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Attorneys for Plaintiff Gary Gonzalez,
individually, and on behalf of all other similarly
situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE

GARY GONZALEZ, as an individual and on
behalf of other similarly situated employees,

Plaintiff,
vs.

STAR WAGGONS, INC., a California
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: 20STCV40531

Assigned for all purposes to:
Hon. William F. Highberger
Dept. 10

**DECLARATION OF ARMOND M.
JACKSON IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: May 25, 2022
Time: 10:00 a.m.
Place: Department 10

Action Filed: October 22, 2020
Trial Date: None

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1 6. Plaintiff alleges that Defendant failed to provide compliant meal periods by staffing
2 employees too thinly in light of the work demands to allow them to take meal periods on time and
3 for at least 30 minutes.

4 7. Plaintiff alleges that Defendant failed to permit and authorize rest breaks for the same
5 reason they could not take their meal periods.

6 8. Plaintiff alleges that Defendant's practices of having employees begin work before
7 clocking in effectively forced Class Members to work off-the-clock in order to complete all of their
8 assigned daily duties, which resulted in unpaid hours worked that also should have been paid at the
9 minimum wage or overtime rate of pay.

10 9. Plaintiff alleges that Defendant failed to provide complete and accurate itemized wage
11 statements in compliance with Labor Code section 226(a) by issuing wage statements to Plaintiff
12 and Class Members that failed to reflect the correct total number of hours worked and therefore, the
13 correct wages earned, on every wage statement.

14 10. After engaging in litigation, the parties agreed to mediate and scheduled mediation for
15 May 19, 2021. Prior to the mediation, Defendant produced informal discovery by providing me
16 with Plaintiff's personnel file, Defendant's Employee Handbook, the total number of Class
17 Members, including those formerly employed during the class period, and the total number of pay
18 periods and workweeks during the class period. I thoroughly reviewed the foregoing documents
19 prior to mediation.

20 11. On May 19, 2021, the parties participated in a full day of mediation with mediator JJ
21 Johnston, Esq., an experienced mediator of wage and hour class actions. Mediator Johnston helped
22 to manage the parties' expectations and provided a useful, neutral analysis of the issues and risks to
23 both sides. The case did not settle that day but agreed to continue to engage in settlement discussions
24 with the assistance of the mediator. With the assistance of the mediator, ultimately, the case was
25 able to resolve. Thereafter, the parties jointly drafted a Memorandum of Understanding containing
26 the material terms of the parties' agreement. Thereafter, the Parties jointly drafted and executed the
27 Stipulation. A true and correct copy of the fully executed Stipulation of Class Action and PAGA
28 Settlement (hereinafter "Stipulation" or "Settlement") is attached hereto as **Exhibit A**. At all times,

1 the Parties' negotiations were adversarial and non-collusive, and the Stipulation thus constitutes a
2 fair, adequate, and reasonable compromise of the claims at issue.

3 **PLAINTIFF'S COUNSEL CONDUCTED A THOROUGH INVESTIGATION OF**
4 **THE FACTUAL AND LEGAL ISSUES AND WERE THUS ABLE TO OBJECTIVELY**
5 **ASSESS THE SETTLEMENT'S REASONABLENESS**

6 12. By engaging in a thorough investigation and evaluation of Plaintiff's claims, I can opine
7 that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair,
8 reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts
9 and circumstances, including the risk of significant delay and uncertainty associated with litigation,
10 various defenses asserted by Defendant.

11 13. Prior to the outset of the litigation, Plaintiff provided me with detailed accounts of his
12 experience working for Defendant and the circumstances that gave rise to the alleged Labor Code
13 violations. In addition to informing my initial evaluation of the lawsuit, the information that Plaintiff
14 provided through my interviews with him also influenced my discovery efforts.

15 14. Plaintiff's discovery requests led to the production of considerable information relied
16 upon for the Settlement, including a statistically significant sampling of thousands of pages of
17 timekeeping and payroll records, and policies and practices directly pertaining to the alleged Labor
18 Code violations at issue, reviewed Defendant's written policies provided in its Employee Handbook,
19 and reviewed the entire set of thousands of pages of data and documents produced by Defendant.
20 From this analysis, I was able to analyze Labor Code issues, theories and alleged violations that
21 would have provided direct evidence for use at trial in a class and PAGA action. I analyzed the
22 timekeeping and payroll data, in order to assess, *inter alia*, the incidence of meal and rest period
23 violations, and premiums paid for said violations, the minimum and overtime rates paid to Class
24 Members, the amount of underpaid minimum, regular and overtime wages, the accuracy of the wage
25 statements, and the amount of waiting time penalties under Cal. Labor Code § 203.

26 15. Overall, I performed a searching investigation into the claims at issue, which included:
27 (1) determining Plaintiff's suitability as a class representative, background investigations, and
28 analyses of his employment files and related records; (2) researching similar wage and hour class

1 actions as to the claims brought, the nature of the positions, and the type of employer; (3) analyzing
2 employee time and wage records; (4) analyzing Defendant's labor policies and practices; (5)
3 researching settlements in similar cases; (6) researching Plaintiff's novel theories of liability; (7)
4 evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8)
5 drafting the mediation brief; and (9) participating in the mediation.

6 **THE PARTIES SETTLED AT THE CONCLUSION OF MEDIATION**

7 16. On May 19, 2021, the parties participated in a mediation with mediator JJ Johnston,
8 Esq., who helped manage the parties' expectations and provided a useful, neutral analysis of the
9 issues and risks to both sides. At all times, the Parties' negotiations were adversarial and non-
10 collusive. After a full day of mediation, and continued negotiations, the Parties reached a settlement
11 in principal and executed a detailed Memorandum of Understanding, before entering in the long
12 form Settlement.

13 **QUALIFICATIONS AND EXPERIENCE**

14 17. I have been a California licensed attorney since November 2011. I began my career
15 in law while still in law school when in I served as a law clerk for the Pedersen Law & Dispute and
16 Resolution Corporation ("PLDRC") handling employment related litigation matters. While clerking
17 for PLDRC I analyzed and organized discovery documents and researched employment litigation
18 issues such as Sexual Harassment, Race Discrimination and Wrongful Termination. I worked as an
19 associate attorney at Pedersen McQueen between March 2013 through January 2017 almost
20 exclusively engaging in employment matters representing employees. I have litigated several wage
21 and hour case to trial and currently litigating or have litigated cases valued in the six and seven
22 figure dollar range, including representative actions. I had primary responsibility for approximately
23 20 litigation matters on average throughout my employment at PLDRC and Pedersen McQueen and
24 Pedersen Law. I regularly practice in state court and sometimes federal court. As an associate, my
25 responsibilities included carrying primary case responsibility which includes tasks like taking
26 depositions, conducting damages analysis, analyzing discovery documents, conducting client
27 intake, developing discovery and litigation strategies, participating in mediations and arbitrations,
28 engaging in settlement negotiations, trial preparation and trial work, as well as other responsibilities

1 that commonly coincide with managing cases from start to finish.

2 18. I have been a member of local bar associations, including the Orange County Bar
3 Association, as well as the State Bar of California and American Bar Association and served in a
4 number of leadership roles at all levels. Most notably, I served as a Committee Member of the
5 Orange County Bar Association Young Lawyers' Education Committee and Social Committee.

6 19. In January 2017, I officially started my own practice Jackson Law, APC. Throughout
7 my career, I have currently litigated over approximately 100 Private Attorney General Act cases
8 and/or class action cases to resolution byway of settlement or trial. Over the course of my career, I
9 have litigated above 150 employment cases, including wage and hour representative actions to
10 resolution byway of settlement, default or trial.

11 20. Below is a non-exhaustive list of all prior wage and hour representative actions on which
12 I have served as lead or co-counsel.

13 1. *Kim v. FNS, Inc.*, Los Angeles Superior Court, Case No. BC 578015

14 2. *Demery v. Pacific Rim Capital Alliance Corporation et al.*, San Diego Superior Court,
15 Case No. 37-2017-00003415-CU-OE-CTL

16 3. *Goldbaum v. Dollarsmart et al.*, San Diego Superior Court, 30-2015-000077437-CU-WT-
17 CLT

18 4. *Hernandez v. Personnel Staffing Group, LLC et al.*, Orange County Superior Court, Case
19 No. 30-2017-00899277-CU-OE-CXC

20 5. *Sanchez, et al v. Pueblo Restaurant, Inc. dba Casa Torres*, Los Angeles Superior Court,
21 Case No. BC697241

22 6. *Augusto v. HIOG Management Services, LLC, et al.*, San Bernardino Superior Court, Case
23 No. CIVDS1610431

24 7. *Mendoza v. McNeal, Duckworth and McNeal, Inc.*, Orange County Superior Court, Case
25 No. 30-2017-00899290-CU-OE-CXC

26 8. *Ortiz v. Bayside Insurance Associates, Inc. et al*, Orange County Superior Court, Case No.
27 30-2016-00895669-CU-OE-CXC

28 9. *Paramo v. Quest Nutrition LLC et al.*, Los Angeles County Superior Court, Case No.

1 BC609306

2 10. *Luis v. Second Street Corporation dba Huntley House Hotel*, Los Angeles County
3 Superior Court, Case No. BC691018

4 11. *Venegas, at al. v. Bergen Shippers Corp, et al*, Los Angeles County Superior Court, Case
5 No. BC715217

6 12. *Bernal v. Bristol Equity Partners LP et al*, Orange County Superior Court, Case No. 30-
7 2016-00854699-CU-OE-CXC

8 13. *Rowe v. Rasier-CA, LLC*, Orange County Superior Court,
9 Case No. 30-2018-00989673-CU-OE-CXC

10 14. *Abarca v. Habit Restaurants, LLC, The et al*, Orange County Superior Court, Case No.
11 30-2016-00840385-CU-OE-CJC

12 15. *Radilla v. States Logistics Services, Inc.*, Orange County Superior Court,
13 Case No. 30-2018-00978231-CU-WT-CJC

14 16. *Rodriguez v. Lampson Sewing Incorporated et al*, Orange County Superior Court, Case
15 No. 30-2017-00900653-CU-OE-CJC

16 17. *January v. Discovery Management Inc. et al*, Los Angeles Superior Court,
17 Case No. BC635918

18 18. *Angel Hernandez v. Merchants Landscape Services, Inc. et al.*, Los Angeles Superior
19 Court, Case No. BC674131

20 19. *Quezada v. Garden Fresh Restaurant Corp. et al*, Orange County Superior Court, Case
21 No. 30-2016-00840321-CU-OE-CJC

22 20. *Munoz v. Batten Down, Inc. et al*, Los Angeles County Superior Court, Case No.
23 BC617880

24 21. *Salgado v. Resort at Pelican Hill, LLC et al*, Orange County Superior Court, Case No.
25 30-2016-00840386-CU-OE-CJC

26 22. *Darmawati v. Westview Services Inc.*, Orange County Superior Court, Case No. 30-2
27 015-00795449-CU-OE-CJC

28 23. *Escobar v. Westcoast Textiles, Inc. et al*, Orange County Superior Court,

1 Case No. 30-2018-00979111-CU-OE-CXC

2 24. *Chacon v. Express Fashion Operations, LLC*, Orange County Superior Court, Case No.
3 30-2017-00900648-CU-OE-CXC

4 25. *Chacon v. Express Fashion Operations, LLC*, Orange County Superior Court, Case No.
5 8:19-cv-00564

6 26. *Plascencia v. RM HQ, LLC, dba Real Mex Restaurants*, Orange County Superior Court,
7 Case No. 30-2017-00926015-CU-OE-CXC

8 27. *Casas v. PC Hospitality et al.*, Orange County Superior Court,
9 Case No. 30-2016-00877489-CU-OE-CXC

10 28. *Leon v. SWH Mimi's Café, LLC*, Orange County Superior Court,
11 Case No. 30-2018-00978815-CU-OE-CXC

12 29. *Quintanilla v. Southwest Wine & Spirits, LLC*, Los Angeles Superior Court, Case No.
13 BC653817

14 30. *Fabiola Rodriguez v. Second Floor Food, Drinks and Art, LLC*, Orange County Superior
15 Court, Case No. 30-2018-00981362-CU-WT-CXC

16 31. *Santisteban v. Rod Fraser Enterprises, Inc. et al*, Orange County Superior Court,
17 Case No. 30-2017-00904202-CU-OE-CXC

18 32. *Milano v. Lev Tambor dba Distractions Lounge*, Orange County Superior Court,
19 Case No. 30-2018-00966582-CU-WT-CXC

20 33. *Ajin v. Lymi, Inc, Los Angeles County Superior Court*, Case No. BC696168

21 34. *Recinos v. Pacific American Fish Co., et al*, Los Angeles Superior Court,
22 Case No. BC710735

23 35. *Valle-Valdez v. St. Jude Hospital Yorba Linda, et al*, Orange County Superior Court,
24 Case No. 30-2015-00795457-CU-OE-CJC

25 36. *Juarez v. Arakelian Enterprises, Inc., et al*, Los Angeles Superior Court,
26 Case No. BC710736

27 37. *Solarzano v. T&J Fresh Co. dba Chomp Sushi*, Orange County Superior Court,
28 Case No. 30-2018-00981299-CU-OE-CXC

1 38. *Taylor v. G.I. Trucking Company dba Estes West et al*, Los Angeles Superior Court, Case
2 No. BC722778

3 39. *Rendon v. L & L Foods Holdings, LLC, et al*, Orange County Superior Court, Case No.
4 30-2018-00982745-CU-OE-CXC

5 40. *Magana v. Zara USA, Inc., et al*, Orange County Superior Court,
6 Case No. 8:18-cv-02249-AG (ADSx)

7 41. *Flores v. ABM Industry Groups, LLC et al*, Orange County Superior Court,
8 Case No. 30-2018-00971152-CU-WT-CJC

9 42. *Diaz v. Macy's West Stores, Inc. dba Macy's*, Central District of California,
10 Case No. SACV19-00303 ODW (MAAx)

11 43. *Aguirre v. Shelfmaster el al*, Orange County Superior Court, 30-2015-00787557-CU-
12 OE-CJC

13 44. *Goldman v. Encore Energy, Inc.*, Los Angeles County Superior Court, BC606773

14 45. *Munoz v. 8947 Sunset Pizza, LLC et al.*, Los Angeles Superior Court,
15 Case No. BC646999

16 **THE SETTLEMENT IS REASONABLE IN LIGHT OF THE RISKS, EXPENSE,**
17 **AND DELAY OF CONTINUED LITIGATION AND DEFENDANT'S DEFENSES**

18 21. Based on the information and evidence provided by Defendant in discovery, analysis of
19 the time cards and wage statements, and my own independent investigation, I determined an
20 appropriate range of recovery for settlement purposes by offsetting Defendant's maximum
21 theoretical exposure by: (i) the strength of Defendant's affirmative defenses; (ii) the risk of losing
22 a motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a
23 class and PAGA trial would be unmanageable; (iv) the risk of losing on various dispositive or quasi-
24 dispositive motions that Defendant will bring before trial (e.g., motion to strike class and
25 representative allegations, motion to decertify a class action, and/or motions for summary judgment)
26 which may eliminate all or some of Plaintiff's claims, or bar evidence necessary to prove such
27 claims; (v) the risk of losing some or all of the claims at trial; (vi) the chances a Court may find
28 Defendant did not willfully refuse to pay discharged or terminated employees (i.e. a good faith

failure) under Cal. Lab. Code section 203; (vii) the chances a Court may find Defendant did not willfully and intentionally refuse to comply (i.e, a good faith failure) with the wage statement requirements under Cal. Labor Code section 226(e); (viii) the chances of the Court exercising its discretion to reduce PAGA penalties (*see* Cal. Lab. Code section 2699(e); (ix) the delay in payment to class members due to years of protracted litigation in certifying a class, obtaining a favorable verdict at trial, upholding that verdict on appeal, and administering class notice and payments to the class at that later stage instead of now; (x) the chances of a favorable verdict being reversed on appeal; and (xi) the difficulties attendant to collecting on a judgment (collectively, the “Discount Factors”). Based on the preceding and considering the aggregate value of the claims in light of the Discount Factors, I valued the claims for settlement purposes at between **\$0** and **\$1,598,340**.

22. The following is a table of potential damages:

Claim	Highest Theoretical Damage Exposure	Reasonable Range of Damages and Penalties	
Failure to Provide Meal Breaks	\$1,429,920 (damages) and \$250,800 (civil penalties) for a total of \$1,680,720 *.5 Discount Factor = \$840,360	\$0	\$840,360
Failure to Provide Rest Breaks	\$1,429,920 (damages) and \$250,800 (civil penalties) for a total of \$1,680,720 *.75 Discount Factor = \$420,180	\$0	\$420,180
Failure to Pay Minimum and Overtime Wages	\$199,900 (damages) and \$250,800 (civil penalties) for a total of \$370,700 *.75 Discount Factor = \$121,018.75	\$0	\$92,675
Failure to Provide Accurate Wage Statements	\$291,800 *.5 Discount Factor = \$145,900	\$0	\$145,900

Waiting Time Penalties	\$388,800 (damages) and \$8,100 (civil penalties) for a total of \$396,900 *.75 Discount Factor	\$0	\$99,225
Total Damages (excluding attorneys' fees and interest):		\$0	\$1,598,340

Meal and Rest Periods

23. Plaintiff alleges that Defendant understaffed shifts and scheduled meal periods such that employees did not take their meal periods within the first five hours of a shift, were less than thirty minutes, or did not take a meal period at all, on some occasions. Similarly, Plaintiff alleges employees were not authorized to take rest periods due to understaffing. Analysis of the sample time records Defendant produced, and an extrapolation of the result of the analysis the estimated meal period violation rate is 26%.

24. Although Defendant's time records may create a rebuttable presumption that it did not provide meal periods on those occasions, in compliance with California law, *see, e.g., Donahue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the claims are likely overwhelmed by individual inquiries, and substantial other evidence either rebuts the presumption or minimizes the potential value of the claims.

25. First, Defendant maintains an Employee Handbook, which sets forth meal and rest period policies consistent with California law. To the extent Plaintiff may allege he felt pressured by his duties or schedule, Defendant will argue this is not evidence that Defendant did not authorize or provide Plaintiff his meal and rest periods.

26. Second, analysis of the time and payroll data for class members revealed a 26% violation rate. Furthermore, since employees are not required in California to record their rest period times, it would be difficult to show rest break violations.

27. Therefore, based on the foregoing and the "Discounted Factors" described above, these claims should be discounted. After taking into account the foregoing considerations and the Discount Factors, I have assessed the combined value of the meal and rest period claims, inclusive of civil penalties, at between **\$0** and **\$1,260,540**.

1 28. For the rest periods, the risk to Plaintiff is greater due to the additional consideration of
2 a lack of rest period recordkeeping requirement. Therefore, I estimate the best-case scenario at one
3 quarter of a 26% violation rate found in the meal period records.

4 **Minimum Wage and Overtime Claim**

5 29. Based on Plaintiff's experiences and discussion with Plaintiff, Plaintiff alleges that the
6 Defendant's requirement to mandate health screenings for COVID 19 effectively forced Class
7 Members to work off-the-clock before their shifts for about 10-15 minutes per shift since March
8 2020.

9 30. In this case, common proof of unpaid minimum and overtime wages for "off-the-clock"
10 work will be especially difficult to present to the court at the motion for class certification stage, for
11 purposes of commonality and superiority (i.e. a manageable trial plan), as well as to demonstrate at
12 trial for purposes of finding class-wide liability and damages. As with the preceding claims, I had
13 to discount the value of the minimum wage and overtime claim to account for the risks of continued
14 litigation and Defendant's affirmative defenses.

15 31. For example, Defendant will simply argue: (i) that Plaintiff will not be able to present
16 any evidence of a company-wide, uniform policy requiring employees to work off-the-clock and (ii)
17 it cannot be held liable because it did not know employees were actually performing work off-the-
18 clock.

19 32. Furthermore, although employees are permitted to arrive early at the job site, Defendant
20 will argue that its policies align with those in the *See's Candy Shops, Inc.* matter in that employees
21 were expressly prohibited from working, when on premises before and after their scheduled shift,
22 but allowed to pursue personal activities. [See, e.g. *See's Candy Shops, Inc. v. Superior Court*
23 (2012) 210 Cal.App.4th 889, 907 (Court found employees were not subject to control of employer
24 for time spent on employer's premises prior to the start of a shift, even when clocked in, because
25 employer prohibited employees from performing any work before scheduled start time and
26 employees were free to pursue any personal activities during that time before a shift.)] .

27 33. However, based on certain Discount Factors (i.e. lack of common evidence such as
28 express policies and customer deadlines), the lack of documentary evidence, and Defendant's ability

1 to garner numerous declarations in support of its defense to this claim creates uncertainty.
2 Ultimately, it was determined that there were approximately 4,796 hours of unpaid work time with
3 an average blended hourly rate of \$25 equating to \$199,900 in damages.

4 **Wage Statement Claim**

5 34. Plaintiff alleges that Defendant failed to provide Plaintiff with timely and accurate wage
6 statements as a derivative claim of the foregoing allegations for failure to provide breaks, pay for
7 all hours worked, and improper overtime premium pay.

8 35. Defendant provided wage statements with the itemized information, as required under
9 Cal. Lab. Code section 226, to its Warehouse workers, including Plaintiff, on a semi-monthly basis.
10 To the extent this claim is derivative of the claims set forth above - that Plaintiff's wage statements
11 were not accurate because Plaintiff was not paid an additional hour of pay when he was not provided
12 meal and rest periods, not paid for all hours worked, and not properly compensated for all overtime
13 premium pay - the claim bears the same risk for failure as the factual reasons discussed above.

14 36. The wage statement does include the gross wages earned at the regular rate of pay, and
15 Plaintiff's overtime rate and overtime hours from which Plaintiff can promptly and easily determine
16 their regular rate and hours worked during that pay period (i.e. multiply the overtime rate by 2/3 to
17 determine the regular rate.). [See, e.g., *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136,
18 1143; and *Morgan v. United Retail, Inc.* (2010) 186 Cal.App.4th 1136, 1147.]

19 37. Assuming wage statements dating back one year prior to the filing of the complaint are
20 inaccurate, then the Defendant is liable for approximately \$291,800. Therefore, in light of these
21 considerations and the Discount Factors at 50%, Plaintiff assessed the settlement value of the wage
22 statement claim at between \$0 and \$145,900.

23 **Waiting Time Penalties**

24 38. This claim is based on Plaintiff's allegations that an extra hour of pay was not provided
25 when meal or rest breaks were not provided, and that Warehouse workers were not paid all minimum
26 and overtimes premium wages. On the presumption that 81 formerly employed Employees are
27 owed some unpaid wages, then the highest theoretical amount for potential waiting time penalties
28 is calculated as follows: 81 former employees x 30 days x 8 hours per day x \$20 average hourly

1 wage = \$388,800.

2 39. Additionally, actions for violations of Labor Code's meal break provisions do not entitle
3 employees to pursue the derivative waiting time and itemized wage statement penalties. [See
4 *Naranjo v. Spectrum Security Services, Inc., supra*, 40 Cal.App.5th 444.) Moreover, nothing in the
5 data indicates any willful violation necessary to trigger Labor Code section 203 waiting time
6 penalties anyway. As such, I estimate that the reasonable best-case scenario is 75% Discount Factor.
7 Therefore, a reasonable range of potential waiting time penalties is **\$0 to \$99,225**.

8 40. On May 3, 2022, I gave notice to the Labor and Workforce Development Agency of the
9 proposed settlement. A true and correct copy of that notice is attached hereto as **Exhibit B**.

10 41. A true and correct copy of the Class Notice is attached hereto as **Exhibit C**.

11 42. A true and correct copy of the Request for Exclusion Form is attached hereto as **Exhibit**
12 **D**.

13 43. A true and correct copy of the Objection Form is attached hereto as **Exhibit E**.

14
15 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
16 is true and correct.

17 Executed this 3rd day of May 2022, in Irvine, California.

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19 /s/ Armond M. Jackson
20 Armond M. Jackson
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