

1 MAYALL HURLEY
A Professional Corporation
2 2453 Grand Canal Boulevard
Stockton, California 95207
3 Telephone (209) 477-3833
Facsimile (209) 473-4818
4 NICHOLAS J. SCARDIGLI
CA State Bar No. 249947
5 VLADIMIR J. KOZINA
CA State Bar No. 284645

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6 **Attorneys for Plaintiff PAMELA SCHMIERER**

7 Additional Counsel on Next Page
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN JOAQUIN**

11 **PAMELA SCHMIERER AND**
12 **THOMASITA ZUNIGA,**

13 **Plaintiffs,**

14 **vs.**

15 **ARC DOCUMENT SOLUTIONS, LLC,**
16 **and DOES 1-10, inclusive,**

17 **Defendants.**

Case No.: STK-CV-UOE-2019-2008

SECOND AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES FOR

1. **FAILURE TO PAY OVERTIME**
(CLASS ACTION ALLEGATIONS)
2. **FAILURE TO PAY ALL WAGES**
UPON TERMINATION (CLASS
ACTION ALLEGATIONS)
3. **VIOLATIONS OF BUSINESS AND**
PROFESSIONS CODE § 17200
(CLASS ACTION ALLEGATIONS)
4. **VIOLATION OF LABOR CODE §**
2698 *ET SEQ.* (PAGA)
5. **FAILURE TO PROVIDE LAWFUL**
REST PERIODS IN VIOLATION OF
LABOR CODE § 226.7
6. **FAILURE TO PROVIDE ACCURATE**
ITEMIZED WAGE STATEMENTS IN
VIOLATION OF LABOR CODE § 226

JURY TRIAL DEMANDED

1 **WINSTON LAW GROUP, P.C.**

David S. Winston, Esq. CA Bar No. 301667

2 david@employmentlitigators.com

1180 South Beverly Drive, Suite 320

3 Los Angeles, California 90035

Phone: (424) 288-4568

4 Fax: (424) 532-4062

5 Attorneys for Plaintiff Thomasita Zuniga

6
7 Plaintiffs Pamela Schmierer (“Schmierer”) and Thomasita Zuniga (“Zuniga”) (collectively
8 “Plaintiffs”) bring this action against ARC Document Solutions, LLC, (“ARC”) and Does 1-10,
9 inclusive as referred to herein, for compensatory damages, statutory penalties, restitution,
10 injunctive relief, costs, and attorneys’ fees resulting from the defendants’ unlawful conduct both
11 individually and on behalf of all similarly situated individuals, as defined below in Paragraph 11.
12 Schmierer and Zuniga also seek civil penalties, as a proxy for the California Labor and Workforce
13 Development Agency (“LWDA”) under the Labor Code Private Generals Act of 2004 (“PAGA”),
14 on behalf of herself and all aggrieved employees, current and former. As grounds Schmierer and
15 Zuniga therefore allege:

16 **PARTIES**

17 1. Schmierer is and was at all times relevant herein an individual, a resident of
18 California, and employed in San Joaquin County, California.

19 2. Zuniga is and was at all relevant times hereto, a resident of California, and has been
20 a class member in this action that has been pending in San Joaquin County, California.

21 3. ARC is and was at all times relevant herein a Texas corporation qualified to do
22 business in California, with a principal place of business in California.

23 4. ARC and Does 1-10 are referred to collectively herein as “Defendants.”

24 5. Schmierer and Zuniga are not aware of the true names and capacities of the
25 defendants sued herein as Does 1-10, whether individual, corporate, associate, or otherwise, and,
26 therefore, sues such defendants by these fictitious names. Schmierer and Zuniga will amend this
27 complaint to allege their true names and capacities when ascertained. Schmierer and Zuniga are
28 informed and believe, and on that basis allege, that each of the fictitiously named defendants is

1 responsible in some manner for the occurrences herein alleged and that Schmierer, Zuniga, and the
2 similarly situated individuals' injuries herein alleged were legally caused by such defendants.
3 Unless otherwise indicated, each defendant was acting within the course and scope of said agency
4 and/or employment, with the knowledge and/or consent of said co-defendant.

5 **VENUE AND JURY TRIAL DEMAND**

6 6. Venue is proper in this Court because the unlawful acts as to Schmierer alleged
7 herein took place in San Joaquin County and Schmierer's place of employment with ARC was at
8 all times relevant herein located within San Joaquin County.

9 7. Venue is also proper as to Zuniga because prior to joining this suit as a proposed
10 class representative, Zuniga was a class member in the Schmierer action.

11 8. Schmierer and Zuniga hereby demand a jury trial.

12 **CLASS ALLEGATIONS**

13 9. Schmierer and Zuniga bring this action both individually and on behalf of all other
14 similarly situated, pursuant to Code of Civil Procedure § 382.

15 10. Schmierer was employed by ARC in Stockton, California, from April 4, 2017,
16 through March 30, 2018, in a non-exempt position of "Customer Service Rep/Production."

17 11. Zuniga is a current employee of ARC in San Jose, California who began working in
18 or around 2004 for ARC. At all times relevant to this action, Zuniga has been a non-exempt
19 employee.

20 12. ARC failed to pay Schmierer, Zuniga, and other similarly situated non-exempt
21 California employees, current and former, at the correct overtime hourly wages, because it
22 improperly calculated and paid these former employees overtime wages in relation to pay periods
23 in which these former employees earned both overtime wages and non-discretionary bonuses, e.g.,
24 "7 Prod Bonus" and "8B Bonus" among others. Specifically, ARC failed to include the bonuses in
25 the calculations of these individuals' regular rate, for purposes of calculating and paying the correct
26 overtime hourly rate, thus paying these individuals at improper overtime hourly wages, and less
27 than they are entitled to, in violation of Labor Code §§ 510, 1194, and 1198.

1 13. Schmierer, Zuniga, and other similarly situated non-exempt California employees
2 earned some of these non-discretionary bonuses over defined time periods during the relevant
3 period. Defendants failed to make required retroactive overtime adjustments and/or payments for
4 overtime worked during the periods over which said bonuses accrued period.

5 14. Instead, the production bonuses and other non-discretionary bonuses were identified
6 as a single lump sum on Schmierer, Zuniga, and other similarly situated non-exempt California
7 employees' wage statements. For instance, for the pay period of November 30, 2019 to December
8 13, 2019, Defendants paid Zuniga an 8B Bonus, but failed to provide retroactive overtime wages
9 associated with the 8B Bonus, nor did Defendants include it when calculating and paying her
10 overtime wages earned during this pay period.

11 15. Labor Code § 226 obligates employers, semi-monthly or at the time of each
12 payment to furnish an itemized wage statement in writing showing:

- 13 (1) gross wages earned;
14 (2) total hours worked by the employee;
15 (3) the number of piece-rate units earned and any applicable piece rate if the
16 employee is paid on a piece rate;
17 (4) all deductions, provided that all deductions made on written orders of the employee may
18 be aggregated and shown as one item;
19 (5) net wages earned;
20 (6) the inclusive dates of the period for which the employee is paid;
21 (7) the name of the employee and only the last four digits of his or her social security
22 number or an employee identification number other than a social security number;
23 (8) the name and address of the legal entity that is the employer...;
24 (9) all applicable hourly rates in effect during the pay period and the corresponding number
25 of hours worked at each hourly rate by the employee...

26 16. Similarly, Labor Code § 226(e) provides:

- 27 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
28 employer to comply with subdivision (a) is entitled to recover the greater of all actual
damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award
of costs and reasonable attorney's fees.
(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.
(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer
fails to provide accurate and complete information as required by any one or more of items
(1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a)....

17. Labor Code § 226(a)(1), (2), (4), (5), and (9) require employers semimonthly or at the time or each *payment* of wages, to furnish each of his or her employees, an accurate itemized statement in writing showing the gross wages earned, the total hours worked by the employee, all deductions, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

18. At all times relevant hereto, Defendants also failed to provide Zuniga and other similarly situated non-exempt California employees with wage statements that included the total gross wages earned over the pay period. Instead, Defendants omitted information related to bonuses, including quarterly incentive payments and other non-discretionary bonuses from the itemized wage statements issued to Zuniga and other similarly situated non-exempt California employees' wage statements.

19. Due to the omission of this information, Zuniga and similarly situated non-exempt California employees could not determine from their wage statements alone the total hours worked during the pay period, the net wages earned during the pay period, the gross wages earned, the applicable hourly rates in effect and the corresponding number of overtime hours worked, and/or all deductions.

20. As a result, ARC also failed to pay Schmierer and other similarly situated former California employees all wages due immediately at the time of discharge, in violation of Labor Code §§ 201 and 203. ARC's failure to timely pay these wages, which, to date, remain unpaid, arises from its failure to properly calculate and pay these former employees overtime wages in relation to pay periods in which these former employees earned both overtime wages and non-discretionary bonuses, e.g., "7 Prod Bonus" "8B Bonus" and/or other non-discretionary bonuses as evidenced above.

1 21. Labor Code § 226.7 provides “an employer shall not require an employee to work
2 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
3 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
4 Order No. 7-2001, an employer must authorize and permit all employees to take ten (10) minute
5 duty free rest periods for every major fraction of four hours worked.

6 22. At all times relevant hereto, Defendants classified Schmierer, Zuniga, and other
7 similarly situated non-exempt California employees as non-exempt for the purposes of rest periods.

8 23. At all times relevant hereto, Defendants failed to authorize or permit Schmierer,
9 Zuniga, and other similarly situated non-exempt California employees with duty-free rest periods
10 of not less than ten (10) minutes for every major fraction of four (4) hours worked.

11 24. Instead, at all times relevant hereto, Defendants regularly and consistently required
12 Schmierer, Zuniga, and other similarly situated non-exempt California employees to remain on the
13 premises during their rest periods as part of their common policies and practices. Specifically,
14 Defendants maintained a number of written policies that advised Schmierer, Zuniga, and other
15 similarly situated non-exempt California employees that “Employees must remain on company
16 premises during their, paid rest break...Employees are expected to know and comply with the Arc
17 Rest Break Policy....”

18 25. In addition, at all times relevant hereto, Defendants also maintained a written policy
19 that Schmierer, Zuniga, and other similarly situated non-exempt California employees were
20 expected to adhere to or be subjected to disciplinary action titled “General Requirements for Rest
21 Period and Meal Breaks.” The “General Requirement for Rest Periods and Meal Breaks” that
22 distinguished between meal and rest periods. Under Defendants’ “General Requirements for Rest
23 Periods and Meal Breaks,” Defendants specifically advised Schmierer, Zuniga, and other similarly
24 situated non-exempt California employees that they could only leave the premises during meal
25 periods: “Employees may leave the premises during meal periods.”

26 26. At all times relevant hereto, by requiring Schmierer, Zuniga, and other similarly
27 situated non-exempt California employees to remain on the premises during rest periods,
28 Defendants continued to exercise control over and restrained their employees from leaving the

1 workplace, engaging in certain specified activities without restriction, and interfered with the right
2 of their employees to take rest periods. For instance, Defendants' policy and practice had a chilling
3 effect on the ability of employees to make personal phone calls and other tasks that Defendants
4 could not easily monitor and/or their limited their ability to complain about workplace conditions
5 during their breaks.

6 27. Moreover, at all times relevant hereto Zuniga, and other similarly situated non-
7 exempt California employees were also subject to Defendants' control during rest periods and
8 advised that they could not "visit or socialize with employees who are working" while
9 simultaneously not being allowed to leave the premises such that they were subject to the
10 employer's control during rest periods. This practice also prevented Schmierer, Zuniga, and other
11 similarly situated non-exempt California employees from making phone calls that were sensitive in
12 nature during their rest periods as they were not permitted to leave the premises.

13 28. In addition, at all times relevant hereto, Defendants' customers interfered with and
14 interrupted when Schmierer, Zuniga, and other similarly situated non-exempt California employees
15 attempted to take the non-compliant on premises rest period.

16 29. Moreover, at all times relevant hereto, as a result of its understaffing practices and
17 policies, Zuniga and many of the other similarly situated non-exempt California employees were
18 the only employees assigned to a particular work location who could perform a required and/or
19 needed job function at a given time. As such, it was not possible for them to take duty-free rest
20 periods as they were expected to remain on-call and ready to assist customers during this period.

21 30. At all times relevant hereto, Defendants' also pressured and coerced Schmierer,
22 Zuniga, and other similarly situated non-exempt California employees to forgo rest periods and
23 made it difficult for employees to take lawful duty-free rest periods both due to their understaffing
24 policies and practices and otherwise.

25 31. At times relevant hereto, Defendants also threatened to take disciplinary action
26 against Schmierer, Zuniga, and other similarly situated non-exempt California employees for
27 attempting to take lawful rest periods.

1 32. Labor Code § 226.7 provides “an employer shall not require an employee to work
2 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
3 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC
4 Wage Order No. 7-2001 prohibits an employer from “employ[ing] any person for a work period of
5 more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No.
6 7-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of
7 pay at the employee’s regular rate of compensation for each workday that the meal period is not
8 provided. Accordingly, for each day that Plaintiff Schmierer, Zuniga, and other similarly situated
9 non-exempt California employees did not receive lawful rest periods, they are entitled to receive
10 rest period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 7-2001.

11 33. The classes (“the Classes”) that Schmierer seeks to represent are defined as follows:

- 12 a. All individuals who are currently employed or were formerly employed by
13 ARC in California and who earned overtime wages in relation to pay periods
14 in which they earned both overtime wages and non-discretionary bonuses,
15 from February 11, 2015 and continuing into the present (the “Overtime
16 Class”); and
- 17 b. All individuals who are currently employed or were formerly employed by
18 ARC in California and who received a quarterly incentive payment and/or
19 periodic non-discretionary bonus and earned overtime wages at any point
20 during that period from February 11, 2015 and continuing into the present
21 (the “Periodic Overtime Subclass”);
- 22 c. All individuals formerly employed by ARC in California who earned
23 overtime wages, who earned a “7 Prod Bonus”, “8B Bonus” or other similar
24 non-discretionary wage and whose employment with Arc concluded at any
25 point from February 11, 2016 continuing into the present and continuing to
26 the date as determined by the Court (the “Waiting-Time Class”);
- 27 d. All individuals who are currently employed or were formerly employed by
28 ARC in California as a non-exempt hourly employee, or other similar

position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from October 27, 2016 and continuing into the present (the “Rest Period Class”); and

- e. All individuals who are currently employed or were formerly employed by ARC in California as a non-exempt hourly employee and who received a 7 Prod Bonus, 8B Bonus, and/or other Bonus from October 27, 2019 and continuing into the present (the “Wage Statement Class”).

34. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the Classes are easily ascertainable:

- a. Numerosity: Schmierer and Zuniga are informed and believe and based on such information and belief allege that the potential members of the Classes are so numerous that the joinder of all the members of the Class is impracticable. The exact number of members of the Classes is presently unknown to Schmierer and Zuniga, but is believed to be in excess of 1,000. The exact number and specific identities of the members of the Classes can be readily ascertained through inspection of ARC’s business records, including copies of wage statements ARC furnished to each of these members and discharge documents.
- b. Commonality: There are questions of law and fact common to Schmierer, Zuniga, and to the Classes that predominate over any questions affecting only individual members of the Classes. These common questions of law and fact include, without limitations:
 - i. Whether and, if so, when ARC correctly calculated overtime rates of pay in relation to pay periods in which employees earned both overtime pay and non-discretionary bonuses; and
 - ii. Whether ARC paid these remaining, unpaid overtime wages immediately upon separation;

- 1 iii. Whether Arc violated Labor Code § 226.7 and IWC Wage Order 7-
2 2001 or other applicable IWC Wage Orders and/or relieved the Rest
3 Period Class of all of their duties when it required them to stay on the
4 premises during rest periods;
- 5 iv. Whether Arc violated Labor Code § 226.7 by failing to compensate
6 said employees one (1) additional hour of pay at the employee's
7 regular rate of compensation in lieu of rest periods;
- 8 v. Whether Defendant violated Labor Code § 226(a) and (e) as well as
9 IWC Wage Order No. 7-2001 or other applicable IWC Wage Order
10 by failing to provide an accurate itemized wage statements that
11 accurately indicate, the gross wages earned, the total hours worked
12 by the employee, all deductions from wages, the net wages earned, as
13 well as all applicable hourly rates in effect during the pay period and
14 the corresponding number of hours worked at each hourly rate by the
15 employee; and
- 16 vi. Whether Arc violated § 17200 et seq. of the Business & Professions
17 Code by engaging in the acts previously alleged;
- 18 c. Typicality: Schmierer and Zuniga's claims are typical of the claims of the
19 Classes. Schmierer and Zuniga and all members of the Proposed Classes
20 sustained injuries and damages arising out of and caused by Defendants'
21 common course of conduct in violation of laws, regulations that have the
22 force and effect of law, and statutes as alleged herein. Schmierer and
23 Zuniga's claims are therefore representative of, and co-extensive with, the
24 claims of the Classes.
- 25 d. Adequacy of Representation: Schmierer is a member of the Overtime Class,
26 the Periodic Overtime Subclass, the Waiting Time Class, and the Rest Period
27 Class. Zuniga is a member of the Overtime Class, the Periodic Overtime
28 Subclass, the Rest Period Class, and the Wage Statement Class. Schmierer

1 and Zuniga do not have any conflicts of interest with other members of the
2 Classes, and will prosecute the case vigorously on behalf of the Classes.
3 Counsel representing Schmierer and Zuniga are competent and experienced
4 in litigating class action and representative employment actions. Schmierer
5 and Zuniga will fairly and adequately represent and protect the interest of
6 members of the Classes.

- 7 e. Superiority of Class Action: A class action is superior to other available
8 means for the fair and efficient adjudication of this controversy. Individual
9 joinder of all members of the Classes is not practicable, and questions of law
10 and fact common to the Classes predominate over any questions affecting
11 only individual members of the Classes. Each member of the Classes has
12 been injured and is entitled to recovery by reason of ARC's illegal conduct.
13 Class action treatment will allow those similarly situated individuals to
14 litigate their claims in the manner that is most efficient and economical for
15 the parties and the judicial system.

16 **FIRST CAUSE OF ACTION**
17 **VIOLATIONS OF LABOR CODE §§ 510 and 1198**
18 **(Failure to Pay Overtime)**

19 **By Plaintiffs, the Overtime Class, and the Periodic Overtime Subclass Against Defendants**

20 35. Schmierer and Zuniga hereby reallege and incorporate by reference each and every
21 allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent
22 with the allegations of this cause of action.

23 36. Pursuant to Labor Code § 510, any work in excess of 8 hours in one workday and
24 any work in excess of 40 hours in any one workweek and the first eight hours worked on the
25 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
26 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day
27 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In
28 addition, any work in excess of eight 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.

37. Pursuant to Labor Code § 1198 and applicable IWC Wage Order(s), it is unlawful to compensate an employee at a rate less than either one and one-half or two times the regular rate of pay for overtime hours worked, depending upon the number of hours worked by the employee on a daily or weekly basis.

38. Nevertheless, as evidenced above, Defendants failed to pay Schmierer, Zuniga, and the other members of the Overtime Class and the Periodic Overtime Subclass at correct overtime hourly rates.

39. Wherefore, Schmierer and Zuniga request relief as set forth below.

SECOND CAUSE OF ACTION
VIOLATIONS OF LABOR CODE §§ 201 and 203
(Failure to Pay All Wages Upon Termination)
By Plaintiff Schmierer and the Waiting-Time Class Against Defendants

40. Schmierer hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

41. Pursuant to Labor Code §§ 201 and 202, an employer is required to pay all wages earned and unpaid immediately at the time of discharge or within 72 hours of resignation. Nevertheless, within the relevant time period, and as evidenced above, Defendants failed to pay Schmierer and the other members of the Waiting-Time Class all wages earned and unpaid immediately at the time of discharge or within 72 hours of resignation.

42. Wherefore, Schmierer requests relief as set forth below.

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THIRD CAUSE OF ACTION
VIOLATIONS OF BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.*
(Unfair Business Practices)
By Plaintiffs, the Overtime Class, the Periodic Overtime Subclass, and the Rest Period Class
Against Defendants

1 43. Schmierer and Zuniga hereby reallege and incorporate by reference each and every
2 allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent
3 with the allegations of this cause of action.

4 44. Plaintiffs, on behalf of themselves, on behalf of the general public, and on behalf of
5 the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, et seq.
6 The conduct of Defendants as alleged in this Complaint has been and continues to be unfair,
7 unlawful, and harmful to Plaintiffs, the general public, and the Proposed Classes. Plaintiffs seek to
8 enforce important rights affecting the public interest within the meaning of Code of Civil
9 Procedure § 1021.5. Plaintiffs are each a “person” within the meaning of Business & Professions
10 Code § 17204, and therefore have standing to bring this cause of action for injunctive relief,
11 restitution, and other appropriate equitable relief.

12 45. Defendants have engaged in unlawful and unfair business practices that violate
13 fundamental public policies of the state of California and the United States of America. As a result
14 of its unlawful and unfair business practices, Defendants have forced employees to work under
15 substandard and unlawful conditions in an effort to gain a competitive advantage over law-abiding
16 employers who comply with California’s Labor Code.

17 46. Defendants have violated statutes and public policies as alleged herein. Through the
18 conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have
19 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
20 business practices in violation of Business & Profession Code § 17200, et seq., depriving Plaintiffs,
21 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
22 guaranteed to all employees under law.

23 47. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
24 violation of § 17200 et seq. of the Business & Professions Code.

25 48. Defendants, by engaging in the conduct herein alleged, either knew or in the
26 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
27 violation of § 17200 et seq. of the Business & Professions Code.
28

1 49. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs, the
2 Classes, others similarly situated, other businesses, and the general public have been damaged in a
3 sum as may be proven.

4 50. Unless restrained, Defendants will continue to engage in the unlawful conduct as
5 alleged above. Pursuant to the Business & Professions Code, this Court should make such orders
6 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
7 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
8 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and
9 disgorgement of profits which may be necessary to restore Plaintiffs and members of the Proposed
10 Classes the money Defendants have unlawfully failed to pay.

11 51. Wherefore, Schmierer and Zuniga request relief as set forth below.

12 **FOURTH CAUSE OF ACTION**
13 **VIOLATIONS OF LABOR CODE § 2698 ET SEQ. and 558**
14 **(PAGA)**
15 **By Plaintiffs as Proxies for the State of California Against Defendants**

16 52. Schmierer and Zuniga hereby reallege and incorporate by reference each and every
17 allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent
18 with the allegations of this cause of action.

19 53. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
20 pursue a civil action arising under PAGA after the following requirements have been met:

- 21 a. The aggrieved employee shall give written notice by certified mail to the
22 LWDA and the employer (hereinafter “Employee’s Notice”) of the specific
23 provisions of the Labor Code alleged to have been violated, including the
24 facts and theories to support the alleged violations;
- 25 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
26 employer and the aggrieved employee by certified mail that it does not
27 intend to investigate the alleged violation within 60 calendar days of the
28 postmark date of the Employee’s Notice. Upon receipt of the LWDA’s
 Notice, or if the LWDA does not provide notice within 65 calendar days of

1 the postmark date of the Employee's Notice, the aggrieved employee may
2 commence a civil action pursuant to Labor § 2699 to recover civil penalties
3 in addition to any other penalties to which the employee may be entitled.

4 54. On February 8, 2019, Schmierer provided written notice and amended written notice
5 by online submission to the LWDA, and by certified mail to Defendants of Defendants' violations
6 of the Labor Code set forth below, including the facts and theories to support the alleged violations.
7 As of today's date, more than 65 days have passed without the LWDA providing written notice
8 that it intends to investigate the allegations in the February 8, 2019 notice and amended notice.
9 Accordingly, Schmierer has satisfied the administrative prerequisites under Labor Code § 2699.3 to
10 bring a civil action to recover penalties against Defendants under PAGA.

11 55. Plaintiff Zuniga fully and completely exhausted her administrative remedies under
12 PAGA prior to proceeding with this action. Plaintiff filed her PAGA Notice online with the Labor
13 Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants
14 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by
15 Labor Code § 2698 et seq. **Exh. A.** As required by PAGA, Plaintiff submitted the \$75.00 filing fee
16 with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was
17 received and/or will have been received by Plaintiff from the LWDA evidencing its intention to
18 investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff
19 is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

20 56. In her PAGA Notice, Plaintiff Zuniga identified the following aggrieved employee
21 groups:

- 22 (1) all individuals who were employed by Arc Document Solutions, Inc., or its
23 predecessor, merged or related entities in California as a non-exempt hourly employee,
24 or other similar position, who worked one or more shifts of more than four (4) hours in
25 length or major fraction thereof from August 28, 2019 and continuing into the present.
("Rest Period Aggrieved Employee");
- 26 (2) all individuals who were employed by Arc Document Solutions, Inc. or its predecessor
27 or merged entities in California as a non-exempt, hourly employee or other similar
28 position and who worked a shift of more than eight (8) hours in a day and/or forty (40)

1 hours in a week during a pay period from August 28, 2019 and continuing into the
2 present. (“Overtime Aggrieved Employees”);

- 3 (3) all individuals who were employed by Arc Document Solutions, Inc or its predecessor,
4 merged or related entities for one or more pay periods in California as a non-exempt,
5 hourly employee and who worked a shift of more than eight (8) hours in a day and/or
6 forty (40) hours in a week during a period where the employee also earned non-
7 discretionary bonuses including but not limited to “7 Prod Bonus” and/or other
quarterly incentive pay from August 28, 2019 and continuing into the present; (“Non-
Discretionary Overtime Aggrieved Employee”);

8 57. Within the relevant time period, and in accordance with a uniform, statewide policy
9 within and throughout California, ARC intentionally and regularly employed Schmierer and
10 current and other former non-exempt employees in California, for a work periods of more than five
11 hours per day and six hours per day without providing them with a meal period of not less than 30
12 minutes. ARC has acknowledged some of these failures by paying an additional hour of pay, i.e.,
13 “CA Meal Prem” pay, which, pursuant to the California Supreme Court in *Kirby v. Immoos Fire*
14 *Protection, Inc.* (2012) 53 Cal.4th 1244, “does not excuse a section 226.7 violation” in an action
15 brought pursuant to PAGA. Consequently, ARC has violated Labor Code §§ 226.7 and 512 as to
16 Schmierer and the other aggrieved employees.

17 58. Also within the relevant time period, and in accordance with a uniform, statewide
18 policy within and throughout California, ARC failed to pay Schmierer and other former California
19 employees all wages due immediately at the time of discharge, in violation of Labor Code §§ 201
20 and 203, and other former California employees who quit within 72 hours, in violation of Labor
21 Code §§ 202 and 203. ARC’s failure to timely pay these wages, which, to date, remain unpaid
22 arises from its failure to properly calculate and pay these former employees overtime wages in
23 relation to pay periods in which these former employees earned both overtime wages and non-
24 discretionary bonuses, e.g., “7 Prod Bonus.” Specifically, ARC failed to include the bonuses in the
25 calculations of the former employees’ regular rate for purposes of calculating and paying the
26 correct overtime hourly rate. As a result, ARC failed to timely pay these former employees all
27 wages earned and unpaid at the time of discharge, in violation of Labor Code §§ 201 and 203, and
28

1 within 72 hours of resignation, in violation of Labor Code §§ 202 and 203. In fact, these wages
2 still remain unpaid as to these former employees.

3 59. Also within the relevant time period, and in accordance with a uniform, statewide
4 policy within and throughout California, ARC failed to pay non-exempt California employees,
5 current and former, at the correct overtime hourly wages, as evidenced above, because it
6 improperly calculated and paid these former employees overtime wages in relation to pay periods
7 in which these former employees earned both overtime wages and non-discretionary bonuses, e.g.,
8 “7 Prod Bonus.” Specifically, ARC failed to include the bonuses in the calculations of these
9 individuals’ regular rate, again, as evidenced above, for purposes of calculating and paying the
10 correct overtime hourly rate, thus paying these individuals at improper overtime hourly wages, and
11 less than they are entitled to, in violation of Labor Code §§ 510, 558, 1194, and 1198.

12 60. Also within the relevant time period, and in accordance with a uniform, statewide
13 policy within and throughout California, ARC failed to show (1) the actual gross wages earned, (2)
14 the actual net wages earned, and (3) all applicable hourly rates in effect during the pay period and
15 the corresponding number of hours worked at each hourly rate by the employee in relation to pay
16 periods in which non-exempt California employees, current and former, earned both overtime
17 wages and non-discretionary bonuses, e.g., “7 Prod Bonus.,” in violation of Labor Code §§
18 226(a)(1)(4), and (9). ARC failed to accurately show the gross wages, net wages, and all hours
19 worked with the corresponding rates because it failed to include the bonuses in the calculations of
20 these individuals’ regular rate, again, as evidenced above, for purposes of calculating and paying
21 the correct overtime hourly rate, thus paying these individuals at improper overtime hourly wages,
22 and less than they are entitled to in the relevant pay periods.

23 61. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
24 employment are due and payable twice during each calendar month, on days designated in advance
25 by the employer as the regular paydays.” Violations of Labor Code § 204 are non-curable under
26 PAGA pursuant to Labor Code § 2699.5.

27 62. Due to Defendant’s failure to pay Plaintiff and all overtime wages and rest period
28 premiums, Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed

1 within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on
2 a regular and consistent basis.

3 63. Labor Code § 210 provides that “in addition to, an entirely independent and apart
4 from, any other penalty provided in this article, every person who fails to pay the wages of each
5 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
6 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
7 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
8 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
9 faulty compensation policies and practices described in detail above, Plaintiff and the other
10 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.

11 64. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
12 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
13 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
14 each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
16 explained in detail above, Defendant failed to provide Plaintiffs and the other aggrieved employees
17 with accurate itemized wage statements. Accordingly, Plaintiffs and the other aggrieved employees
18 may also recover Labor Code § 226.3 penalties for Defendant’s violations of Labor Code § 226(a).

19 65. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be
20 violated...any provision regulating hours and days of work in any order of the Industrial Welfare
21 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars
22 (\$50) for each underpaid employee for each pay period for which the employee was underpaid in
23 addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation,
24 one hundred dollars (\$100) for each underpaid employee for each pay period for which the
25 employee was underpaid in addition to an amount sufficient to recover underpaid wages; and
26 (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes
27 of Labor Code § 558, Plaintiff seeks only the penalties assessed as civil penalties pursuant to *ZB*,
28 *N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages. As set forth above, Defendants

1 failed to compensate Plaintiffs and all aggrieved employees for all overtime wages at the proper
2 rates. Accordingly, Plaintiff and the aggrieved employees are entitled to recover Labor Code § 558
3 penalties to the extent permitted by law.

4 66. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
5 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
6 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
7 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
8 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
9 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
10 period for which the employee is underpaid regardless of whether the initial violation is
11 intentionally committed. As set forth above, Defendant failed to compensate Plaintiffs and all
12 aggrieved employees for all overtime wages at the proper rates. Accordingly, Defendants violated
13 Labor Code § 1197.1.

14 67. Wherefore, Schmierer and Zuniga request relief as set forth below.

15 **FIFTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT REST**
17 **PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE ORDER**
18 **7-2001, § 12**

19 **By Plaintiffs and the Rest Period Class Against Defendants**

20 68. Schmierer and Zuniga hereby reallege and incorporate by reference each and every
21 allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent
22 with the allegations of this cause of action.

23 69. Schmierer, Zuniga, and the Proposed Rest Period Classes consistently worked shifts
24 more than four (4) hours or a major fraction thereof, including shifts in excess of eight (8) hours,
25 without receiving net ten (10) minute duty-free rest periods within the past four (4) years.

26 70. Labor Code § 226.7 provides “an employer shall not require an employee to work
27 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
28 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage

Order No. 7-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

71. For the reasons described above, Defendants failed to authorize and permit Schmierer, Zuniga, and the Rest Period Class to receive duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.

72. In addition to failing to authorize and permit lawful rest periods, at all times relevant hereto Schmierer, Zuniga, and the Rest Period Class often were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

73. Pursuant to Labor Code § 226.7, Schmierer, Zuniga, and the Rest Period Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN
VIOLATION OF LABOR CODE § 226
By Plaintiffs and the Wage Statement Class Against Defendants

74. Zuniga, on behalf of herself and the Wage Statement Classes, realleges and incorporates by reference all previous paragraphs.

75. From at least October 27, 2019 and continuing into the present, Defendants knowingly and intentionally failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 4, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the 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...

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

76. Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a)....

77. Labor Code § 226(a)(1), (2), (4), (5), and (9) require employers semimonthly or at the time or each *payment* of wages, furnish to each of his or her employees, an accurate itemized statement in writing showing the gross wages earned, the total hours worked by the employee, all deductions, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

78. At all times relevant hereto, Defendants also failed to provide Zuniga and the Wage Statement Class with wage statements that included the total gross wages earned over the pay period. Instead, Defendants omitted information related to bonuses, including quarterly incentive payments and other non-discretionary bonuses from the itemized wage statements issued to Zuniga and the Wage Statement Class' wage statements.

79. Due to the omission of this information, Zuniga and the Wage Statement Class could not determine from their wage statements alone the total hours worked during the pay period, the net wages earned during the pay period, the gross wages earned, the applicable hourly rates in effect and the corresponding number of overtime hours worked, and/or all deductions.

80. Defendants also knowingly and intentionally failed to pay Plaintiff and the Wage Statement Class overtime wages owed and rest periods premiums including at the proper rates. Moreover, Zuniga and the Wage Statement also suffered legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants were confusing and inaccurate, Zuniga and the Wage Statement Class were unable to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

81. Defendants also failed to both comply with and create a policy that complied with Labor Code § 226 prior to Plaintiff’s filing of this lawsuit, PAGA Notices, or this cause of action. Labor Code § 226(e)(3) provides that when determining whether or not an employer’s violation of Labor Code § 226(a) was knowing and intentional, “the relevant factor [is] whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.” Accordingly, Defendants’ conduct was knowing and intentional within the meaning of Labor Code § 226(e).

82. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees. *See* Lab. Code § 226(e). Zuniga and the Wage Statement Class seek penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, the following relief is sought:

1. For an order, pursuant to Code of Civil Procedure § 382, certifying the Classes and the claims of the Classes and appointing Schmierer and Zuniga as Class Representative and Schmierer and Zuniga's attorneys as Class Counsel;
2. For a declaratory judgment that Defendants have violated the Labor Code as alleged herein;
3. For and for an order awarding actual, compensatory, special, and general damages as well as restitutionary relief to Schmierer, Zuniga, and the members of the Classes;
4. For and for an order awarding injunctive relief, including that available under Business and Professions Code § 17203;
5. For and for an order imposing all penalties, including but not limited to those available under Labor Code § 203
6. For and for an order award statutory attorneys' fees and costs, including those available under Labor Code §§ 218.5 and 1194, as well as Code of Civil Procedure § 1021.5;
7. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and
8. For such other and further relief as the court deems just and proper.
9. For civil penalties recoverable under PAGA, including but not limited to those available under Labor Code § 2699(f) and Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 558, 1197, 1197.1, 1198;
10. For compensatory damages in the amount of Plaintiff's and each Rest Period Class Members' unpaid rest period premiums from at least four (4) years prior to the filing of this action to the present as may be proven;
11. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in

1 a subsequent pay period, not exceeding an aggregate penalty of four thousand
2 dollars (\$4,000) for the inaccurate itemized wage statements issued from one (1)
3 year prior to the filing of this Complaint and continuing into through the present;

4 12. An order enjoining Defendant and its agents, servants, and employees, and all
5 persons acting under, in concert with, or for it from providing Plaintiff and the
6 Proposed Class Members proper compensation for all hours worked and all hours
7 reported, from refusing to pay minimum wages, overtime wages, meal period
8 premiums, rest period premiums, from failing to provide timely first meal periods
9 within the first five (5) hours of an employees shift and second meal periods when
10 employees work more than ten (10) hours in a day, from failing to authorize and
11 permit employees to receive a second ten (10) minute rest period when they worked
12 a shift in excess of six (6) hours, but less than eight (8) hours as well as their right to
13 receive a third ten (10) minute rest period for every shift worked in excess of ten
14 (10) hours, to provide all tools and implements needed by employees to discharge
15 their job duties, and to provide accurate itemized wage statements pursuant to Labor
16 Code §§ 226(a);

17 13. For restitution for unfair competition pursuant to Business & Professions Code
18 § 17200, including disgorgement or profits, in an amount as may be proven;

19 14. For statutory attorneys' fees and costs, including but not limited to those available
20 under Code of Civil Procedure § 1021.5 and Labor Code §§ 226, 510, and 2699(g);

21 15. For prejudgment and post-judgment interest according to any applicable provision
22 of law or as otherwise permitted by law, including those available under Civil Code
23 §§ 3287(a) and 3289(b); and

24 16. For such other and further relief as the court deems just and proper.

25 **DATED:** December ³⁰ 7, 2020

MAYALL HURLEY P.C.

26
27 By _____

NICHOLAS J. SCARDIGLI
VLADIMIR J. KOZINA

Attorneys for Plaintiff
PAMELA SCHMIERER

22
Dated: December 7, 2020

WINSTON LAW GROUP, P.C.

By: David S. Winston
DAVID S. WINSTON
Attorney for Plaintiff THOMASITA ZUNIGA

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On December 30, 2020, I served the following document:

SECOND AMENDED COMPLAINT

addressed to:

Shannon B. Nakabayashi (Shannon.Nakabayashi@jacksonlewis.com)

Riley R. Moyer (Riley.Moyer@jacksonlewis.com)

Chad Bernard (chad.bernard@jacksonlewis.com)

Fatimah Sikin (Fatimah.sikin@jacksonlewis.com)

Jackson Lewis P.C.

50 California Street, 9th Floor

San Francisco, CA 94111-4615

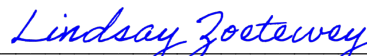
Attorneys for Defendant

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☐ **BY EXPRESS SERVICE CARRIER:** On the date specified below, I directed to be deposited in a box or other facility regularly maintained by Federal Express or delivered to a courier or driver authorized by said express service carrier to receive documents, a copy of the document mentioned above, in an envelope designed by the said express service carrier, with delivery fees paid or provided for, addressed to the individuals and/or entities mentioned above.

☒ **BY EMAIL:** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person[s] at the e-mail address[es] listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 30, 2020, at Stockton, California.


LINDSAY ZOETEWEE