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9 Henry, Patrick Lovette, Virginia Duncan, Randy Ricks, Gun Owners of California,  
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Incorporated

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16 Attorneys for Plaintiff Citizens Committee for the Right to Keep and Bear Arms

17 **UNITED STATES DISTRICT COURT**  
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 SOUTH BAY ROD & GUN CLUB,  
20 INC.; GARY BRENNAN, an  
21 individual; CORY HENRY, an  
22 individual; PATRICK LOVETTE, an  
23 individual; VIRGINIA DUNCAN, an  
24 individual; RANDY RICKS, an  
25 individual; CITIZENS COMMITTEE  
26 FOR THE RIGHT TO KEEP AND  
27 BEAR ARMS; GUN OWNERS OF  
28 CALIFORNIA; SECOND  
AMENDMENT LAW CENTER; and  
CALIFORNIA RIFLE & PISTOL  
ASSOCIATION, INCORPORATED,

Plaintiffs,

v.

ROBERT BONTA, in his official  
capacity as Attorney General of the  
State of California; and DOES 1-10,

Defendants.

**CASE NO: 3:22-cv-01461-RBM-WVG**  
**REQUEST FOR JUDICIAL NOTICE**  
**IN SUPPORT OF PLAINTIFFS’**  
**REPLY TO DEFENDANT BONTA’S**  
**SUPPLEMENTAL BRIEF**

**Bench Trial Date: December 16, 2022**  
**Courtroom: 5B**  
**Judge: Hon. Roger T. Benitez**

1 GAVIN NEWSOM, in his official  
2 capacity as Governor of the State of  
3 California,

4  
5 Intervenor-Defendant.

6 TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

7 Under Federal Rule of Evidence 201, Plaintiffs South Bay Rod & Gun Club,  
8 Inc., Gary Brennan, Cory Henry, Patrick Lovette, Virginia Duncan, Randy Ricks,  
9 Citizens Committee for the Right to Keep and Bear Arms, Gun Owners of  
10 California, Second Amendment Law Center, and California Rifle and Pistol  
11 Association, Incorporated, respectfully request that the Court take judicial notice of  
12 the following documents or facts in support of Plaintiffs' Reply to Defendant  
13 Bonta's Supplement Brief Re Motion for Preliminary Injunction:

14 1. **Order Denying Preliminary Injunction** – filed in *Abrera v. Newsom*,  
15 Case No. 2:22-cv-1162 (E.D. Cal. Dec. 8, 2022) (Dkt No. 29 thereof). A true and  
16 correct copy of this document is attached hereto as Exhibit "A."

17 2. **Notice of Appearance of Counsel** - Filed in *G. Mitchell Kirk, et al. v.*  
18 *City of Morgan Hill, et al.*, Santa Clara County Superior Court Case No.  
19 19CV346360 (May 21, 2019). A true and correct copy of this document is attached  
20 hereto as Exhibit "B."

21 Federal Rule of Evidence 201 allows the Court to notice a fact if it is not  
22 subject to reasonable dispute such that it is generally known or can be accurately  
23 and readily determined from sources whose accuracy cannot reasonably be  
24 questioned. A court shall take judicial notice of such a fact if requested by a party  
25 and supplied with the necessary information. FED. R. EVID. 201(d). In addition, the  
26 Court may take judicial notice of court records. *Brooks v. Y.Y.G.M. SA*, No. 2:21-  
27 cv-00078, 2021 U.S. Dist. LEXIS 225412, at \*2-3 (E.D. Cal. Nov. 22, 2021) (citing  
28 *BP W. Coast Prods. LLC v. Greene*, 318 F. Supp. 2d 987, 994 (E.D. Cal. 2004)).

1 Here, Plaintiffs request judicial notice of two court records. Exhibit “A” is a  
2 recent preliminary injunction ruling in a case being heard in the Eastern District of  
3 California that also concerns California Code of Civil Procedure section 1021.11.  
4 Exhibit “B” is a notice of appearance filed on behalf of Defendants in a state court  
5 matter challenging a local firearm ordinance.

6 Respectfully submitted,

7  
8 Dated: December 13, 2022

**MICHEL & ASSOCIATES, P.C.**

9 /s/ C.D. Michel  
10 For Plaintiffs South Bay Rod & Gun Club,  
11 Inc. Gary Brennan, Cory Henry, Patrick  
12 Lovette, Virginia Duncan, Randy Ricks, Gun  
13 Owners of California, Second Amendment  
14 Law Center, and California Rifle and Pistol  
15 Association, Incorporated

**Law Offices of Donald Kilmer, APC**

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28 /s/ Don Kilmer  
For Plaintiff Citizens Committee for the  
Right to Keep and Bear Arms

**EXHIBITS  
TABLE OF CONTENTS**

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<b>EXH NO.</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
A	Order Denying Preliminary Injunction – filed in <i>Abrera v. Newsom</i> , Case No. 2:22-cv-1162 (E.D. Cal. Dec. 8, 2022) (Dkt No. 29 thereof)	5
B	Notice of Appearance of Counsel - Filed in <i>G. Mitchell Kirk, et al. v. City of Morgan Hill, et al.</i> , Santa Clara County Superior Court Case No. 19CV346360 (May 21, 2019)	14

# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ARNOLD ABRERA,  
  
Plaintiff,  
  
v.  
  
GAVIN NEWSOM, in his official  
capacity as Governor of the  
State of California; ROB  
BONTA, in his official  
capacity as Attorney General  
of the State of California,  
et al.,  
  
Defendants.

No. 2:22-cv-01162-JAM-DB

**ORDER DENYING PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

Arnold Abrera ("Plaintiff") petitions the Court to enjoin Governor Gavin Newsom and California Attorney General Rob Bonta ("Defendants") from enforcing California Code of Civil Procedure § 1021.11 (enacted under Senate Bill No. 1327) against Plaintiff and the citizens of California. See Mot. for Preliminary Inj. ("Mot."), ECF No. 19. Plaintiff contends that the statute's fee-shifting provision constitutes an unprecedented, unconstitutional attack on the Second Amendment and those who wish to bring non-frivolous claims to enforce their right to bear arms for lawful

1 purposes. Id. at 3-4. Defendants oppose the motion on both the  
2 merits and standing grounds, noting their commitment to not  
3 enforce the statute against Plaintiff in this action or any  
4 related cases. See Opp'n, ECF No. 22, at 1. Plaintiff replied.  
5 See Reply, ECF No. 24.

6 For the reasons set forth below, this Court DENIES  
7 Plaintiff's motion for preliminary injunction.<sup>1</sup>

8  
9 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

10 Plaintiff's firearms, two handguns and two semi-automatic  
11 rifles, were seized from his home after officers responded to a  
12 suicide threat from Plaintiff's wife; the seizure occurred  
13 pursuant to California Welfare and Institutions Code §§ 5150,  
14 8102, and 8103. Mot. at 2. Shortly thereafter, Plaintiff filed  
15 a complaint against Defendants and other state parties, alleging  
16 that the seizure violated his Second Amendment rights. See  
17 Compl., ECF No. 1. Several months later, Plaintiff filed the  
18 operative first amended complaint ("FAC"), adding causes of  
19 action challenging § 1021.11, which covers the fee-shifting  
20 provisions in Senate Bill No. 1327. See FAC, ECF No. 16.  
21 § 1021.11 permits state entities and officials charged with  
22 enforcing laws that regulate or restrict firearms to collect  
23 attorney's fees and costs from any person or entity who pursues  
24 declaratory or injunctive relief against the enforcement of those  
25 laws if the state is the prevailing party; the state may seek

26  
27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for November 15, 2022.

1 these costs and fees within three years of the date when the  
2 dismissal or denial of relief became final on appellate review or  
3 when the time for seeking appellate review expires. Cal. Civ.  
4 Pro. Code § 1021.11.

5 A couple of weeks after filing the FAC, Plaintiff requested  
6 by e-mail that Defendants waive enforcement of § 1021.11 against  
7 Plaintiff and his counsel for all of Plaintiff's past, current,  
8 and future litigation related to this case. Opp'n at 3.

9 Defendants replied that they would waive enforcement if Plaintiff  
10 agreed to withdraw his claims for relief related to § 1021.11,  
11 which Plaintiff rejected. Id. at 3-4. A couple of weeks later,  
12 Plaintiff filed this motion for preliminary injunction seeking to  
13 enjoin Defendants' enforcement of § 1021.11. Id. at 4. Shortly  
14 thereafter, Defendants claim that they notified Plaintiff's  
15 counsel that they would not enforce the statute against Plaintiff  
16 in any litigation related to this action, regardless of whether  
17 or not Plaintiff amended the FAC; Defendants reiterated this  
18 commitment several days later in response to Plaintiff's  
19 statement that he planned to continue with this motion for  
20 preliminary injunction. Id. at 4-5. Plaintiff contends that  
21 Defendants have stated that they do intend to proceed with  
22 enforcement of § 1021.11 against Plaintiff unless Plaintiff  
23 withdraws this motion. Mot. at 6. On October 20, 2022,  
24 Defendants filed their opposition brief, arguing that  
25 (1) Plaintiff lacks standing and (2) Plaintiff has alleged  
26 insufficient facts to establish the requisite elements for a  
27 preliminary injunction. See Opp'n. Plaintiff replied. See  
28 Reply.



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II. OPINION

A. Legal Standard

A defendant may move to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Fed. R. Civ. P. 12(b)(1).

If a plaintiff lacks standing, then the Court lacks subject-matter jurisdiction, and the case must be dismissed. See Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011). Once a party has moved to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1), the opposing party bears the burden of establishing the court's jurisdiction. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

B. Analysis

1. Standing

Defendants claim that Plaintiff lacks standing because Plaintiff faces no threat that Defendants will enforce § 1021.11 against him. Opp'n at 5. Defendants have committed to not seek fees against Plaintiff in this case or any related matters, which is what Plaintiff is seeking in the FAC. Id. Defendants claim that their commitment to not enforcing the statute against Plaintiff is unconditional and subject to judicial estoppel, which eliminates the need for Plaintiff's injunction. Id. at 6.

Plaintiff responds that Defendants' stated commitment not to enforce § 1012.11 against him is insufficient to negate standing. Reply at 2. Plaintiff argues that Defendants' commitment is illusory and does not bind the other defendants named in the FAC nor does it protect other prospective challengers to SB No. 1327 and § 1012.11. Id. at 2-3, 10-11. Plaintiff then refers to the

1 Supreme Court's holding in New York State Rifle & Pistol Ass'n,  
2 Inc. v. City of New York, New York, 206 L. Ed. 2d 798, 140 S. Ct.  
3 1525, 1526 (2020) to support his contention that Defendants are  
4 abusing their positions as state officials for political ends.  
5 Id. at 3-4. Plaintiff claims that, regardless of Defendants'  
6 stated commitment, he and other potential litigants have suffered  
7 an injury-in-fact due to the chilling effect of the statute,  
8 which deters legal challenges. Id. at 7-9. Plaintiff further  
9 contends that an injury-in-fact has been established because the  
10 statute nullifies 42 U.S.C. § 1988, a federal statutory right.  
11 Id. at 10.

12 The Court finds that Plaintiff has failed to establish  
13 standing. To have standing, a plaintiff must show that (1) the  
14 plaintiff suffered an injury in fact, i.e., one that is  
15 sufficiently "concrete and particularized" and "actual or  
16 imminent, not conjectural or hypothetical," (2) the injury is  
17 "fairly traceable" to the challenged conduct, and (3) the injury  
18 is likely to be "redressed by a favorable decision. Lujan v.  
19 Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). For the  
20 second factor, a plaintiff must allege "a causal connection  
21 between the injury and the conduct" at issue; it is insufficient  
22 to connect the injury to the independent actions of a third  
23 party. Id. at 560. When a plaintiff alleges a chilling of their  
24 First Amendment rights as an injury in fact, the alleged chilling  
25 cannot be based solely on a fear of future injury that is too  
26 speculative to confer standing. Wright v. Serv. Emps. Int'l  
27 Union Loc. 503, No. 20-35878, 2022 WL 4295626, at \*5 (9th Cir.  
28 Sept. 19, 2022). Further, a plaintiff cannot establish standing

1 through the "mere existence of a proscriptive statute nor a  
2 generalized threat of prosecution." Thomas v. Anchorage Equal  
3 Rts. Comm'n, 220 F.3d 1134, 1139 (9th Cir. 2000). To establish  
4 third-party standing, a plaintiff must show that (1) the third-  
5 party suffered an injury in fact, (2) the plaintiff and third  
6 party have a close relationship, and (3) the third party faces an  
7 obstacle that prevents them from pursuing their own claim.  
8 Campbell v. Louisiana, 523 U.S. 392, 397 (1998).

9 In this case, Plaintiff has failed to establish that he  
10 faces a concrete and particularized injury from the enforcement  
11 of § 1012.11 against him. Defendants have stated in their  
12 opposition brief that they do not intend to enforce the statute  
13 against Plaintiff in the current action or any related action.  
14 By assuming this position in a legal proceeding and maintaining  
15 that position, Defendants will be subject to judicial estoppel,  
16 absent a showing that: (1) Defendants' stated position is clearly  
17 inconsistent with an earlier position; (2) Defendants have  
18 succeeded in persuading a court to accept an earlier inconsistent  
19 position; or (3) Defendants' inconsistent position will "derive  
20 an unfair advantage or impose an unfair detriment on the opposing  
21 party if not estopped." Bock v. Washington, 33 F.4th 1139, 1145  
22 (9th Cir. 2022). Plaintiff has failed to make a showing of any  
23 of these factors. In light of this failure, the Court finds that  
24 Defendants are estopped from enforcing § 1021.11 against  
25 Plaintiff in this action and related actions, and that Plaintiff  
26 has failed to demonstrate an injury-in-fact on this ground.  
27 Plaintiff's claim of a chilling effect must also fail because the  
28 threat of future injury from the enforcement of the statute

1 against him is non-existent. Plaintiff's contention that  
2 Defendants' commitment does not bind the other parties in the FAC  
3 is immaterial because Plaintiff narrowed the scope of his  
4 injunction to address only Defendants Newsom and Bonta; the  
5 speculative, independent actions of third parties not named as  
6 parties in this action are insufficient to establish the  
7 requisite "causal connection between the injury and the conduct"  
8 at issue. Lujan, 504 U.S. at 560. Plaintiff further fails to  
9 establish any of the requisite elements for third-party standing  
10 on behalf of other potential litigants. As for Plaintiff's  
11 argument concerning the abrogation of 42 U.S.C. 1988, the Court  
12 declines to consider it pursuant to Ninth Circuit precedent  
13 against the consideration of new arguments or issues raised for  
14 the first time in a reply brief. Brown v. Takeuchi Mfg. Co.  
15 (U.S.), No. 221CV00392JAMDMC, 2022 WL 1204713, at \*4 (E.D. Cal.  
16 Apr. 22, 2022) (citing Cedano-Viera v. Ashcroft, 324 F.3d 1062,  
17 1066 n.5 (9th Cir.2003)); see also State of Nev. v. Watkins, 914  
18 F.2d 1545, 1560 (9th Cir.1990).

19 2. Remaining Issues

20 The Court does not reach the parties' remaining issues,  
21 because the first issue of standing is dispositive.

22  
23 III. SANCTIONS

24 This Court issued its Order re Filing Requirements ("Filing  
25 Order") on August 4, 2022. ECF No. 11-2. The Filing Order  
26 limits reply memoranda to ten pages. Filing Order at 1. The  
27 Filing Order also states that an attorney who exceeds the page  
28 limit must pay monetary sanctions of \$50 per page. Id.

1 Plaintiff exceeded the Court's 10-page limit on reply memoranda  
2 by four pages. See Reply. The Court therefore ORDERS  
3 Plaintiff's counsel to pay \$200.00 to the Clerk for the Eastern  
4 District of California no later than seven days from the date of  
5 this Order.

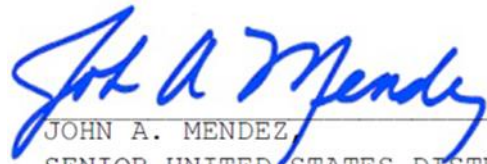
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IV. ORDER

For the reasons set forth above, the Court DENIES  
Plaintiff's motion for preliminary injunction.

IT IS SO ORDERED.

Dated: December 8, 2022

  
\_\_\_\_\_  
JOHN A. MENDEZ  
SENIOR UNITED STATES DISTRICT JUDGE

# **EXHIBIT B**

1 Roderick M. Thompson (State Bar No. 96192)  
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2 James Allison (State Bar No. 319204)  
jallison@fbm.com  
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6 Hannah Shearer (State Bar No. 292710)  
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7 Hannah Friedman (State Bar No. 324771)  
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8 Giffords Law Center to Prevent Gun Violence  
268 Bush Street #555  
9 San Francisco, California 94104  
Telephone: (415) 433-2062  
10 Facsimile: (415) 433-3357

11 Attorneys for CITY OF MORGAN HILL,  
MORGAN HILL CHIEF OF POLICE DAVID  
12 SWING, MORGAN HILL CITY CLERK IRMA  
TORREZ

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE

16 G. MITCHELL KIRK; and CALIFORNIA  
17 RIFLE & PISTOL ASSOCIATION,  
INCORPORATED,

18 Plaintiffs and Petitioners,

19 vs.

20 CITY OF MORGAN HILL; MORGAN HILL  
21 CHIEF OF POLICE DAVID SWING, in his  
official capacity; MORGAN HILL CITY  
22 CLERK IRMA TORREZ, in her official  
capacity; and DOES 1-10,,

23 Defendants and Respondents.  
24

Case No. 19CV346360

**NOTICE OF APPEARANCE OF  
COUNSEL**

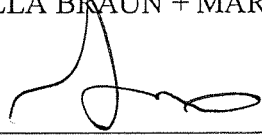
Action Filed: April 15, 2019

25 Defendants and Respondents CITY OF MORGAN HILL, MORGAN HILL CHIEF OF  
26 POLICE DAVID SWING, MORGAN HILL CITY CLERK IRMA TORREZ hereby notify the  
27 Court that Roderick M. Thompson and James Allison of the firm Farella, Braun + Martel, LLP,  
28 235 Montgomery Street, 17<sup>th</sup> Floor, San Francisco, CA 94104 (415) 954-4400,

1 rthompson@fbm.com and jallison@fbm.com and Hannah Shearer and Hannah Friedman of the  
2 firm Giffords Law Center to Prevent Gun Violence, 268 Bush Street, Suite 555, San Francisco,  
3 CA 94104, (415) 433-2062, hshearer@giffords.org and hfriedman@giffords.org have entered this  
4 action as counsel to be noticed on their behalf. In connection with this notice, we request that all  
5 future pleadings and other papers filed be served on them at the above address and contact  
6 information.

7 Dated: May 21, 2019


FARELLA BRAUN + MARTEL LLP

8  
9 By:  for  
Roderick M. Thompson

10 Attorneys for CITY OF MORGAN HILL, MORGAN  
11 HILL CHIEF OF POLICE DAVID SWING, MORGAN  
12 HILL CITY CLERK IRMA TORREZ

13 Dated: May 21, 2019

GIFFORDS LAW CENTER TO PREVENT GUN  
VIOLENCE

14  
15 By:   
16 Hannah Shearer

17 Attorneys for CITY OF MORGAN HILL, MORGAN  
18 HILL CHIEF OF POLICE DAVID SWING, MORGAN  
19 HILL CITY CLERK IRMA TORREZ

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**PROOF OF SERVICE**

**Kirk v. City of Morgan Hill  
Case No. 19CV346360**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery Street, 17th Floor, San Francisco, CA 94104.


On May 21, 2019, I served true copies of the following document(s) described as **NOTICE OF APPEARANCE OF COUNSEL** on the interested parties in this action as follows:

C.D. Michel, Esq.  
Anna M. Barvir, Esq.  
Tiffany D. Chevront, Esq.  
MICHEL & ASSOCIATES, P.C.  
180 Est Ocean Blvd., Suite 200  
Long Beach, CA 90802  
Tel: (562) 216-4444  
Fax: (562) 216-4445  
cmichel@michellawvers.com

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Farella Braun + Martel LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 21, 2019, at San Francisco, California.

  
\_\_\_\_\_  
Pamela Woodfin

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**CERTIFICATE OF SERVICE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

Case Name: *South Bay Rod & Gun Club, Inc. v. Bonta*  
Case No.: 3:22-cv-01461-RBM-WVG

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS'  
REPLY TO DEFENDANT BONTA'S SUPPLEMENTAL BRIEF**

on the following parties by electronically filing the foregoing on December 13, 2022 with the Clerk of the District Court using its ECF System, which electronically notifies them.

Elizabeth Watson  
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Ryan Richard Davis  
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Stephen M. Duvernay  
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Thomas A. Willis  
Kristen Mah Rogers  
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[twillis@olsonremcho.com](mailto:twillis@olsonremcho.com)

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I declare under penalty of perjury that the foregoing is true and correct.  
Executed on December 13, 2022, at Long Beach, CA.

*/s/Christina Castron*  
CHRISTINA CASTRON