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 12 **UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN JOSE DIVISION**
 15

16 **NATIONAL ASSOCIATION FOR GUN**
RIGHTS, INC., a non-profit corporation, and
 17 **MARK SIKES**, an individual,

18 Plaintiffs,

19 v.

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 21 **CITY OF SAN JOSE**, a public entity,
JENNIFER MAGUIRE, in her official
 22 capacity as City Manager of the City of San
 Jose, and the **CITY OF SAN JOSE CITY**
 23 **COUNCIL**,

24 Defendants.

Case No. 5:22-cv-00501-BLF

**REQUEST FOR JUDICIAL NOTICE
 IN SUPPORT OF DEFENDANTS’
 MOTION TO DISMISS FOR LACK OF
 SUBJECT MATTER JURISDICTION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

Date: June 2, 2022
 Time: 9:00 A.M.
 Courtroom: 3 – 5th Floor
 Judge: Hon. Beth Labson Freeman

Complaint Filed: January 25, 2022

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**REQUEST FOR JUDICIAL NOTICE ISO DEFENDANTS’ MOTION TO DISMISS FOR
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 AUTHORITIES; CASE NO. 5:22-CV-00501-BLF**

REQUEST FOR JUDICIAL NOTICE

I. INTRODUCTION

Pursuant to Fed. R. Evid. 201 and 801(d)(2) and supporting case law, Defendants City of San Jose, Jennifer Maguire, and the City of San Jose Council (collectively, “Defendants”), request that this Court take judicial notice of the following documents in connection with Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1):

1. **Statement by Dudley W. Brown** (“Statement”). Brown is the President of entity Plaintiff National Association for Gun Rights (“NAGR”). Declaration of Tamarah P. Prevost in Support of the Request for Judicial Notice (“Prevost Decl.”) ¶ 4. The Statement concerns the filing of Plaintiffs’ Complaint. The statement was made by Brown in a January 30, 2022, video that was produced by NAGR and posted to NAGR’s YouTube account in which Brown is clearly identified. *Id.* ¶ 5. The video is available online at <https://youtu.be/YZJlctURfeg>. *Id.* Brown’s Statement spans 1:30 – 2:02 of the video. *Id.* ¶ 6 A true and correct transcript of Brown’s Statement during that time span appears in Prevost Declaration. *Id.* ¶ 6.
2. **Docket Activity Report** (“DAR”), generated on February 4, 2022, at 12:02 p.m., of all documents in the instant lawsuit filed to date on the case docket on CM/ECF. Prevost Decl. ¶ 7. A true and correct copy of the DAR is attached as **Exhibit 7**.

II. ARGUMENT

“Proper subjects of judicial notice when ruling on a motion to dismiss include[s] . . . publicly accessible websites.” *Perkins v. LinkedIn Corp.*, 53 F. Supp. 3d 1190, 1204 (N.D. Cal. 2014) (Koh, J.). The *Perkins* Court took judicial notice of “two interviews” with the co-founder and chairman of the defendant. *Id.* at 1201, 1205. Similarly, another Court in this District took judicial notice of statements that the defendant made to a reporter because “these were his words,” so “these quotes from the newspaper article are admissible under FRE 801(d)(2) as an admission of a party opponent.” *Boyd v. City of Oakland*, 458 F. Supp. 2d 1015, 1050 (N.D. Cal. 2006); *see also, e.g.*,

1 *Hernandez v. Wells Fargo & Co.*, 2019 WL 3017657, at *5 (“[P]arty admissions may be judicially
2 noticed for the truth of the matter if requested by the opposing party. FRE 801(d)(2).”)

3 Brown’s Statement constitutes an admission of a party opponent because he is the president
4 of Plaintiff NAGR. The Statement was made by Brown himself in a video freely available on a
5 publicly accessible website—YouTube—and posted from an account that is owned by NAGR.
6 Indeed, the U.S. Supreme Court has even incorporated into an opinion a link to a video to allow it
7 to “speak for itself.” *Scott v. Harris*, 550 U.S. 372, 378 n.5 (2007).

8 Further, the DAR is judicially noticeable as a public record and as a record of this Court.
9 *See, e.g., No Cost Conference, Inc. v. Windstream Comm’cns, Inc.*, 940 F. Supp. 2d 1285, 1295
10 (citing *United States v. Howard*, 381 F.3d 873, 876 n.1 (9th Cir. 2004)).

11 **III. CONCLUSION**

12 Pursuant to Fed. R. Evid. 201 and 801(d)(2), and for the reasons set forth above, the Court
13 should take judicial notice of Brown’s Statement and the DAR.

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15 Dated: February 7, 2022

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17 By: /s/ Tamarah P. Prevost

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