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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

STEVEN SOLIVEN, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

GENMARK DIAGNOSTICS, INC., a
Delaware corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 37-2020-00015938-CU-OE-CTL

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATION OF LABOR CODE
§ 2698 *et seq.* (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/26/2020 at 08:00:00 AM
Clerk of the Superior Court
By Chelsea Martinez, Deputy Clerk

1 Plaintiff STEVEN SOLIVEN ("Plaintiff") hereby submits his Complaint against
2 Defendants GENMARK DIAGNOSTICS, INC.; and DOES 1 through 100, inclusive;
3 (collectively, "Defendants"), on behalf of themselves and other current and former aggrieved
4 employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 **1.** This representative action brought pursuant to Labor Code § 2698 *et seq.*
7 (the Private Attorneys General Act of 2004 ("PAGA")) for Defendants' violations of Labor
8 Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194,
9 1197, 1197.1, 1198, 2800 and 2802.

10 **2.** This Complaint challenges Defendants' systemic illegal employment
11 practices resulting in violations of the stated provisions of the Labor Code against the
12 identified group of employees.

13 **3.** Plaintiff is informed and believes and thereon alleges Defendants jointly
14 and severally acted intentionally and with deliberate indifference and conscious disregard to
15 the rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2)
16 failing to properly calculate and pay all minimum and overtime wages, (3) failing to provide
17 compliant wage statements, (4) failing to pay all wages due and owing during employment and
18 upon termination of employment, (5) causing employees to work on seven consecutive days
19 per week without rest, and (6) failing to reimburse necessary business expenses.

20 **JURISDICTION AND VENUE**

21 **4.** This action is brought pursuant to PAGA. The civil penalties sought by
22 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
23 according to proof at trial.

24 **5.** This Court has jurisdiction over this action pursuant to California
25 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
26 causes except those given by statute to other courts. The statutes under which this action is
27 brought do not specify any other basis for jurisdiction.

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1 **6.** This Court has jurisdiction over the violations of PAGA and Labor Code
2 §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,
3 1197.1, 1198, 2800 and 2802.

4 **7.** This Court has jurisdiction over all Defendants because, upon
5 information and belief, each party has sufficient minimum contacts in California, or otherwise
6 intentionally avails itself of California law so as to render the exercise of jurisdiction over it by
7 the California courts consistent with traditional notions of fair play and substantial justice.

8 **8.** Venue is proper in this Court because, upon information and belief, the
9 named Defendants transact business and/or have offices in this county, and the acts and
10 omissions alleged herein took place in this county. Moreover, this action is brought on behalf
11 of the State of California as a private attorney general and has jurisdiction in this venue.

12 **PARTIES**

13 **9.** Plaintiff Steven Soliven is an individual residing in the State of
14 California. Plaintiff was employed by Defendants within the statutory time period.

15 **10.** Plaintiff is informed and believes and thereon alleges that Defendants
16 are licensed to do business and actually doing business in the State of California, including the
17 County of San Diego.

18 **11.** Plaintiff does not know the true names or capacities, whether individual,
19 partner or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that
20 reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to
21 amend this complaint when the true names and capacities are known. Plaintiff is informed and
22 believes and thereon alleges that each of Defendants designated as a DOE was responsible in
23 some way for the matters alleged herein and proximately caused Plaintiff and other current and
24 former aggrieved employees to be subject to the illegal employment practices, wrongs and
25 injuries complained of herein.

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1 **12.** At all times herein mentioned, Defendants, and each of them, were
2 agents, partners, joint venturers, representatives, servants, employees, successors-in-interest,
3 co-conspirators and assigns, each of the other, and at all times relevant hereto were acting
4 within the course and scope of their authority as such agents, partners, joint venturers,
5 representatives, servants, employees, successors, co-conspirators and assigns, and that all acts
6 or omissions alleged herein were duly committed with ratification, knowledge, permission,
7 encouragement, authorization and consent of each Defendant designated herein.

8 **13.** As such, and based upon all the facts and circumstances incident to
9 Defendants' business in California, Defendants are subject to PAGA and Labor Code §§ 201,
10 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194,
11 1197, 1197.1, 1198, 2800 and 2802.

12 **CAUSE OF ACTION**

13 **VIOLATION OF PAGA**

14 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

15 **14.** Plaintiff re-alleges and incorporate by reference paragraphs 1 through 13
16 as though fully set forth herein.

17 **15.** PAGA expressly establishes that any provision of the California Labor
18 Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of
19 its departments, divisions, commissions, boards, agencies or employees for a violation of the
20 California Labor Code, may be recovered through a civil action brought by an aggrieved
21 employee on behalf of himself or herself, and other current or former employees.

22 **16.** On February 3, 2020, Plaintiff provided written notice to the LWDA and
23 Defendants of the specific provisions of the Labor Code he contends were violated, and the
24 theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by
25 reference is a copy of the February 3, 2020 written notice to the LWDA. Plaintiff believes that
26 on or about April 8, 2020, the sixty-five (65) day notice period expired as to all Defendants,
27 and the LWDA did not take any action to investigate or prosecute this matter. Therefore,
28 Plaintiff has exhausted the statutory time period to bring this action.

1 17. Plaintiff and the other hourly-paid or non-exempt employees are
2 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all
3 current or former employees of Defendants who worked for Defendants at any time during the
4 period from February 3, 2019 to the present, and one or more of the alleged violations was
5 committed against them.

6 **Failure to Pay Minimum and Overtime Wages**

7 18. At all times relevant herein, Defendants were required to compensate
8 their non-exempt employees minimum wages for all hours worked and overtime wages for all
9 hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant
10 to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

11 19. As a pattern and practice, Defendants failed to compensate Plaintiff and
12 other aggrieved current and former employees for all hours worked, resulting in a failure to pay
13 all minimum wages and overtime wages, where applicable.

14 **Failure to Provide Meal Periods and Rest Breaks**

15 20. In accordance with the mandates of Labor Code §§ 226.7 and 512,
16 Defendants were required to authorize and permit their non-exempt employees to take a 10-
17 minute rest break for every four (4) hours worked or major fraction thereof, and were further
18 required to provide their non-exempt employees with a 30-minute meal period for every five
19 (5) hours worked.

20 21. As a pattern and practice, Defendants failed to provide Plaintiff and
21 other aggrieved current and former employees with legally-mandated meal periods and rest
22 breaks and failed to pay proper compensation for this failure.

23 **Failure to Timely Pay Wages During Employment**

24 22. At all times relevant herein, Defendants were required to pay their
25 employees within a specified time period pursuant to the mandate of Labor Code § 204.

26 23. As a pattern and practice, Defendants failed to pay Plaintiff and other
27 aggrieved current and former employees all wages due and owing them within the required
28 time period.

1 **Failure to Timely Pay Wages Upon Termination**

2 **24.** At all times relevant herein, Defendants were required to pay their
3 employees all wages owed in a timely fashion at the end of employment pursuant to California
4 Labor Code §§ 201 to 204.

5 **25.** As a result of Defendants' Labor Code violations alleged above,
6 Defendants failed to pay Plaintiff and the other aggrieved former employees their final wages
7 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
8 Labor Code § 203.

9 **Failure to Provide Complete and Accurate Wage Statements**

10 **26.** At all times relevant herein, Defendants were required to keep *accurate*
11 records regarding their California employees pursuant to the mandate of Labor Code §§ 226
12 and 1174.

13 **27.** As a result of Defendants' various Labor Code violations, Defendants
14 failed to keep accurate records regarding Plaintiff and other aggrieved current and former
15 employees. For example, Defendants failed in their affirmative obligation to keep accurate
16 records regarding Plaintiff and other aggrieved current and former employees' gross wages
17 earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates
18 and the number of hours worked at each hourly rate.

19 **Failure to Reimburse Business Expenses**

20 **30.** At all times relevant herein, Defendants were required to reimburse its
21 employees for any and all necessary expenditures or losses incurred by the employees in direct
22 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§
23 2800 and 2802.

24 **31.** As a pattern and practice, Defendants regularly failed to pay Plaintiff
25 and other aggrieved current and former employees all business expenses incurred and owing
26 them within the required time period.

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Penalties

32. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, against Defendants, and each of them, including but not limited to:

33. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

34. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

35. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

36. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

37. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

38. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on his own behalf and as representative of other
3 current and former aggrieved employees pursuant to PAGA, prays for judgment as follows:

- 4 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in
5 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201,
6 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558,
7 1174(d), 1194, 1197, 1197.1, and 1198.
8 2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code
9 §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and
10 3. For such other and further relief the court may deem just and proper.

11
12 Dated: April 16, 2020

JUSTICE LAW CORPORATION

13
14 By: 

Douglas Han
Shunt Tatavos-Gharajeh
Daniel J. Park
Attorneys for Plaintiff

EXHIBIT 1

February 3, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: GENMARK DIAGNOSTICS, INC.

Dear Representative:

We have been retained to represent Steven Soliven against Genmark Diagnostics, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "GENMARK").

Mr. Soliven is pursuing his California Labor Code sections 2698 *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Soliven may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Genmark Diagnostics, Inc. is a Delaware corporation headquartered at 5964 La Place Court, Carlsbad, California 92008.

GENMARK employed Mr. Soliven as an hourly-paid non-exempt Manufacturing Technician within one year of the date of this letter (until in or about August of 2019) in the State of California. GENMARK directly controlled the wages, hours and working conditions of Mr. Soliven's employment.

The "aggrieved employees" that Mr. Soliven may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a labor contractor or staffing agency) of GENMARK within the State of California.

¹ Mr. Soliven does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Soliven will amend this notice when the true names and capacities are known. Mr. Soliven is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Soliven and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

GENMARK failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Soliven has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at GENMARK, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

GENMARK has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Soliven and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. GENMARK failed to compensate Mr. Soliven and other aggrieved employees for all hours work and work performed off-the-clock, including pre- and post-shift and during meal breaks. GENMARK also failed to factor non-discretionary bonuses and incentives in Mr. Soliven's and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Soliven and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, GENMARK routinely required Mr. Soliven and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with GENMARK policies and expectations, and meet production goals. Moreover, GENMARK failed to provide Mr. Soliven and other aggrieved employees with adequate relief to enable them to cease work and take their breaks. Additionally, GENMARK failed to authorize and permit Mr. Soliven and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, GENMARK failed to compensate Mr. Soliven and other aggrieved employees all the premium wages they were owed.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, GENMARK failed to pay Mr. Soliven and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, GENMARK did not provide Mr. Soliven and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from GENMARK were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Soliven and other aggrieved employees, (2) total hours worked by Mr. Soliven and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Soliven and other aggrieved employees (4) all deductions for Mr. Soliven and other aggrieved employees, (5) net wages earned by Mr. Soliven and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Soliven and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Soliven and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties and wages. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Soliven and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, GENMARK failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Soliven and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, GENMARK did not provide Mr. Soliven and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Soliven and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by GENMARK, including for the use of their personal cellular phones and vehicles for work purposes and for the purchase of personal protective equipment they were required to wear while working,

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We believe that Mr. Soliven and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Soliven will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of GENMARK within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only)

Hany Massarany
c/o Genmark Diagnostics, Inc.
5964 La Place Court
Carlsbad, California 92008
Agent for Service of Process for Genmark Diagnostics, Inc.

LWDA

February 3, 2020

Page 6 of 6

CC: (By Electronic Mail Only)

Stacey E. James, Esq.

sjames@littler.com

Noah J. Woods, Esq.

nwoods@littler.com

LITTLER MENDELSON P.C.

Counsel of Record for Genmark Diagnostics, Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mabzun@justicelawcorp.com

On June 22, 2020, I served the foregoing document described as

COMPLAINT FOR PENALTIES FOR VIOLATION OF LABOR CODE § 2698 *et seq.*
(PRIVATE ATTORNEYS GENERAL ACT OF 2004)

for the following case: **Soliven v. Genmark Diagnostics, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-770277-20**
Court Case No.: 37-2020-00015936-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on June 22, 2020, at Pasadena, California.



Melanie Abzun