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Attorneys for Plaintiff JOSE RIVERA,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES- CENTRAL DISTRICT**

JOSE RIVERA, on behalf of himself and current
and former aggrieved employees

Plaintiff,

vs.

APRIA HEALTHCARE LLC; and DOES 1 to
100, inclusive,

Defendants.

Case No.: **24STCV17464**

PAGA ACTION

**PLAINTIFF JOSE RIVERA'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff JOSE RIVERA ("Plaintiff"), who alleges and complains on
information and belief except as to those allegations relating to plaintiff himself/herself, which are
asserted on personal knowledge, against Defendants APRIA HEALTHCARE LLC; and DOES 1
to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

- This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

1 (“PAGA”) representative action brought by Plaintiff on behalf of the State of California,
2 himself/herself and other current and former aggrieved employees of Defendants who worked as
3 hourly non-exempt employees in California during the relevant time period seeking civil penalties
4 associated with Defendants’ violation of the Labor Code based on Defendants’ failure to pay
5 wages for all hours worked at the employees’ minimum wage rate or overtime rate, failure to
6 provide all legally required and legally compliant meal and rest periods, failure to timely pay
7 earned wages during employment, failure to provide complete and accurate wage statements,
8 failure to timely pay all unpaid wages following separation of employment. Plaintiff seeks on a
9 representative basis, following notice to the Labor and Workforce Development Agency, civil
10 penalties, reasonable attorneys’ fees pursuant to Labor Code section 2699(g)(1) and costs brought
11 on behalf of Plaintiff, the State of California, and others aggrieved.

12 **II. JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
14 former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks
15 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
16 non-exempt employees, and the State of California in excess of thirty-five thousand dollars
17 (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-
18 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
19 aggrieved California-based hourly non-exempt employees occurred in locations throughout
20 California, including but not limited to Los Angeles County, at 610 S Douglas Street, El Segundo,
21 CA 90245.

22 **III. PARTIES**

23 3. Plaintiff brings this action as a representative of the Labor and Workforce
24 Development Agency on behalf of himself/herself and other current and former employees subject
25 to violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action
26 is filed include current, former and/or future employees of Defendants who work, worked, or will
27 work for Defendants as direct employees as well as temporary employees employed through temp
28 agencies as hourly non-exempt employees in California. At all times mentioned herein, the

1 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
2 employed by Defendants in an hourly position at Defendants' location in Los Angeles County
3 from approximately April 1, 2014 until on or about April 1, 2024.

4 4. Defendant APRIA HEALTHCARE LLC is authorized to do business within the
5 State of California and is doing business in the State of California and/or that Defendants DOES
6 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendant APRIA
7 HEALTHCARE LLC in the establishment of, or ratification of, the aforementioned illegal wage
8 and hour practices or policies. Defendant APRIA HEALTHCARE LLC operates in Los Angeles
9 County and employed Plaintiff and aggrieved employees in Los Angeles County, including but
10 not limited to, at 610 S Douglas Street, El Segundo, CA 90245.

11 5. Defendants DOES 1 through 50 are corporations or other business entities or
12 organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California
13 non-exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised
14 control over the wages, hours and working conditions of employment of Plaintiff and aggrieved
15 employees.

16 6. Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each
17 Defendant is sued individually and in their capacity as an agent, shareholder, owner,
18 representative, manager, supervisor, independent contractor and/or employee of each defendant
19 who violated or caused to be violated the minimum wage and overtime provisions of the Labor
20 Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours
21 and days of work.

22 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
23 sues said defendants by said fictitious names and will amend this complaint when the true names
24 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
25 permitted by law or by the Court. Each fictitiously named defendant is in some manner
26 responsible for the events and allegations set forth in this complaint.

27 8. Plaintiff makes the allegations in this complaint without any admission that, as to
28 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and

1 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

2 **FIRST CAUSE OF ACTION**

3 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
4 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

5 **(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and**
6 **Other Current and Former Aggrieved Employees)**

7
8 9. Plaintiff incorporates by reference and re-alleges each and every allegation
9 contained in this pleading as though fully set forth herein.

10 10. During Plaintiff's employment and continuing through the present, Plaintiff alleges
11 Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 510, 512, 1194,
12 1197, and the applicable Wage Orders.

13 11. Specifically, Defendants have committed the following violations of California
14 Labor Code:

15 12. **Failure to pay wages for all hours worked at the legal minimum wage:**
16 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
17 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
18 which includes all time that an employee is under control of the employer and all time the
19 employee is suffered and permitted to work. This includes the time an employee spends, either
20 directly or indirectly, performing services which inure to the benefit of the employer.

21 13. Labor Code sections 1194 and 1197 require an employer to compensate employees
22 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
23 Wage Orders.

24 14. In this case, Plaintiff and other current and former aggrieved California-based
25 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
26 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
28 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
not limited to:

1 (a) "Rounding down" Plaintiff's and other current and former aggrieved California-
2 based hourly non-exempt employees' total daily hours at the time of their clock-ins and clock-outs
3 to the nearest tenth of an hour, to the benefit of Defendants.

4 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
5 non-exempt employees to remain on-duty while off the clock during meal breaks due to
6 Defendants' requirement that Plaintiff and other current and former aggrieved California-based
7 hourly non-exempt employees keep their employer-issued cell phone on their person and
8 monitored at all times during shift, including while off the clock during meal breaks without being
9 paid for that time.

10 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
11 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
12 control without paying wages for that time. This resulted in Plaintiff and other current and former
13 aggrieved California-based hourly non-exempt employees working time for which they were not
14 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
15 Wage Order.

16 16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
17 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
18 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
19 which includes all time that an employee is under control of the employer and all time the
20 employee is suffered and permitted to work. This includes the time an employee spends, either
21 directly or indirectly, performing services that inure to the benefit of the employer.

22 17. Labor Code sections 510 and 1194 require an employer to compensate employees a
23 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
24 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

25 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
26 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
27 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
28 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
(12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Labor Code § 510.

18. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) "Rounding down" Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' total daily hours at the time of their clock-ins and clock-outs to the nearest tenth of an hour, to the benefit of Defendants.

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to remain on-duty while off the clock during meal breaks due to Defendants' requirement that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees keep their employer-issued cell phone on their person and monitored at all times during shift, including while off the clock during meal breaks without being paid for that time.

19. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510, 1194 and 1198, and the applicable Wage Order.

20. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

21. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of

1 all duties and the employer relinquishes control over the employee's activities prior to the
2 employee's sixth hour of work. Labor Code §§ 226.7, 512, and 1198; Wage Order 4 at § 11;
3 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not
4 employ an employee for a work period of more than ten (10) hours per day without providing the
5 employee with a second such meal period of not less than thirty (30) minutes prior to the start of
6 the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the
7 meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on
8 duty" meal period is only permitted when: (1) the nature of the work prevents an employee from
9 being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal
10 periods.

11 22. If an employer fails to provide an employee a meal period in accordance with the
12 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
13 for each workday that a legally required and compliant meal period was not provided. Labor Code
14 §§ 226.7 and 1198; Wage Order 4 at § 11.

15 23. In this case, Defendants failed to authorize or permit legally required and compliant
16 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
17 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
18 limited to,

19 (a) "Rounding down" Plaintiff's and/or other current and former aggrieved California-
20 based hourly non-exempt employees' total daily hours at the time of their clock-ins and clock-outs
21 for meal breaks, to the nearest tenth of an hour, to the benefit of Defendants.

22 (b) Failure to provide Plaintiff and/or other current and former aggrieved
23 California-based hourly non-exempt employees' timely, uninterrupted, duty-free meal breaks of at
24 least 30 minutes for every five hours worked due to employer's requirement that Plaintiff and/or
25 other current and former aggrieved California-based hourly non-exempt employees keep their
26 employer-issued cell phone on their person and monitored at all times during shift including while
27 off the clock during meal breaks.

28 24. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or

1 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
2 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
3 workday that Plaintiff and/or other current and former aggrieved California-based hourly non-
4 exempt employees did not receive legally required and compliant meal periods, in violation of
5 Labor Code section 226.7.

6 25. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
7 and/or other current and former aggrieved California-based hourly non-exempt employees not
8 receiving wages to compensate them for workdays during which Defendants did not provide them
9 with meal periods in compliance with California law.

10 26. **Failure to pay wages to hourly non-exempt employees for workdays that**
11 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
12 current and former aggrieved California-based hourly non-exempt employees regularly worked
13 shifts of more than three-and-a-half (3.5) hours.

14 27. California law requires every employer to authorize and permit an employee a rest
15 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
16 Code § 226.7; Wage Order 4 at § 12. Under California law, "[e]mployees are entitled to 10
17 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
18 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
19 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
20 § 226.7; Wage Order 4 at § 12. Rest periods, insofar as practicable, shall be in the middle of each
21 work period. Wage Order 4 at § 12. Additionally, the rest period requirement "obligates employers
22 to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security*
23 *Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve
24 employees of all duties and relinquish control over how employees spend their time. *Id.*

25 28. If the employer fails to authorize or permit a required rest period, the employer
26 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
27 the employer did not authorize or permit a legally required rest period. Labor Code § 226.7; Wage
28 Order 4 at § 12.

1 29. In this case, Defendants failed to authorize or permit all legally required and
2 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
3 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
4 limited to,

5 (a) Failure to provide Plaintiff and other current and former aggrieved California-based
6 hourly non-exempt employees' with net ten (10) minute rest breaks for every four (4) hours
7 worked or major fraction thereof due to employer's requirement that Plaintiff and other current
8 and former aggrieved California-based hourly non-exempt employees keep their employer-issued
9 cell phone on their person and monitored at all times during shift including during their rest
10 breaks.

11 30. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
12 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
13 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
14 workday they did not receive legally required and compliant rest periods, in violation of Labor
15 Code section 226.7.

16 31. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
17 and other current and former aggrieved California-based hourly non-exempt employees not
18 receiving wages to compensate them for workdays in which Defendants did not provide them with
19 rest periods in compliance with California law.

20 32. **Failure to timely pay earned wages during employment:** In California, wages
21 must be paid at least twice during each calendar month on days designated in advance by the
22 employer as regular paydays, subject to some exceptions. Labor Code § 204(a). Wages earned
23 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th
24 and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of
25 any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other
26 payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
27 seven (7) calendar days following the close of the payroll period in which wages were earned.
28 Labor Code § 204(d).

1 33. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
2 to timely pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
3 employees their earned wages (including minimum wages, overtime wages, meal period premium
4 wages and/or rest period premium wages), in violation of Labor Code section 204. Defendants'
5 aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff and
6 other current and former aggrieved California-based hourly non-exempt employees their earned
7 wages within the applicable time frames outlined in Labor Code section 204.

8 34. **Secret payment of lower wages than designated by statute:** Labor Code section
9 223 provides that, where any statute or contract requires an employer to maintain the designated
10 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
11 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including
12 by failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and
13 lawful sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7,
14 246, 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by
15 Labor Code section 1198, Defendants secretly paid a lower wage than designated by statute while
16 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

17 35. **Failure to provide complete and accurate wage statements:** Labor Code section
18 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
19 employee his or her wages, the employer must "furnish each of his or her employees ... an
20 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
21 employee, except for any employee whose compensation is solely based on a salary and who is
22 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
23 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
24 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
25 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
26 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
27 name of the employee and his or her social security number, (8) the name and address of the legal
28 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and

1 the corresponding number of hours worked at each hourly rate by the employee.”

2 36. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
3 and other current and former aggrieved California-based hourly non-exempt employees all wages
4 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
5 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
6 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
7 section 226(a)(1, 2, 5 & 9).

8 37. **Failure to pay employees all wages due at time of termination/resignation:** An
9 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
10 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
11 hours of resignation (Labor Code section 202).

12 38. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
13 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
14 all of their earned wages (including minimum wages, overtime wages, meal period premium
15 wages, and/or rest period premium wages), Defendants failed to pay those employees timely after
16 each employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and
17 203.

18 39. Plaintiff has complied with the procedures for bringing suit specified in Labor
19 Code section 2699.3. On May 8, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
20 provided notice to Defendants by certified mail which provided notice of the specific provisions of
21 the Labor Code alleged to have been violated, including the facts and theories to support the
22 violations alleged.

23 40. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
24 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
25 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
26 parties notice within 65 days of the date of Plaintiff’s PAGA Claim Notice that the LWDA intends
27 to investigate Plaintiff’s claims.

28 41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil

1 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a),
2 226.7, 510, 512, and 1194, During Plaintiff's employment and continuing through the present,
3 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the
4 following amounts:

5 a. For violations of Labor Code sections 201, 202, 203, 226(a), and 226.7; one
6 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and
7 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
8 violation [penalty amounts established by Labor Code section 2699(f)(2)].

9 b. For violations of Labor Code section 226(a), alternatively, two hundred
10 fifty dollars (\$250) for each employee for each pay period for the initial violation, and one
11 thousand dollars (\$1,000) for each subsequent violation, for each underpaid employee for each pay
12 period [penalty amounts established by Labor Code section 226.3].

13 c. For violations of Labor Code section 510 and 512, fifty dollars (\$50) for
14 each employee for each pay period for the initial violation, and one hundred dollars (\$100) for
15 each subsequent violation, for each underpaid employee for each pay period [penalty amounts
16 established by Labor Code section 558].

17 d. For violations of Labor Code section 204, one hundred dollars (\$100) for
18 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
19 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
20 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
21 section 210].

22 e. For violations of Labor Code section 223, one hundred dollars (\$100) for
23 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
24 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
25 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
26 section 225.5].

27 42. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
28 reasonable attorneys' fees and costs in connection with his/her claims for civil penalties.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF/HERSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: July 15, 2024

Respectfully submitted,

LAVI & EBRAHIMIAN, LLP



By:

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JOSE RIVERA, on behalf of himself and
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