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by and through the California Highway Patrol, and
8 David Agredano*

**EXEMPT FROM FILING
FEES PER GOV'T CODE
§6103**

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13
14 **JOHN SEARS,**

15 Plaintiff,

16 v.

17 **CALIFORNIA HIGHWAY
18 PATROL, a State Agency; DAVID
19 AGREDANO, an officer with the
20 California Highway Patrol; and
DOES 1-40, inclusvie,,**

21 Defendants.

2:21-cv-03165

**DEFENDANTS' ANSWER TO
COMPLAINT; DEMAND FOR
JURY TRIAL**

22 COMES NOW Defendants State of California, acting by and through the
23 California Highway Patrol, and David Agredano, and in response to the complaint
24 on file herein admit, deny, and allege as follows:

25 1. Answering paragraph 1 of the complaint, answering Defendants admit
26 that on January 23, 2020, Plaintiff was traveling on Nacimiento Lake Drive, in San
27 Luis Obispo County, leading two mules when he was approached by Defendant
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1 David Agredano. Answering Defendants further admit that Defendant David
2 Agredano requested and later ordered that Plaintiff keep his mules out of the traffic
3 lane. Answering Defendants deny that Defendant David Agredano's order and
4 Plaintiff's subsequent arrest was in violation of Plaintiff's rights. Defendants have
5 no information or belief upon the remaining facts alleged in said paragraph
6 sufficient to enable Defendants to answer the allegations and, on that ground, deny
7 each and every remaining allegation of said paragraph of the complaint.

8 2. Answering paragraph 2 of the complaint, answering Defendants admit
9 that Nacimiento Lake Drive is part of the Juan Bautista de Anza Trail and is a two-
10 lane country road that twists through hills in San Luis Obispo County. Answering
11 Defendants deny each and every remaining allegation of said paragraph of the
12 complaint.

13 3. Answering paragraph 3 of the complaint, answering Defendants admit
14 the allegations in said paragraph of the complaint.

15 4. Answering paragraph 4 of the complaint, answering Defendants admit
16 that a number of drivers had called CHP dispatchers claiming that Plaintiff's mules
17 posed a safety hazard. Answering Defendants further admit that Plaintiff was
18 arrested at the intersection of Nacimiento Lake Drive and San Marcos Drive which
19 is approximately 5.2 miles outside of Paso Robles. Answering Defendants deny
20 each and every remaining allegation of said paragraph of the complaint.

21 5. Answering paragraph 5 of the complaint, answering Defendants admit
22 that Plaintiff was arrested for violation of California Vehicle Code sections 2800(a)
23 and 21954(a). Answering Defendants further admit that Plaintiff's mules and
24 personal property were impounded and released upon payment of a \$266 fee.
25 Defendants have no information or belief upon the remaining facts alleged in said
26 paragraph sufficient to enable Defendants to answer the allegations and, on that
27 ground, deny each and every remaining allegation of said paragraph of the
28 complaint.

1 6. Answering paragraph 6 of the complaint, answering Defendants deny
2 each and every allegation in said paragraph of the complaint.

3 7. Answering paragraph 7 of the complaint, answering Defendants deny
4 each and every allegation in said paragraph of the complaint.

5 8. Answering paragraph 8 of the complaint, answering Defendants deny
6 each and every allegation in said paragraph of the complaint.

7 9. Answering paragraph 9 of the complaint, the allegations of said
8 paragraph contain conclusions of law which do not require an answer. To the
9 extent that said allegations may be deemed to require an answer, answering
10 Defendants deny each and every allegation of said paragraph.

11 10. Answering paragraph 10 of the complaint, answering Defendants deny
12 each and every allegation in said paragraph of the complaint.

13 11. Answering paragraph 11 of the complaint, Defendants have no
14 information or belief upon the facts alleged in said paragraph sufficient to enable
15 Defendants to answer the allegations and, on that ground, deny each and every
16 allegation of said paragraph of the complaint.

17 12. Answering paragraph 12 of the complaint, Defendants have no
18 information or belief upon the facts alleged in said paragraph sufficient to enable
19 Defendants to answer the allegations and, on that ground, deny each and every
20 allegation of said paragraph of the complaint.

21 13. Answering paragraph 13 of the complaint, Defendants have no
22 information or belief upon the facts alleged in said paragraph sufficient to enable
23 Defendants to answer the allegations and, on that ground, deny each and every
24 allegation of said paragraph of the complaint.

25 14. Answering paragraph 14 of the complaint, the allegations of said
26 paragraph contain conclusions of law which do not require an answer. To the
27 extent that said allegations may be deemed to require an answer, answering
28 Defendants deny each and every allegation of said paragraph.

1 15. Answering paragraph 15 of the complaint, the allegations of said
2 paragraph contain conclusions of law which do not require an answer. To the
3 extent that said allegations may be deemed to require an answer, answering
4 Defendants deny each and every allegation of said paragraph.

5 16. Answering paragraph 16 of the complaint, the allegations of said
6 paragraph contain conclusions of law which do not require an answer. To the
7 extent that said allegations may be deemed to require an answer, answering
8 Defendants deny each and every allegation of said paragraph.

9 17. Answering paragraph 17 of the complaint, the allegations of said
10 paragraph contain conclusions of law which do not require an answer. To the
11 extent that said allegations may be deemed to require an answer, answering
12 Defendants deny each and every allegation of said paragraph.

13 18. Answering paragraph 18 of the complaint, the allegations of said
14 paragraph contain conclusions of law which do not require an answer. To the
15 extent that said allegations may be deemed to require an answer, answering
16 Defendants deny each and every allegation of said paragraph.

17 19. Answering paragraph 19 of the complaint, the allegations of said
18 paragraph contain conclusions of law which do not require an answer. To the
19 extent that said allegations may be deemed to require an answer, answering
20 Defendants deny each and every allegation of said paragraph.

21 20. Answering paragraph 20 of the complaint, the allegations of said
22 paragraph contain conclusions of law which do not require an answer. To the
23 extent that said allegations may be deemed to require an answer, answering
24 Defendants deny each and every allegation of said paragraph.

25 21. Answering paragraph 21 of the complaint, the allegations of said
26 paragraph contain conclusions of law which do not require an answer. To the
27 extent that said allegations may be deemed to require an answer, answering
28 Defendants deny each and every allegation of said paragraph.

1 22. Answering paragraph 22 of the complaint, answering Defendants admit
2 that the incidents alleged in Plaintiff's complaint occurred in San Luis Obispo
3 County. Answering Defendants deny each and every remaining allegation of said
4 paragraph of the complaint.

5 23. Answering paragraph 23 of the complaint, the allegations of said
6 paragraph contain conclusions of law which do not require an answer. To the
7 extent that said allegations may be deemed to require an answer, answering
8 Defendants deny each and every allegation of said paragraph.

9 24. Answering paragraph 24 of the complaint, answering Defendants admit
10 that Plaintiff is an individual. Defendants have no information or belief upon the
11 remaining facts alleged in said paragraph sufficient to enable Defendants to answer
12 the allegations and, on that ground, deny each and every remaining allegation of
13 said paragraph of the complaint.

14 25. Answering paragraph 25 of the complaint, answering Defendants admit
15 the allegations in said paragraph of the complaint.

16 26. Answering paragraph 26 of the complaint, answering Defendants admit
17 the allegations in said paragraph of the complaint.

18 27. Answering paragraph 27 of the complaint, Defendants have no
19 information or belief upon the facts alleged in said paragraph sufficient to enable
20 Defendants to answer the allegations and, on that ground, deny each and every
21 allegation of said paragraph of the complaint.

22 28. Answering paragraph 28 of the complaint, the allegations of said
23 paragraph contain conclusions of law which do not require an answer. To the
24 extent that said allegations may be deemed to require an answer, answering
25 Defendants deny each and every allegation of said paragraph.

26 29. Answering paragraph 29 of the complaint, the allegations of said
27 paragraph contain conclusions of law which do not require an answer. To the
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1 extent that said allegations may be deemed to require an answer, answering
2 Defendants deny each and every allegation of said paragraph.

3 30. Answering paragraph 31 of the complaint, the allegations of said
4 paragraph contain conclusions of law which do not require an answer. To the
5 extent that said allegations may be deemed to require an answer, answering
6 Defendants deny each and every allegation of said paragraph.

7 31. Answering paragraph 32 of the complaint, answering Defendants deny
8 each and every allegation in said paragraph of the complaint.

9 32. Answering paragraph 33 of the complaint, answering Defendants deny
10 each and every allegation in said paragraph of the complaint.

11 33. Answering paragraph 34 of the complaint, answering Defendants deny
12 each and every allegation in said paragraph of the complaint.

13 34. Answering paragraph 35 of the complaint, answering Defendants deny
14 each and every allegation in said paragraph of the complaint.

15 35. Answering paragraph 36 of the complaint, answering Defendants deny
16 each and every allegation in said paragraph of the complaint.

17 36. Answering paragraph 37 of the complaint, answering Defendants deny
18 each and every allegation in said paragraph of the complaint.

19 37. Answering paragraph 38 of the complaint, answering Defendants deny
20 that Plaintiff's arrest was unlawful. Defendants have no information or belief upon
21 the remaining facts alleged in said paragraph sufficient to enable Defendants to
22 answer the allegations and, on that ground, deny each and every remaining
23 allegation of said paragraph of the complaint.

24 38. Answering paragraph 39 of the complaint, answering Defendants deny
25 each and every allegation in said paragraph of the complaint.

26 39. Answering paragraph 40 of the complaint, answering Defendants deny
27 each and every allegation in said paragraph of the complaint.

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1 40. Answering paragraph 41 of the complaint, answering Defendants deny
2 each and every allegation in said paragraph of the complaint.

3 41. Answering paragraph 43 of the complaint, answering Defendants deny
4 each and every allegation in said paragraph of the complaint.

5 42. Answering paragraph 44 of the complaint, answering Defendants deny
6 each and every allegation in said paragraph of the complaint.

7 43. Answering paragraph 45 of the complaint, answering Defendants deny
8 each and every allegation in said paragraph of the complaint.

9 44. Answering paragraph 46 of the complaint, answering Defendants admit
10 that Defendant David Agredano arrested Plaintiff on January 23, 2020. Answering
11 Defendants deny each and every remaining allegation of said paragraph of the
12 complaint.

13 45. Answering paragraph 47 of the complaint, answering Defendants deny
14 each and every allegation in said paragraph of the complaint.

15 46. Answering paragraph 48 of the complaint, answering Defendants admit
16 that Plaintiff did not resist arrest. Defendants further admit that Plaintiff verbally
17 objected to his arrest and expressed his alleged legal rights to travel on the subject
18 road. Defendants have no information or belief upon the remaining facts alleged in
19 said paragraph sufficient to enable Defendants to answer the allegations and, on that
20 ground, deny each and every remaining allegation of said paragraph of the
21 complaint.

22 47. Answering paragraph 49 of the complaint, answering Defendants deny
23 each and every allegation in said paragraph of the complaint.

24 48. Answering paragraph 50 of the complaint, answering Defendants admit
25 that Plaintiff's mules and personal belongings were impounded due to his arrest.
26 Answering Defendants deny each and every remaining allegation of said paragraph
27 of the complaint.

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1 49. Answering paragraph 51 of the complaint, answering Defendants admit
2 that Defendant David Agredano checked the box on the Arrest-Investigation Report
3 indicating that “if released immediately, would jeopardize the prosecution of the
4 offense or offenses for which arrested or the prosecution of any other offenses.”
5 Answering Defendants deny each and every remaining allegation of said paragraph
6 of the complaint.

7 50. Answering paragraph 52 of the complaint, answering Defendants deny
8 each and every allegation in said paragraph of the complaint.

9 51. Answering paragraph 53 of the complaint, answering Defendants deny
10 each and every allegation in said paragraph of the complaint.

11 52. Answering paragraph 55 of the complaint, the allegations of said
12 paragraph contain conclusions of law which do not require an answer. To the
13 extent that said allegations may be deemed to require an answer, answering
14 Defendants deny each and every allegation of said paragraph.

15 53. Answering paragraph 56 of the complaint, the allegations of said
16 paragraph contain conclusions of law which do not require an answer. To the
17 extent that said allegations may be deemed to require an answer, answering
18 Defendants deny each and every allegation of said paragraph.

19 54. Answering paragraph 57 of the complaint, answering Defendants deny
20 each and every allegation in said paragraph of the complaint.

21 55. Answering paragraph 58 of the complaint, answering Defendants deny
22 each and every allegation in said paragraph of the complaint.

23 56. Answering paragraph 59 of the complaint, answering Defendants deny
24 each and every allegation in said paragraph of the complaint.

25 57. Answering paragraph 60 of the complaint, answering Defendants deny
26 each and every allegation in said paragraph of the complaint.

27 58. Answering paragraph 61 of the complaint, answering Defendants deny
28 each and every allegation in said paragraph of the complaint.

1 59. Answering paragraph 62 of the complaint, answering Defendants deny
2 each and every allegation in said paragraph of the complaint.

3 60. Answering paragraph 63 of the complaint, answering Defendants deny
4 each and every allegation in said paragraph of the complaint.

5 61. Answering paragraph 65 of the complaint, Defendants have no
6 information or belief upon the facts alleged in said paragraph sufficient to enable
7 Defendants to answer the allegations and, on that ground, deny each and every
8 allegation of said paragraph of the complaint.

9 62. Answering paragraph 66 of the complaint, answering Defendants deny
10 each and every allegation in said paragraph of the complaint.

11 63. Answering paragraph 67 of the complaint, answering Defendants admit
12 the allegations in said paragraph of the complaint.

13 64. Answering paragraph 68 of the complaint, answering Defendants admit
14 the allegations in said paragraph of the complaint.

15 65. Answering paragraph 69 of the complaint, the allegations of said
16 paragraph contain conclusions of law which do not require an answer. To the
17 extent that said allegations may be deemed to require an answer, answering
18 Defendants deny each and every allegation of said paragraph.

19 66. Answering paragraph 70 of the complaint, the allegations of said
20 paragraph contain conclusions of law which do not require an answer. To the
21 extent that said allegations may be deemed to require an answer, answering
22 Defendants deny each and every allegation of said paragraph.

23 67. Answering paragraph 71 of the complaint, answering Defendants admit
24 that when Plaintiff is walking with his mules, Plaintiff is a pedestrian and must
25 comply with the laws applicable to pedestrians.

26 68. Answering paragraph 72 of the complaint, answering Defendants deny
27 each and every allegation of Plaintiff in said paragraph of the complaint.
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1 69. Answering paragraph 73 of the complaint, answering Defendants deny
2 each and every allegation of Plaintiff in said paragraph of the complaint.

3 70. Answering paragraph 74 of the complaint, answering Defendants deny
4 that a judicial declaration of Plaintiff's rights and duties is necessary. Defendants
5 have no information or belief upon the remaining facts alleged in said paragraph
6 sufficient to enable Defendants to answer the allegations and, on that ground, deny
7 each and every remaining allegation of said paragraph of the complaint.

8 71. Answering paragraph 75 of the complaint, answering Defendants deny
9 each and every allegation in said paragraph of the complaint.

10 72. Answering paragraph 76 of the complaint, answering Defendants deny
11 each and every allegation in said paragraph of the complaint.

12 73. Answering paragraph 77 of the complaint, the allegations of said
13 paragraph contain conclusions of law which do not require an answer. To the
14 extent that said allegations may be deemed to require an answer, answering
15 Defendants deny each and every allegation of said paragraph.

16 74. Answering paragraph 78 of the complaint, answering Defendants deny
17 each and every allegation in said paragraph of the complaint.

18 AS SEPARATE AND AFFIRMATIVE DEFENSES, answering Defendants
19 allege as follows:

20 AFFIRMATIVE DEFENSE NO 1

21 The complaint and each cause of action therein fail to allege facts sufficient to
22 constitute a cause of action.

23 AFFIRMATIVE DEFENSE NO. 2:

24 The complaint and each cause of action therein are uncertain.

25 AFFIRMATIVE DEFENSE NO. 3:

26 The complaint and each cause of action therein are barred by the two-year
27 statute of limitations of Code of Civil Procedure section 335.1 [relating to assault;
28 battery; injury or death caused by wrongful act or neglect].

1 AFFIRMATIVE DEFENSE NO. 4:

2 Plaintiff herein willingly, voluntarily and knowingly assumed each, every and
3 all the risks and hazards involved in the activities alleged in the complaint.

4 AFFIRMATIVE DEFENSE NO. 5:

5 Any and all alleged happenings and events, damages and injuries, if any there
6 were, were proximately caused and contributed to by the negligence of plaintiff and
7 others, each and all of whom failed to exercise ordinary care at the times and places
8 alleged in the complaint.

9 AFFIRMATIVE DEFENSE NO. 6:

10 This action against a public entity is barred by the failure to precede the action
11 with a claim as required by Gov. Code sections 905.2, 905.7, 911.2, 945.2 and
12 950.2.

13 AFFIRMATIVE DEFENSE NO. 7:

14 Plaintiff's own conduct estops plaintiff from claiming the damages alleged in
15 the complaint.

16 AFFIRMATIVE DEFENSE NO. 8:

17 At all relevant times, plaintiff failed to mitigate injury and damages.

18 AFFIRMATIVE DEFENSE NO. 9:

19 Because the complaint is couched in conclusory terms, all affirmative defenses
20 that may be applicable to the within action cannot be fully anticipated.
21 Accordingly, the right to assert additional affirmative defenses, if and to the extent
22 that such affirmative defenses are applicable, is reserved.

23 AFFIRMATIVE DEFENSE NO. 10:

24 The instant action is barred by the doctrine of unclean hands.

25 AFFIRMATIVE DEFENSE NO. 11:

26 Plaintiff has waived any right to relief for the causes of action alleged in the
27 complaint.

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1 AFFIRMATIVE DEFENSE NO. 12:

2 If and to the extent that the allegations of the complaint attempt to enlarge
3 upon the facts and contentions set forth in the California Government Claims
4 Program claim, if any there was, said complaint fails to state a cause of action and
5 is barred by Government Code sections 905.2, 911.2 and 950.2.

6 AFFIRMATIVE DEFENSE NO. 13:

7 If and to the extent that any claim was presented to the California Government
8 Claims Program, this lawsuit is untimely because it was filed more than six-months
9 after a written notice of rejection of claim was personally delivered or deposited in
10 the mail. (Gov. Code Section 945.6.)

11 AFFIRMATIVE DEFENSE NO. 14

12 The detention or arrest, if any there was, alleged in the complaint was regular
13 and lawful and made in good faith by a peace officer or peace officers acting within
14 the course and scope of authority and with reasonable cause to believe at the time
15 that such action was lawful.

16 AFFIRMATIVE DEFENSE NO. 15:

17 There was reasonable cause to make the detention or arrest, if any there was,
18 alleged in the complaint.

19 AFFIRMATIVE DEFENSE NO. 16:

20 At the time and place alleged in the complaint, defendants were peace officers
21 in the course and scope of employment. At all relevant times, defendant(s) had
22 reasonable cause to believe that plaintiff had committed a public offense in an
23 officer's presence, to wit, a violation of the law of the State of California, and so
24 believing, exercised the power, and discharged the duty, of lawful arrest.

25 AFFIRMATIVE DEFENSE NO. 17:

26 Answering defendants will be entitled to reasonable attorney fees and costs of
27 suit upon prevailing within the meaning of 42 United States Code section 1988.
28

1 AFFIRMATIVE DEFENSE NO. 18:

2 At all relevant times, defendants exercised due care and acted only in the
3 execution or enforcement of the law.

4 AFFIRMATIVE DEFENSE NO. 19:

5 The complaint fails to state a cause of action for violation of civil rights, as
6 any deprivation of civil rights alleged in the complaint was not without due process
7 of law.

8 AFFIRMATIVE DEFENSE NO. 20:

9 Answering defendants have not deprived any person of any right, privilege or
10 immunity guaranteed by the Constitution or laws of the United States. There has
11 been no deprivation of any right, privilege or immunity guaranteed by the laws or
12 Constitution of the United States.

13 AFFIRMATIVE DEFENSE NO. 21:

14 All acts of defendants, if any there were, occurred in the proper exercise of
15 police powers without malice or intent to deprive any person of any right arising
16 under the Constitution or laws of the United States, or to do any person any other
17 injury.

18 AFFIRMATIVE DEFENSE NO. 22:

19 Answering defendants are entitled to qualified and official and quasi-judicial
20 immunity. Defendant(s) acted at all times herein relevant in good faith, with due
21 care, within the scope of discretion, and pursuant to laws, regulations, rules, and
22 practices reasonably believed to be in accordance with the Constitution and laws of
23 the United States. There is no liability pursuant to the Federal Civil Rights Act
24 where one acts in good faith and entertains an honest, reasonable belief that one's
25 actions are in accord with the clearly-established law. (*Harlow v. Fitzgerald* (1982)
26 457 U.S. 800, 818 [73 L.Ed.2d 396, 102 S.Ct. 2727].)

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1 AFFIRMATIVE DEFENSE NO. 23:

2 There is no liability for any injury or damages, if any there were, resulting
3 from an exercise of discretion vested in a public employee, whether or not such
4 discretion be abused. (Gov. Code, §§ 815.2, 820.2.)

5 AFFIRMATIVE DEFENSE NO. 24:

6 The complaint herein fails to state facts sufficient to constitute a cause of
7 action against answering defendants because there can be no recovery for a federal
8 civil rights violation against one who enjoys absolute prosecutorial immunity from
9 suit pursuant to *Imbler v. Pachtman* (1976) 424 U.S. 409 at 431, 47 L.Ed.2d 128,
10 96 S.Ct. 984.

11 AFFIRMATIVE DEFENSE NO. 25:

12 The answering public entity is immune from suit pursuant to Government
13 Code section 815 to the extent that the complaint and each cause of action therein
14 attempt to state a cause of action not provided by statute against a public entity.

15 AFFIRMATIVE DEFENSE NO. 26:

16 To the extent that the complaint herein seeks recovery on any common law
17 tort theory, any liability for common law tort must be diminished in proportion to
18 the amount of fault attributable to plaintiff and others.

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WHEREFORE, Defendants pray that:

1. Judgment be rendered in favor of Defendants and against Plaintiff; and
2. Plaintiff take nothing by the Complaint; and
3. Defendants be awarded costs of suit incurred herein; and
4. Defendants be awarded such other and further relief as the Court may deem necessary and proper.

Dated: May 20, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MARK T. CUMBA
Supervising Deputy Attorney General

/s/ John B. Greene

JOHN B. GREENE
Deputy Attorney General
*Attorneys for Defendants State of
California, acting by and through the
California Highway Patrol, and
David Agredano*

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DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury.

Dated: May 20, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MARK T. CUMBA
Supervising Deputy Attorney General

/s/ John B. Greene

JOHN B. GREENE
Deputy Attorney General
*Attorneys for Defendants State of
California, acting by and through the
California Highway Patrol, and
David Agredano*

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Sears v. CHP et al.**

No.: **2:21-cv-03165**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 20, 2021, I served the attached **DEFENDANTS' ANSWER TO COMPLAINT; DEMAND FOR JURY TRIAL** by transmitting a true copy via electronic mail.

Todd T. Cardiff
Law Office of Todd T. Cardiff
E-mail Address: todd@tcardifflaw.com

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 May 20, 2021, at Los Angeles, California.

Yamillet Dominguez

Declarant

Signature