349(b)(3) expressly reserves authority to “the court” to
25 order otherwise for cause. Plaintiff does not ask this Court to hold that cause necessarily existed.
26 Plaintiff alleges that the Bankruptcy Court was never given the opportunity to make that
27 determination because the PA shares were absent from the bankruptcy record.
28

1 225. The distinction is not that § 349(b)(3) can never operate by statute. It is that the Panel later
2 encountered a disputed federal question concerning the legal effect of the 2011 dismissal upon
3 undisclosed estate property and resolved that controversy itself.

4 PLAINTIFFS RIGHT TO NOTICE AND AN OPPORTUNITY TO BE HEARD BEFORE THE
5 CHAPTER 11 DISMISSAL

6 226. Because the PA shares and Shareholders' Agreement were omitted from Kesel's schedules,
7 neither PA nor Plaintiff received notice that those interests were implicated in the Chapter 11
8 proceeding before dismissal. PA did not appear on the notice matrix, and no PA officer or
9 shareholder received Form B9E notice. (EXHIBIT 3.)

10 227. The right to be heard “has little reality or worth unless one is informed that the matter is
11 pending and can choose for himself whether to appear or default, acquiesce or contest.” *Richards*
12 *v. Jefferson County*, 517 U.S. 793, 799 (1996) (quoting *Mullane v. Central Hanover Bank &*
13 *Trust Co.*, 339 U.S. 306, 314 (1950)). Nor does the law “impose upon any person absolutely
14 entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger.” *Id.* at
15 799 n.5 (quoting *Chase Nat'l Bank v. Norwalk*, 291 U.S. 431, 441 (1934)).

16 228. Plaintiff does not contend that the absence of notice itself creates a private claim, nullifies
17 the dismissal order, or determines the statutory effect of § 349(b)(3). It explains why the omission
18 of the PA shares and Shareholders' Agreement went unchallenged during the Chapter 11
19 proceeding and why no affected PA shareholder appeared to request that the Bankruptcy Court
20 address those undisclosed interests before dismissal.

21 IN 2023 THE PANEL SELECTED § 349(B)(3) OVER § 554(D)

22 229. The Panel held: “Those shares were part of the bankruptcy estate and reverted back in
23 ownership to Kesel once his Chapter 11 case was dismissed pursuant to Section 349(b)(3) of the
24 Bankruptcy Code.” (EXHIBIT 1, Award p. 44.)

25 230. The Award quoted § 349(b)(3) and concluded: “The dismissal order in the Kesel bankruptcy
26 did not ‘order otherwise’.... Therefore, by operation of law, all of Kesel's property that was the
27 subject of the bankruptcy estate, whether or not listed on his schedules, reverted in Kesel
28 personally—including his unlisted PA shares.” (EXHIBIT 1, Award p. 44.)

1 231. To support that conclusion, the Panel relied principally on Crawford v. Franklin Credit
 2 Management Corp., 758 F.3d 473 (2d Cir. 2014), quoting Crawford's statements that § 349
 3 "makes no distinction between those that were listed in the debtor's schedule of assets and those
 4 that were not," and that "Congress intended that a dismissal would undo the bankruptcy case."
 5 (EXHIBIT 1, Award p. 44.) The Award also cited In re Westwood Plaza North, 2016 WL
 6 11697859. Plaintiff has found no discussion in that decision addressing the interaction between §§
 7 349(b)(3) and 554(d).

8 232. Plaintiff presented the competing line of authority, including Kunica v. St. Jean Financial,
 9 Inc., 233 B.R. 46 (S.D.N.Y. 1999), arguing that Kesel "independently ceased to be a voting PA
 10 Shareholder under 11 U.S.C. § 554(d), as a consequence of his knowing and intentional failure to
 11 disclose his valuable PA Shares to the Bankruptcy Court ... while using that nondisclosure to
 12 persuade AMC to forgive for \$0 its \$1,427,000 Pre-Bankruptcy Judgment against him." The
 13 Panel described Kunica as among the authorities "which Crawford cited but did not follow," and
 14 ruled: "The Panel declines to find a forfeiture under § 554(d) based on the authorities relied on by
 15 Respondents." (EXHIBIT 1, Award p. 45.)

16 233. The Award therefore reflects more than a passing reference to federal bankruptcy law. The
 17 Panel quoted § 349(b)(3), applied it to the undisclosed PA shares, adopted Crawford's
 18 interpretation, rejected the competing § 554(d) position, and determined that Kesel—not the
 19 bankruptcy estate—owned the shares after dismissal.

21 THE LIMITATION CRAWFORD PLACED ON ITS OWN HOLDING

22 234. Crawford's analysis of § 554(d) opens with the holding the Panel applied: "We cannot view §
 23 554(d) as overriding § 349." Reasoning that dismissal leaves no estate and therefore no property
 24 of the estate, the court concluded that "§ 554 has no applicability after a dismissal."

25 235. Immediately following, Crawford addressed the contrary authority: "We are not persuaded to
 26 reach the opposite conclusion by the opinion of the district court in Kunica, which dealt with a
 27 debtor that, despite the dismissal, received relief that was tantamount to a discharge, and which is,
 28 in any event, not binding on us." The Second Circuit did not reject Kunica as wrongly decided; it

1 distinguished it on its facts and noted that it was not binding in that circuit.

2 **236.** That distinction is directly implicated here. The Panel itself found that Kesel's bankruptcy
3 was triggered by an approximately \$1,427,000 judgment against him personally and that, during
4 the bankruptcy, Kesel obtained a court-approved compromise resolving that liability without
5 monetary payment by him. (EXHIBIT 1, Award p. 43 & n.26.) Thus, the factual circumstance on
6 which Crawford distinguished Kunica—a dismissed debtor having received substantial
7 bankruptcy relief before dismissal—is alleged here: Kesel obtained resolution of approximately
8 \$1.427 million in personal liability while the PA shares remained undisclosed.

9 **237.** Crawford's own facts further define the distinction. Crawford was a Chapter 13 debtor who
10 held no trustee powers. Her petition was dismissed after she failed to appear at the confirmation
11 hearing and failed to make plan payments; the bankruptcy court "did not confirm Crawford's
12 proposed plan, address its merits, or mention her assets." The omitted asset was a contingent,
13 unadjudicated cause of action. She obtained nothing from the proceeding.

14 **238.** Kesel's circumstances differ from Crawford in each respect material to that distinction:

15 (a) Kesel served as debtor in possession for approximately twenty-two months, holding the rights
16 and powers of a trustee under §1107(a). His own bankruptcy counsel represented to the
17 Bankruptcy Court that, because no trustee had been appointed, Kesel was "the debtor-in-
18 possession with all powers and rights of a trustee pursuant to 11 U.S.C. §1107." (EXHIBIT 41.)

19 (b) The omitted asset was not a contingent, unadjudicated cause of action. It was an established
20 equity interest in an operating corporation, held since 1998 and enlarged by transfers in 2007 and
21 2008, later appraised at approximately \$4.46 million.

22 (c) The omitted equity interest produced distributions to Kesel while the Chapter 11 case
23 remained open, without §363 authorization.

24 (d) The omitted interest carried shareholder voting and corporate-governance rights that Kesel
25 continued to exercise. The contingent cause of action at issue in Crawford carried no comparable
26 corporate voting or director rights.

27 (e) During the Chapter 11 proceeding, Kesel obtained the benefit of a court-approved Rule 9019
28 compromise under which his approximately \$1,427,000 personal liability was extinguished —

1 forgiven without monetary payment, in exchange for non-monetary consideration furnished by
 2 Multimetrixs — while the PA shares remained undisclosed. The December 19, 2011 dismissal
 3 order expressly preserved that compromise. (EXHIBIT 42; Award p. 43 & n.26.)

4 (f) Asked at the arbitration whether he had returned to amend his petition to include the Power
 5 Architects shares, Kesel answered: “I think we would have to do it if we would go proceed with
 6 the bankruptcy, but I didn't proceed with the bankruptcy, and at the time I had other things on my
 7 mind.” (EXHIBIT 6, Vol. IV, 898:18–24.) He never amended Schedule B.

8 THE CONTINUING FEDERAL DISCLOSURE DUTY

9 **239.** Federal bankruptcy law imposes an affirmative and continuing duty of disclosure. *In re*
 10 *Coastal Plains, Inc.*, 179 F.3d 197, 207–08 (5th Cir. 1999), holds that a debtor must disclose all
 11 assets, that the obligation continues throughout the proceeding, and that a debtor may not obtain
 12 bankruptcy relief while withholding an asset and later assert it for his own benefit. The Fifth
 13 Circuit applied judicial estoppel where the debtor knew of the undisclosed claim and had a motive
 14 to conceal it, explaining that the doctrine protects the integrity of the judicial system rather than
 15 any opposing litigant. *Id.* at 205–10. Plaintiff does not ask this Court to hold that Coastal Plains
 16 estops Kesel. Its significance is that the consequences of continuing nondisclosure are governed
 17 by federal bankruptcy doctrine — the same federal consequences the Panel undertook to resolve
 18 when it declined to apply estoppel and nevertheless restored the ownership, economic, and
 19 governance consequences of the undisclosed shares to Kesel.

20 KUNICA MADE DISCLOSURE, NOT MERELY DISMISSAL, THE PIVOTAL 21 QUESTION

22 **240.** In *Kunica v. St. Jean Financial, Inc.*, 233 B.R. 46, 53–55 (S.D.N.Y. 1999), a dismissed
 23 Chapter 11 corporate debtor was not permitted to escape the consequences of nondisclosure
 24 merely by invoking § 349(b)(3). Kunica stated that “the key issue in this case is not dismissal nor
 25 discharge, but disclosure,” described disclosure as the “pivotal” concept in Chapter 11, and
 26 explained that the Bankruptcy Code requires disclosure to protect creditors from a debtor who
 27 may try to hide assets and to maximize judicial efficiency.
 28

1 **241.** Kunica concluded: “Given the critical importance of full and candid disclosure in Chapter 11
2 proceedings, it cannot be that the requirement of adequate disclosure evaporates because a
3 reversion of property is obtained by dismissal, under § 349, as opposed to abandonment under §
4 554.” Id. at 54–55. It further reasoned that the contrary result would “encourage a procedural
5 endrun around the disclosure requirements,” thereby rewarding failure to comply with Chapter 11
6 disclosure requirements.

7 **242.** Kunica is particularly significant because it was not authority newly supplied after the
8 arbitration. The Panel itself identified and considered Kunica in the 117-page Award. The Panel
9 found that Kesel did not disclose his PA shares, found that those shares nevertheless became
10 property of the bankruptcy estate under § 541, but expressly considered it “unnecessary to
11 resolve” whether Kesel intentionally failed to disclose them. (EXHIBIT 1, Award p. 43 n.26.) The
12 Panel nevertheless proceeded to the dispositive federal consequence: it declared that the
13 undisclosed estate property “reverted back in ownership to Kesel” upon dismissal and thereafter
14 repeatedly treated Kesel as a “legitimate shareholder.”

15 **243.** The significance of Kunica is not that Plaintiff asks this Court to adopt Kunica as the
16 ultimate answer to ownership of Kesel's shares. It is that the Panel's own cited authority treated
17 disclosure—not merely dismissal—as the pivotal Chapter 11 issue and expressly rejected the
18 proposition that adequate disclosure simply evaporates because property is asserted to revert
19 under § 349 rather than remain unadministered under § 554. Thus, by declaring revesting while
20 declining to resolve the consequences of nondisclosure, the Panel necessarily resolved that
21 disputed federal issue.

22 **244.** The additional § 1107(a) issue remained unanswered. Kesel exercised trustee powers as a
23 Chapter 11 debtor in possession, yet the Panel never analyzed whether § 349(b)(3) returned
24 undisclosed estate property personally to the same debtor in possession who exercised those
25 powers while the property remained undisclosed.

THE PANEL, NOT THE BANKRUPTCY COURT, RESOLVED THE FEDERAL PROPERTY CONTROVERSY

245. The Bankruptcy Court never selected Crawford over Kunica, never determined the interaction between §§ 349(b)(3) and 554(d) as to the undisclosed PA shares, never addressed the effect of Kesel's § 1107(a) status upon that question, and never declared that the PA shares revested in Kesel. Those determinations were made by the Panel in 2023.

246. Plaintiff alleges that the Panel nevertheless resolved that controversy under authority derived solely from a private Shareholders' Agreement and used its federal property determination as a predicate for declaring Kesel a "legitimate shareholder" possessing voting and economic rights, notwithstanding Congress's allocation of exclusive jurisdiction over bankruptcy-estate property under 28 U.S.C. § 1334(e)(1). The question presented here is therefore not which competing interpretation of federal bankruptcy law ultimately prevails, but whether the Panel possessed authority to make that federal property determination at all.

THE PANEL'S ESTOPPEL DETERMINATION

247. Plaintiff argued that Kesel's omission was inconsistent with his later assertion of shareholder status and that he was judicially estopped from voting to remove Plaintiff as CEO and director and from asserting claims on behalf of himself and PA. Plaintiff does not contend the Panel lacked authority to decide estoppel. It is relevant because the Panel relied on Crawford in resolving the federal issues.

248. Crawford addressed both § 349(b)(3) and estoppel. On the statutory question it held that § 349(b)(3) revests without regard to scheduling. On the equitable question it explained: "To the extent that the district court declined to apply § 349 on the basis that the equities did not favor Crawford, that rationale bespeaks estoppel rather than lack of standing." Crawford thus directed that equitable considerations concerning nondisclosure are addressed under estoppel rather than as a limitation on § 349(b)(3).

249. Crawford found estoppel unavailable on its own facts, because the bankruptcy court "did not confirm Crawford's proposed plan, address its merits, or mention her assets," and there was therefore "no risk of inconsistent adjudications."

250. On February 7, 2022, Kesel executed a declaration under penalty of perjury in *Gilberg v. Mednik*, Santa Clara Superior Court No. 21CV386091, declaring: "I have been a shareholder of P.A. since August of 1998," and "I have been a director of P.A. since August of 1998." (EXHIBIT 43 ¶¶ 2–3.) Twelve years earlier he had signed Schedule B under penalty of perjury, answered Item 13, listed a brokerage account of approximately \$5,235, and omitted the PA interest.

251. The bankruptcy record placed the nondisclosure within an express federal framework. Kesel's Form B6 Declaration Concerning Debtor's Schedules, signed under penalty of perjury on January 16, 2010, certified that he had read the schedules and that they were "true and correct to the best of my knowledge, information and belief."

252. The Panel resolved the estoppel question on a different basis: "Insofar as Kesel could have amended his bankruptcy petition at any time before the case was closed and he voluntarily dismissed it, the omission is not deemed a judicial admission," and "The Panel declines to apply estoppel against Kesel under all of the circumstances described above, as a basis to strip him of his PA shares." (Award pp. 45–46.)

253. Plaintiff further alleges that the Panel declined to reach the question of intent underlying the omission, deeming it "unnecessary to resolve the issue of Kesel's intent in omitting his shares." (EXHIBIT 1, Award p. 43 & n.26.) The omitted interest was appraised in 2022 at approximately \$4.46 million, representing 34.62% of Power Architects' fair market value of \$12,896,000. The Chapter 11 proceeding was one in which Kesel's personal liability of approximately \$1,427,000 was extinguished through a compromise approved by the Bankruptcy Court — forgiven without monetary payment, in exchange for non-monetary consideration furnished by Multimatrixs.

254. The authorities cited by the Panel were *Ellis v. Phillips and Cohen Associates, LTD.*, No. 5:14-cv-05539-EJD (N.D. Cal. July 17, 2015), and *Singer v. State Farm Mutual Automobile Insurance Co.*, 116 F.3d 373 (9th Cir. 1997). *Ellis* states the governing test: a party invoking estoppel "must point to more than just the omission itself; instead, there has to be evidence, circumstantial or otherwise, showing that the plaintiff's non-disclosure was relied upon in some way during the process, either by creditors or by the bankruptcy court adjudicating the estate," citing *Hamilton v. State Farm Fire & Casualty Co.*, 270 F.3d 778, 784 (9th Cir. 2001).

1 255. Each case in that line arose from a dismissed bankruptcy. In Hamilton the Chapter 7 case
 2 was dismissed on the trustee's motion and the discharge vacated, and the Ninth Circuit applied
 3 estoppel notwithstanding, holding that a bankruptcy court may "accept" a debtor's assertions "by
 4 relying on the debtor's nondisclosure of potential claims in many other ways." In Ellis the test was
 5 unmet because the petitions "were dismissed before anything of note happened in those actions,
 6 such as the discharge of debts." In Crawford it was unmet because the court never addressed the
 7 plan or mentioned the assets. The distinction turned not on whether the case was dismissed but on
 8 whether the nondisclosure was relied upon during the proceeding.

9 256. Ellis identified what would supply the missing element. Distinguishing *Allers-Petrus v.*
 10 *Columbia Recovery Group, LLC*, the court observed that the plaintiff there "had a plan confirmed
 11 by the bankruptcy court before she asserted omitted claims in district court," and that the doctrine
 12 "was better suited to those facts given the bankruptcy court's reliance on the plaintiff's
 13 representations when confirming the plan." It concluded: "Nothing similar is shown to have
 14 occurred here."

15 257. Plaintiff does not contend the Panel was required to apply estoppel. Plaintiff alleges that
 16 Kesel's case presented what those records lacked: a determination made by the bankruptcy court
 17 during the pendency of the case — the Rule 9019 approval, entered on a schedule from which the
 18 PA interest was absent. The Panel made no finding as to reliance.

19
 20 OPTIONAL PROVISION 16 AND § 365(E) REST ON THE SAME RESERVED FOR
 FEDERAL COURT QUESTION 11 USC § 349(B)(3), VS. § 554(D) PER § 1334

21 258. Optional Provision 16 of the August Agreement provides that a shareholder "shall cease to
 22 be a Shareholder and shall have no interest or liability in common with the remaining
 23 Shareholders of Corporation property" upon, among other events, obtaining or becoming subject
 24 to "an order or relief under the Bankruptcy Code," and that "[f]rom the date of any of the above
 25 events, the Shareholder shall be considered in equity as a vendor to the Corporation of his share
 26 of the Corporation's assets." (EXHIBIT 4, OP 16.) The Corporation then holds a right — not a
 27 duty — to purchase that interest within forty-five days, followed by like rights in the remaining
 28

1 shareholders and, failing those, an election to offer the interest to third parties. Any resulting price
2 “shall be considered a debt owed by the Corporation to that Shareholder or his assignee or
3 trustee.” (Id.) The Panel held OP 16 unenforceable as an ipso facto clause under 11 U.S.C. §
4 365(e)(1)(B). (Award pp. 43–44.)

5 **259.** Plaintiff does not contend that the Panel lacked authority to construe § 365(e). Whether a
6 contract term is an unenforceable ipso facto clause is a proceeding “arising under title 11” within
7 28 U.S.C. § 1334(b), where jurisdiction is original but not exclusive. The objection is one of
8 order, not of power.

9 **260.** Whose status OP 16 altered, and to whom any resulting price was owed, depended on who
10 held the shares. The provision itself contemplates that the payee may be the shareholder “or his
11 assignee or trustee.” If the concealed shares remained property of the estate under § 554(d), the
12 interest OP 16 addressed was the estate’s, and the debt the provision describes ran to the estate
13 rather than to Kesel. Striking OP 16 removed an obstacle; it did not confer status. The Panel
14 nonetheless moved from the unenforceability of OP 16 to the conclusion that Kesel held
15 shareholder and voting rights in February 2019 — a conclusion that required an ownership
16 determination it never made, and that it could supply only through § 349(b)(3) reversion. The
17 Panel resolved the consequent without deciding the predicate.

18 **261.** The same reserved question governs the instrument. The Panel stated that the Shareholders’
19 Agreement “is an ‘executory contract’” without deciding the point. (Award p. 43.) On that
20 characterization, the Agreement itself became property of the estate under § 541(a)(1) at
21 commencement. Kesel answered Schedule G, left the box for “no executory contracts or
22 unexpired leases” unchecked, and listed a single contract — a property-management agreement
23 with NeoVision, LLC, beginning January 1, 2010. The August 1998 Shareholders’ Agreement
24 was not listed. (EXHIBIT 12, Schedule G.) The dilemma admits no comfortable exit: if the
25 Agreement was an executory contract, Schedule G was incomplete and the § 365(e) protection the
26 Panel invoked was never disclosed to the court whose approval its administration required; if it
27 was not, § 365(e) had no application and the ground for setting aside OP 16 falls away. Kesel’s
28 own filing takes the second position; the Panel took the first.

1 262. Nor was the Agreement ever administered. Section 365(a) permits assumption or rejection
 2 only “subject to the court’s approval,” and § 365(d)(2) allows a Chapter 11 trustee to assume or
 3 reject “at any time before the confirmation of a plan.” Kesel, exercising the powers of a trustee
 4 under § 1107(a), neither assumed nor rejected; no plan was proposed and none was confirmed. He
 5 could not have sought approval without disclosing the contract he had omitted. Section 365(e)(1)
 6 by its terms bars ipso facto termination “at any time after the commencement of the case,” and the
 7 protection it affords runs to the estate. Whether it survived the December 19, 2011 dismissal, and
 8 whether it ran to Kesel personally or to the estate he was charged with administering, are
 9 questions no court with jurisdiction under § 1334(e)(1) has decided.

10
 11 **EXCLUSIVE FEDERAL JURISDICTION; THE ESTATE NEVER CONSENTED**

12 263. Congress vested the district court with exclusive jurisdiction over property of the debtor as
 13 of commencement and property of the estate. 28 U.S.C. § 1334(e)(1). The Constitution “grants
 14 Congress exclusive power to regulate bankruptcy, and, under this power, Congress can limit that
 15 jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor
 16 who duly invokes the bankruptcy law.” *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940).

17 264. Neither the bankruptcy estate, nor a trustee, nor any representative possessing the statutory
 18 authority of a trustee participated in the arbitration. The estate was not a party to the Shareholders’
 19 Agreement, did not consent to arbitration, and did not authorize the Panel to determine ownership
 20 of property the Panel itself found had become estate property. The Award identifies no provision
 21 authorizing the Panel to bind an estate or trustee, to administer omitted estate assets, or to
 22 determine ownership of such property.

23 265. Arbitral authority is defined and bounded by the contract and the submission. “[A]bsent an
 24 express and unambiguous limitation in the contract or the submission to arbitration, an arbitrator
 25 has the authority to find the facts, interpret the contract, and award any relief rationally related to
 26 his or her factual findings and contractual interpretation.” *Heimlich v. Shivji* (2019) 7 Cal.5th
 27 350, 358. Arbitration “is a matter of consent, not coercion.” *Stolt-Nielsen S.A. v. AnimalFeeds*
 28 *Int’l Corp.*, 559 U.S. 662, 681 (2010). Optional Provision 21 was therefore not a procedural

1 provision Defendants allegedly misinterpreted; it was the contractual source and boundary of their
 2 adjudicatory authority. Plaintiff does not allege that Defendants lost immunity by misreading the
 3 Agreement. He alleges that the Agreement supplied no adjudicatory authority over the property
 4 rights of the non-consenting federal estate in the first instance.

5 **266.** The Agreement itself distinguishes between binding a successor and determining that
 6 successor's federal status. Optional Provision 27 provides that "[e]ach and all of the covenants,
 7 terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit
 8 of all the Shareholders, their estates, heirs, personal representatives, and assigns." (EXHIBIT 4,
 9 OP 27.) The parties contemplated that a shareholder's estate would take subject to the
 10 Agreement's terms as a successor. They did not thereby submit to arbitration the question whether
 11 federal law placed that estate's property beyond the Agreement's reach.

12 THE CONTRACTUAL CHAIN OF TITLE

13 **267.** Property interests generally are defined by nonbankruptcy law unless a federal interest
 14 requires a different result. *Butner v. United States*, 440 U.S. 48, 55 (1979). Plaintiff does not
 15 contend that Optional Provision 4(b) prevented the initial § 541 transfer into the estate; § 541(c)
 16 may override transfer restrictions for that purpose. The Panel nevertheless enforced Optional
 17 Provision 4(b)'s written-transfer procedures strictly against Mednik, finding an attempted transfer
 18 to his wife ineffectual because the contractual steps were not followed. (EXHIBIT 1, Award pp.
 19 36–39.) No comparable analysis appears as to the passage of title from the estate back to Kesel,
 20 and no writing records it.

21 THE PANEL RETROACTIVELY RECHARACTERIZED A DECADE OF BOARD-KNOWN 22 TRANSACTIONS WHILE TREATING STATUTORILY PROTECTED CORPORATE 23 DUTIES AS WAIVED

24 **268.** The Panel's retroactive treatment of the 2009–2015 buyback transactions presents an
 25 additional illustration of the manner in which the Award expanded remedial authority while
 26 treating statutory corporate protections as waived. The arbitration commenced in 2020, yet the
 27 Panel reached back to transactions beginning in 2009 and treated payments made over the ensuing
 28 years as purchases that reduced Plaintiff's ownership. The Panel itself found contemporaneous

1 knowledge by the directors who later challenged those transactions: Mednik testified that Gilberg
2 told him in 2009 that, because of stock-market losses, Gilberg would be “selling shares in lieu of
3 his distributions and compensation,” and Kesel testified that in 2011 he first learned that Gilberg
4 wanted to conduct stock buybacks. (EXHIBIT 1, Award p. 56 & fn. 35.) Thus, according to the
5 Award’s own findings, the two directors constituting the asserted Board majority knew of the
6 challenged practice nine to eleven years before the arbitration commenced.

7 **269.** PA’s subsequent corporate conduct was inconsistent with the Award’s later retroactive
8 reconstruction. The Panel found that Gilberg and Mednik continued to receive the same amounts
9 in dividend distributions through 2019. (EXHIBIT 1, Award p. 61.) The Award also characterized
10 Gilberg’s buyback practice as being “in lieu of his compensation.” (*Id.*, Award p. 83.) Treasury
11 Stock resulting from Plaintiff’s buybacks was reflected on PA’s balance sheets and financial
12 statements. Plaintiff alleges that transactions known to the Board, reflected in PA’s corporate
13 financial records, and occurring in connection with compensation and distributions cannot
14 coherently be treated a decade later as transactions whose ownership consequences the Board
15 majority had no responsibility to know.

16 **270.** PA’s federal tax filings supplied additional documentary notice. The Panel found that “PA’s
17 tax returns reported Gilberg’s ownership interest declining from 35% as of 3/31/10 to 25% as of
18 3/31/16.” (EXHIBIT 1, Award p. 56.) PA thereafter continued reporting Gilberg at approximately
19 25%, including its 2018 Form 1120 executed on PA’s behalf by Mednik as President. (EXHIBIT
20 13.) Plaintiff alleges that these contemporaneous corporate filings contradict the premise that the
21 controlling directors remained unaware of the ownership consequences of transactions they knew
22 about, recorded, distributed profits around, and reported for years. They are also inconsistent with
23 the Award’s later reconstruction reducing Plaintiff to only 3,945 shares, approximately 92%
24 below his original interest.

25 **271. Mandatory Board Duties Were Expressly Presented to the Panel Before the Award.**

26 Plaintiff did not first raise Corporations Code §§ 1501 and 500(a) after receiving an adverse
27 Award. In Respondents’ Post-Hearing Opening Brief, Plaintiff expressly told the Panel that
28 Mednik and Kesel, directors since 1998, were “never mere passive bystanders” and had

1 “affirmative duties to act, imposed by statute, duties that cannot be waived or delegated to
 2 others.” Plaintiff quoted § 1501(a)’s command that “[t]he board shall cause an annual report to be
 3 sent to the shareholders,” argued that PA had no bylaws providing the statutory waiver, and
 4 emphasized that responsibility for the required financial reporting remained with the Board.
 5 (EXHIBIT 44, Respondents’ Post-Hearing Brief I — §§ 500(a) and 1501.)

6 **272.** Plaintiff separately presented § 500(a), which prohibits a shareholder distribution unless “the
 7 board of directors has determined in good faith” that a statutory financial test is satisfied.

8 Although § 500(a) does not separately state that the Board must determine shareholder ownership,
 9 before PA could calculate and make percentage-based distributions to its shareholders, the Board
 10 necessarily had to determine who the shareholders were and the ownership interests upon which
 11 those distributions were calculated. Plaintiff therefore alleges that the Board’s statutory
 12 responsibility for distributions necessarily implicated knowledge and application of PA’s
 13 shareholder ownership structure.

14 **273.** Mednik and Kesel therefore could not simultaneously exercise their asserted Board majority,
 15 participate in percentage-based shareholder distributions year after year for over a decade, and
 16 disclaim responsibility for determining the ownership interests upon which those distributions
 17 were calculated—particularly where Plaintiff’s buybacks generated Treasury Stock reflected in
 18 PA’s books and financial statements. The Panel was expressly presented with that contradiction
 19 before issuing the Award.

20 **274. California Law Expressly Preserved the Validity of the Shareholders’ Agreement.** The
 21 Agreement itself required application of California law. Optional Provision 26 commands: “This
 22 Agreement shall be interpreted in accordance with California Law,” and Optional Provision 27
 23 provides that its covenants and provisions are binding upon and inure to the benefit of the
 24 shareholders and their estates, heirs, personal representatives, and assigns. Corporations Code §
 25 300(b), in turn, expressly provides that a shareholders’ agreement concerning “any phase of the
 26 affairs of a close corporation” shall not be invalid between the parties merely because it interferes
 27 with Board discretion, treats the corporation as if it were a partnership, or arranges the
 28 shareholders’ relationships in a manner appropriate between partners. Thus, even if the 1998

1 Agreement structured PA or the shareholders' relationship in a partnership-like manner,
 2 California law expressly preserved its validity between the parties. § 300(c) expressly prohibited
 3 that Agreement from altering or waiving §§ 500 and 1500–1501; § 300(d) preserved managerial
 4 responsibility where the Agreement controlled Board powers; and Optional Provision 26 required
 5 the Agreement itself to be interpreted “in accordance with California Law.”

6 **275.** The Legislature immediately imposed an express limitation upon that contractual freedom.
 7 Section 300(c) provides: “No agreement entered into pursuant to subdivision (b) may alter or
 8 waive” § 500 or Chapter 15, commencing with § 1500 and therefore including §§ 1500 and
 9 1501. Thus, even an otherwise valid partnership-like shareholders' agreement protected by §
 10 300(b) remained expressly subject to the mandatory protections of §§ 500 and 1500–1501.

11 **276.** Section 300(d) addresses the consequence of the management structure created by the
 12 Shareholders' Agreement. Optional Provision 13 provided that “The Shareholders shall control
 13 the Corporation and all its affairs,” while assigning day-to-day management to the CEO and
 14 President and major decisions to shareholder vote. Section 300(d) provides that, “to the extent
 15 and so long as the discretion or powers of the board in its management of corporate affairs is
 16 controlled by such agreement,” each shareholder party assumes liability for managerial acts or
 17 omissions otherwise imposed upon directors, with directors relieved only “to that extent.” Thus,
 18 if PA's Agreement controlled powers otherwise belonging to the Board, the corresponding
 19 statutory responsibility shifted to the shareholder parties exercising that control; if it did not, that
 20 responsibility remained with the Board. **Under either alternative, the statutory responsibility**
 21 **did not disappear.**

22 **277.** The Panel nevertheless disposed of Plaintiff's §§ 1501 and 500(a) arguments through waiver
 23 and equitable estoppel, including the proposition that Gilberg failed to provide financial
 24 information. (EXHIBIT 1, Award pp. 77–78, 85–87.) Plaintiff alleges that this reversed the
 25 statutory allocation of responsibility despite the issue having been expressly presented before the
 26 Award: § 1501(a) provides that “the board shall cause” the annual report to be sent; § 1500
 27 places shareholder-record obligations upon the corporation; and § 500(a) requires the Board's
 28 own good-faith determination before shareholder distributions. Section 300(c) prohibited the

1 Agreement from altering or waiving those statutory protections, while § 300(d) provided that, to
 2 the extent the Agreement controlled powers otherwise exercised by the Board, the corresponding
 3 managerial liability shifted to the shareholder parties rather than disappearing. The Panel
 4 nevertheless effectively relieved Mednik and Kesel of the statutory responsibility applicable to
 5 the asserted Board majority, while using waiver and equitable estoppel to defeat Plaintiff's
 6 corresponding statutory claims. It then reached backward approximately eleven years to
 7 recharacterize and claw back Gilberg's Board-known buybacks beginning in 2009.

8 **278.** Plaintiff alleges that the Panel thereby applied the statutory framework in opposite
 9 directions: it treated Plaintiff's protections under §§ 500 and 1500–1501 as subject to waiver or
 10 equitable defeat while effectively excusing Mednik and Kesel, the asserted Board majority, from
 11 their corresponding statutory responsibilities during the same period. The Legislature supplied no
 12 such exception: § 300(b) preserved the Agreement, § 300(c) expressly prohibited alteration or
 13 waiver of these statutory protections, and § 300(d) transferred rather than extinguished managerial
 14 responsibility. The Panel supplied the exception that the Legislature did not.

15
 16 **THE PANEL HAD NO CONTRACTUAL AUTHORITY TO ALTER OR WAIVE
 STATUTORY RIGHTS THAT CALIFORNIA LAW MADE NON-WAIVABLE**

17 **279.** The Court of Appeal itself identified the controlling limitation on arbitral power. In Exhibit
 18 23, it stated that although arbitrators ordinarily do not exceed their contractually created powers
 19 merely by committing errors of fact or law, “[a]rbitrators may exceed their powers by issuing an
 20 award that violates a party's unwaivable statutory rights or that contravenes an explicit legislative
 21 expression of public policy.” (EXHIBIT 40, Opinion p. 6, citing Richey v. AutoNation, Inc.
 22 (2015) 60 Cal.4th 909, 916.) The Court further recognized that, when unwaivable statutory rights
 23 are at stake, judicial review must be sufficient to ensure that arbitrators comply with the statute.
 24 (EXHIBIT 40, Opinion p. 9, citing Pearson Dental Supplies, Inc. v. Superior Court (2010) 48
 25 Cal.4th 665, 679.) Plaintiff alleges that § 300(c) supplies precisely such an express legislative
 26 boundary: a shareholders' agreement may not “alter or waive” § 500 or Chapter 15, including §
 27 1501. The legislative boundary is explicit rather than implied: after identifying §500 and Chapter
 28

1 15 among the provisions that the Agreement may not alter or waive, §300(c) expressly provides
 2 that “[a]ll other provisions of this division may be altered or waived as between the parties thereto
 3 in a shareholders’ agreement.” The Legislature therefore itself distinguished between powers the
 4 parties could confer through their Agreement and powers it expressly withheld from that
 5 Agreement.

6 **280.** An arbitration panel cannot amend or override the California Corporations Code. More
 7 precisely, private parties cannot confer upon an arbitrator, through a shareholders’ agreement,
 8 contractual authority that the governing statute expressly prohibits that agreement itself from
 9 exercising. Because the Panel derived its authority from the Shareholders’ Agreement, it could
 10 not obtain through that Agreement a power the California Legislature expressly withheld from the
 11 Agreement itself. Optional Provision 26 makes the limitation still more direct: the Agreement was
 12 required to be interpreted “in accordance with California Law.” The Panel’s mandate therefore
 13 was to enforce the Agreement subject to §§ 300(c), 500, and 1501—not to derive from that
 14 Agreement authority to accomplish through waiver, estoppel, acquiescence, or remedial discretion
 15 what the Legislature expressly prohibited the Agreement itself from accomplishing through
 16 alteration or waiver. The limitation is textual as well as statutory: Optional Provision 21 submits
 17 only disputes “as to their rights under any provisions of this agreement,” and § 300(c) places
 18 rights under §§ 500 and 1500–1501 outside what any such agreement may reach. Rights the
 19 Legislature withheld from the instrument cannot be rights arising under it.

20 **281.** These allegations also bear directly upon the Panel Defendants’ assertion of arbitral
 21 immunity. Plaintiff alleges that the express statutory prohibition in §300(c), particularly after it
 22 was specifically presented to the Panel before the Award, is evidence of a known limitation on the
 23 authority obtainable from the Agreement—not merely an alleged error in the Panel’s exercise of
 24 concededly existing authority.

25 **282.** Exhibit 23 also identifies the contractual side of that boundary. The Court of Appeal quoted
 26 Provision 21 as applying when a dispute arises among the parties “as to their rights under any
 27 provisions of this agreement.” (EXHIBIT 40, Opinion p. 8.) Thus, the same appellate record
 28 confirms both propositions relevant here: the Panel’s authority was contractually bounded, and

1 California law recognizes that arbitrators may exceed their powers when an award violates
 2 unwaivable statutory rights or an explicit legislative expression of public policy. Plaintiff alleges
 3 that the Panel could not avoid those limitations by characterizing the ultimate relief as contractual
 4 or remedial when the contractual result depended upon displacement of statutory protections the
 5 Agreement itself was prohibited from altering or waiving.

6 7 EACH ARBITRATOR SIGNED THE AWARD AND ADOPTED ITS FEDERAL PROPERTY DETERMINATIONS

8 **283.** The foregoing determinations were not isolated decisions attributable to different arbitrators.
 9 Turitz, Cottle, and Burke each signed the same Award and thereby jointly adopted its
 10 interdependent findings concerning Kesel's ownership and voting status, Plaintiff's compensation
 11 and equity, the 2009–2015 transactions, §§ 500 and 1501, waiver and equitable estoppel,
 12 valuation, and resulting liability.

13 **284.** Plaintiff alleges that the significance lies in the convergence of those determinations, not
 14 merely their unanimity. The Panel was expressly presented before the Award with the statutory
 15 command that “the board shall cause” the annual report to be sent, § 500(a)'s requirement of a
 16 Board determination before distributions, § 300(c)'s prohibition against altering or waiving those
 17 protections through a shareholders' agreement, and Optional Provision 26's requirement that the
 18 Agreement be interpreted “in accordance with California Law.” Nevertheless, all three arbitrators
 19 joined an Award that treated Plaintiff's §§ 500 and 1501 claims as subject to waiver or equitable
 20 estoppel while permitting Mednik and Kesel to obtain retroactive relief concerning transactions
 21 the Award itself found they had known were occurring since 2009 and 2011.

22 **285.** Plaintiff alleges that the Panel accomplished through waiver and equitable estoppel what §
 23 300(c) expressly prohibited the Shareholders' Agreement itself from accomplishing: alteration or
 24 waiver of the protections imposed by § 500 and Chapter 15. The Panel treated Plaintiff's rights
 25 arising from those statutes as subject to equitable defeat while simultaneously relieving Mednik
 26 and Kesel, as the asserted Board majority, of corresponding statutory responsibilities during the
 27 same period. Thus, the same nonwaivable statutory framework operated in opposite directions—
 28

1 against Gilberg's asserted rights and in favor of excusing Mednik's and Kesel's corresponding
 2 duties—before the Panel permitted them to reach backward and claw back Gilberg's Board-
 3 known share-redemption transactions. Plaintiff alleges this not merely as an erroneous
 4 interpretation of §§ 500 and 1501, but as evidence that the Panel used equitable doctrines to
 5 produce a result that § 300(c) expressly prohibited the Shareholders' Agreement itself from
 6 producing.

7
 8 **THE CONFIRMING COURT CONFIRMED THAT THE FEDERAL ISSUES WERE “FULLY
 9 CONSIDERED BY THE PANEL, BUT DENIED”**

10 **286.** The adjudicatory character of the challenged conduct is confirmed by the state court's own
 11 description of what the Panel decided. In confirming the Award, Judge Amber Rosen stated:

12 **287.** “The Panel considered the issue of Kesel’s bankruptcy fraud. It found Kesel’s omission of
 13 his PA shares in the bankruptcy case did not change the result, that Kesel was not judicially
 14 estopped from taking the positions he did, and that Gilberg failed to carry his burden to establish
 15 forfeiture by Kesel of his PA shares either pursuant to the bankruptcy or in connection with his
 16 criminal case. Ex. H, pp42-46. Because the issue of Kesel’s alleged bankruptcy fraud was fully
 17 considered by the Panel, but denied, . . .” (EXHIBIT 45, Order p. 7.)

18 **288.** The phrase “fully considered by the Panel, but denied” is significant because the
 19 confirming court did not characterize the bankruptcy and criminal-forfeiture matters as incidental
 20 evidence, background facts, or questions the Panel declined to reach. Judge Rosen identified the
 21 determinations the Panel actually made: Kesel's omission of his PA shares from bankruptcy “did
 22 not change the result”; judicial estoppel did not prevent Kesel from asserting his position; and
 23 Gilberg failed to establish forfeiture of Kesel's shares either through the bankruptcy or “in
 24 connection with his criminal case.”

25 **289.** Judge Rosen's description therefore independently confirms the central factual premise of
 26 this action: the Panel did not merely encounter federal law while deciding contractual rights. It
 27 considered and resolved the asserted consequences of Kesel's bankruptcy and federal criminal
 28 proceedings upon his PA ownership, and those determinations formed part of the path by which

1 the Panel recognized Kesel as a legitimate shareholder possessing voting and economic rights.
2 **290.** Plaintiff alleges that Judge Rosen's order confirms **what the Panel decided**, not whether
3 those federal determinations were legally correct or binding upon absent federal interests. Plaintiff
4 challenges the Panel's authority to make and give dispositive effect to those determinations, not
5 the state court's subsequent limited review of their merits. Judge Rosen stated that courts
6 generally do not review an arbitrator's reasoning or the sufficiency of the evidence supporting an
7 award. (EXHIBIT 45, Order p. 2.) Her confirmation therefore did not transform the Panel's
8 determinations into an adjudication by a federal court possessing jurisdiction over bankruptcy-
9 estate property or into an adjudication binding the absent bankruptcy estate, trustee, or United
10 States.

11 **291.** Plaintiff alleges that all three highly experienced arbitrators jointly signed the 117-page
12 Award after repeatedly confronting federal bankruptcy and forfeiture issues. The nature and
13 extent of those issues support a reasonable inference that the limits of the Panel's contractual
14 authority and exclusive federal jurisdiction were considered in reaching the Award. Yet the
15 Award repeatedly declared Kesel a "legitimate shareholder" without acknowledging that the
16 Panel's authority derived solely from the Shareholders' Agreement, which conferred no authority
17 to adjudicate the underlying federal property interests. Judge Rosen subsequently confirmed that
18 those federal issues were **"fully considered by the Panel, but denied."** (EXHIBIT 45, Order p.
19 7.) Plaintiff alleges that the three arbitrators' collective adoption of the federal determinations,
20 without acknowledging this jurisdictional limitation, is additional circumstantial evidence of the
21 alleged conspiracy among them.

22 **292.** After fifteen hearing days, three rounds of post-hearing briefing, and a 117-page Interim
23 Award followed by the Final Award, the Panel assessed against Plaintiff a total of \$5,295,929.04,
24 including the arbitrator compensation and AAA administrative fees described above. (EXHIBIT
25 60, Final Award p. 17.) Defendant Francis J. Burke, Jr. previously served as an Assistant United
26 States Attorney assigned to the Economic Crime Unit. The scope objection had been stated on
27 AAA's own Answering Statement at the inception of the case, and explained to an AAA Director
28 of ADR Services twelve days later, before any hearing was held. (EXHIBITS 55–56.) Plaintiff

1 alleges these circumstances as context bearing on the Panel's continuation of the proceeding after
2 the jurisdictional objections were presented, and not as an independent constitutional claim or as
3 credentials sufficient in themselves to establish knowledge.

4
5 **THE ASSERTED INCAPACITY OF CEO PYSTIN CONFLICTED WITH HIS CONTINUED CORPORATE FUNCTIONS**

6 **293.** A similar evidentiary issue arose concerning Vladimir Pystin. Pystin had worked at PA since
7 approximately 2004—about sixteen years without any asserted mental-incapacity episode—
8 before Mednik and Kesel used a July 27, 2020 Written Consent of Shareholders to appoint him
9 acting Chief Executive Officer. (EXHIBIT 46.) The consent expressly invoked Optional
10 Provision 13(a)'s majority-vote requirement and was signed by Mednik, listed with 48,500 shares,
11 and Kesel, listed with 35,250 shares. (EXHIBIT 46.) Pystin's appointment was therefore itself
12 tied to Kesel's asserted voting power at a time when the federal status of Kesel's shares had never
13 been determined by the federal court possessing jurisdiction over bankruptcy-estate property.

14 **294.** Approximately two years later, after about sixteen years at PA without such an incident,
15 Pystin was placed on medical leave only three or four weeks before the arbitration hearing at
16 which the Panel had subpoenaed him. Mednik described a "nervous breakdown or mental
17 breakdown," stating that Pystin was "preoccupied with war in Ukraine" and would not perform
18 CEO duties until the war ended, although Mednik acknowledged that Pystin was from
19 Kazakhstan. Yet during the asserted incapacity Pystin continued coming to PA, continued
20 receiving his salary, advised employees concerning production, and remained capable, according
21 to Mednik, of "consulting about the production flow." (EXH. 47, Arbitration Tr. pp. 523–529.)

22 **295.** Pystin's absence was material because he possessed firsthand knowledge concerning the
23 corporate authority by which PA operated during the period preceding arbitration—including the
24 circumstances of his own appointment as CEO through votes cast by Mednik and Kesel. His
25 daughter acknowledged that Pystin knew he had ignored the Panel's subpoena and was "almost
26 proud of it," stating that "when the war's over, he will do whatever you need him to." She further
27 confirmed that there was no official medical diagnosis. (EXH. 48, Arbitration Tr. pp. 2747–2750.)
28

1 296. When Gilberg's counsel attempted to examine the timing of the asserted incapacity,
2 Arbitrator Burke stated, "Maybe you should talk to Vladimir Putin," then acknowledged: "I am
3 trying to be facetious, but I am trying to get you to move along here so we can get this case done
4 this week or next week." (EXHIBIT 48, Arbitration Tr. pp. 2746–2747.) Plaintiff alleges that the
5 Panel curtailed inquiry into the unavailability of a subpoenaed witness whose testimony bore
6 upon corporate authority dependent in part upon Kesel's disputed voting status.

7 297. The later corporate record created a direct contradiction with the explanation given for
8 Pystin's asserted mental incapacity. Mednik testified that Pystin's condition was caused by his
9 preoccupation with the war in Ukraine, and Pystin's daughter likewise tied his inability or
10 unwillingness to participate to that war, stating that "when the war's over, he will do whatever
11 you need him to." (EXHIBITS 47, 48.) But the war had not ended when, on May 31, 2023—
12 approximately five months after the hearing—PA filed a Statement of Information with the
13 California Secretary of State identifying Pystin as one of its three directors and reporting no
14 Board vacancies. CFO and Secretary Natallia Kushchanka electronically affirmed that the
15 information was "true and correct." (EXHIBIT 49.) PA's own official filing therefore represented
16 that Pystin was capable of serving as a corporate director while the very condition Mednik and
17 Pystin's daughter identified as the cause of his asserted incapacity—the continuing war in
18 Ukraine—still existed.

19 298. Plaintiff does not ask this Court to diagnose Pystin or determine that his asserted incapacity
20 was fabricated. The narrower significance is the unexplained inconsistency: after approximately
21 sixteen years at PA without an asserted mental-incapacity episode, Pystin became unavailable
22 only weeks before his subpoenaed arbitration testimony because of a condition attributed to the
23 war in Ukraine; yet while that same war continued, PA officially identified him as a director
24 capable of exercising corporate responsibilities. The Panel accepted his asserted incapacity and
25 curtailed inquiry into it without resolving that inconsistency, even though Pystin possessed
26 firsthand knowledge concerning corporate authority resting in part upon Kesel's federally
27 disputed voting power.

28

299. THE PANEL CONVERTED EVIDENCE OF PLAINTIFF'S UNDERCOMPENSATION INTO ADDITIONAL LIABILITY

300. The same pattern extended to Plaintiff's compensation. The Panel found that "Mednik left PA's employment in or around 2001 to work at Supertex (later Microchip), and Kesel was an outside investor not actively involved in the business." (EXHIBIT 1, Award p. 15.) Plaintiff, by contrast, remained at PA for approximately the next 18 years and managed the company during the period in which substantial shareholder value was created.

301. Plaintiff's expert, Claudia J. Stern, CPA/ABV/CFF, calculated Plaintiff's total compensation and dividends for 1998–2018 at \$3,933,242, against \$4,220,295 contractually due, producing a net underpayment of \$287,053. (EXHIBIT 50.) Stern separately compared Plaintiff's effective compensation with Economic Research Institute ("ERI") compensation data.

302. The Award nevertheless extracted from Stern's testimony a proposition supporting additional liability. It stated that Stern "treated the payments to Gilberg's family members as legitimate compensation," that "she never deducted the payments from Mr. Gilberg's compensation," and that she "was unaware that Mr. Gilberg had testified that those payments were deducted from his compensation." (EXHIBIT 1, Award p. 63.) The Panel then imposed \$219,672.50 in additional liability for what it characterized as a "separate scheme" involving compensation paid to family members for "non-existent positions and non-existent work." (*Id.*, Award p. 61.)

303. Plaintiff alleges that this characterization omitted Stern's controlling bottom-line calculation and the circumstances surrounding those payments. Stern treated the family payments as part of Plaintiff's effective compensation yet still calculated that Plaintiff received \$287,053 less than contractually due—an underpayment exceeding the entire \$219,672.50 in challenged family payments made over the twenty-year period from 1998 through 2017, about \$10,984 per year. Those payments included compensation to Plaintiff's mother and wife for bookkeeping services performed for PA. Plaintiff is an electrical engineer by training, devoted substantial time to engineering and customer support, and PA did not employ a full-time bookkeeper during the relevant period. Even if the entire \$219,672.50 were additionally charged against Stern's calculated underpayment, Plaintiff would still remain underpaid by \$67,380.50.

1 304. Stern's separate ERI analysis showed a substantially greater disparity. For 2011–2018, she
2 calculated Plaintiff's effective compensation as approximately \$2.41 million below the ERI
3 median CEO benchmark. (EXHIBIT 50.) PA's rebuttal expert, Gallagher Human Resources and
4 Compensation Consulting, independently reproduced essentially the same underlying ERI data,
5 reporting that its results were “essentially the same (slightly higher)” and that “the data
6 differences are negligible.” (EXHIBIT 51, pp. 3–5.) Gallagher disputed the compensation
7 measure Stern derived from those figures, but did not materially dispute the underlying ERI
8 market data.

9 305. The treatment of Mednik supplied a direct comparison. Claimants' own expert, Monica Ip,
10 CPA/CFF, CVA, CMA, examined payments by PA to Mednik's wife, daughter, sister, friend,
11 father-in-law, BBC Tutoring, Starbright School, and other affiliates. Ip reported that PA's general
12 ledger and cancelled checks recorded those payments as “payroll, independent contractor, and
13 other expenses,” and that, at Claimants' counsel's direction, she treated the payments—totaling
14 \$104,565—as having been paid to Mednik “in lieu of cash dividends to him.” (EXHIBIT 52.)

15 306. The Award itself identified an even closer parallel. Under “Payments to Mednik's
16 Girlfriend,” it found that, at Mednik's request, Gilberg agreed to issue four checks to Natalia B.
17 even though she never worked for PA, and that Gilberg generated 1099 forms for Natalia B.
18 (EXHIBIT 1, Award p. 80.) Thus, the Award had before it evidence of payments to a person
19 associated with Mednik who admittedly did not work for PA, yet the economic treatment differed
20 materially: Claimants' own expert treated Mednik-affiliate payments as dividends attributable to
21 Mednik, while the Panel treated payments to Gilberg's family members as a “separate scheme”
22 supporting \$219,672.50 in liability against Gilberg.

23 307. Plaintiff alleges that this comparison is especially significant because it does not depend
24 upon competing characterizations supplied only by Plaintiff. The Mednik-affiliate payments were
25 identified by Claimants' own expert, and the Natalia B. payments were expressly acknowledged
26 in the Award itself. Plaintiff alleges that materially similar payment evidence was therefore
27 treated differently depending upon whose economic interest was implicated: payments associated
28 with Mednik were characterized as dividends attributable to him, while payments associated with

1 Gilberg were characterized as compensation for “non-existent positions and non-existent work”
2 and converted into liability against him.

3 **308.** By contrast, approximately **\$125,000 in Kesel-OSM-ADLS investment transactions—
4 including \$25,000 invested directly by ADLS and converted into 4,167 PA shares—**ultimately
5 accompanied Kesel's approximately 34.62% interest, representing approximately \$4.46 million of
6 PA's \$12.896 million 2022 independent valuation, apart from approximately \$943,337.58 in
7 distributions from 2010 through 2022 calculated from the Panel's own findings and distribution
8 data. (EXHIBIT 1, Award pp. 60–61, 70.) The Panel itself found Kesel was “an outside investor
9 not actively involved in the business.” (*Id.*, Award p. 15.)

10 **309.** Plaintiff alleges that this episode is cumulative evidence of the pattern of disparate treatment
11 described above. The Panel used Stern's testimony to support \$219,672.50 in additional liability
12 without reconciling that result with her \$287,053 contractual underpayment calculation, her
13 separate ERI analysis showing approximately \$2.41 million below the median CEO benchmark
14 and Gilberg's CEO salary of \$156,000, well below that average; PA's own expert's substantial
15 confirmation of the underlying ERI data; or Claimants' expert's identification of \$104,565 in
16 payments to Mednik's family members and affiliates that Claimants themselves treated as
17 distributions to Mednik rather than liability against him.

18 **310.** The resulting Award imposed liability exceeding Plaintiff's entire 21 years of calculated
19 compensation and dividends, treated Plaintiff as having lost approximately 92% of his PA equity,
20 valued at approximately \$3.25 million, and simultaneously preserved Kesel's disputed ownership
21 and corresponding multimillion-dollar economic position. Plaintiff alleges that the resulting
22 allocation deprived the shareholder who remained at and managed PA during the 21-year period
23 of its substantial growth of most of his equity in the value generated during those years, while
24 preserving substantial ownership and economic benefits for shareholders whom the Panel itself
25 found had either left PA's employment or were not actively involved in its business.

26 **311.** These determinations were not attributable to a single arbitrator. All three Panel members
27 signed the Award and jointly adopted the compensation, affiliate-payment, ownership, valuation,
28 and liability determinations described above. Plaintiff does not allege that unanimity, disparate

1 treatment, or adverse rulings alone establish conspiracy. He alleges that the common adoption of
 2 these determinations is circumstantial evidence to be considered with the broader sequence
 3 pleaded in this Complaint, in which successive factual and legal predicates repeatedly produced
 4 the same ultimate ownership and liability result.

5 **312.** The same asymmetry appeared in discovery. Kesel sold PA shares in 2018 (EXHIBIT 6),
 6 and Plaintiff sought Kesel's personal tax return for that single year to determine whether the sale
 7 had been reported. Arbitrator Turitz denied the request. The Panel nevertheless ordered Plaintiff
 8 to produce twenty-one years of his own personal tax returns, reaching back to 1998, to Kesel and
 9 Mednik — who had held exclusive control of PA's corporate records, including payroll records,
 10 tax returns, and bank statements, since February 2019. (EXHIBIT 59.) Plaintiff does not ask this
 11 Court to review any discovery ruling; the allegation is pleaded as cumulative evidence of the
 12 disparate treatment described above.

13 **313.** Plaintiff does not ask this Court to recalculate his compensation, choose between Stern and
 14 Gallagher, reweigh the family-payment evidence, or determine that these matters independently
 15 defeat arbitral immunity. Standing alone, they concern evidentiary and merits determinations
 16 ordinarily protected from collateral review. They are alleged as cumulative evidence of the
 17 manner in which all three arbitrators assembled and adopted the factual predicates producing the
 18 Award's ownership and liability result, before the distinct jurisdictional question addressed below:
 19 whether the Panel could supply indispensable predicates by adjudicating non-consenting federal
 20 property interests outside the source of its arbitral authority

21
 22 **THE PANEL ATTRIBUTED EMPLOYEE HARM TO PLAINTIFF WHILE DISREGARDING
 EVIDENCE ATTRIBUTING THE WORKPLACE CONDUCT TO MEDNIK**

23 **314.** The same disparate allocation of responsibility extended to PA's employees. In addressing
 24 damages associated with Richard "Rick" Kline's departure, the Panel itself described evidence
 25 that Kline became uncomfortable with Mednik's conduct at PA, including Kline's statement that
 26 he felt he was being "sucked into a love triangle" that he did not want to be part of. (EXHIBIT 1,
 27 Award pp. 98–99; EXHIBIT 53, Kline Declaration.)
 28

1 315. Kline's sworn declaration supplied the underlying context. Kline, who worked at PA from
2 July 2015 through December 2018, declared that Mednik repeatedly brought female companions
3 into PA's offices; that conduct he witnessed or heard made him feel "very unwelcome"; and that
4 the conduct became a "very usual occurrence." Kline further stated that witnessing Mednik's
5 conduct made him feel Mednik had "power over me," that Mednik did not treat him well after
6 those encounters, and that he was "happy the day I left to be away from these office romances."

7 316. Kline also described Plaintiff's response. According to Kline, Gilberg knew how upsetting
8 Mednik's conduct was to the workplace and "tried to stop Mr. Mednik" by drafting a formal
9 agreement prohibiting non-work activities in PA's building. Cameras were subsequently installed,
10 but Kline stated that "the issue kept happening, just less often," and that he would "just go home
11 when I felt uncomfortable." (EXHIBIT 54, PA Employees' Letter to Pystin.)

12 317. On May 7, 2019, three PA employees—Roberto Ramirez, Raul Ramirez, and Rigoberto
13 Martinez—signed a written complaint concerning Mednik's conduct at PA. They described
14 hearing sexual activity coming from Mednik's office during working hours. After Gilberg's
15 removal, the employees reported: "Later that day Vlad came up to me and said that Larry was
16 fired because he had complained about Alex bringing females to the work place." Vlad Pystin—
17 the same PA executive whose asserted incapacity described above one month before the AAA
18 hearings. The three employees described Mednik's conduct as making them "uncomfortable,"
19 interfering with their ability to work, and creating an "unsafe" and "unhealthy" environment, and
20 expressly requested to "have Larry back." (EXHIBIT 54, pp. 1–2.)

21 318. The Panel's own legal analysis made the effect of Mednik's conduct upon other employees
22 directly relevant to whether the conduct was sufficiently pervasive to alter workplace conditions.
23 Yet the Panel concluded that there was "no evidence that Mednik imposed his activities on other
24 employees" and that the conditions were not pervasive enough to create an objectively hostile
25 environment. (EXHIBIT 1, Award pp. 100–101.) That conclusion was made notwithstanding
26 Kline's evidence that Mednik's conduct made him uncomfortable, caused him to leave the
27 workplace when it occurred, made him feel "sucked into a love triangle," and contributed to his
28 being "happy the day I left to be away from these office romances.", the very pervasiveness and

1 workplace effect the Panel stated were required.

2 **319.** All three arbitrators possessed the same evidentiary record and signed the resulting Award.
 3 Plaintiff does not allege that these adverse determinations, disparate treatment, or unanimity
 4 standing alone establish conspiracy. He alleges that their common adoption is circumstantial
 5 evidence when considered with the broader sequence pleaded in this Complaint: distinct factual
 6 issues repeatedly were resolved through predicates preserving Mednik's and Kesel's ownership
 7 and economic positions while concentrating liability and loss upon Plaintiff.

8 **320.** Mednik and Kesel prosecuted the arbitration together while asserting corporate control
 9 dependent upon preservation of Kesel's disputed shareholder and voting status.

10 **321.** Plaintiff does not plead the foregoing evidence to reexamine the Award or disturb the state
 11 judgment. Rather, the cumulative pattern of coordinated interests, disparate treatment, and
 12 successive determinations producing the same ownership and liability result is pleaded as
 13 circumstantial evidence supporting the alleged conspiracies: among the three Panel members who
 14 possessed the same record and jointly adopted the Award, and between Mednik and Kesel, whose
 15 common corporate and economic interests depended upon preservation of Kesel's disputed
 16 shareholder and voting status, subject to proof and discovery.

17
 18 **ARBITRAL IMMUNITY EXTENDS ONLY TO ACTS WITHIN THE
 ARBITRATORS' JURISDICTION**

19 **322. Scope.** This Section concerns the boundary of arbitral immunity, not an exception to
 20 immunity for error. Plaintiff does not contend that immunity disappears because an arbitrator
 21 commits legal error, misinterprets federal law, exceeds contractual authority in an ordinary sense,
 22 or reaches an erroneous result. Factual error remains protected. Contract interpretation remains
 23 protected. An incorrect application of federal law within a controversy properly submitted
 24 remains protected. Plaintiff likewise does not ask this Court to decide whether the Panel construed
 25 11 U.S.C. §§ 349, 541, 554 or 365(e), or 21 U.S.C. § 853, correctly; whether the shares presently
 26 remain estate property; or whether any person committed an offense. The allegation is antecedent:
 27 whether a private tribunal whose authority arose solely from the August 21, 1998 Shareholders'
 28

1 Agreement possessed jurisdiction to determine the ownership and legal effect of property interests
2 belonging to non-consenting federal entities.

3 **323. The Challenged Act.** The challenged act is identifiable and narrow. The Panel found that
4 Kesel's PA shares became property of his Chapter 11 estate under § 541 notwithstanding their
5 omission from Schedule B; determined that they "reverted back in ownership to Kesel" upon
6 dismissal under § 349(b)(3); and declined to apply the competing effect of § 554(d). (¶¶ 173–174,
7 228, 231.) It then recognized Kesel as a "legitimate shareholder," and that status supplied the
8 voting authority on which PA's corporate capacity, the claims against Plaintiff, and the resulting
9 Award depended. (¶¶ 3–4, 13, 16, 47.) Against that act the governing rule is jurisdictional on its
10 face: "Of course, arbitral immunity does not extend to every act of an arbitrator. Arbitral
11 immunity extends only to those acts taken by arbitrators 'within the scope of their duties and
12 within their jurisdiction.'" *Sacks v. Dietrich*, 663 F.3d 1065, 1069 (9th Cir. 2011) (quoting *Wasył,*
13 *Inc. v. First Boston Corp.*, 813 F.2d 1579, 1582 (9th Cir. 1987)); accord *Pfannenstiel v. Merrill*
14 *Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1159 (10th Cir. 2007), which identified "[t]he
15 pivotal question" as "whether the claim at issue arises out of a decisional act," and concluded that
16 "the arbitrators were acting within their jurisdiction and plaintiff's claims arise out of a decisional
17 act." The jurisdictional limitation is part of the doctrine itself, not an exception Plaintiff asks this
18 Court to create.

19 **324. Sacks and Wasył Distinguished.** The Panel identified the source of its own jurisdiction on the
20 face of the Award: "WE, THE UNDERSIGNED ARBITRATORS, having been designated in
21 accordance with the arbitration agreement entered into as of August 21, 1998 between the above-
22 named parties and having been duly sworn ... hereby issue the following Interim Award."
23 (EXHIBIT 1, Award p. 3.) Plaintiff alleges that the oath and the designation are coextensive with
24 the instrument that produced them: the arbitrators were sworn to decide the disputes that
25 instrument submitted, and Optional Provision 21 submitted only disputes between the parties "as
26 to their rights under any provisions of this agreement." An oath to perform a defined adjudicative
27 function does not enlarge the function; it confirms that the duties Plaintiff alleges were exceeded
28 were duties the Agreement defined. Both controlling cases distinguish themselves on their facts.

In *Sacks* the governing FINRA rules expressly authorized the panel to interpret and apply the provisions governing the disputed issue, and the arbitrators therefore acted “with full authority under the arbitration agreement.” 663 F.3d at 1070. In *Wasy/* immunity attached because the challenged valuation was precisely what the parties had contractually assigned to the decisionmaker and because “appellants do not challenge First Boston’s authority to have resolved the disputed valuations.” 813 F.2d at 1582. Here the converse obtains in both respects. Optional Provision 21 submitted only disputes “as to their rights under any provisions of this agreement,” and the Agreement contains no reference to §§ 349(b)(3), 541 or 554(d), to 28 U.S.C. § 1334(e)(1), or to 21 U.S.C. § 853, and no delegation from any estate, trustee, or the United States. (¶¶ 61, 160, 178.) Plaintiff directly challenges the authority to determine the disputed federal property status.

325. Consent as the Outer Limit. The source of the Panel’s authority therefore defines its limits. “[A]rbitration is a matter of consent, not coercion”; agreements are enforced according to their terms; and parties may limit the issues they choose to arbitrate. *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 671–72, 681–83 (2010). The four signatories could submit their own contractual rights. They could not submit the property interests of a federal estate or the United States, because those interests were not theirs to submit. The distinction is not between a correct and an incorrect exercise of authority conferred, but between exercising authority the parties possessed to confer and exercising authority they did not.

326. The Order Compelling Arbitration. The order compelling arbitration did not enlarge that consent. On January 12, 2021, the Superior Court (Folan, J.) ordered Plaintiff to arbitrate under the August Agreement and thereby determined which disputes between the parties fell within Optional Provision 21. (EXHIBIT 58.) The court was not asked to determine, and did not determine, whether the Panel could adjudicate the property status of a federal bankruptcy estate or the forfeiture interests of the United States. Neither the estate, nor any trustee, nor the United States appeared in that proceeding. Plaintiff alleges that a judicial order compelling arbitration of contractual claims can compel only the parties before the court, and cannot supply authority over interests that were never before it. The same limitation operates as to state law: the order

1 compelled arbitration of disputes over rights “under any provisions of this agreement,” and
 2 Corporations Code § 300(c) places rights under §§ 500 and 1500–1501 beyond what any such
 3 agreement may alter or waive.

4 **327. The Instrument’s Statutory Bounds.** California law treats the Agreement itself as an
 5 instrument of bounded authority, and does so whether or not Power Architects is a statutory close
 6 corporation. Sections 500(a) and 1501(a) impose duties upon the board that a shareholders’
 7 agreement may not alter or waive: § 500(a) bars any distribution to shareholders unless “the board
 8 of directors has determined in good faith” that a specified financial test is satisfied, and § 1501(a)
 9 commands that “[t]he board shall cause an annual report to be sent to the shareholders.” (¶¶ 271–
 10 272.) Where the corporation is a close corporation, § 300(b) permits such an agreement to alter or
 11 waive provisions of the division, but § 300(c) expressly excepts §§ 500 and 501 and Chapter 15
 12 (commencing with § 1500) from that permission, while providing that “[a]ll other provisions of
 13 this division may be altered or waived as between the parties thereto in a shareholders’
 14 agreement” — the Legislature marking the boundary from both sides. Where the corporation is
 15 not a close corporation, no provision of the division authorizes such an agreement to alter or
 16 waive any mandatory duty, and § 300(a) commits management of the corporation’s business and
 17 affairs to the board “[s]ubject to the provisions of this division and any limitations in the articles”
 18 — not to any limitation contained in a shareholders’ agreement. Where a corporation is a general
 19 corporation, the boundary is the firmer of the two: the permission granted by § 300(b) is
 20 unavailable, § 300(d)’s transfer of managerial responsibility to shareholder parties has no
 21 application, and no provision of the division authorizes a shareholders’ agreement to alter or
 22 waive § 500(a) or § 1501(a) at all. The duties bind the board directly, and § 316(a)(1) makes
 23 directors who approve a distribution contrary to §§ 500 to 503 “jointly and severally liable to the
 24 corporation for the benefit of all of the creditors or shareholders entitled to institute an action.”
 25 Plaintiff does not resolve Power Architects’ corporate form in this paragraph and pleads the
 26 boundary under either characterization. Optional Provision 26 requires that the Agreement be
 27 interpreted “in accordance with California Law.” (EXHIBIT 4, OP 26.) Under either
 28 characterization the Agreement could confer no power to alter or waive duties the Legislature

1 made unwaivable, and the parties' consent could confer only what the instrument itself was
2 capable of conferring.

3 **328. Notice Before the Award.** That limitation was placed before the Panel prior to the Award.
4 Plaintiff advised all three arbitrators that Mednik and Kesel, as directors since 1998, bore
5 "affirmative duties to act, imposed by statute, duties that cannot be waived or delegated to
6 others," identifying § 1501(a) and § 500(a) specifically. (¶ 271.) Plaintiff alleges that the Panel
7 nevertheless applied waiver and equitable estoppel to defeat Plaintiff's protections under those
8 statutes while relieving Mednik and Kesel, as the asserted Board majority, of the corresponding
9 statutory duties over the same period. Plaintiff does not contend that the California courts erred in
10 reviewing the Award, does not seek vacatur upon this or any ground, and does not ask this Court
11 to determine whether the Panel exceeded its powers within the meaning of Code of Civil
12 Procedure § 1286.2(a)(4). The allegation is that the authority to alter or waive these duties was
13 never within the instrument from which the Panel drew its power, and that its exercise therefore
14 falls on the side of the boundary described at ¶¶ 322–323 rather than within the ordinary exercise
15 of authority the Agreement conferred.

16 **329. The Federal Record Before the Panel.** Plaintiff does not rely upon an inference that
17 Defendants inadvertently reached federal law. On the bankruptcy side, Plaintiff presented Kesel's
18 omitted Schedule B, § 554(d), the competing bankruptcy authorities, § 349(b)(3), and the Chapter
19 11 record itself, and the Award demonstrates that the Panel understood the controversy. On the
20 forfeiture side, the Panel had before it the federal plea, the Preliminary and Final Orders of
21 Forfeiture, Plaintiff's § 853 position, the ADLS-funded transaction, the 2007 Sagodeev transfer,
22 Kesel's testimony concerning the non-cash transaction and the parking building, and Judge
23 Wilken's retained-jurisdiction provision. (EXHIBITS 2, 23, 25.) On the question of knowledge, it
24 had the July 1997 DEA contact with Kesel and the April 1998 DEA inspection (EXHIBITS 21,
25 24), the evidence of repeated warnings to ADLS (EXHIBIT 17), and the plea describing Kesel's
26 participation during 1998 through 2000 inclusive (EXHIBIT 2).

27 **330. The Corporate Consequence.** The Panel also understood the corporate consequence of the
28 disputed interest. Arbitrator Burke asked Kesel whether he understood that he was "effectively in

1 a blocking position because you had 25 percent and they had to have 76 percent.” Kesel
 2 answered: “Right.” Burke continued: “That’s exactly what you negotiated coming into the
 3 company, correct?” (EXHIBIT 11, Vol. IV, pp. 968–969.) The Panel therefore knew both that
 4 Kesel’s vote was indispensable under the Agreement and that the legal existence of that vote
 5 depended upon its own resolution of disputed federal property-status questions.

6 **331. No Jurisdiction by Waiver.** Nor could consent, waiver, or participation supply what the
 7 instrument withheld, and the Award itself supplies the distinction. Addressing the legal effect of
 8 Kesel’s nondisclosure, the Panel invoked *Singer v. State Farm Mutual Automobile Insurance Co.*,
 9 116 F.3d 373, 376 (9th Cir. 1997), for the proposition that “[a] trial judge has discretion whether
 10 to accept a judicial admission.” (¶ 254.) The passage from which that sentence was drawn begins
 11 by excluding the case of an actual jurisdictional defect: “This is not to say that a defect in
 12 jurisdiction can be avoided by waiver or stipulation to submit to federal jurisdiction. It cannot.
 13 *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1264 (9th Cir. 1992). But a judicial
 14 admission of a fact is not the same thing as a waiver or a stipulation.” *Singer* thus separates an
 15 admission establishing a fact from an actual defect in jurisdiction, which is different in kind.
 16 Subject-matter jurisdiction “can never be forfeited or waived,” *Steel Co. v. Citizens for a Better*
 17 *Environment*, 523 U.S. 83, 94 (1998), and “[w]ithout jurisdiction the court cannot proceed at all
 18 in any cause,” *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869). The obligation to satisfy
 19 oneself of jurisdiction is “inflexible and without exception.” *Great Southern Fire Proof Hotel Co.*
 20 *v. Jones*, 177 U.S. 449, 453 (1900). Plaintiff does not contend *Great Southern* converts private
 21 arbitrators into Article III courts; the narrower point is that the parties’ presentation of federal
 22 questions to AAA could not itself supply authority over property belonging to absent federal
 23 interests.

24 **332. Exclusive Federal Jurisdiction.** Congress placed that property beyond the reach of private
 25 submission. Title 28 U.S.C. § 1334(e)(1) vests in the district court in which the case is
 26 commenced “exclusive jurisdiction” over “all the property, wherever located, of the debtor as of
 27 the commencement of such case, and of property of the estate.” (¶¶ 29, 31–32, 45, 156, 160.) That
 28 allocation is not merely procedural. *Kalb v. Feuerstein*, 308 U.S. 433, 438–40 (1940), recognized

1 Congress's power to withdraw bankruptcy matters from other tribunals, and the Ninth Circuit has
 2 described the resulting jurisdiction as comprehensive and distinctly federal. *In re Gruntz*, 202
 3 F.3d 1074, 1081–84 (9th Cir. 2000) (en banc). Among the “[c]ritical features of every bankruptcy
 4 proceeding” is the “exercise of exclusive jurisdiction over all of the debtor’s property,” and the
 5 jurisdiction is principally *in rem*: “[t]he whole process of proof, allowance, and distribution is,
 6 shortly speaking, an adjudication of interests claimed in a res.” *Central Virginia Community*
 7 *College v. Katz*, 546 U.S. 356, 362–64, 369 (2006), quoting *Gardner v. New Jersey*, 329 U.S.
 8 565, 574 (1947). Plaintiff alleges the Panel adjudicated interests claimed in precisely such a res,
 9 with no entity holding or representing that res before it.

10 **333. Limits on Arbitrability.** Federal law independently limits arbitral authority over reserved
 11 bankruptcy questions. In *In re Eber*, 687 F.3d 1123, 1130–31 (9th Cir. 2012), applying *In re*
 12 *Thorpe Insulation Co.*, 671 F.3d 1011 (9th Cir. 2012), the Ninth Circuit affirmed refusal to
 13 compel arbitration where arbitral resolution of predicate issues would effectively determine a
 14 matter within the bankruptcy court’s exclusive jurisdiction, emphasizing the “centralization of
 15 disputes concerning a debtor’s legal obligations.” Accord *In re White Mountain Mining Co.*, 403
 16 F.3d 164, 169–71 (4th Cir. 2005) (clause reaching claims “of whatever nature” yielded where
 17 arbitration conflicted with the Code’s centralizing purpose), quoting *In re Summerfield Pine*
 18 *Manor*, 219 B.R. 637, 638 (B.A.P. 1st Cir. 1998). Plaintiff does not contend that every
 19 bankruptcy-related dispute is nonarbitrable, and acknowledges *White Mountain* is not binding
 20 here. Their narrower significance is that an arbitration agreement does not itself answer whether
 21 an arbitrator may determine predicates that, for practical purposes, resolve a federally reserved
 22 question. Here the Panel went further than determining predicates: it expressly held that the shares
 23 entered the estate, that they revested, and that § 554(d) did not apply.

24 **334. Indispensable, Not Incidental.** That the federal determination was indispensable rather than
 25 incidental appears from the Award’s own treatment of contractual formalities. The Panel strictly
 26 enforced Optional Provision 4(b)’s written-transfer procedures against Mednik, holding his
 27 attempted transfer to his wife ineffective because the contractual steps were not followed. (¶ 267.)
 28 No comparable contractual transfer, writing, or shareholder act returned the estate’s interest to

1 Kesel. The Panel could recognize Kesel's personal ownership only by supplying the federal §
 2 349(b)(3) determination itself. Judicial-immunity law distinguishes an erroneous exercise of
 3 existing jurisdiction from action where jurisdiction over the subject is altogether absent. *Bradley*
 4 *v. Fisher* instructed that "[a] distinction must be here observed between excess of jurisdiction and
 5 the clear absence of all jurisdiction over the subject matter," and held that "[w]here there is
 6 clearly no jurisdiction over the subject matter any authority exercised is a usurped authority, and
 7 for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse
 8 is permissible." 80 U.S. (13 Wall.) 335, 351–52 (1871). The Court illustrated the rule: if a probate
 9 court "invested only with authority over wills and the settlement of estates of deceased persons,
 10 should proceed to try parties for public offenses, jurisdiction over the subject of offenses being
 11 entirely wanting in the court, and this being necessarily known to its judge, his commission would
 12 afford no protection to him in the exercise of the usurped authority." *Id.* at 352. *Stump v.*
 13 *Sparkman* holds immunity survives error, malice, and acts "in excess of his authority," but not
 14 action in the "clear absence of all jurisdiction." 435 U.S. 349, 356–57 (1978); accord *Mireles v.*
 15 *Waco*, 502 U.S. 9, 11–12 (1991).

16 **335. Tribunals of Limited Authority.** *Bradley* also confines its broader rule to courts of general
 17 authority. Immunity for acts merely in excess of jurisdiction attaches to "judges of superior or
 18 general authority"; as to "judges of limited and inferior authority it had been held that they were
 19 protected only when they acted within their jurisdiction." 80 U.S. at 351. A tribunal deriving its
 20 power from a single contractual provision is not a court of general jurisdiction, and *Sacks* states
 21 the same limitation from the arbitral side. On the knowledge element, the boundary was placed
 22 before the Panel: Plaintiff presented Kesel's omitted Schedule B, § 554(d) and the competing
 23 authorities, the federal plea and forfeiture Orders, the § 853 position, and Judge Wilken's
 24 retained-jurisdiction provision, and Arbitrator Burke examined Kesel on his "blocking position"
 25 under the Agreement's voting threshold. (¶¶ 33, 38, 62, 65, 156.) Plaintiff does not allege that
 26 notice of a limitation can itself defeat immunity; an adjudicator told he is mistaken who rules
 27 anyway has committed error, and error remains protected. Knowledge does not create the absence
 28 of authority. Where authority is absent, knowledge is what distinguishes the exercise of usurped

1 authority from an inadvertent overstep.

2 **336. Scope of the Submission.** *Stern v. Marshall*, 564 U.S. 462 (2011), reinforces the distinction.
 3 That a party had properly invoked the bankruptcy court's authority over one claim did not
 4 authorize final adjudication of a different claim requiring determinations "not disposed of in
 5 passing on objections" to the first; the objecting party "did not truly consent" because "[h]e had
 6 nowhere else to go," distinguishing *Commodity Futures Trading Commission v. Schor*, 478 U.S.
 7 833 (1986), where the parties "freely elected" the forum. The limitation applies twice here.
 8 Submission of contractual disputes under Optional Provision 21 did not confer authority to
 9 adjudicate ownership of federal estate property merely because resolution became necessary to
 10 the contractual result. And Plaintiff's participation was not an election: the Superior Court
 11 compelled him to arbitrate, the applicable rules permitted the proceeding to continue and an
 12 award to issue notwithstanding a party's absence, and he had no alternative forum in which to
 13 defend. Plaintiff recognizes that *Stern* concerns a non-Article III federal court and does not
 14 contend it supplies the governing rule.

15 **337. The Absent Interests.** The absent interests could not be bound in any event. Neither the
 16 bankruptcy estate, nor any trustee, nor the United States signed the Agreement, received notice of
 17 the arbitration, appeared in it, or consented to it; and Kesel's former status as debtor in possession
 18 under § 1107(a) was a federally prescribed representative capacity that ended with the case. (¶¶ 9,
 19 150, 218.) "[O]ne is not bound by a judgment *in personam* in a litigation in which he is not
 20 designated as a party or to which he has not been made a party by service of process." *Taylor v.*
 21 *Sturgell*, 553 U.S. 880, 884 (2008) (quoting *Hansberry v. Lee*, 311 U.S. 32, 40 (1940)). *Taylor*
 22 rejected "virtual representation" and confined nonparty preclusion to six grounds, none of which
 23 reaches these interests; alignment of interests alone does not establish adequate representation,
 24 and Kesel's position that dismissal returned the shares to him personally was adverse to the estate
 25 the Panel had just found owned them. It "would violate the Due Process Clause ... to bind
 26 litigants to a judgment rendered in an earlier litigation to which they were not parties and in which
 27 they were not adequately represented." *Richards v. Jefferson County*, 517 U.S. 793, 795 (1996)
 28 (citing *Hansberry v. Lee*, 311 U.S. 32, 37 (1940)). A judgment "does not conclude the rights of

1 strangers to those proceedings.” *Id.* at 798 (quoting *Martin v. Wilks*, 490 U.S. 755, 762 (1989)).
 2 Nor may absence be charged as a failure to intervene: the law does not “impose upon any person
 3 absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a
 4 stranger.” *Id.* at 799 n.5 (quoting *Chase National Bank v. Norwalk*, 291 U.S. 431, 441 (1934)).
 5 And “deprivation of life, liberty or property by adjudication” requires notice and an opportunity
 6 for hearing. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 312–13 (1950).

7 **338. Forfeiture.** The forfeiture determinations present the same structure with a different absent
 8 sovereign. The Panel evaluated the federal plea and forfeiture Orders, determined that ADLS
 9 “never was a shareholder in Power Architects,” treated the October 23, 2007 Sagodeev transfer of
 10 14,089 shares as a valid acquisition notwithstanding Kesel’s testimony that he “didn’t pay a
 11 penny,” and adopted that transaction’s \$9-per-share figure as the benchmark applied against
 12 Plaintiff’s own holding. (¶¶ 147, 153–155.) The United States was not a party to the Agreement or
 13 the arbitration, received no notice of it, and authorized no one to determine its interests under 21
 14 U.S.C. § 853, while the issuing court expressly retained jurisdiction to enforce the forfeiture
 15 Orders. The same nonparty rule stated in *Taylor and Richards* governs that absence, and the same
 16 jurisdictional limitation recognized in *Wasyk* and *Sacks* governs the authority to make the
 17 determination.

18 **339. Confirmation.** Confirmation did not enlarge the authority the Panel possessed when the
 19 challenged adjudications were undertaken; the relevant inquiry is the authority held at that time,
 20 not the enforceability later accorded the Award under California’s limited standards of arbitral
 21 review. California authority likewise treats arbitral immunity as functional rather than unlimited
 22 by title. *Morgan Phillips, Inc. v. JAMS/Endispute, L.L.C.*, 140 Cal.App.4th 795, 801–03 (2006),
 23 recognized that immunity protects functions integral to the arbitral process while distinguishing
 24 conduct constituting a breakdown or abandonment of that function. Plaintiff does not rely on
 25 *Morgan Phillips* for the proposition that ordinary legal error defeats immunity; it reinforces the
 26 threshold inquiry whether the challenged conduct falls within the arbitral function and jurisdiction
 27 to which immunity attaches. The documented fee consequences of the proceeding are alleged as
 28 circumstance, not as an independent constitutional claim. (¶ 292.)

1 **340. Either Characterization.** Either characterization of the state-court record leaves the authority
 2 problem intact. If the Panel determined that the omitted shares left the estate and revested in Kesel
 3 — as the Award's express application of §§ 541 and 349(b)(3) indicates — it adjudicated the
 4 property status of a non-consenting federal estate notwithstanding § 1334(e)(1). If instead the
 5 Court of Appeal's statement that AAA "did not decide in the first instance" means the federal
 6 question remained unresolved, the Panel nevertheless recognized Kesel as a "legitimate
 7 shareholder" and attached ownership, voting, dividend, and governance consequences to a
 8 property status that no tribunal possessing § 1334(e)(1) jurisdiction had determined. (¶¶ 159, 172,
 9 178.) The same determination cannot simultaneously be adjudicative enough to receive deference
 10 as a mixed question of fact and law yet too incidental to implicate the jurisdictional limitation
 11 recognized by *Wasyf*.

12 **341. By Defendant and by Function.** Immunity must finally be analyzed by defendant and by
 13 function. The individual arbitrators' decisional acts present the jurisdictional questions addressed
 14 above; AAA's administrative acts must be analyzed according to their own function and
 15 relationship to the adjudicative process, and administrative conduct does not acquire decisional
 16 immunity merely because it facilitated an arbitration. Plaintiff therefore requests that immunity be
 17 determined claim by claim, Defendant by Defendant, and act by act, rather than by treating every
 18 challenged act as immune because it occurred in connection with an arbitration.

19 **342. Summary.** Taken together, the challenged determinations concerned property the Panel itself
 20 found had entered a federal bankruptcy estate; determined whether that property ceased to belong
 21 to the estate; implicated an estate and trustee that never consented to arbitration; concerned
 22 property over which Congress prescribed exclusive federal jurisdiction under § 1334(e)(1);
 23 separately determined the asserted effect of a federal § 853 proceeding despite the absence of the
 24 United States and the issuing court's retained enforcement jurisdiction; and supplied
 25 indispensable predicates for Kesel's shareholder status, voting rights, PA's asserted corporate
 26 authority, Plaintiff's alleged loss of equity, and the monetary Award against him. Those
 27 allegations describe an asserted absence of arbitral jurisdiction over the subject property and over
 28 non-consenting federal interests — not an erroneous exercise of authority concededly possessed.

1 The challenged federal property-status adjudications therefore occurred outside the arbitral
2 jurisdiction protected by *Wasyf* and *Sacks*.

3
4 **THRESHOLD: ROOKER-FELDMAN DOES NOT BAR THE CLAIMS AS PLED**

5 **343.** Rooker-Feldman bars a federal court from reviewing a state-court judgment. It has no
6 application here, for three independent reasons.

7 **344.** The injury predates every state proceeding. Rooker-Feldman reaches only "state-court losers
8 complaining of injuries caused by state-court judgments." *Exxon Mobil Corp. v. Saudi Basic*
9 *Industries Corp.*, 544 U.S. 280, 284 (2005). Kesel's 2010 concealment from this Court — the
10 injury this Complaint addresses — predates the AAA arbitration by a decade and the February 17,
11 2026 affirmance by sixteen years. The § 1334(e)(1) jurisdiction over the concealed shares
12 attached at filing and has never left. The Complaint does not complain of an injury caused by any
13 state judgment; it seeks administration of property that was estate property before any state
14 proceeding began.

15 **345.** *The interests at issue belong to no state-court loser.* The declarations sought in Counts I
16 through III would operate on the interests of the bankruptcy estate, a trustee, and the United
17 States. None was a party to the state proceedings, none took an appeal, and none could have. A
18 judgment "does not conclude the rights of strangers to those proceedings." *Richards v. Jefferson*
19 *County*, 517 U.S. 793, 798 (1996). A declaration concerning the effect of the Award upon those
20 interests is not review of a judgment rendered against them; no such judgment exists.

21 **346.** *Plaintiff's own contractual rights were adjudicated in no proceeding to which he was a*
22 *party.* Plaintiff was a stranger to the 2010 Chapter 11 case. Because the PA interest was omitted
23 from Schedule B and the Shareholders' Agreement from Schedule G, Power Architects never
24 appeared on the notice matrix and neither Plaintiff nor the corporation learned of the filing or the
25 dismissal. The rights Optional Provision 16 conferred on the Corporation and the remaining
26 shareholders upon a bankruptcy event are property. *Logan v. Zimmerman Brush Co.*, 455 U.S.
27 422, 428 (1982). To the extent the dismissal order is invoked as having conclusively determined
28 ownership of the concealed shares as against those rights, Plaintiff was not a party to that

1 proceeding and was represented in it by no one.

2 **347.** The state courts expressly declined to decide the federal-estate question. Rooker-Feldman
3 bars review of what a state court decided; it has no application where the state court declined to
4 decide the very question Congress reserved to this Court. Section F is explicit: AAA "did not
5 decide in the first instance ... whether Kesel's shares should be included in a bankruptcy estate."
6 (EXHIBIT 39, Section F, p. 11.) There is no state determination of the federal-estate question for
7 this Court to "review" — only one the appropriate federal court may decide in the first instance.
8 (See II, *supra*.)

9 **348.** Kesel is not affirmed as a legitimate shareholder as a matter of federal law. California court
10 arbitration review explicitly did not reach and cannot reach the federal questions beneath that
11 finding.

12 **349.** The opponents themselves insisted that only a court could decide this question. At the
13 February 7, 2019 shareholder meeting, Mednik stated on the record that the share-validity issue
14 "cannot be used until proven in a court of law." (EXHIBIT 4, J000008.) The party that demanded
15 a judicial determination thus obtained none, leaving the federal-estate question — automatic at
16 commencement under § 541(a) and never since adjudicated — for this Court alone under 28
17 U.S.C. § 1334(e)(1).

18 **350.** The Agreement could not confer power to adjudicate federal statutes. The Court of Appeal
19 located AAA's authority "within the scope of its power as the arbiter of his rights under the
20 August Agreement." (EXHIBIT 39, Section F, p. 11.) An arbitrator's jurisdiction derives from,
21 and is bounded by, that agreement. Power Architects is itself a signatory to the Agreement,
22 executed on the Corporation's behalf by Plaintiff as Chief Executive Officer and by Mednik as
23 President. (EXHIBIT 4, signature page.) The limits of Optional Provision 21 therefore bound the
24 Corporation as they bound the individual shareholders; no party to the instrument could submit to
25 arbitration what the instrument does not reach.

26 **351.** 11 U.S.C. §§ 541, 554(d), and 349, 21 U.S.C. § 853, and 18 U.S.C. § 3284 are federal
27 statutes, not terms of the August Agreement. The Agreement could not confer power to decide
28 whether Kesel's shares are property of a federal bankruptcy estate, whether they revested on the

1 dismissal of his case, whether they were forfeited to the United States (if those shares are criminal
 2 proceeds — a question reserved to the federal district court before Judge Wilken), or whether the
 3 concealment remains an ongoing federal offense per 18 U.S.C. § 3284. Congress committed each
 4 of those questions to the federal courts. Justice Lie's opinion states that AAA "did not decide in
 5 the first instance" the federal-estate question: the Panel construed the contract; the federal
 6 questions remained, by the court's own admission, undecided, and 28 U.S.C. § 1334(e)(1)
 7 reserves them to this Court.

8 **352.** This Court's determination conflicts with no state judgment. Inclusion in a bankruptcy estate
 9 is not adjudicated — it occurs by statute at commencement. § 541(a)(1). Kesel's interest entered
 10 the estate on February 16, 2010 and, never scheduled, abandoned, or administered, remains estate
 11 property today under § 554(d) — a present, continuing status, not a stale 2010 grievance.
 12 Deciding that status disturbs no California judgment; it resolves what those judgments left open.

13
 14 **THRESHOLD: PRECLUSION DOES NOT BIND THE NONPARTY FEDERAL
 INTERESTS ALLEGED HERE**

15 **353.** Preclusion binds only parties and those in privity with them, and reaches only matters
 16 actually adjudicated. Neither condition is met. The bankruptcy estate's interest was never
 17 represented, and preclusion "extends only to matters actually adjudicated." *Baker v. General*
 18 *Motors Corp.*, 522 U.S. 222 (1998).

19 **354.** *Taylor v. Sturgell*, 553 U.S. 880 (2008) (unanimous), disapproved preclusion by "virtual
 20 representation" and confined nonparty preclusion to six established grounds. None applies here.
 21 The bankruptcy estate agreed to nothing. It stood in no pre-existing substantive legal relationship
 22 with any arbitration party as to the concealed shares. It was not adequately represented: adequate
 23 representation requires at a minimum that the interests of the nonparty and the representative be
 24 aligned, and that either the party understood itself to be acting in a representative capacity or the
 25 original tribunal took care to protect the nonparty's interests, and may further require notice to the
 26 person alleged to have been represented. (Citing *Hansberry v. Lee*, 311 U.S. 32, 43, and *Richards*,
 27 517 U.S. at 801–802.) None of those conditions was met. The estate assumed no control over the
 28

1 arbitration, and no party appeared as its proxy or agent. Nor could Kesel have supplied that
2 representation: his personal position — that dismissal returned the shares to him — was directly
3 adverse to the estate's interest in property the Panel itself had found entered the estate.

4 355. The sixth ground—that “a special statutory scheme otherwise consistent with due process,”
5 including bankruptcy, may “expressly foreclos[e] successive litigation by nonlitigants,” *Martin v.*
6 *Wilks*, 490 U.S. 755, 762 n.2 (1989)—presupposes a determination the scheme produced. The
7 December 19, 2011 dismissal order made no determination concerning the concealed shares: it
8 did not identify them, did not address § 349(b)(3) or § 554(d), and made no findings as to
9 undisclosed assets. Nor did Plaintiff receive notice of the bankruptcy proceeding concerning those
10 undisclosed interests or participate in any adjudication of them. There is accordingly no
11 bankruptcy adjudication concerning the concealed shares whose relitigation the statutory scheme
12 could foreclose against Plaintiff.

13 356. The Award separately made a merits determination concerning Kesel's knowledge during
14 the same period addressed by his federal criminal proceedings. Rejecting Respondents'
15 concealment claim, the Panel found that they had “failed to produce evidence that Kesel knew in
16 July 1998 that he was engaging in the illegal sale of controlled substances when he invested in PA
17 or knew that he was under investigation for illegal activities,” and therefore held that “[t]he
18 element of known concealment . . . was not proven.” (Award pp. 75–76.) That determination
19 rested upon Kesel's AAA testimony. But the federal record was not merely an accusation against
20 ADLS. Kesel personally pleaded guilty pursuant to a package deal under which the ADLS
21 agreement would take effect only if Kesel and Kotlyarenko “both plead guilty pursuant to our
22 respective plea agreements,” and Kesel personally signed the ADLS agreement certifying that he
23 had read it and that its representations were “true to the best of my knowledge and belief.”
24 (EXHIBIT 2, Plea Agreement p. 8.) Those representations included that Kesel had been present
25 for a DEA/BNE warning concerning sales of chemicals used to manufacture controlled
26 substances and that Kesel agreed with Kotlyarenko to use proceeds to purchase additional Freon,
27 during conduct the agreement expressly places within 1998–2000. (Id. pp. 3–4.)

28 357. Plaintiff does not ask this Court to determine that the federal plea conclusively established

every element of the state-law concealment claim. The jurisdictional point is narrower. In finding Kesel's knowledge "not proven," the Panel necessarily determined what weight and legal effect to give a federal guilty plea, a package-deal plea agreement personally affirmed by Kesel, and the federal factual admissions concerning the same period. Plaintiff alleges that the resulting private determination cannot itself preclude a properly authorized federal tribunal from determining the meaning, effect, or consequences of those federal proceedings.

358. The declarations requested in Counts I through III do not depend upon treating Plaintiff as a substitute for the bankruptcy estate or the United States. They concern the effect, in federal fora, of determinations made by a tribunal whose authority derived from a private contract.

STATUTE OF LIMITATIONS AND ACCRUAL

359. Counts I through III seek prospective declaratory relief concerning the present federal effect of the challenged determinations and are not subject to the limitations periods governing Plaintiff's damages claims. The remaining claims are addressed separately according to their respective limitations and accrual rules.

360. The Panel issued its Interim Award on August 31, 2023. The Award assembled the challenged determinations into an operative adjudication: it found that Kesel's undisclosed PA shares became property of the bankruptcy estate under 11 U.S.C. § 541, determined that the shares "reverted back in ownership to Kesel" under § 349(b)(3), rejected Plaintiff's competing bankruptcy and federal-forfeiture positions, and treated Kesel as a legitimate shareholder. The Panel thereafter issued its Final Award in January 2024. Plaintiff pleads August 31, 2023 as the earliest date on which any fraud-based claim could be said to have accrued and the Final Award as an alternative later operative date where legally applicable.

361. Counts VIII and IX are based upon alleged fraud or deceit and are pleaded under the three-year limitations period of California Code of Civil Procedure § 338(d). Civil conspiracy is pleaded as a theory of liability for participation in the alleged fraud, not as an independent tort. Even assuming accrual on August 31, 2023, an action commenced before August 31, 2026 is within three years of the Interim Award.

362. Section 338(d) further provides that a cause of action for fraud or mistake is not deemed to

1 accrue until discovery of the facts constituting the fraud or mistake. Plaintiff pleads that rule in
 2 the alternative to the extent applicable, but Counts VIII and IX do not depend upon a later
 3 discovery date to be timely.

4 5 A. EQUITABLE TOLLING OF THE TWO-YEAR CLAIMS

6 **363.** Plaintiff alternatively pleads equitable tolling as to each claim governed by a two-year
 7 limitations period, including the negligence claims against AAA and, to the extent applicable,
 8 claims against the Arbitrator Defendants. Following the Award, Plaintiff pursued California's
 9 statutory remedy directed at the alleged exercise of arbitral authority beyond the submission,
 10 including relief under Code of Civil Procedure § 1286.2(a)(4), confirmation proceedings, and
 11 appellate review. Those proceedings challenged the same underlying exercise of arbitral authority
 12 from which the present two-year claims arise.

13 **364.** Where a federal court borrows a state limitations period, it borrows the State's applicable
 14 equitable-tolling rules as well. *Board of Regents v. Tomanio*, 446 U.S. 478, 486–87 (1980);
 15 *Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1136 (9th Cir. 2001) (en banc).
 16 California's doctrine applies when an injured person has several legal remedies and reasonably
 17 and in good faith pursues one. *Elkins v. Derby*, 12 Cal.3d 410, 414 (1974). Its core elements are
 18 timely notice, lack of prejudice, and reasonable and good-faith conduct. *Addison v. State of*
 19 *California*, 21 Cal.3d 313, 319 (1978); *Collier v. City of Pasadena*, 142 Cal.App.3d 917, 924
 20 (1983). The claims need not be "absolutely identical," and tolling is not confined to remedies that
 21 are inconsistent or incapable of simultaneous pursuit. *Collier*, 142 Cal.App.3d at 925–26; *Nichols*
 22 *v. Canoga Industries*, 83 Cal.App.3d 956, 963–64 (1978). Sitting en banc, the Ninth Circuit
 23 rejected more stringent requirements and held that California law does not require the same
 24 remedies in both proceedings. *Daviton*, 241 F.3d at 1140–41.

25 **365.** Plaintiff recognizes the general rule that pursuit of an action against one alleged wrongdoer
 26 ordinarily does not toll limitations on a later claim against another person not named in the first
 27 proceeding. *Freeman v. State Farm Mut. Auto. Ins. Co.*, 14 Cal.3d 473, 489 (1975). Plaintiff does
 28 not rely upon a contrary general rule.

1 366. Nominal absence from the first proceeding, however, is not invariably dispositive of the
2 notice inquiry. Notice may be sufficient where the later defendant was alerted by the earlier
3 proceeding to the need to gather and preserve evidence even though not nominally a party to it.
4 *Daviton*, 241 F.3d at 1140 n.3 (discussing *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 &
5 n.3 (9th Cir. 1993)). In *Cervantes*, sufficiently close “evidentiary privity” permitted the court to
6 overlook nominal absence for purposes of equitable-tolling notice.

7 367. AAA had actual institutional notice of the asserted limitation upon the arbitration from the
8 inception of the case. On October 15, 2020, Respondents filed AAA’s own Answering Statement
9 expressly rejecting the demand because, among other grounds, “the issues in dispute are outside
10 the scope of the arbitration clause.” (EXHIBIT 55.) The filing identified AAA Case No. 01-20-
11 0015-0897 and was submitted through AAA’s case-administration process.

12 368. Twelve days later, Respondents’ counsel wrote directly to AAA Director of ADR Services
13 Alisa Bacon Sullivan and expanded the objection. Counsel specifically identified Kesel’s
14 bankruptcy and omission of his PA shares, described Optional Provision 21 as “very narrow” and
15 limited to disputes concerning the parties’ “rights under any provisions of this agreement,” and
16 advised AAA that the Agreement did not confer authority to determine the disputed threshold
17 issue. (EXHIBIT 56.) Plaintiff alleges that Exhibits 55 and 56 establish actual notice to AAA
18 itself of the asserted contractual and bankruptcy-related boundary and an opportunity to preserve
19 the relevant administrative record.

20 369. Those 2020 objections did not themselves establish Plaintiff’s present alleged injury or
21 reveal how the completed arbitration would ultimately treat the objections. At that time no Panel
22 had adjudicated the disputed federal property questions and no Award existed. Plaintiff alleges
23 that the challenged injury became concrete no earlier than August 31, 2023, when the Interim
24 Award determined that Kesel’s undisclosed shares had entered the bankruptcy estate, determined
25 that they nevertheless “reverted back in ownership to Kesel,” rejected the competing federal
26 positions, and recognized Kesel as a legitimate shareholder.

27 370. Plaintiff does not allege that AAA’s receipt of those objections required AAA administrators
28 to dictate how the Panel should interpret §§ 349, 541, or 554(d), § 853, or other substantive

1 federal law. Their significance here is narrower: AAA itself had contemporaneous notice of the
2 asserted boundary, administered the proceeding in which that objection was made, possessed or
3 controlled the associated administrative records, and was positioned to preserve those records.
4 Plaintiff relies upon Exhibits 55 and 56 for notice, absence of evidentiary prejudice, and AAA's
5 own alleged administrative conduct, not as a basis for imposing liability upon AAA for protected
6 decisional acts of the Panel.

7 **371.** The later vacatur, confirmation, and appellate proceedings challenged the same underlying
8 exercise of arbitral authority. Plaintiff alleges that AAA therefore was not a stranger first learning
9 of the underlying controversy through this action. Before the Award it had received the formal
10 scope objection and detailed follow-up; after the Award the resulting exercise of authority was
11 challenged through California's statutory review process. Plaintiff alleges that AAA had every
12 opportunity to preserve its case-management records, correspondence, submissions, fee records,
13 and administrative communications and suffered no material evidentiary prejudice from
14 Plaintiff's sequential pursuit of remedies.

15 **372.** As to the Arbitrator Defendants, Plaintiff alleges notice based upon their direct participation
16 in the challenged arbitration and their receipt and consideration of the objections upon which the
17 subsequent challenge to arbitral authority was based. The Award, arbitration record, written
18 objections, and materials bearing upon the scope of the submission were fixed and available for
19 preservation. Whether such notice satisfies California's equitable-tolling requirements is pleaded
20 as a fact-dependent issue rather than as a conclusion arising merely from their status as arbitrators.

21 **373.** Tolling is not necessarily defeated because Plaintiff theoretically could have pursued
22 damages while simultaneously pursuing vacatur. *Nichols* rejected the contention that equitable
23 tolling is confined to inconsistent remedies. 83 Cal.App.3d at 963–64. Plaintiff alleges that he
24 reasonably and in good faith first pursued relief capable of eliminating the challenged Award and
25 thereby preventing, terminating, or materially reducing the injury itself, before seeking damages
26 from the Defendants whose conduct produced or administered the proceeding that caused the
27 approximately \$8.53 million now asserted and enforced against him.

28 Requiring Plaintiff simultaneously to pursue damages against AAA while asking the

1 California courts to eliminate the instrument producing those damages would have required
 2 parallel litigation concerning an injury Plaintiff was actively attempting to prevent or mitigate
 3 374. Plaintiff accordingly pleads equitable tolling in the alternative and alleges reasonable and
 4 good-faith pursuit of the first remedy, absence of material evidentiary prejudice from the
 5 sequence of proceedings, and such notice to each Defendant as required by the governing
 6 authorities. *Addison*, 21 Cal.3d at 319; *Collier*, 142 Cal.App.3d at 924. Plaintiff does not allege
 7 that equitable tolling follows merely because the proceedings arose from related facts.

8 375. Application of equitable tolling ordinarily requires a fact-specific inquiry into the prior
 9 proceeding, including the parties involved, issues raised, evidence considered, and discovery
 10 conducted. *Daviton*, 241 F.3d at 1140; *Cervantes*, 5 F.3d at 1276. Because that inquiry generally
 11 requires consideration of matters outside the pleadings, the Ninth Circuit has stated that “only in
 12 the rare case” can it properly be resolved at the pleading stage. *Daviton*, 241 F.3d at 1140.

13 376. Equitable tolling suspends rather than restarts a limitations period. When applicable, the
 14 limitations clock stops during the tolling event and resumes when that event concludes; the tolled
 15 interval is added to the end of the limitations period. *Lantzy v. Centex Homes*, 31 Cal.4th 363,
 16 370–71 (2003).

17 377. Plaintiff alleges that the qualifying tolling interval commenced no later than February 22,
 18 2024, when the petition to vacate the Award was filed, and continued through appellate review,
 19 concluding no earlier than issuance of the remittitur on April 21, 2026. California authority
 20 recognizes, in appropriate equitable-tolling circumstances, a tolling interval continuing through
 21 appellate proceedings until remittitur. *Hoover v. Galbraith*, 7 Cal.3d 519, 525–26 (1972); see
 22 *Archdale v. American International Specialty Lines Ins. Co.*, 154 Cal.App.4th 449, 469 (2007).

23 378. Plaintiff commenced this action within a reasonable period after remittitur. The dates alleged
 24 above identify the interval Plaintiff contends should be excluded from the limitations calculation
 25 if equitable tolling applies; they are not pleaded as new accrual dates and do not depend upon
 26 restarting an otherwise expired limitations period.

27 28 B. PROCEDURAL HISTORY OF THE JURISDICTIONAL OBJECTION

1 379. On July 19, 2024, the Superior Court stated that “[t]he Panel considered the issue of Kesel’s
 2 bankruptcy fraud,” that Kesel’s omission of his PA shares “did not change the result,” and that
 3 Gilberg “failed to carry his burden to establish forfeiture by Kesel of his PA shares either
 4 pursuant to the bankruptcy or in connection with his criminal case.” The court further stated that
 5 the issue had been “fully considered by the Panel, but denied.” (EXHIBIT 45, Rosen Order, July
 6 19, 2024, p. 7.)

7 380. While appellate review remained pending, and before expiration of two years measured from
 8 the August 31, 2023 Interim Award, Plaintiff expressly sought judicial relief directed at
 9 preventing the challenged exercise of arbitral authority from continuing to produce the injury
 10 alleged here. On August 13, 2025, Plaintiff filed and served his Motion to Determine Jurisdiction
 11 Before Resolution of Other Issues. The motion did not merely assert legal error in the Award. It
 12 alleged that the Panel “exceeded constitutional authority by adjudicating federal bankruptcy estate
 13 property and criminal forfeiture matters,” invoked 28 U.S.C. § 1334(e)(1), 11 U.S.C. §§ 541, 349
 14 and 554(d), *Steel Co.*, and the contractual limitation of Optional Provision 21, and expressly
 15 argued that the Panel exceeded the written contractual scope by determining federal bankruptcy-
 16 estate property and criminal-forfeiture matters. (EXHIBIT 57, Motion to Determine Jurisdiction.)

17 381. Plaintiff alleges that the August 13, 2025 motion constituted continued good-faith pursuit,
 18 within two years of the Interim Award, of judicial relief directed at eliminating or preventing the
 19 same alleged injury for which the claims governed by a two-year period — Counts IV, V, VI, VII,
 20 and X — now seek damages. Had the requested relief been granted and the Award vacated or
 21 declared beyond the permissible arbitral authority, the continuing economic and enforcement
 22 consequences that Plaintiff attributes to AAA’s allegedly negligent administration of that
 23 proceeding would have been eliminated or materially reduced as to every Defendant. Plaintiff
 24 therefore did not abandon the alleged injury and later revive it after expiration of limitations;
 25 before two years had elapsed, he was actively pursuing a judicial remedy directed at the same
 26 alleged exercise of arbitral authority and its consequences.

27 382. Plaintiff does not allege that the August 13, 2025 motion itself commenced a damages action
 28 against AAA or any other Defendant, independently restarted limitations, or made any Defendant

1 a party to the appeal. Plaintiff pleads it instead as additional evidence of the reasonable and
 2 continuous pursuit of an alternative remedy for the same alleged injury for purposes of California
 3 equitable tolling. That injury traces to the determinations the Panel made and AAA administered:
 4 absent those federal property determinations, Kesel's votes would not have been recognized, and
 5 PA would have lacked the corporate authority to prosecute the claims that produced the Award.
 6 The motion sought threshold judicial intervention concerning precisely the jurisdictional
 7 boundary that Plaintiff alleges AAA had been placed on notice of during its administration of the
 8 arbitration. It requested relief capable of eliminating the Award and thereby avoiding or reducing
 9 damages before Plaintiff resorted to a separate damages action. Plaintiff did not choose the
 10 arbitral forum; he was compelled to it by court order. (§ 177.) His earlier proceedings sought to
 11 undo the Award and thereby remove the injury; this action seeks damages from the parties alleged
 12 to have caused it.

13 383. Plaintiff's pursuit of the alternative remedy continued throughout appellate review. Until the
 14 Court of Appeal decided the appeal, Plaintiff was still pursuing judicial relief capable of
 15 eliminating the Award and thereby preventing or materially reducing the same economic and
 16 enforcement injury for which damages are sought here. On February 17, 2026, the Court of
 17 Appeal affirmed the judgment, establishing that the appellate remedy Plaintiff had pursued would
 18 not eliminate the challenged Award. The appellate proceeding nevertheless remained pending
 19 until issuance of the remittitur on April 21, 2026.

20 384. Plaintiff therefore pleads April 21, 2026 as the end of the asserted tolling period, not as a
 21 new accrual date or restart of limitations. California decisions recognize, in appropriate
 22 circumstances, tolling through appellate proceedings where resolution of the appeal may
 23 eliminate or materially alter the injury underlying the later claim. *Hoover v. Galbraith*, 7 Cal.3d
 24 519, 525–27 (1972); *Archdale v. American International Specialty Lines Ins. Co.*, 154
 25 Cal.App.4th 449, 477–79 (2007). Plaintiff invokes those authorities as to the continuity and
 26 duration of the asserted tolling period and does not allege that California law prohibited him from
 27 commencing the present damages claims while the appeal was pending.

28 385. On February 17, 2026, the Court of Appeal affirmed the judgment and rejected the relief

1 Plaintiff had pursued. Until that decision, the pending appeal remained capable of eliminating or
 2 materially reducing the Award and the resulting economic and enforcement injury alleged in the
 3 claims governed by a two-year period, as to every Defendant. Plaintiff pleads February 17, 2026
 4 not as a new accrual date or restart of limitations, but as the date on which the appellate remedy
 5 was substantively rejected. The appellate proceeding thereafter concluded with issuance of the
 6 remittitur on April 21, 2026.

7 **386.** On February 17, 2026, the Court of Appeal described AAA as acting “within the scope of its
 8 power as the arbiter of [Kesel’s] rights under the August Agreement,” while also stating that
 9 AAA “did not decide in the first instance whether Kesel’s shares should be forfeited to the federal
 10 government, whether Kesel’s shares should be included in a bankruptcy estate, or whether Kesel
 11 could or should be prosecuted for the fraud that Kolchinsky alleges.” (EXHIBIT 39, Section F, p.
 12 11.) Plaintiff pleads that opinion for its description of the contractual source of AAA’s authority
 13 and the federal questions AAA “did not decide in the first instance,” not as an event creating or
 14 restarting the underlying injury.

15 **387.** Plaintiff does not allege that the July 19, 2024 order, August 13, 2025 jurisdiction motion, or
 16 February 17, 2026 opinion independently restarted an expired limitations period. Rather, those
 17 proceedings document Plaintiff’s continuous pursuit of judicial relief directed at the same
 18 challenged exercise of arbitral authority and resulting injury. As to Counts VI and VII
 19 specifically, Plaintiff alleges that he pursued that alternative remedy before expiration of two
 20 years from the August 31, 2023 Interim Award and continued pursuing it until completion of
 21 appellate review.

22 C. APPLICATION TO THE REMAINING DAMAGES CLAIMS

23 **388.** Counts IV and V arise under 42 U.S.C. § 1983. Federal law governs accrual, while the
 24 applicable California limitations period and California tolling rules are borrowed where consistent
 25 with federal law. Plaintiff pleads equitable tolling during pursuit of the California remedy as an
 26 alternative basis for timeliness.

27 **389.** Counts VI and VII concern AAA’s alleged non-adjudicative administrative conduct. Plaintiff
 28 alleges that any such claims became actionable no earlier than August 31, 2023, when the Interim

1 Award first made concrete the alleged consequence of AAA's administration by resolving the
 2 disputed federal-property predicates and recognizing Kesel as a legitimate shareholder. Plaintiff
 3 further pleads equitable tolling because, before two years elapsed from that date, he was already
 4 pursuing judicial relief directed at eliminating the same alleged exercise of arbitral authority and
 5 resulting injury, including his February 22, 2024 petition to vacate and his August 13, 2025
 6 jurisdiction motion, and continued that pursuit through appellate review and remittitur on April
 7 21, 2026. Plaintiff pleads delayed accrual, equitable tolling, and any other applicable accrual or
 8 tolling doctrine in the alternative rather than alleging that any later filing restarted an expired
 9 limitations period.

10 CAUSES OF ACTION

11 COUNT I

12 DECLARATORY RELIEF — BANKRUPTCY ESTATE AND TRUSTEE ARE NOT 13 BOUND

14 390. Plaintiff incorporates the preceding allegations.

15 391. The Award expressly found that Kesel's PA shares became property of the bankruptcy estate
 16 under 11 U.S.C. § 541.

17 392. Neither the bankruptcy estate nor any duly appointed trustee participated in or consented to
 18 the arbitration. The December 19, 2011 dismissal order did not identify or adjudicate the omitted
 19 PA shares, and Plaintiff alleges that he received no notice concerning those undisclosed interests
 20 and had no opportunity to be heard concerning their disposition.

21 393. The Panel nevertheless selected between 11 U.S.C. §§ 349(b)(3) and 554(d), determined that
 22 the shares "reverted back in ownership to Kesel," and thereafter repeatedly recognized Kesel as a
 23 "legitimate shareholder" possessing the associated voting and economic rights.

24 394. An actual controversy exists because Defendants—including Kesel and Mednik, who assert
 25 the Award against Plaintiff and are enforcing the resulting judgment—rely upon the Award as
 26 establishing Kesel's ownership and voting rights, while proceedings to reopen Kesel's bankruptcy
 27 seek federal consideration of the omitted shares.

28 395. Plaintiff seeks a declaration that the Award does not preclude or otherwise bind the

1 bankruptcy estate or any duly appointed trustee concerning ownership, administration,
2 abandonment, revesting, turnover, voting rights, dividends, or causes of action associated with the
3 PA shares, and does not prevent the bankruptcy court or trustee from independently applying 11
4 U.S.C. §§ 349, 541, 542, 554, 1107, or other governing federal law to the omitted property.

5 **COUNT II**

6 **DECLARATORY RELIEF — UNITED STATES AND FEDERAL FORFEITURE**
7 **COURT ARE NOT BOUND**

8 **396.** Plaintiff incorporates the preceding allegations.

9 **397.** The Panel adjudicated Plaintiff's contention that Kesel's PA shares were implicated by
10 federal forfeiture proceedings and determined that Plaintiff failed to establish forfeiture. The
11 United States was not a party to the arbitration and did not authorize the Panel to adjudicate its
12 independent interests under 21 U.S.C. § 853.

13 **398.** Judge Wilken's Final Order expressly retained jurisdiction to enforce the federal forfeiture
14 order. The federal record included Kesel's personal guilty plea and the package-deal ADLS Plea
15 Agreement he personally affirmed, as alleged above.

16 **399.** An actual controversy exists because the Award treated Kesel's PA shares and the Sagodeev
17 transfer—made during Kesel's federal probation and alleged to have involved no payment by
18 Kesel—as valid private ownership interests, treated the Sagodeev transaction as evidence of
19 Kesel's ownership and as a valuation benchmark, and recognized Kesel as a legitimate
20 shareholder, while Kesel and Mednik continue to assert those determinations against Plaintiff.

21 **400.** Plaintiff seeks a declaration, as between Plaintiff and Defendants, that the Panel's forfeiture
22 determination does not bind the United States or preclude the United States or the federal criminal
23 court from independently determining whether any PA shares, appreciation, dividends, transferred
24 property, traceable proceeds, or substitute property fall within 21 U.S.C. § 853 or the governing
25 federal forfeiture orders.

26 **401.** Plaintiff does not seek a declaration that any property is forfeited, does not seek forfeiture on
27 behalf of the United States, and does not invoke § 853 as a private cause of action. Those merits
28 determinations remain for the United States and the federal court possessing jurisdiction over the

1 federal forfeiture proceeding.

2 **COUNT III**

3 **DECLARATORY RELIEF — SCOPE AND EFFECT OF ARBITRAL AUTHORITY**
4 **OVER NONPARTY FEDERAL INTERESTS**

5 **402.** Plaintiff incorporates the preceding allegations.

6 **403.** Optional Provision 21 supplied the contractual source and limits of the Panel's authority. It
7 authorized arbitration of disputes concerning the parties' "rights under any provisions of this
8 agreement" and provided that AAA's decision on those questions "shall be binding on the
9 parties." OP 21 therefore defined both the subject matter submitted to arbitration and the persons
10 who agreed to be bound by the resulting decision.

11 **404.** Neither the bankruptcy estate, a trustee, nor the United States was a party to the
12 Shareholders' Agreement or the arbitration, and none consented to AAA adjudicating its
13 independently arising federal property interests. OP 21 contains no language submitting
14 ownership of bankruptcy-estate property, administration of estate property, federal criminal
15 forfeiture interests, or the rights of those absent federal entities to private arbitration.

16 **405.** Plaintiff does not contend that these limitations prevented the Panel from considering federal
17 statutes, records, or law insofar as necessary to determine contractual rights properly submitted by
18 the parties. The distinction alleged is between the law consulted by an arbitrator and the right
19 adjudicated by the arbitrator. Authority to determine the parties' contractual rights in light of
20 federal law did not confer authority to adjudicate independently arising federal property interests
21 belonging to entities that never submitted them, and did not enlarge merely because resolving
22 those questions became useful or necessary to the parties' private dispute.

23 **406.** Plaintiff alleges that the Panel crossed that boundary when it determined antecedent federal
24 property-status questions as predicates to Kesel's contractual rights. The Panel found that Kesel's
25 undisclosed PA shares became property of the bankruptcy estate under 11 U.S.C. § 541; selected
26 § 349(b)(3) over the competing effect asserted under § 554(d); determined that the shares
27 "reverted back in ownership to Kesel"; and thereafter recognized Kesel as a legitimate
28 shareholder possessing voting and economic rights. Neither the estate nor a trustee participated in

1 that adjudication.

2 **407.** The Panel separately determined the asserted effect of Kesel's federal criminal and forfeiture
3 proceedings upon his PA ownership. It considered Kesel's federal plea, plea agreement, federal
4 investigative evidence, and forfeiture record; rejected Plaintiff's position that Kesel's ownership
5 had been affected by federal forfeiture; treated the Sagodeev transaction as evidence of Kesel's
6 ownership and as a valuation benchmark; and recognized Kesel as a legitimate shareholder
7 notwithstanding those asserted federal interests.

8 **408.** Those determinations were not incidental. Plaintiff alleges they supplied necessary
9 predicates for Kesel's recognition as a legitimate shareholder, his voting and economic rights,
10 PA's asserted corporate authority, and the ownership and damages determinations imposed
11 against Plaintiff. The Complaint therefore challenges the authority to give those determinations
12 operative effect, not the correctness of the Panel's federal-law analysis.

13 **409.** Nor did subsequent judicial confirmation enlarge the original contractual submission.
14 Confirmation gave the Award the enforceable consequences provided by state law, but Plaintiff
15 alleges that it could not retroactively supply consent by the bankruptcy estate, a trustee, or the
16 United States; enlarge OP 21 beyond the authority submitted by its signatories; or convert the
17 Panel's antecedent federal property-status determinations into determinations made by a federal
18 court exercising jurisdiction under 28 U.S.C. § 1334(e)(1).

19 **410.** The distinction is independently significant because due process ordinarily does not permit
20 an adjudication to bind persons whose interests were neither before the tribunal nor adequately
21 represented. *Richards v. Jefferson County*, 517 U.S. 793, 795 (1996) (citing *Hansberry v. Lee*,
22 311 U.S. 32, 37 (1940)); *id.* at 798 (quoting *Martin v. Wilks*, 490 U.S. 755, 762 (1989)). Plaintiff
23 invokes the nonparty principle to define the permissible effect of the Panel's determinations, not
24 to represent those absent entities or prosecute claims belonging to them.

25 **411.** Plaintiff therefore seeks a declaration that Optional Provision 21 did not authorize the Panel
26 to bind or displace the independent federal property interests of the bankruptcy estate, a trustee, or
27 the United States, and that neither the Award nor the Panel's antecedent determinations preclude
28 those entities or the appropriate federal courts from independently determining those interests

1 under governing federal law.

2 **412.** Plaintiff further seeks a declaration that the Panel's resolution of those questions as
 3 predicates to the parties' contractual dispute does not itself constitute a first-instance federal
 4 adjudication of estate ownership or federal forfeiture binding upon the absent federal interests. No
 5 court exercising jurisdiction under 28 U.S.C. § 1334(e)(1) adjudicated the omitted PA shares. The
 6 California Court of Appeal, while describing AAA as acting "within the scope of its power as the
 7 arbiter of [Kesel's] rights under the August Agreement," also stated that AAA "did not decide in
 8 the first instance whether Kesel's shares should be forfeited to the federal government, whether
 9 Kesel's shares should be included in a bankruptcy estate, or whether Kesel could or should be
 10 prosecuted for the fraud that Kolchinsky alleges." (EXHIBIT 39, Section F, p. 11.) Plaintiff does
 11 not dispute the first statement; the declaration sought concerns the second.

12 **413.** Plaintiff requests the narrowest effective declaration. He does not ask this Court to determine
 13 whether the PA shares presently remain property of the bankruptcy estate under 11 U.S.C. §
 14 554(d); whether the Panel correctly interpreted 11 U.S.C. §§ 349(b)(3), 541, or 554(d), or 21
 15 U.S.C. § 853; whether Kesel committed a federal offense; to order criminal forfeiture; to
 16 determine what the bankruptcy court ultimately should do with the disputed shares; to vacate or
 17 modify the Award; to review the Award for legal or factual error; or to reverse or modify the
 18 California judgment.

19 **414.** As to Defendants Kesel and Mednik, Counts I through III seek declaratory relief only.
 20 Plaintiff seeks no damages from them. They are named because they presently assert rights
 21 dependent upon the Award and therefore possess interests adverse to the declarations sought.
 22 Plaintiff asks only that the permissible federal effect of the Panel's determinations be defined
 23 without disturbing whatever force the California judgment otherwise possesses between the
 24 parties.

25 **COUNT IV**

26 **42 U.S.C. § 1983 - PROCEDURAL DUE PROCESS (PLED IN THE** 27 **ALTERNATIVE)**

28 **415.** This Count is pled only if the Court determines that one or more Defendants acted under

1 color of state law under an applicable state-action doctrine. Plaintiff does not allege that private
 2 arbitration, state-law regulation of arbitration, judicial confirmation of an award, or enforcement
 3 of a resulting judgment, standing alone, converts private arbitrators into state actors.

4 **416.** Plaintiff possessed protected property interests in his shares, contractual corporate rights, and
 5 money. As alleged in ¶ 4, California law also expressly prohibited a shareholders' agreement
 6 from altering or waiving the protections imposed by Corporations Code § 500 and Chapter 15,
 7 including § 1501, and Optional Provision 26 required the Agreement to be interpreted "in
 8 accordance with California Law." (EXHIBIT 4, OP 26.)

9 **417.** Plaintiff alleges that, after Exhibit 67 expressly placed the Panel on notice that §§ 500(a) and
 10 1501 imposed duties that could not be waived or delegated, the Panel nevertheless used waiver
 11 and equitable doctrines to defeat Plaintiff's corresponding statutory protections while relieving
 12 Mednik and Kesel, as the asserted Board majority, of those duties for approximately ten years
 13 reaching back to 2009. Plaintiff alleges this was not merely an erroneous interpretation of
 14 California law, but a knowing exercise of authority that the Agreement itself could not confer.

15 **418.** Plaintiff further alleges deprivation through a process in which the Panel adjudicated federal
 16 nonparty property interests outside the contractual submission and converted those determinations
 17 into predicates for shareholder status, corporate authority, and monetary liability against Plaintiff.

18 **419.** Plaintiff recognizes that the foregoing allegations concerning the Panel's asserted absence of
 19 authority do not themselves establish action under color of state law. This Count therefore
 20 survives only if the evidence and applicable law independently establish that the challenged
 21 deprivation is fairly attributable to the State under a recognized state-action doctrine.

22 **420.** Plaintiff seeks declaratory relief and damages against any Defendant found to have acted
 23 under color of state law and not protected by absolute immunity.

24 **COUNT V**

25 **42 U.S.C. § 1983 - CIVIL CONSPIRACY (PLED IN THE ALTERNATIVE)**

26 **421.** This count is pled only if discovery supports an agreement between private Defendants and
 27 one or more state actors to use the arbitral and judicial enforcement process to deprive Plaintiff of
 28 federally protected property without constitutionally adequate process.

1 422. The alleged overt acts include presenting Kesel as a legitimate shareholder despite
2 unresolved federal interests, securing confirmation, and pursuing interstate enforcement while
3 representing the federal-property issues as finally resolved.

4 423. Adverse rulings and parallel litigation positions alone do not establish conspiracy.

5 424. Plaintiff seeks relief only against persons shown to have knowingly joined such an
6 agreement and caused injury.

7 **COUNT VI**

8 **NEGLIGENCE - AAA NON-ADJUDICATIVE ADMINISTRATION**

9 425. AAA undertook administrative functions separate from adjudication, including intake,
10 maintenance of the case file, receipt and processing of submissions and objections, appointment
11 procedures, scheduling, fee administration, and communications concerning administration of the
12 case.

13 426. AAA had actual institutional notice of the asserted limitation upon the arbitration from its
14 inception. On October 15, 2020, Respondents filed AAA's own Answering Statement expressly
15 rejecting the demand because, among other grounds, "the issues in dispute are outside the scope
16 of the arbitration clause." (EXHIBIT 55.) Twelve days later, counsel wrote directly to AAA
17 Director of ADR Services Alisa Bacon Sullivan, specifically identifying Kesel's bankruptcy and
18 omission of his PA shares and explaining the asserted limitation imposed by Optional Provision
19 21. (EXHIBIT 56.)

20 427. Plaintiff alleges that, in performing its own administrative functions, AAA failed to exercise
21 reasonable care in receiving, recording, routing, maintaining, or otherwise processing those
22 objections and related submissions in accordance with applicable administrative rules,
23 procedures, and undertakings. Plaintiff seeks discovery concerning AAA's handling of those
24 materials and the administrative actions taken after their receipt.

25 428. Plaintiff alleges that such non-adjudicative failures, to the extent established by discovery,
26 caused additional fees, delay, and economic and enforcement injury.

27 429. This Count does not allege that AAA was required to instruct the Panel how to interpret
28 federal law, dictate the merits, correct the Panel's reasoning, or alter the Award. It concerns only

1 AAA's own administrative conduct that the Court determines was ministerial, contractual, or
2 otherwise outside the adjudicative function protected by arbitral immunity.

3 **COUNT VII**

4 **GROSS NEGLIGENCE — AAA NON-ADJUDICATIVE ADMINISTRATION**

5 **430.** Plaintiff incorporates the preceding allegations. AAA's notice was not merely constructive.
6 The asserted scope limitation was stated on AAA's own Answering Statement at the inception of
7 the case and thereafter explained directly to an AAA Director of ADR Services, together with the
8 bankruptcy-related basis for the objection. (EXHIBITS 55–56.)

9 **431.** Plaintiff alleges that AAA thereafter continued administering the proceeding for nearly three
10 years before issuance of the Interim Award, generating \$579,694.66 in arbitrator compensation
11 and \$68,762.50 in AAA administrative fees. (EXHIBIT 60, Final Award p. 17.) To the extent
12 discovery establishes that AAA knowingly failed to follow applicable administrative safeguards,
13 procedures, or undertakings in handling the repeatedly presented scope and federal-nonparty
14 objections, Plaintiff alleges an extreme departure from reasonable administrative care.

15 **432.** Plaintiff alleges gross negligence only to the extent the evidence establishes conscious
16 disregard of known administrative obligations and probable consequences. Plaintiff does not
17 characterize the Panel's legal conclusions, evidentiary determinations, or other protected
18 decisional acts as negligence or gross negligence.

19 **433.** Plaintiff seeks compensatory damages according to proof for injury proximately caused by
20 AAA's own non-immune administrative conduct, subject to applicable immunity, contractual
21 defenses, California law, and the equitable-tolling allegations above.

22 **COUNT VIII**

23 **CALIFORNIA CIVIL CONSPIRACY TO COMMIT FRAUD AND DECEIT**

24 **(DERIVATIVE THEORY; CCP § 338(D))**

25 **434.** Plaintiff incorporates the preceding allegations. Civil conspiracy is not pleaded as an
26 independent tort, but as a derivative theory of liability for the fraud and deceit alleged in Count
27 IX. Liability is asserted only against persons shown to have knowingly agreed to the alleged
28 wrongful objective and intentionally participated in acts furthering it.

1 435. Plaintiff alleges, on information and belief where the relevant communications are within
2 Defendants' possession, that the common objective was to obtain and preserve operative
3 recognition of Kesel as a legitimate PA shareholder and thereby preserve the ownership and
4 voting predicates necessary for PA's asserted corporate authority and claims against Plaintiff,
5 notwithstanding the known absence of the bankruptcy estate, any trustee, and the United States
6 from the arbitration and the limited contractual source of arbitral authority.

7 436. The alleged acts in furtherance included presenting and maintaining Kesel as entitled
8 personally to the disputed shares; urging or adopting federal property-status determinations as
9 predicates for his shareholder and voting status; and using those predicates to support PA's
10 corporate authority and monetary claims. Plaintiff does not allege that parallel positions,
11 advocacy, adverse rulings, or participation in arbitration alone establishes an agreement to
12 commit fraud.

13 437. Plaintiff separately alleges, as to each Defendant against whom such conduct is specifically
14 proved, that after issuance of the Award those Defendants invoked the resulting federal property-
15 status determinations as authoritative in subsequent proceedings, including enforcement
16 proceedings against Plaintiff. Plaintiff alleges this post-Award conduct as an act in furtherance
17 distinct from conduct occurring within the arbitration itself.

18 438. Plaintiff alleges that the challenged federal predicates were material. The Panel's recognition
19 of Kesel as a "legitimate shareholder" carried ownership, voting, distribution, and governance
20 consequences and allegedly supplied an indispensable predicate for PA's asserted authority and
21 the monetary Award against Plaintiff. Plaintiff alleges resulting economic and property injury
22 according to proof.

23 439. This Count applies only to the extent the underlying fraud alleged in Count IX is established
24 and the evidence establishes each Defendant's knowing participation in it. It does not seek
25 conspiracy liability merely because Defendants participated in the arbitration or reached,
26 advocated, confirmed, or enforced an adverse legal position, and remains subject to applicable
27 immunity and privilege defenses.

28

COUNT IX

**FRAUD AND DECEIT — REPRESENTATION OF AUTHORITY OVER NONPARTY
FEDERAL INTERESTS (CCP § 338(d))**

440. Plaintiff incorporates the preceding allegations. This Count does not allege fraud merely because the Panel considered federal law, interpreted it incorrectly, or reached an erroneous Award. The Award openly disclosed substantial federal-law analysis. The alleged deception is narrower: after resolving federal property-status questions concerning interests of an absent bankruptcy estate and the United States, Defendants allegedly presented and used those determinations as operative predicates of Kesel's ownership, voting authority, and PA's claims without identifying any source of authority by which those absent federal interests had submitted their property rights to the private tribunal.

441. Before the Award, the asserted jurisdictional boundary had been specifically and repeatedly presented. AAA was advised in October 2020 that the dispute exceeded the narrow scope of Optional Provision 21 and that Kesel's bankruptcy omission affected threshold shareholder standing. Before the Award, the Panel had been presented with 11 U.S.C. §§ 541, 349(b)(3), and 554(d), the 21 U.S.C. § 853 forfeiture issue, Judge Wilken's retained jurisdiction, and the absence of the estate, a trustee, and the United States. Plaintiff therefore alleges that the asserted absence of authority was consciously encountered rather than first discovered after the adverse Award.

442. Plaintiff alleges that Defendants knew the source of arbitral authority was the Shareholders' Agreement and knew that neither the bankruptcy estate, any trustee, nor the United States had consented to arbitration. This Count is directed to Kesel and Mednik, who asserted Kesel's shareholder status and invoked it to authorize Power Architects' claims against Plaintiff, and to the Arbitrator Defendants — Turitz, Burke, and Cottle — who determined the federal property and forfeiture questions and presented those determinations as authoritative predicates. It is not directed to AAA, whose administrative conduct is addressed in Counts VI and VII. Plaintiff does not allege that any of these five Defendants were required to know which interpretation of §§ 349(b)(3), 554(d), or 853 was legally correct. The alleged knowledge concerns the source and limits of the authority being exercised, not the correctness of the federal-law answer.

1 **443.** The challenged representation was material because the federal property determination
 2 supplied an asserted predicate for recognizing Kesel's personal ownership and voting rights and,
 3 in turn, PA's asserted corporate authority and monetary claims against Plaintiff. Plaintiff alleges
 4 resulting economic and property injury, including arbitration expense and other damages
 5 proximately caused by any actionable fraud established according to proof.

6 **444.** Plaintiff pleads reliance only to the extent legally supportable by the facts proved. Plaintiff
 7 does not allege that he believed or voluntarily accepted the challenged jurisdictional
 8 representation; to the contrary, he objected to the asserted authority before the Award. Plaintiff
 9 therefore does not rely upon compelled participation, disagreement with the Panel, or subsequent
 10 enforcement standing alone as substitutes for the reliance element of common-law fraud.

11 **COUNT X**

12 **NEGLIGENCE / GROSS NEGLIGENCE — ACTS OUTSIDE PROTECTED ARBITRAL** 13 **JURISDICTION**

14 **445.** Plaintiff incorporates the preceding allegations. The Arbitrator Defendants certified that they
 15 were "designated in accordance with" the August 21, 1998 Agreement and had been "duly
 16 sworn." (EXHIBIT 1, Award p. 3.) Optional Provision 21 limited the submission to disputes
 17 concerning the parties' "rights under" provisions of that Agreement and made AAA's decision
 18 "binding on the parties."

19 **446.** Plaintiff does not allege negligence because Defendants considered federal law, interpreted it
 20 incorrectly, weighed evidence incorrectly, or reached an erroneous Award. An arbitrator may
 21 consider federal law when determining contractual rights properly submitted to arbitration.
 22 Plaintiff seeks no tort liability for such decisional acts.

23 **447.** This Count is pleaded only in the alternative, and only if the Court determines that the
 24 challenged acts occurred outside the jurisdiction conferred by the arbitral submission. Arbitral
 25 immunity extends only to acts undertaken "within the scope of [the arbitrators'] duties and within
 26 their jurisdiction." *Wasyl v. First Boston Corp.*, 813 F.2d 1579, 1582 (9th Cir. 1987); *Sacks v.*
 27 *Dietrich*, 663 F.3d 1065, 1069 (9th Cir. 2011). The jurisdictional limitation is therefore part of the
 28 immunity doctrine itself, not an exception Plaintiff asks this Court to create.

1 448. Plaintiff alleges a distinction between the law consulted and the right adjudicated. Optional
 2 Provision 21 permitted the Panel to consider federal law insofar as necessary to determine the
 3 parties' contractual rights. It did not thereby authorize the Panel to determine federal property
 4 interests belonging to an absent bankruptcy estate, trustee, or the United States, and then use those
 5 determinations as predicates establishing Kesel's ownership, voting authority, and PA's corporate
 6 authority against Plaintiff.

7 449. The relevant knowledge was not knowledge of which interpretation of 11 U.S.C. §§
 8 349(b)(3) or 554(d), or 21 U.S.C. § 853, was correct. Plaintiff alleges that Defendants knew their
 9 authority arose solely from the Shareholders' Agreement, knew that the bankruptcy estate, any
 10 trustee, and the United States had not consented to arbitration, and nevertheless undertook the
 11 challenged federal property-status determinations.

12 450. If those acts were within the Panel's arbitral jurisdiction, this Count does not apply. If they
 13 were outside that jurisdiction, Plaintiff alleges that undertaking them despite the known limits of
 14 the arbitral submission constituted negligence and, to the extent conscious disregard is
 15 established, gross negligence. The alleged duty is not a duty to decide correctly, but to refrain
 16 from exercising adjudicatory authority over matters outside the jurisdiction of the arbitral office
 17 Defendants accepted. Plaintiff alleges resulting economic and property injury according to proof,
 18 and pleads timeliness as set forth above.

19 PRAYER FOR RELIEF

20 A. Declare that neither the Award nor the resulting state judgment binds or precludes the
 21 bankruptcy estate, a duly appointed trustee, the United States, or the appropriate federal courts
 22 from independently determining the federal property interests described in this Complaint;

23 B. Declare that Optional Provision 21 did not authorize the Panel to adjudicate, bind,
 24 displace, or give binding effect against absent, non-consenting federal interests to determinations
 25 concerning property of the bankruptcy estate or asserted federal forfeiture interests;

26 C. Declare that the Panel's consideration of federal law in resolving the parties'
 27 contractual dispute did not itself produce a first-instance federal adjudication, binding upon those
 28 absent federal interests, of ownership of bankruptcy-estate property or of federal forfeiture;

1 D. Declare that Defendants, including Kesel and Mednik, may not represent or invoke the
2 Award as a final adjudication binding the bankruptcy estate, a trustee, the United States, or the
3 federal courts upon those federal property questions;

4 E. Grant such further necessary or proper relief based upon the declaratory judgment as
5 authorized by 28 U.S.C. § 2202, including prospective relief if and to the extent legally
6 appropriate;

7 F. Award compensatory damages on those claims, and against those Defendants, for
8 which damages are legally available, in an amount according to proof;

9 G. Award punitive damages against any Defendant for whom such relief is legally
10 authorized and supported by the evidence;

11 H. Award costs and any attorney's fees authorized by law; and

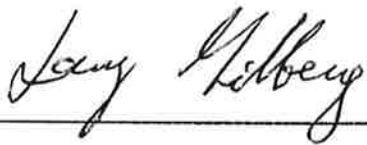
12 I. Grant such other and further relief as the Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

14 **451.** Plaintiff demands a trial by jury on all issues so triable.

15
16 Dated: 08/25/2026

17 Respectfully submitted,

18
19 
20

21 **LARRY GILBERG**

22 Plaintiff, Pro Se
23
24
25
26
27
28

INDEX OF EXHIBITS

The third column gives the exhibit number assigned in Doc. 106; “—” means the document was not part of that filing. See Note on Exhibits, above.

Ex.	Document	Doc. 106
1	Interim Award (Aug. 31, 2023)	1
2	ADLS Plea Agreement	14
3	Form B9E notice / creditor matrix	30
4	Shareholders' Agreement, Aug. 21, 1998 (OP 1–32)	8
5	Power Architects appraisal, Aug. 15, 2022	6
6	AAA Tr. Vol. IV, 874–875, 898:18–24 — Kesel	37, 41
7	PA IRS Forms 1120, Schedule G	13
8	Kesel Dep. 119:25–120:18 — NeoVision performed no work	47
9	AAA Tr. Vol. I, 17 — Mednik re 76% supermajority	9
10	AAA Tr. Vol. III, 613–614 — Kesel re 76% supermajority	10
11	AAA Tr. Vol. IV, 968–969 — Burke re blocking position	11
12	Kesel Chapter 11 petition and Schedules A, B, G; B6 Declaration	25
13	Wiggs retainer agreement, Jan. 9, 2019	7
14	Shareholders' meeting transcript, Feb. 7, 2019	4
15	Cease-and-desist letter, Feb. 18, 2019	5
16	National Archives retrieval, CR-00-40242	48
17	Aldine DEA affidavit, Dec. 7, 2000	17
18	Cummings declaration	18
19	1998 OSM investment checks	15
20	ADLS promissory note and \$25,000 wire, Feb. 28, 2000	16
21	DEA Form 82, July 25, 1997	21
22	PA dividend distributions, Forms 1099-DIV, 2022–2025	19
23	Final Order of Forfeiture (Wilken, J.)	2
24	DEA Form 82, April 7, 1998 (Kotlyarenko)	22
25	Preliminary Order of Forfeiture, April 13, 2004	24
26	AAA Tr. Vol. IV, 863–864 — disclosure to government	26
27	NeoVision LLC Articles of Organization	33
28	Conditions of Probation	27
29	Kesel email, May 23, 2019 — PA dissolution	39
30	Mednik letter to PA shareholders, June 2026	50
31	Lee tax-reporting email, Dec. 12, 2019	—

Ex.	Document	Doc. 106
32	RC-1693 · Mednik court declaration	—
33	AAA Tr. Vol. VIII, 1943–1944 — Burke, “why do we care?”	—
34	David Lee testimony re Gilberg buybacks	—
35	Offers of Proof (Lee and Dahi)	—
36	AAA Tr. Vol. IV, 867–869 — “didn’t pay a penny”	37
37	PA chief financial officer declaration (Kushchanka)	31
38	Probation record, Form 12C, Feb. 4, 2008	38
39	Court of Appeal opinion, H052610 (Kolchinsky), Section F	3
40	Court of Appeal opinion, H052611 (Gilberg), Feb. 17, 2026	23
41	Application to employ bankruptcy counsel (Doc. 12) — § 1107	29
42	Chapter 11 dismissal order, Dec. 19, 2011 (Lafferty, J.)	28
43	Kesel declaration, Feb. 7, 2022, No. 21CV386091	40
44	Respondents’ Post-Hearing Brief I — §§ 500(a), 1501	—
45	Order confirming the Award, July 19, 2024 (Rosen, J.)	43
46	Written Consent of Shareholders, July 27, 2020	—
47	AAA Tr. 523–529 — Mednik re Pystin	—
48	AAA Tr. 2746–2750 — Pysina re Pystin	—
49	CA Secretary of State Statement of Information, May 31, 2023	—
50	Stern report — compensation, dividends, ERI analysis	—
51	Gallagher ERI rebuttal report	—
52	Ip analysis — Mednik affiliate payments (\$104,565)	—
53	Kline declaration	—
54	PA employees’ letter to Pystin, May 7, 2019	—
55	Answering Statement to AAA, Oct. 15, 2020	—
56	Letter to AAA Director of ADR Services Sullivan	—
57	Motion to Determine Jurisdiction, Aug. 13, 2025	—
58	Order compelling arbitration, Jan. 12, 2021 (Polan, J.)	42
59	LEX Omni letter re 21-year personal tax return motion	—
60	Final Award (Jan. 10, 2024)	1
61	Minute Entries, In re Kesel, July 8 and July 29, 2026	—