NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP
Christopher E. Skinnell, Esq. (S.B. No. 227093)
Hilary J. Gibson, Esq. (S.B. No. 287862)
2350 Kerner Boulevard, Suite 250
San Rafael, California 94901
Telephone: (415) 389-6800
Facsimile: (415) 388-6874
Email: cskinnell@nmgovlaw.com
Email: hgibson@nmgovlaw.com

Attorneys for Plaintiff/Petitioners
CALIFORNIA APARTMENT ASSOCIATION

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT

CALIFORNIA APARTMENT ASSOCIATION, *Petitioner and Plaintiff*, vs. COUNTY OF LOS ANGELES and DOES 1-100, *Respondents and Defendants.*	Case No. 23STCP01114 **REPLY MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PETITIONER'S MOTION FOR JUDGMENT ON THE WRIT** Assigned for all purposes to Hon. Mitchell L. Beckloff, Dept. 86 Petition filed April 11, 2023 DATE: Dec. 6, 2023 TIME: 9:30 AM DEPT: 86

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I. INTRODUCTION.

Section VI(A)(1)(c) of the County's Resolution, challenged herein, purports to requires a landlord to provide certain tenants thirty days' notice to pay rent or quit prior to commencing an unlawful detainer action. This the County may not do, because Code of Civil Procedure § 1161(2) requires only three days' notice to pay delinquent rent before a landlord may initiate unlawful detainer proceedings. Local legislation that "contradicts" state law is void, as is local legislation that seeks to regulate in a field that is "fully occupied" by state law. *Tri County Apt. Ass'n v. City of Mountain View*, 196 Cal. App. 3d 1283, 1293 (1987) (*Tri County*); *Birkenfeld v. Berkeley*, 17 Cal. 3d 129, 141 (1976). California's courts have squarely held that the State's unlawful detainer statutes fully occupy the field of regulation with respect to the "procedures that a landlord must undergo as a prerequisite to seeking repossession of a" rental unit. *Id. at* 149-52. And the "timing of landlord-tenant transactions" in particular has been held to be "a matter of statewide concern not amenable to local variations." *Tri County*, 196 Cal. App. 3d at 1296; *Channing Props. v. City of Berkeley*, 11 Cal. App. 4th 88 (1992) (*Channing Props.*). The County's 30-day notice requirement is preempted both because it *conflicts* with, and because it seeks to enter a field *fully occupied* by, State law.

The County's response boils down to two profoundly mistaken premises. The first is that because only some tenants are entitled to this extended notice period, the requirement is "substantive," and thus permissible, rather than "procedural" and thus preempted. (Implicitly, at least, the County acknowledges that if it were to impose a 30-day notice requirement to *all* evictions for nonpayment of rent, it would be unequivocally preempted.) But the County simply misreads the applicable case law: an extended notice requirement does not become "substantive" simply because it applies in only some cases, when the substantive ground for eviction remains the same.

The second mistaken premise is that by enacting the COVID-19 Tenant Relief Act of 2020, Code Civ. Proc. §§ 1179.01-1179.07 ("CTRA"), the Legislature authorized notice requirements like those in the Resolution. The County's argument on this point

is essentially that because CTRA preempted local legislation relating to COVID-19 eviction protections during a specified and limited time period, and that limited time period has expired, the County now has free rein to adopt provisions that would otherwise conflict with generally applicable state law—state law that was in effect before CTRA's adoption and will remain in effect after its expiration. This is incorrect. The expiration of CTRA merely restores the pre-COVID status quo in which local governments may not interfere with notice requirements prescribed by state law.

The writ should be granted.

II. THE COUNTY'S 30-DAY NOTICE REQUIREMENT IS PREEMPTED BY THE NOTICE REQUIREMENTS IN THE UNLAWFUL DETAINER LAW.

A. The Legislature Has Occupied the Field with Respect to Notice Requirements Governing Unlawful Detainer Actions.

It is well-established that local jurisdictions "may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes." *San Francisco Apartment Assn. v. City & Cty. of S.F.,* 20 Cal. App. 5th 510, 518 (2018) (*SFAA*). And specifically, because the Legislature has adopted a "statutory scheme which occupies the field of notice between landlords and tenants," *Tri County*, 196 Cal. App. 3d at 1286-87, "where a statute has set the amount of notice required, the municipality may not impose further requirements of additional notice." *Mobilepark W. Homeowners Ass'n v. Escondido Mobilepark W.*, 35 Cal. App. 4th 32, 47 (1995) (*Mobilepark West*).

Accordingly, the courts have repeatedly struck down local efforts to interfere with the notice requirements governing landlord-tenant transactions. *See Tri County*, 196 Cal. App. 3d at 1296-98 (city could not require landlords to provide 60 days' notice before increasing a monthly tenant's rent, when Civil Code § 827 required only 30 days' notice); *Channing Props.,* 11 Cal. App. 4th at 96 (city could not require 180 days' notice for an Ellis Act eviction, when the Act only required 60 days); *Mobilepark West*, 35 Cal. App. 4th at 46-47 (city could not impose "requirement of additional notice" greater than was required by the Mobilehome Residency Law).

The County seeks to distinguish *Tri County*, *Channing Properties*, and

Mobilepark West on the ground that they dealt primarily with notices under statutes other than § 1161(2). But while *Tri County* applied Civil Code § 827 and *Channing Properties* applied Government Code § 7060.4, both expressly recognized the relationship of those statutes *to the unlawful detainer statutes* and to a host of other statutes prescribing notice in the landlord-tenant context. Thus, for example, *Tri County* explicitly recognized that § 827 "represents only one part of the legislative expression about when landlords and tenants may assert their rights and must meet their obligations"; it then immediately proceeded to cite the *unlawful detainer* statutes, followed by over a dozen others regulating various notice timelines, as further examples. 196 Cal. App. 3d at 1296-98; *see also Channing Props.*, 11 Cal. App. 4th at 97-98. It was precisely this "patterned" approach that the Legislature has taken with respect the notice required in landlord-tenant transactions that the courts concluded was evidence of a legislative intent to broadly occupy the field of notice requirements. *Id. Mobilepark West* also followed *Tri County*'s lead. *See* 35 Cal. App. 4th at 47.[1]

And ironically, though the County claims otherwise, none of the cases it chiefly relies upon—*Birkenfeld*, *SFAA*, and *Rental Housing Assn. of No. Alameda Cty. v. City of Oakland*, 171 Cal. App. 4th 741, 754 (2009) (*RHANAC*)—applied § 1161(2) either.

B. There Is No Merit to the County's Attempt to Frame The 30-Day Notice Requirement as Substantive Rather Than Procedural.

The County also claims *Tri County*, *Channing Properties*, and *Mobilepark West* are distinguishable because they failed to apply the substantive/procedural distinction from *Birkenfeld*, which, the County contends, "establishes the relevant framework for

[1] The County dismisses the language from *Mobilepark West* as dicta, relying on language from *Vill. Trailer Park, Inc. v. Santa Monica Rent Control Bd.*, 101 Cal. App. 4th 1133 (2002). But the reason *Village Trailer* found *Mobilepark West* inapt was that *Village Trailer* was about whether a rent board "usurped a judicial function by applying Civil Code section 798.17 to a particular case," rather than whether a local ordinance "imposed additional requirements for long-term mobilehome lease agreements that went beyond the requirements provided" in state law, like *Mobilepark West*. *Id.* at 1141. The plaintiff in *Village Trailer* "d[id] not contend that the Rent Control Law adds any further or contradictory requirements to" state law. This case is like *Mobilepark* West and not *Village Trailer*. Also, the language quoted above was the *Mobilepark West* court's description of *Tri County*. 35 Cal. App. 4th at 47.

determining whether or not the 30-Day Notice Requirement is preempted by Section 1161(2)." (Oppo. at 10.)[2] Under *Birkenfeld*, "municipalities may by ordinance limit the substantive grounds for eviction by specifying that a landlord may gain possession of a rental unit only on certain limited grounds. [Citations.] But they may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes…." *RHANAC*, 171 Cal. App. 4th at 754. But the County's effort to characterize its 30-day notice as substantive, rather than procedural, is wholly meritless.

At its most basic level, the amount and timing of notice to be provided is one of the quintessential aspects of procedure. *See Gilbert v. City of Sunnyvale*, 130 Cal. App. 4th 1264, 1279 (2005) ("The essence of procedural due process is notice and an opportunity to respond."); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (declaring that the "central meaning of procedural due process" includes the right to notice and the chance to be heard "'at a meaningful time'"). Moreover, as *Tri County* observed, where a local ordinance attempts to serve the same purpose as the applicable notice statute, but then simply changes the "statewide chronology to suit its own agenda," that ordinance is preempted. 196 Cal. App. 3d at 1296; *see also Birkenfeld*, 17 Cal. 3d at 149. Here, as the County acknowledges, "[t]he purpose of the [3-day] notice required by section 1161, subdivision 2, is to give the tenant the opportunity to pay the rent due and retain possession by avoiding forfeiture." *See* Oppo. at 13 n.4. That is also the purpose of the Resolution. *See* Oppo. at 12:8-14. The Resolution simply purports to set a new, longer timeline than that prescribed by § 1161(2).

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[2] Whether that is the relevant framework is questionable. *Birkenfeld* did not address § 1161(2). It addressed restrictions on evicting tenants in good standing—*i.e.*, those willing and able to pay the rent timely—but whose lease term had expired, under § 1161(*1*). *See* 17 Cal. 3d at 148-49. § 1161(1) does not require *any* notice. *Ryland v. Appelbaum*, 70 Cal. App. 268 (1924). *Birkenfeld* therefore had no occasion to consider the Legislature's "patterned" approach to notice requirements as discussed in *Tri County*, *Channing Properties*, and *Mobilepark West*. But the County's Resolution implicates § 1161(2), which—like *Tri County*, *Channing Properties*, and *Mobilepark West*—does prescribe the applicable notice. And in any event, this proposed ground for distinction isn't supported by the opinions themselves. *Tri County* did expressly cite and distinguish *Birkenfeld*, *see* 196 Cal. App. 3d at 1297, and the opinion contained a whole section rejecting Mountain View's attempt to characterize its ordinance as prescribing "a rent control device" rather than "notification procedures," *id*. at 1292-93, which is essentially what the County is trying to do. *See* Oppo. at 14-15. *Channing Props.* and *Mobilepark West* squarely relied on *Tri County*.

In fact, even the language of the Resolution itself is instructive:

> 30-Day Notice to Cure or Quit. Following expiration of the Resolution, if a Landlord seeks to evict a Residential Tenant described in subsection VI.A.1.b., above, for rent incurred must first serve on the Residential Tenant a 30-day notice to cure or quit prior to initiating the unlawful detainer action. This protection shall not be construed as superseding or nullifying, in whole or in part, the Residential Tenant's twelve (12) month repayment period, described in section VI.C.1., below, ***nor the Residential Tenant's affirmative defense to an unlawful detainer action for such nonpayment of rent, described in section VI.C.4, below***. This protection shall survive the expiration of the Resolution.

(Rec. at 21 [§ VI.A.1.c]; emphasis added.) The emphasized language was conveniently excised from the County's quotation of this section, *see* Oppo. at 7, but it makes the procedural aspect of the notice clear. Section VI.C.4 establishes a limited *substantive defense* to evictions based on inability to pay COVID-19 debt in specified circumstances; Section V.A.1.c, challenged herein, seeks to alter the *procedure* by which evictions may be brought for that failure, in cases where the "affirmative defense" is unavailable. Where the 30-day notice is required, the ground for eviction remains the same as under § 1161(2)—failure to timely pay rent. Only the amount of notice changes.

Ultimately, the County's position that the Resolution is substantive rather than procedural rests on only two cases: *RHANAC* and *SFAA*, *see* Oppo. at 10-16. But neither supports the conclusion that the County urges this Court to draw.

1. *Rental Housing Assn.* does not save the County's Resolution.

As for *RHANAC*, contrary to the assertion in the County's memo, *see* Oppo. at 12:24, that case did not address § 1161(2), which governs eviction for the failure to pay rent. Rather, the ordinance there required that, before a landlord could file an unlawful detainer action based on certain enumerated grounds—those governed by §§ 1161(3) and (4), such as nuisance, waste, or breach of a material term of the lease *other than* the requirement to pay rent[3]—the landlord had to provide the tenant with notice of the

[3] The provision of Measure EE applicable to the failure to pay rent, now codified at Oakland Muni.

wrong (bad act or failure to act) and time to cure it. 171 Cal. App. 4th at 762. *RHANAC* held this notice requirement regulated the substantive grounds for eviction, because "[i]f the tenant ceases the offending conduct once notified by the landlord, there is no good cause to evict." *Id.* at 762-63. This is consistent with the fact that the courts have held that evictions under §§ 1161(3) and (4) must be material to justify eviction;[4] the ordinance at issue in *RHANAC* essentially provided that if a breach could be cured within 10 days, it was insufficiently material to warrant eviction.

In contrast, timely payment of rent is always material and always a substantial breach, because (a) the payment of rent in exchange for (b) exclusive possession are the "essential elements" of a lease agreement. *Santa Monica Rent Control Bd. v. Bluvshtein*, 230 Cal. App. 3d 308, 316 (1991).[5] That is why failure to pay rent (§ 1161(2)) is a separately actionable breach from those under §§ 1161(3), (4).

Additionally, *RHANAC* does not discuss, address, or distinguish *Tri County* or *Channing Properties*, and *RHANAC* predates the adoption of Civ. Proc. Code §§ 1179.01-1179.07, discussed below, which further emphasize the Legislature's intention to occupy the field with respect to notices regarding the termination of a tenancy for failure to pay rent, even in connection with the COVID-19 pandemic.

2. *San Francisco Apartment Assn. v. City & Cty. of San Francisco* (2018) also does not save the County's Resolution.

As for the *SFAA* case, the ordinance at issue there, "unlike the ordinances in *Tri County* and *Channing*"—and also unlike the Resolution here—"*d[id] not specify an amount of notice required to terminate a tenancy*," 20 Cal. App. 5th at 521 (emphasis added). That fact alone makes it distinguishable. Additionally, the *SFAA* ordinance

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Code § 8.22.360(A)(1), does not impose an additional notice and cure requirement beyond the three days specified by § 1161(2).

[4] *See, e.g., Superior Motels, Inc. v. Rinn Motor Hotels, Inc.*, 195 Cal. App. 3d 1032, 1051 (1987); *Boston LLC v. Juarez*, 245 Cal. App. 4th 75, 83 (2016).

[5] *See also Danger Panda, LLC v. Launiu*, 10 Cal. App. 5th 502, 513 (2017) ("Payment of rent is the consideration for this right to exclusive possession."); Civ. Code § 1925; *Multani v. Knight*, 23 Cal. App. 5th 837, 851 (2018) ("'the refusal of one party to a contract to make payment as called for by the terms of a contract excuses the other party from further performance on his part'").

only barred evictions of pupils, educators, and certain other related people during the school year, *provided those evictions were not for fault*. *Id.* at 513. This latter point is significant to the holding that the ordinance in *SFAA* was substantive. The Court of Appeal held that in those circumstances, where the tenant faced significant disruption from eviction during the school year *and was faultless*, San Francisco could decree that there was—*substantively*—no "good cause" to evict. But the notice that was required when good cause did exist remained the same.

That is not the case here. Failure to pay rent indisputably provides good cause to evict. The 30-day notice requirement is thus not the "elimination of a particular grounds for eviction," *see Birkenfeld*, 17 Cal. 3d at 149.[6] It merely extends the amount of notice required to pursue that ground for eviction, which it cannot do.

The County further relies heavily—indeed, exclusively[7]—on *SFAA* for the proposition that "[a] local government's rule that extends the length of the notice-to-quit period is substantive if it applies only to a defined and uniquely vulnerable class." Oppo. at 10:25-26. This badly misreads *SFAA*. That case did unquestionably recognize that "an ordinance limiting the timing of *all* evictions would appear to be preempted by the unlawful detainer statutes" because such an ordinance would be "independent of any substantive defenses to eviction." 20 Cal. App. 5th at 519 (emphasis added). Petitioner does not quarrel with that premise. But it does not logically follow that the opposite is true—that by limiting an extension of the notice required to a subset of tenants the extension becomes, *ipso facto*, substantive rather than procedural. Even a limited extension remains procedural where the fundamental ground for eviction—here, the failure to pay rent—remains unchanged, and only the timing is altered.[8]

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[6] If a local jurisdiction were to try to actually eliminate the failure to pay a lawfully-set rent as a ground for eviction, it would directly contradict section 1161(2) and would raise serious constitutional questions. *See SFAA*, 20 Cal. App. 5th at 519 n.4 (San Francisco conceded as much).

[7] Neither *Birkenfeld*, *RHANAC*, nor any other case cited by the County rests on such a distinction.

[8] It is also worth noting that the class is not as narrowly defined as the County would have this Court believe. Because a tenant can "self-certify" his or her entitlement to the defense, a landlord must give the benefit of the 30-day notice to all tenants who claim it, even if, ultimately, the facts would not justify

Ultimately, if the County's position were accepted here, the "substantive" exception to preemption by the unlawful detainer statutes would simply swallow the rule. There would be no impediment to a county creating a host of new "protected classes" that would effectively cover all defaulting tenants in one way or another. And what's worse, it would do so for the most basic and fundamental aspect of the landlord-tenant relationship: namely, the payment of rent. State law does not allow that result.

III. THE COVID-19 TENANT RELIEF ACT ("CTRA") DOES NOT AID THE COUNTY'S CASE.

A. The Expiration of CTRA's Broad-Based Restriction on Local Action—Does Not Undermine the Longstanding Preemptive Effect of § 1161(2).

In the spring and summer of 2020, in response to the COVID-19 pandemic, various local governments began to exercise their ability to regulate the substantive grounds of eviction to impose various temporary eviction moratoria that went beyond the moratorium imposed by Governor Newsom on an emergency basis that March. In August of that year, in an effort to establish a more uniform statewide approach to the payment of COVID-19 rental debt and resulting defaults, the Legislature passed, and the Governor signed, CTRA (Assem. Bill 3088).

As part of its comprehensive approach, CTRA expressly preempted certain actions by local governments with respect to COVID-19 eviction moratoria. Specifically, pursuant to § 1179.05, CTRA: (1) *temporarily* froze the state of play with respect to local eviction moratoria by providing that moratoria existing as of the date CTRA was adopted could remain in effect but could not be extended, and prohibiting new moratoria from being adopted ((a)(1)); and (2) placed limits on the maximum time periods local jurisdiction could impose for the repayment of rental debt ((a)(2)).

This broad restriction on a local jurisdiction's ability to enact "any extension, expansion, renewal, reenactment, or new adoption of a measure" "in response to the

its application in a given case. A tenant's lack of entitlement would not be determined by a court until well after the landlord has to take the preliminary step of serving the notice.

COVID-19 pandemic to protect tenants from eviction" by its terms, applied only to enactments occurring between August 19, 2020, and June 30, 2022. Petitioner does not disagree that, pursuant to the terms of CTRA, the County was free as of July 1, 2022, to once again enact local eviction protection measures in response to the COVID-19 pandemic, *provided such measures comply with otherwise controlling, preemptive state law*. But the expiration of CTRA's preemptive provision did not give local governments any new powers that they did not have before. § 1161(2), which preempted conflicting local legislation long before (and completely unrelated to) the adoption of CTRA, continues to do so today. The County's apparent claim to the contrary defies logic and is unsupported by the text of CTRA.

The legislative history cited by the County does not—and indeed cannot—change this conclusion. As a threshold matter, it would be inappropriate for the Court to consider any legislative history related to CTRA, given the plain, unambiguous language of CTRA with respect to this issue, because the language of CTRA is plain and unambiguous. If there is no ambiguity in the statutory language, courts "presume the Legislature meant what it said, and the plain meaning of the statute governs" with reference to extrinsic sources. *Hunt v. Superior Court*, 21 Cal. 4th 984, 1000 (1999).

Regardless, the legislative history doesn't support the County's argument. Notwithstanding the cherrypicked quote offered by the County (which is itself ambiguous), other portions of the legislative history of AB 2179[9] confirm that the Legislature's intent in imposing a time limit on the provisions of CTRA was simply to allow a return to the status quo after the expiration of this period. Thus, for example, the March 27, 2022 Senate Judiciary Committee Analysis of the bill (which the County's legislative report specifically refers readers to "[f]or a full explanation of the impacts of this preemption extension," *see* Supp. Rec. 90), notes that after July 1, 2022, "local jurisdictions will once again be free to impose their own anti-eviction protections" (Reply Rec. 108; emphasis added). Similar language appears throughout.

[9] AB 2179 was the final extension of CTRA and other various COVID protections related to eviction.

B. The Amendment to Section 1161(2) to Refer to CRTA Did Not Authorize Local Enactments Like Section VI(A)(1)(c), Which Apply to Rental Debts Outside the Time Period Covered by CRTA.

That § 1161(2) was amended to provide that it is "subject to" CTRA does not change the general preemptive effect of § 1161(2) with respect to rental debts that are outside the scope of CTRA. The County conveniently fails to mention that, pursuant to the express language of this amendment to § 1161(2), an unlawful detainer action is *only* subject to CTRA if the default in the payment of rent "is based upon the COVID-19 rental debt." § 1161(2). The term "COVID-19 rental debt" is defined by CTRA to mean "unpaid rent or any other unpaid financial obligation of a tenant under the tenancy that came due during the covered time period," *i.e.*, "between March 1, 2020, and September 30, 2021." § 1179.02(a) & (c). Section VI(A)(1)(c), on the other hand, applies only to non-payment of rent from July 1, 2022, forward—well beyond the "covered time period" during which the unlawful detainer provisions were subject to CTRA. If anything, this amendment to § 1161(2) proves the opposite of the County's point—specifying that § 1161(2) is "subject to" CTRA with respect to unpaid rent during the period of March 1, 2020, to September 30, 2021, is indicative of legislative intent that the unlawful detainer action *ceases* to be subject to CTRA if it is based on rental debt incurred after that time period, under the *expressio unius* canon.

Further, even with respect to those unlawful detainer actions to which CTRA does apply (namely, those involving unpaid rent that came due between March 1, 2020, and September 30, 2021), CTRA made specified modifications to unlawful detainer actions involving "COVID-19 rental debt" by extending the notice period to 15-days and tolling the usual 1-year window in which to serve a notice, in specified cases. *See* §§ 1179.03 & 1179.05(c). This only further emphasizes the Legislature's intent to fully occupy the field of notice, even in the context of the COVID-19 pandemic.

IV. CONCLUSION.

For the foregoing reasons, Petitioner is entitled to a writ of mandate declaring Section VI(A)(1)(c) void and unenforceable.

Respectfully submitted,

Dated: November 21, 2023

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

By: 

Christopher E. Skinnell

Attorneys for Plaintiffs and Petitioners

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of 18 and not a party to the within cause of action. My business address is, 2350 Kerner Boulevard, Suite 250, San Rafael, California 94901.

On November 21, 2023, I caused the document entitled "**REPLY MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PETITIONER'S MOTION FOR JUDGMENT ON THE WRIT**," filed herewith, to be served on the following individuals:

Andrew Baum (S.B. No. 190397) Jesse B. Levin (S.B. No. 268047) Alexander J. Suarez (S.B. No. 289044) GLASER WEIL FINK HOWARD JORDAN & SHAPIRO LLP 10250 Constellation Boulevard, 19th Fl. Los Angeles, California 90067 Telephone: (310) 553-3000 Facsimile: (310) 556-2920 Email: abaum@glaserweil.com Email: jlevin@glaserweil.com Email: asuarez@glaserweil.com *Attorneys for Respondent*	

by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

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

Executed in San Rafael, California, on November 21, 2023.

Paula A. Scott