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12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 **MORONGO BAND OF MISSION**
 17 **INDIANS, a federally recognized**
 18 **Indian Tribe,**
 Plaintiff,
 19
 20 v.
 21 **STATE OF CALIFORNIA;**
GOVERNOR GAVIN NEWSOM, in
 22 **his official capacity,**
 Defendants.
 23

Case No. 5:25-cv-01098-SSS-SPX

**DEFENDANTS' SUPPLEMENTAL
BRIEF REGARDING RIPENESS
IN RESPONSE TO ORDER [ECF
NO. 22]**

Courtroom: 2
 Judge: The Honorable Sunshine
 Suzanne Sykes
 Trial Date: TBA
 Action Filed: May 6, 2025

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INTRODUCTION

Each of the 17 counts in Plaintiff’s First Cause of Action presents a hypothetical dispute premised upon contingent future events regarding a provision of the negotiated tribal-state class III gaming compact (Compact) between the State of California and the Morongo Band of Mission Indians (Tribe). It is uncertain whether these imagined disputes will occur. Even if some of them should materialize, it is far from clear that they would involve any threatened or actual breach of the Compact by the Tribe, or any threatened or actual enforcement of the Compact against the Tribe by the State. The Tribe’s counts set forth claims devoid of any facts demonstrating a live controversy between the parties and are therefore not ripe for judicial determination and should be dismissed.

ARGUMENT

To satisfy the traditional ripeness standard, a claim “must at least present a substantial controversy between parties having adverse legal interests that savors of sufficient immediacy and reality to warrant resolution.” *Golden v. California Emergency Physicians Med. Grp.*, 782 F.3d 1083, 1088 (9th Cir. 2015).¹ A claim is not ripe, under this standard, if it “rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774, 793 (9th Cir. 2012) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)); see *Golden*, 782 F.3d at 1087 (citing *Alcoa* in assessing the ripeness of a declaratory judgment action about the validity of a contract).

This standard is difficult to meet for declaratory judgment claims challenging the validity of a contract based on a potential, theoretical branch. Most obviously,

¹ “[T]he appropriate standard for determining ripeness of private party contract disputes is the traditional ripeness standard.” *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 671 (9th Cir. 2005). Although both the Tribe and the State are sovereigns (rather than mere “private part[ies]”) their Compact is governed by “[g]eneral principles of federal contract law.” *Cachil Dehe Band of Wintun Indians of Colusa Indian Cmty. v. California*, 618 F.3d 1066, 1073 (9th Cir. 2010). Nothing about the sovereign status of the Tribe or the State alters the analysis of the extent to which the Tribe’s claims are ripe.

1 such claims are not ripe “when the defendant has sworn to the court that it has no
2 intention of enforcing the contract at issue.” *Eller v. Automatic Data Processing,*
3 *Inc.*, No. 23-cv-0943-BAS-AHG, 2023 WL 3829723, at *3 (S.D. Cal. June 5,
4 2023). Even in the absence of such a commitment, such claims raise ripeness
5 concerns “when conduct that allegedly violates a contractual provision has not yet
6 been undertaken or when any injury from actual or potential breaches has yet to
7 materialize.” *Golden*, 782 F.3d at 1087. In general, “if the plaintiff—the would-be
8 breaching party—has not yet breached the contract, there is not ‘sufficient
9 immediacy and reality’ to create a case or controversy.” *Eller*, 2023 WL 3829723,
10 at *3. This is because such claims present at least “two layers of attenuation: the
11 potential breach and the potential lawsuit.” *Id.* Or, in other words: such claims rest
12 on too many contingent future events.

13 Here, the Tribe’s claims related to the purported effect of *Chicken Ranch*
14 *Rancheria of Me-Wuk Indians v. California (Chicken Ranch)*, 42 F.4th 1024 (9th
15 Cir. 2022) are not ripe because the State has disavowed enforcement of the
16 challenged Compact provisions either in whole as to Counts 10 (environmental
17 review) and 17 (child and spousal support), or in relevant part as to Counts 2
18 (definition of “Gaming Facility”) and 14 (tort provisions). The Tribe’s claim
19 related to unauthorized spending of the Special Distribution Fund (Count 5) is not
20 ripe because that spending is no longer allowed under state law. The Tribe’s
21 remaining claims (Counts 1 (definition of “Gaming Employee”), 3 (definition of
22 “Gaming Operation”), 4 (Special Distribution Fund), 6 (Revenue Sharing Trust
23 Fund), 7 (Tribal Nation Grant Fund), 8 (Rainy Day Fund), 9 (Local Community
24 Benefit Fund), 11 (federal anti-discrimination laws for covered employees), 12
25 (prohibition on cashing of government checks), 13 (California minimum wage laws
26 for covered employees, 15 (collection and remittance of unemployment insurance
27 and state taxes for covered employees) and 16) are not ripe because they are
28 untethered from concrete facts—that is, they “rest[] upon contingent future events

1 that may not occur as anticipated, or indeed may not occur at all” (*Alcoa* 698 F.3d
2 at 793), and therefore are too abstract and hypothetical to create the “immediacy
3 and reality” that ripeness requires.

4 **I. COUNTS 10 AND 17 ARE NOT RIPE BECAUSE THE STATE HAS**
5 **COMPLETELY DISAVOWED THE CHALLENGED COMPACT PROVISIONS**

6 Count 10 (environmental review) and Count 17 (child and spousal support) are
7 not ripe because the State has completely disavowed the challenged Compact
8 provisions. Those claims challenge the Compact’s environmental-review
9 provisions and its child-and-spousal-support provisions, respectively—but the State
10 has already made an express commitment that (consistent with the Ninth Circuit’s
11 decision in *Chicken Ranch*, 42 F.4th 1024 (9th Cir. 2022)) it will not seek to
12 enforce those provisions. *See* Matthew Lee decl., Exh. 1. For the avoidance of
13 doubt, the State now re-confirms that commitment to the Court. *Id.* Accordingly,
14 because “the defendant has sworn to the court that it has no intention of enforcing
15 the contract [provisions] at issue” (*Eller*, 2023 WL 3829723, at *3), Counts 10
16 (environmental review) and 17 (child and spousal support) are not ripe.

17 **II. COUNTS 2 AND 14 ARE NOT RIPE BECAUSE THE STATE HAS**
18 **DISAVOWED THE CHALLENGED COMPACT PROVISIONS IN RELEVANT**
19 **PART**

20 Likewise, counts 2 (definition of “Gaming Facility”) and 14 (tort provisions)
21 are not ripe because the State has disavowed the challenged Compact provisions in
22 relevant part. Given the State’s concessions, any dispute between the parties
23 remains contingent and hypothetical—it turns on “events that have not yet
24 occurred, and may never occur,” and it therefore is not ripe. *Alcoa*, 698 F.3d at
25 793.

26 As a starting point, this can be seen most clearly with Count 2, which
27 challenges the Compact’s definition of “Gaming Facility.” Here, as with the
28 Compact’s environmental review and child and spousal support provisions, the
State has previously made a commitment to construe the relevant Compact

1 provision “in a manner consistent with *Chicken Ranch*.” Matthew Lee decl., Exh.
2 1. In particular, the State has made a commitment that it understands the “Gaming
3 Facility” definition “to be limited to the buildings or structures in which Class III
4 Gaming, as authorized by the Compact, is conducted.” *Id.* The Tribe, conversely,
5 has challenged the Compact’s definition of “Gaming Facility” on the basis that it
6 encompasses “structures and areas of the Reservation within which no class III
7 gaming activities are conducted.” Compl. at ¶21. Given their respective framings
8 of the issue, it is not clear that the parties disagree about the proper definition of
9 “Gaming Facility.” More to the point, it is not clear that the State will ever seek to
10 enforce the Compact in a way that turns upon any such potential disagreement.
11 Certainly, the Tribe has not pled the existence of any active dispute between the
12 parties regarding the application of the “Gaming Facility” definition.

13 Similar logic applies to Count 14, which challenges the tort provisions in
14 Section 12.4 of the Compact. Here again, the State has made a commitment to
15 construe the relevant Compact provision in a manner consistent with *Chicken*
16 *Ranch*. In the State’s view, this means that “[t]he State will construe the tort
17 provisions of section 12.4 . . . to be limited to injuries or property damage that
18 occur within the Gaming Facility”; it also means that the State “will not seek to
19 enforce the provision, in section 12.4(b)(1), requiring that the Tribe’s tort ordinance
20 adopt provisions that are the same as California tort law regarding the disposition of
21 these claims.” Matthew Lee decl., Exh. 1. Without acknowledging the State’s
22 concessions, the Tribe contends that section 12.4 (as written) reaches “claims based
23 on personal injury or property damage not directly related to the operation of the
24 Morongo Band’s class III gaming activities.” Compl. at ¶76. But, with the State’s
25 concessions, it is not clear that a real-world dispute will ever arise between the
26 parties on this point. Any such dispute would depend on the existence of real-
27 world tort claims based on “injuries or property damage that occur within the
28 Gaming Facility” that nevertheless are (in the Tribe’s view) “not directly related to

1 the operation of the Morongo Band’s class III gaming activities.” It is far from
2 obvious that such claims will ever arise in the real world. Nor is it obvious that, if
3 such claims did ever arise, the Tribe would steadfastly refuse to settle them—no
4 matter how small those claims might be, for example, and no matter what impact
5 non-payment might have on the Tribe’s ability to attract patrons to its casino. And
6 it is even less obvious that the State and the Tribe would ultimately be unable to
7 resolve any dispute that might arise over this hypothetical non-payment of these
8 hypothetical claims, such that the State would feel compelled to sue for breach.

9 In short, given the State’s commitment to construe the Compact’s definition of
10 “Gaming Facility” and its tort provisions in a manner consistent with *Chicken*
11 *Ranch*, it is far from obvious that any real-world dispute will ever arise between the
12 Tribe and the State over those provisions. Any dispute over those provisions
13 remains abstract and hypothetical—which is to say that it is not ripe.

14 **III. COUNTS 1, 3, 11, 12, 13, AND 15 ARE NOT RIPE BECAUSE THEY ARE**
15 **TOO ABSTRACT AND HYPOTHETICAL**

16 In the same vein, six of the Tribe’s remaining claims in Counts 1 (definition of
17 “Gaming Employee”), 3 (definition of “Gaming Operation”), 11 (federal anti-
18 discrimination laws for covered employees), 12 (prohibition on cashing of
19 government checks), 13 (California minimum wage laws for covered employees),
20 and 15 (collection and remittance of unemployment insurance and state taxes for
21 covered employees) are not ripe because they, too, are abstract and hypothetical:
22 they lack the “immediacy and reality” that ripeness requires because they are
23 untethered from concrete facts. These claims are not ripe because the existence of a
24 real-world dispute between the Tribe and the State “hangs on future contingencies
25 that may or may not occur.” *Clinton v. Acequia, Inc.*, 94 F.3d 568, 572 (9th Cir.
26 1996).

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1 Two of these claims (Count 1 (definition of “Gaming Employee”) and 3
2 (definition of “Gaming Operation”)) concern definitions much like the definition of
3 “Gaming Facility,” and suffer from a similar problem. Indeed, the definition of
4 “Gaming Operation” (the subject of Count 3) is expressly tied to the definition of
5 “Gaming Facility”: it covers “the overall business enterprise that offers and
6 operates Gaming Activities,” but expressly excludes “the Tribe’s governmental or
7 other proprietary activities unrelated to the operation of the Gaming Facility.”
8 Compl. at ¶22. Although the Tribe alleges (in conclusory fashion) that this
9 definition “encompasses activities neither directly related to and necessary for the
10 regulation and licensing nor directly related to the operation of class III gaming
11 activities,” the Tribe does not give any concrete examples of this supposed
12 overbreadth. In the absence of a concrete example, it is far from obvious how a
13 “business enterprise that offers and operates [class III] Gaming Activities” is not
14 directly related to the operation of class III gaming activities. More to the point: in
15 the absence of a concrete example, it is far from obvious that the State and the Tribe
16 actually disagree about how this definition applies to any real-world facts—and it is
17 far from obvious that the State would sue to enforce the Compact as to any such
18 hypothetical disagreement. In any case, the Tribe has not alleged facts of such an
19 active dispute.

20 So too with the definition of “Gaming Employee” (the subject of Count 1).
21 The Tribe points out that this definition covers any natural person who requires
22 licensing under federal or tribal gaming law. Compl. at ¶19. But here again, the
23 Tribe has not identified any real-world examples of employees who require
24 licensing as a matter of federal or tribal gaming law, who nevertheless are not
25 directly connected to gaming. It is not immediately obvious that such employees
26 exist. And, if such employees do exist, it is not obvious that the Tribe and the State
27 would be unable to resolve any future disputes that might arise over the status of
28

1 those specific employees, whomever they might turn out to be. As before, the
2 Complaint does not allege facts which indicate such a dispute.

3 Three additional claims suffer from essentially the same defect. Count 11
4 (federal anti-discrimination laws for covered employees), Count 13 (California
5 minimum wage laws for covered employees), and Count 15 (collection and
6 remittance of unemployment insurance and state taxes for covered employees) all
7 concern Compact provisions that are indisputably valid to the extent they apply to
8 employees who are sufficiently connected to gaming activities. *See Chicken Ranch,*
9 *42 F.4th at 1036 n.2; In re Indian Gaming Related Cases (Coyote Valley II), 331*
10 *F.3d 1094, 1116 (9th Cir. 2003).* The existence of a genuine dispute between the
11 parties thus depends on the existence of employees who (in the Tribe's view) are
12 insufficiently connected to gaming activities. But the Tribe has not identified any
13 real-world employees who are covered by these provisions but who (in the Tribe's
14 view) lack a sufficient connection to class III gaming activities and has not pled
15 facts regarding an active dispute between the parties as to these employees. It is not
16 obvious whether such employees exist, or who they are. Nor is it obvious that the
17 Tribe and the State would be unable to resolve any future disagreements that might
18 arise over how these challenged Compact provisions apply to those specific,
19 identified employees. Indeed, given the business realities in which the Tribe
20 operates, it is not obvious that the Tribe would refuse to offer terms of employment
21 consistent with these provisions even if (in the Tribe's view) it was not legally
22 required to do so.

23 The Tribe's challenge to Count 12 (prohibition on cashing of government
24 checks) is similarly abstract. Count 12 challenges a Compact provision that serves
25 to prohibit a "gambling enterprise" from cashing federal, state, and local
26 government checks. Compl. at ¶68. Like the employment provisions above, this
27 check-cashing provision is valid to the extent it is sufficiently connected to gaming
28 activities, and invalid to the extent it is not. But it is far from clear that anyone who

1 seeks to cash a check at the Tribe’s casino does so for reasons unrelated to gaming.
2 And, if the Tribe were to identify real-world situations in which casino patrons *do*
3 seek to cash government checks for reasons unrelated to gaming, it is very doubtful
4 that the State would seek to enforce the Compact against the Tribe as to those
5 situations.

6 “Where a dispute hangs on future contingencies that may or may not occur, it
7 may be too impermissibly speculative to present a justiciable controversy.” *In re*
8 *Coleman*, 560 F.3d 1000, 1005 (9th Cir. 2009) (internal citations omitted). Here,
9 that is the case with respect to Counts 1, 3, 11, 12, 13, and 15: those claims “rest[]
10 upon hypothetical situations” (*Thomas v. Anchorage Equal Rights Comm’n*, 220
11 F.3d 1134, 1142 (9th Cir. 2000)) that may never actually occur. The parties may
12 never disagree about how the Compact applies to a specific set of real-world facts;
13 even if they disagree, the Tribe may not ultimately breach (or allegedly breach) the
14 Compact as to that specific set of facts; even if the Tribe does breach (or allegedly
15 breach) the Compact, the State may not seek to enforce the Compact against the
16 Tribe.² *Cf. Eller*, 2023 WL 3829723, at *3. This “series of contingencies” means
17 these claims are “abstract at best.” *Portland Police Ass’n v. City of Portland*, 658
18 F.2d 1272, 1274 (9th Cir. 1981) (Kennedy, J.). Accordingly, these claims are not
19 ripe.

20 **IV. THE TRIBE’S REVENUE-RELATED CLAIMS ARE NOT RIPE**

21 Although the Tribe’s revenue-related claims (Counts 4 through 9) present a
22 closer question, they ultimately are also not ripe. Most of these claims—Counts 4
23 (Special Distribution Fund), 6 (Revenue Sharing Trust Fund), 7 (Tribal Nation
24 Grant Fund), 8 (Rainy Day Fund), and 9 (Local Community Benefit Fund)—
25 concern the Tribe’s financial obligations to contribute to various funds. To be sure,
26 the financial obligations imposed by these provisions are immediate and can be

27 ² The Compact itself requires a dispute resolution process predicated on the
28 parties’ best efforts to resolve such disputes before seeking court intervention. *See*
Compact (Compl. Exh. 1; ECF No. 3) § 13.0.

1 determined from the four corners of the Compact—but there is, at present, no clear
2 and immediate dispute between the State and the Tribe regarding the revenue-
3 related provisions, and any dispute set forth in the Complaint is abstract,
4 hypothetical, or otherwise uncertain. There has been no breach or credible threat to
5 breach the revenue-related provisions by the Tribe and there is no imminent threat
6 of enforcement of those provisions against the Tribe by the State. These claims
7 therefore are not ripe because the “conduct that allegedly violates [the relevant]
8 contractual provision has not yet been undertaken or when any injury from actual or
9 potential breaches has yet to materialize.” *Golden*, 782 F.3d at 1087. Because “the
10 plaintiff—the would-be breaching party—has not yet breached the contract, there is
11 not ‘sufficient immediacy and reality’ to create a case or controversy.” *Eller*, 2023
12 WL 3829723, at *3.³

13 Finally, Count 5 is different from the Tribe’s other revenue-related claims in a
14 way that makes it more clearly not ripe. Unlike Counts 4 (Special Distribution
15 Fund), and 6-9 (Revenue Sharing Trust Fund, Tribal Nation Grant Fund, Rainy Day
16 Fund, and Local Community Benefit Fund, respectively), Count 5 (authorized use
17 of Special Distribution Fund) does not concern the Tribe’s obligation to contribute
18 money. Rather, it concerns how the money that has previously been contributed to a
19 specific fund (the Special Distribution Fund) can be spent. *See* Compl. at ¶¶36–37.
20 In particular, the Tribe chiefly contends that section 4.3.1(b), and portions of
21 sections 4.3.1(c) and 4.3.1(d) of the Compact authorize the State to spend money
22 from the Special Distribution Fund in ways that violate IGRA. Compl. at ¶37.

23 _____
24 ³ To be sure, these revenue claims are not *as* abstract as the Compact
25 provisions discussed above. The Compact makes clear the financial obligations of
26 the Tribe and specifies how to calculate the amount of money that the Tribe owes
27 and how it should be accounted for and paid. There is no question, under the
28 Compact, that the Tribe owes this money that it agreed to pay and allocate as a
result of the negotiation process. There is no dispute about how to calculate the
amount of money, under the Compact, that the Tribe owes. Accordingly, an active
controversy would exist if the Tribe made credible threats to stop paying some or
all of the money owed, and the State threatened to take some action to enforce these
provisions against the Tribe.

1 The State, however, has effectively disavowed most of the potential spending
2 that the Tribe challenges: the state statute governing appropriations from the
3 Special Distribution Fund no longer allows the spending contemplated by Compact
4 section 4.3.1(b) (“Grants, including any administrative costs and environmental
5 review costs, for the support of State and/or local government agencies impacted by
6 tribal government gaming”) and Compact section 4.3.1(d) (“Compensation to state
7 and local government agencies for law enforcement, fire, public safety, and other
8 emergency response services . . .”). *See* Cal. Gov’t Code § 12012.85. Likewise, as
9 to Compact section 4.3.1(c), state law now limits the Special Distribution Fund to
10 “[c]ompensation for regulatory costs incurred by the state gaming agency and the
11 Department of Justice,” and certain regulatory costs (related to the implementation
12 of tribal labor relations ordinances) that may be borne by the state Department of
13 Human Resources—but not the other state agencies identified in Compact Section
14 4.3.1(c). Cal. Gov’t Code § 12012.85(b), (d). In other words, the State has
15 effectively disavowed enforcement of sections 4.3.1(b) and (d) of the Compact, as
16 well as most of section 4.3.1(c). Accordingly, to the extent the Tribe challenges
17 those disavowed provisions, that challenge is not ripe. *Cf. Eller*, 2023 WL
18 3829723, at *3 (a declaratory-judgment action about a contract is not ripe “when
19 the defendant has sworn to the court that it has no intention of enforcing the
20 contract at issue”).⁴

23 ⁴ The State understands Count Five to assert that “Section 4.3.1 of the 2018
24 Compact is not consistent with IGRA, never was considered approved by the
25 Secretary, and is thus unenforceable.” Compl. at ¶37. To the extent the allegation
26 that “the State has used money paid into the SDF for purposes other than those
27 enumerated in the 2018 Compact” (*id.*) should be understood as raising a separate
28 argument about the State’s consistency with the Compact (as opposed to the
Compact’s consistency with IGRA), this aspect of Count Five is not justiciable
because Count Five does not contain sufficient facts to establish that a concrete
dispute currently exists on this point—or to establish that the Tribe has exhausted
the Compact’s required dispute-resolution procedure as to that separate dispute.
See Compact (Compl. Exh. 1; ECF No. 3) § 13.0.

1 **V. THE TRIBE’S CHALLENGE TO THE TRIBAL LABOR RELATIONS**
2 **ORDINANCE IS NOT RIPE**

3 Finally, the Tribe’s challenge to the Tribal Labor Relations Ordinance (the
4 “TLRO,” which the Tribe challenges in Count 16) is also not ripe. As with the
5 financial obligations discussed in Section IV above (and unlike the other compact
6 provisions discussed in Section III above), the Tribe’s obligation to adopt and
7 maintain the TLRO is not abstract, hypothetical, or otherwise uncertain: the
8 Compact specifies the full text of the TLRO, which the Tribe has already been
9 required to enact. *See* Compact (Compl. Exh. 1; ECF No. 3) § 12.9 and Appendix
10 B. The Tribe is under a present and definite obligation to adopt and maintain the
11 TLRO; the content of the TLRO, likewise, is definitively prescribed by the
12 Compact itself. However, as with the revenue provisions, the Tribe has pled no
13 facts setting forth a present, live controversy that actually exists between the State
14 and the Tribe regarding the TLRO. The Tribe has not moved to repeal the TLRO,
15 or otherwise breached the TLRO requirements of the Compact, and the State has
16 not threatened nor commenced any enforcement against the Tribe. Accordingly,
17 any dispute regarding the Tribe’s obligation to adopt and maintain the TLRO is
18 speculative and contingent upon future facts. Accordingly, the Tribe’s challenge to
19 the TLRO is not ripe.

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CONCLUSION

For the reasons given above, counts 1 through 17 of the Tribe’s Complaint are not ripe. The Tribe has not pled sufficient facts establishing a ripe controversy as to its claims.

For all the reasons set forth above—or, alternatively, the reasons given in the State’s motion to dismiss—the Court should grant the State’s Motion to Dismiss and dismiss Morongo’s entire Complaint without leave to amend.

Dated: November 14, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, State of California; Gavin Newsom, certifies that this brief contains 3,430 words, which:

X complies with the word limit of L.R. 11-6.1.

___ complies with the word limit set by court order dated.

Dated: November 14, 2025

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CERTIFICATE OF SERVICE

Case Name: **Morongo Band of Mission
Indians v. State of California
etal.** No. **5:25-cv-01098**

I hereby certify that on November 14, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' SUPPLEMENTAL BRIEF REGARDING RIPENESS IN RESPONSE
TO ORDER [ECF NO. 22]**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 14, 2025, at Los Angeles, California.

Dora Mora
Declarant

Dora Mora
Signature