

Case No. B326977

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION 7

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LOS ANGELES COUNTY EMPLOYEES' RETIREMENT  
ASSOCIATION,

*Petitioner, Plaintiff and Appellant.*

vs.

COUNTY OF LOS ANGELES and BOARD OF  
SUPERVISORS OF THE COUNTY OF LOS ANGELES,

*Defendants and Respondents.*

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Appeal from the Superior Court for the County of Los Angeles,  
Case No. 21STCP03475 (Hon. James C. Chalfant)

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF AND AMICUS CURIAE BRIEF  
OF THE BOARD OF RETIREMENT OF THE SAN  
BERNARDINO COUNTY EMPLOYEES' RETIREMENT  
ASSOCIATION IN SUPPORT OF THE LOS ANGELES  
COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

[Service on Attorney General required pursuant to  
California Rule of Court 8.29]

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**APPLICATION AND STATEMENT OF INTEREST  
OF *AMICUS CURIAE* (Cal. R. Ct. 8.200(c)(3))**

The San Bernardino County Employees' Retirement Association ("SBCERA") Board of Retirement ("SBCERA Board") applies for leave and for permission to file the attached *amicus curiae* brief in support of petitioners/plaintiffs and appellants Los Angeles County Employees' Retirement Association ("LACERA") and its Board of Retirement ("LACERA Board").

SBCERA is a public retirement system that serves over 48,000 current and former public employees and their beneficiaries. SBCERA was established on January 1, 1945 under the County Employees Retirement Law of 1937 ("CERL") following a vote by the People of San Bernardino County on May 16, 1944. The SBCERA Board is responsible for administering SBCERA for the exclusive benefit of its members and beneficiaries. The SBCERA Board manages over \$14 billion in retirement system assets and, like the LACERA Board, is governed by the California Constitution, article XVI, section 17 and the CERL.

Like many CERL retirement systems, SBCERA has had a longstanding and collaborative relationship with San Bernardino County—the plan sponsor and the largest of SBCERA's participating employers. Indeed, SBCERA and San Bernardino County jointly sought and obtained legislation providing that specified SBCERA personnel "may not be county employees but shall be employees of the retirement system, subject to terms and conditions of employment established by the board of retirement."

Gov. Code, § 31522; see also, Gov. Code, §§ 31522.5 31522.7. Moreover, SBCERA became a special district pursuant to separately enacted legislation passed in mid-2008. See Gov. Code, §§ 31468(l)(2), 31. Thereafter, SBCERA began a process that ultimately resulted in all SBCERA personnel becoming employees of SBCERA rather than San Bernardino County.

Today, the SBCERA Board has the authority and responsibility for setting appropriate salary levels for its personnel and for hiring new and additional personnel when it has determined that is necessary to support the SBCERA Board in administering the retirement system and investing its assets in accordance with its fiduciary responsibilities.

As a result, the exact problem currently faced by LACERA will not be faced by SBCERA given its special district status. However, were the SBCERA Board ever to find itself in the position of being unable to attract, retain, and hire the personnel it had determined were necessary to the board's work, the SBCERA Board firmly believes that it and other retirement systems must have the plenary authority to attract and retain the professional staff necessary to prudently administer the retirement system for the benefit of participants in accordance with its fiduciary responsibilities.

Attracting and retaining competent personnel to manage and administer the retirement system under the retirement board's supervision is necessary to ensure retirement board members can "discharge their duties with respect to the system with the care, skill, prudence, and diligence under the

circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.” Cal. Const., art. XVI, § 17(c). Allowing an entity other than a retirement board—and particularly one that neither sits in a fiduciary role nor is involved in the day-to-day administration of the retirement system—to exercise discretion over the hiring and compensation of the personnel that the retirement board has determined are required to assist it in discharging its “fiduciary responsibilities” is illogical and inappropriate.

Such unfettered discretion would permit the precise sort of political meddling to creep back into public retirement systems that Proposition 162 was enacted by the People to banish. Indeed, if the trial court’s reasoning, conclusions, and judgment are affirmed, it could well be used to justify future attempts to usurp the retirement board’s “sole and exclusive” and “plenary” authority to administer the retirement system, thereby impairing the board’s ability to meet its “fiduciary responsibilities” to the retirement system’s members and beneficiaries.

The proposed *amicus curiae* brief will assist the Court in deciding this matter because it provides a practical and logical explanation of how the trial court’s judgment in favor of the County of Los Angeles can (and likely will) undermine the LACERA Board, the SBCERA Board and other retirement boards from discharging their fiduciary responsibilities. Further, the proposed brief integrates this explanation against the backdrop of

the cogent reading of the applicable constitutional and statutory provisions that LACERA advocates in its opening brief.

For these reasons, the SBCERA Board respectfully requests that this Court grant it leave to file the accompanying brief.

DATED: December 21, 2023      HANSON BRIDGETT LLP

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**AMICUS CURIAE BRIEF IN SUPPORT OF LOS ANGELES  
COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

**I. INTRODUCTION**

In the State of California alone, public retirement systems held over \$1.2 trillion in assets at the close of Fiscal Year 2022.<sup>1</sup> And, the retirement boards responsible for managing those assets must do so in an increasingly complex and global financial landscape. Those retirement boards, like the LACERA and SBCERA Boards, have a fiduciary duty to manage their retirement systems for the exclusive benefit of the system's members and beneficiaries. Cal. Const., art. XVI, § 17(b). And they must do so “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.” Cal. Const., art. XVI, § 17(c).

The People, the Legislature, and the Courts have—time-and-time and again and in various ways—confirmed that discharging these fiduciary responsibilities requires that retirement boards be free from the political influences that have all too often sought to meddle in retirement system affairs to achieve their own ends. To be sure, while the conflicts today are more subtle than in the past – when, for example, the People passed Proposition 162 in response to the Legislature's raid of the

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<sup>1</sup>See <https://www.nasra.org/ca>

CalPERS' retirement system to balance the State's budget – the stakes are just as high.

This case presents one such conflict and its resolution will have profound implications for public retirement systems across the State of California. SBCERA respectfully submits that the trial court's decision resolved the conflict presented by this appeal incorrectly. It did so based on a strained and illogical reading of Article XVI, Section 17 ("Section 17") of the California Constitution and the applicable CERL provisions and based on an overbroad application of a single appellate decision that was poorly reasoned and that this Court is not bound to follow. The trial court also failed to give proper consideration to the historical and legal contexts and the increasingly-complicated and global financial landscape in which public retirement systems operate today.

Section 17 vests in public retirement boards "plenary authority" over the "investment of moneys" and the "administration" of the retirement system. Cal. Const., art. XVI, § 17. The administration of the system and the investment of moneys must be done in accordance with the board's "fiduciary responsibilities." *Ibid.* Given the inherent complexity of these retirement systems, anyone can understand that a retirement board's ability to meet its fiduciary responsibilities requires a retirement system to have qualified personnel who are competent to administer the system under the retirement board's supervision and directions.

The CERL grants the LACERA the authority to “appoint such ... staff ... as are required to accomplish the necessary work of the board[]” and, once so appointed, such staff “*shall be* included in the salary ordinance or resolution adopted by the [county] board of supervisors.” Gov. Code, § 31522.1, emphasis added. This plain language, interpreted in light of Proposition 162’s intended purpose of ensuring retirement board autonomy from their governmental plan sponsors, leaves no room for the County of Los Angeles (“County”) to prevent the LACERA Board from appointing and hiring the personnel it has determined are needed to ensure the LACERA Board’s fiduciary responsibilities to LACERA’s members and beneficiaries are fulfilled.

This being especially so where, as here, the record not only confirms—but the County argues—that it rejected several personnel appointment requests for reasons wholly unrelated to the sound administration of LACERA for the exclusive benefit of its members and beneficiaries. This Court must confirm that the County cannot prevent the LACERA Board from appointing and hiring the personnel that it has determined—in its fiduciary capacity—are required to perform the necessary work of the board. This would erode the constitutional protections of members of the various county retirement systems and could be applied in the future in other situations where a public retirement board’s fiduciary duties are being impinged upon.

The SBCERA Board respectfully submits that the trial court’s judgment in favor of the County should be reversed and that this Court should remand the matter and direct the trial

court to enter judgment in favor of LACERA and the LACERA Board.

## II. ARGUMENT

### A. CERL Retirement Boards Operate Under a Constitutional Grant of “Plenary Authority” and Must Administer Their Retirement Systems in Accordance With Their Fiduciary Responsibilities.

Like the SBCERA Board, the LACERA Board operates under a constitutional grant of “plenary authority” and possesses “fiduciary responsibility” for the “investment of moneys and administration of the system.” Cal. Const., art. XVI, § 17. These fiduciary responsibilities include the duty to administer the retirement system for the exclusive benefit of its members and beneficiaries (i.e., the duty of loyalty) and to do so “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aim” (i.e., the duty of prudence). See *O’Neal v. Stanislaus County Employees’ Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1208-1211 citing, Cal. Const., art. XVI, § 17(b), (c).

Section 17 represents two things. It represents an express grant of authority to retirement boards and, by necessary implication, it also represents a parallel restriction on the powers of State and Local legislatures over them. See *State Bd. of Education v. Levit* (1959) 52 Cal.2d 441, 461 (cleaned up) [where

the Constitution specifically confides matters to a specified body, the legislature cannot “directly or indirectly” take those matters from its control.”] This understanding of Section 17 is particularly appropriate given the People’s overarching purpose in enacting Proposition 162 was to ensure that retirement boards would be able to administer their systems and invest their moneys free from political interference and for the exclusive benefit of their system’s members and beneficiaries in accordance with their fiduciary responsibilities. (See LACERA’s Opening Brief (“AOB”), pp. 37-43.)

**B. Retirement Systems Must Have The “Sole And Exclusive Authority” And Discretion To Employ The Personnel Their Retirement Boards Have Determined Necessary To Fulfill Their Constitutional Fiduciary Responsibilities.**

It is self-evident that managing vast financial troves of assets—like the \$72 billion that LACERA manages or the \$14 billion SBCERA manages—requires retirement systems to recruit, appoint, and employ specialized personnel who are qualified to carry out complicated investment, legal and technical functions. Prudently managing assets across numerous asset classes and myriad time horizons—not to mention doing so in the increasingly complex and global financial markets of today—is no small task. Nor is ensuring that public retirement systems are maintained and implemented in accordance with the tax-qualification rules including, as just one example, the over 90

changes to those rules enacted by the SECURE 2.0 Act. See Pub. L. No. 117-328, Div. T (Secure 2.0 Act of 2022).

Failure to prudently invest assets will mean the loss of retirement system assets, whereas failure to prudently maintain and implement the retirement system in accordance with the tax-qualification rules will mean the possible loss of tax-qualified status.<sup>2</sup> A failure to prudently discharge either function will ultimately inure to the detriment of the retirement system’s members and beneficiaries. Prudently managing a retirement system requires retirement boards to have the authority—which authority must be exercised in accordance with their fiduciary responsibilities—to employ the personnel they have determined are required to meet the retirement board’s fiduciary obligations to the retirement system’s members and beneficiaries. Without such authority, retirement boards will be unable to do so.

Government Code section 31522.1 (“Section 31522.1”) confirms that the Legislature has granted LACERA this necessary authority. Section 31522.1 provides:

The board of retirement and both the board of retirement and the board of investment may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards [...] The personnel shall

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<sup>2</sup>See *San Diego City Firefighters, Local 145 v. Board of Admin. of San Diego City Employees Retirement System* (2012) 206 Cal.App.4th 594, 599, n.2 (*Local 145*) [losing tax-qualified status would result “in the non-deductibility of employer contributions, inclusion of employer contributions in employee income, and taxation of [trust] income.”]

be county employees and shall be subject to the county civil service or merit system rules and shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees.

The County and LACERA's dispute in this appeal largely centers around the last sentence of Section 31255.1 and most specifically around the "shall be included in the salary ordinance or resolution adopted by the board of supervisors..." language. SBCERA submits that the use of "shall be included" in Section 31522.1 confirms that the LACERA Board has the authority to employ the appointed personnel that it has determined are "required to accomplish the necessary work of the boards." See *Coalition for Adequate Review v. City and Cnty. of San Francisco* (2014) 229 Cal.App.4th 1043, 1056. Indeed, "[s]hall be included" indicates that the County's Board of Supervisors has a duty to include such appointed personnel in a County salary resolution or ordinance—full stop. Indeed, had the Legislature intended that the terms of employment for appointed LACERA personnel be limited to classifications and salaries set by the County's Board of Supervisors it would have used different words.

More to the point, framing the issue presented in this appeal as the County has (e.g., whether Section 31522.1 requires the County to "rubber-stamp" LACERA's personnel appointments "no matter how unreasonable", see ROB, p. 15) fails to appreciate two things. First, the very first sentence of Section 31522.1 confirms the LACERA Board's authority to appoint personnel is limited to those personnel it has determined are "required" to do

the “necessary work” of the LACERA Board. That determination imposes a clear limitation on the appointment authority and that authority is necessarily subject to the board’s fiduciary responsibilities because, among other reasons, the compensation of appointed personnel is “charged against the earnings of the retirement fund.” See Gov. Code, § 31580.2. And, of course, the board’s exercise of its fiduciary responsibilities is subject to judicial review. See *Singh v. Board of Retirement* (1996) 41 Cal.App.4th 1180, 1191 Second, the LACERA Board’s personnel appointments are presumed to have been made in accordance with these limitations. See Evid. Code, § 664 [“It is presumed that official duty has been regularly performed.”] Nevertheless, the County effectively operates under the presumption that the opposite is true in arguing that the trial court got it right because LACERA might make an appointment in the future that the County would have to “rubber stamp” “no matter how unreasonable.” (See ROB, p. 15.) Aside from being speculative and presuming exactly the opposite of what the law requires, it fails to appreciate that all parties agree that there are mechanisms available to challenge the LACERA Board’s fiduciary decisions. See e.g., *Singh, supra*, 41 Cal.App.4th at 119.

The County’s interpretation is also at odds with other CERL provisions and the broader structural changes ushered into constitutional significance by Proposition 162. For example, no one disputes that the LACERA Board has the authority to contract, *on terms it deems prudent*, with outside actuaries and attorneys. See Cal. Const., art. XVI, § 17(e) [actuaries]; Gov.



Code, § 31529.1, 31607 [attorneys]. Nevertheless, the County contends that the appointment of LACERA personnel on the terms the LACERA Board has deemed prudent are subject to the County's approval. That incongruity is illogical and leads to the absurd result that the LACERA Board lacks the authority to appoint and employ the personnel that it—in exercise of its fiduciary responsibilities—has determined are necessary to discharge its fiduciary obligations, but no such impediment exists with respect to the LACERA Board's authority to contract with private law firms and actuaries. See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1122 [courts must “apply common sense to the language at hand” and interpret statutes to make them “workable and reasonable” and to avoid absurd results]. That interpretation directly undermines Proposition 162's goal of ensuring that retirement boards be free from the political influences and meddling that were impairing their ability to administer their systems for the exclusive benefit of their members and beneficiaries. And this is especially so, here, where the record confirms that the County's decisions regarding LACERA's appointments were made, at least in part, based on considerations unrelated to the sound administration of the retirement system. (See, e.g., 1 AA 98-99, 3 AA 551.)

This conclusion is also supported by *Corcoran v. Contra Costa County Employees Ret. Bd.* (1997) 60 Cal.App.4th 89, which considered a CERL retirement board's statutory authority to set compensation for the retirement system's staff and which is far more relevant to the issues presented here than *Westly v.*

*California Public Employees' Retirement System Board of Admin.* (2003) 105 Cal.App.4th 1095—the latter of which is distinguishable for the reasons set forth in LACERA's opening brief and need not be repeated here, although SBCERA makes one observation about *Westley* that does not appear to have been made by either of the parties to this appeal.<sup>3</sup>

*Corcoran* squarely held that “the Retirement Board is the governing body as to the officers and employees that it appoints, otherwise it would have abdicated its obligation to make administrative cost decisions consistent with its primary duty to the fund's participants and to their beneficiaries.” *Corcoran, supra*, 60 Cal.App.4th at 94-95. That is, *Corcoran* confirms that the terms and conditions on which retirement system personnel

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<sup>3</sup>*Westly* arose from the appeal of an order granting a motion for judgment on the pleadings, but the Court's broader conclusion required it to assume the opposite of what the CalPERS appellants had alleged in their underlying lawsuit. The Court's broader conclusion was this: “the payment of board staff according to civil service laws, the payment of members under existing reimbursement limits, and payment of release time reimbursements under existing allowable limits do not prohibit the realization of [Section 17's] objectives.” *Westly, supra*, 105 Cal.App.4th at 1095. This disconnect between the procedural posture and the broader conclusion is especially stark because appellants specifically argued in their opening brief that by “granting the Controller's motion for judgment on the pleadings, the trial court erroneously deprived appellants of the chance” to establish as a factual matter that “limiting the expenditures at issue to the levels prescribed by statute or regulation would have made it *impossible* for the Board to comply with its fiduciary duties under Section 17.” 2002 WL 32146734, \*25 (January 29, 2002) (emphasis in original).

are employed are directly related to the discharge of the system's fiduciary responsibilities and, to hold otherwise, would "elevate form over substance." *Ibid.* The contrary conclusion embraced by *Westly*, see *supra* at fn. 3, that was, at least ostensibly, driven in part by the *Westly* Court's narrow view of a retirement board's fiduciary obligations must be rejected. It defies common sense and undermines the constitutional protections that Proposition 162 granted to public retirement system members and beneficiaries, as explained below.

In sum, the LACERA Board must have the authority to carry out its fiduciary responsibilities and any process that allows the County to usurp the LACERA Board's "plenary authority" to administer LACERA must be rejected.

**C. Allowing the Trial Court's Decision to Stand Could Erode Constitutional Protections for Retirement System Members and Could Be Inappropriately Applied By Future Courts.**

The California Constitution was amended by Proposition 162 to ensure that the pensions of members and beneficiaries of public retirement systems were protected and that the assets used to fund those pensions were managed by fiduciaries for their sole and exclusive benefit. The People did this by declaring that public retirement systems shall be administered "solely and exclusively" by retirement boards and those retirement boards shall have "plenary authority" to administer those retirement systems prudently and for the sole and exclusive benefit of the

system's members and beneficiaries. See Cal. Const., art. XVI, § 17(b).

Allowing the County to have discretion over the establishment of positions and salaries for those positions that the LACERA Board has determined are necessary to carry out its fiduciary responsibilities imperils these constitutional protections. If the trial court decision is allowed to stand, the County will be allowed to let its decision based on political issues—such as, for example, the fact that the County does not have, in essence, a comparator position under its current civil service rules and that approving such a position for new LACERA personnel may upend the *County's* current civil service classifications—to preclude the LACERA Board from hiring and compensating the personnel it has determined are needed to ensure the proper administration of the retirement system.

This is even though it should be unsurprising that the County would not have appropriate comparators in its civil service system to LACERA positions, since the County does not administer a \$72 billion retirement system. In addition to those positions needed to carry out the sophisticated investments of such a large trust fund,<sup>4</sup> the LACERA Board must also ensure

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<sup>4</sup>For example, the primary objective of a County investment officer is to “[1] safeguard the principal of the funds under its control” and then to meet “[2] liquidity” needs and to “[3] achieve a return on the funds under its control” (*in that order*) and she must do so with a limited array of investment options. Gov. Code, § 53600.5; see also, Cal. Const., art. XVI, § 17 [restricting the State and its political subdivisions, which include a county, from investing in stock except in very limited circumstances]. By

that there are employees with the requisite skills necessary to administer a tax-qualified plan. The Internal Revenue Code and Internal Revenue Service requirements needed for operational compliance with the tax rules for these plans requires special skills that would not be applicable in other positions at the County. And, the people ultimately harmed by losing that fiduciary oversight and control are the members and beneficiaries of the retirement system for whom Proposition 162 was enacted to protect.

In sum, if the trial court's reasoning, conclusions, and judgment are affirmed on appeal, it could well be used to justify future attempts to usurp the retirement board's "sole and exclusive authority" and "plenary authority" to administer the retirement system, thereby impairing its' ability to meet its "fiduciary responsibilities" to the retirement system's members and beneficiaries.

### **III. CONCLUSION**

For the reasons set forth above, the SBCERA Board respectfully submits that this Court should reverse the trial

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contrast, a LACERA investment officer must prudently invest retirement system assets to earn a return and generally must do so across innumerable asset classes and utilizing myriad financial strategies. Without belaboring the issue, this requires a far different and greater skillset, and, therefore, to attract appropriate talent, would likely require greater compensation.

court's judgment in favor of the County and direct it to enter judgment in favor of LACERA and the LACERA Board.

Respectfully submitted,

DATED: December 21, 2023

HANSON BRIDGETT LLP

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**WORD COUNT CERTIFICATE**

Pursuant to California Rule of Court 8.204(c)(1), the foregoing Application for Leave to File *Amicus Curiae* Brief and *Amicus Curiae* Brief of the SBCERA Board in Support of Los Angeles County Employees' Retirement System contains 2,792 words. In preparing this certificate, I relied on the word count generated by MS Word 365.

Executed on December 21, 2023, at San Rafael, California.

/s/ Raymond F. Lynch  
RAYMOND F. LYNCH

PROOF OF SERVICE

*Los Angeles County Employees Retirement Association,*  
Plaintiff/Appellant

v.

*County of Los Angeles; Board of Supervisors  
for the County of Los Angeles*  
Defendants/Respondents

California Court of Appeal  
Second Appellate District, Division Seven  
Case No. B326977

Los Angeles Superior Court  
Case No. 21STCP03475

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 Marin, State of California. My business address is 1000 4th Street, Suite 700, San Rafael, California 94901.

On December 21, 2023, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE BOARD OF RETIREMENT OF THE SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION IN SUPPORT OF THE LOS ANGELES COUNTY EMPLOYEES' RETIREMENT ASSOCIATION** on the interested parties in this action as follows:

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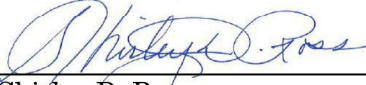
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Hon. James C. Chalfant  
Los Angeles Superior Court  
Stanley Mosk Courthouse, Dept. 85  
111 N. Hill Street  
Los Angeles, CA 90012

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

Executed on December 21, 2023, at Oakland, California.

  
\_\_\_\_\_  
Shirley D. Ross