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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

JODY HERNANDEZ-MOORE on behalf of
herself and all others similarly situated

Plaintiff,

vs.

SUTTER OUTPATIENT SERVICES, LLC, a
California limited liability company, and DOES
1 through 50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages**
- 2) Failure to Provide Lawful Meal
Periods or Compensation in Lieu
Thereof**
- 3) Failure to Provide Lawful Rest
Periods or Compensation in Lieu
Thereof**
- 4) Failure to Timely Pay Wages**
- 5) Knowing and Intentional Failure to
Comply With Itemized Employee
Wage Statement Provisions**
- 6) Failure to Reimburse**
- 7) Violations of the Unfair Competition
Law**

JURY TRIAL DEMANDED

1 Plaintiff JODY HERNANDEZ-MOORE on behalf of herself and all others similarly
2 situated assert claims against Defendant SUTTER OUTPATIENT SERVICES, LLC and DOES
3 1 through 50, inclusive as follows:

4 **I.**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought
7 against Defendants SUTTER OUTPATIENT SERVICES, LLC and any subsidiaries and
8 affiliated companies (hereinafter “SUTTER OUTPATIENT SERVICES” and/or Defendants”) on
9 behalf of Plaintiff JODY HERNANDEZ-MOORE (hereinafter “Plaintiff”) and all employees not
10 classified as “Exempt” or primarily employed in executive, professional, or administrative
11 capacities, employed by, or formerly employed by SUTTER OUTPATIENT SERVICES in
12 California (hereinafter referred to as “Non-Exempt Employees” and/or “Class Members”).

13 2. During the liability period, defined as the applicable statute of limitations for each
14 and every cause of action contained herein, Defendant enforced shift schedules, employment
15 policies and practices, and workload requirements wherein Plaintiff and all other Non Exempt
16 Employees: (1) were not paid proper wages they earned for all hours they worked; (2) were not
17 permitted to take their full statutorily authorized rest and meal periods. Defendant failed to pay
18 such employees one (1) hour of pay at the employees’ regular rate of compensation for each
19 workday that the meal period and/or rest period that was not properly provided.

20 3. During the liability period, Defendant has failed to reimburse Class Members for
21 business expenses incurred in the performance of their job duties.

22 4. During the liability period, Defendant has also failed to maintain accurate
23 itemized records reflecting total hours worked and have failed to provide Non Exempt
24 Employees with accurate, itemized wage statements reflecting total hours worked and
25 appropriate rates of pay for those hours worked.

26 5. During the liability period, Defendant willfully refused to pay for all hours
27 worked, including minimum, regular, and overtime wages including overtime at the proper rate.

6. During the liability period, Defendant also failed to compensate Plaintiff and Class Members for work performed “off the clock.”

7. During the liability period, Defendants have also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Non Exempt Employees with accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked.

8. During the liability period, Defendants have also failed to pay all wages owed to discharged or resigned Class Members in a timely manner.

9. Plaintiff, on behalf of herself and all Class Members, bring this action pursuant to Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1199, 2802 California Code of Regulations, Title 8, section 11050 *et seq.* and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

10. Plaintiff, on behalf of herself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to pay all overtime wages and rest and meal period premiums to each of their Non-Exempt Employees.

II.

VENUE

11. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendants conduct substantial and continuous commercial activities in Stanislaus County, California and each Defendant is within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in Stanislaus County, California.

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III.

PARTIES

12. Plaintiff is, and at all times mentioned in this complaint was, a resident of California.

13. On information and belief, Defendant was at all times mentioned herein licensed and qualified to do business in California. On information and belief, Plaintiff alleges that all relevant times referenced herein Defendant did and continues to transact business throughout California.

14. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

15. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

IV.

FACTUAL BACKGROUND

16. SUTTER OUTPATIENT SERVICES operates as a business that provides inpatient and outpatient healthcare services.

17. Plaintiff was employed by SUTTER OUTPATIENT SERVICES on or about January 13, 2020 and was employed as a “food service director” working in Modesto, California. Plaintiff occupied said position until the last day of her employment on or about January 6, 2020.

1 18. Upon being employed by Defendants, Plaintiff was paid salary. Defendant later
2 changed the pay structure to which Plaintiff was paid hourly.

3 19. Due to the time constraints and work load requirements implemented by
4 Defendants, Plaintiff and Class Members were occasionally required to complete certain job
5 duties “off the clock” and therefore not paid all lawful wages earned including proper overtime
6 compensation and minimum wage. Plaintiff was not compensated for the times in which she
7 performed work off the clock during her work shifts.

8 20. During the liability period, Defendants implemented a timekeeping policy and
9 practice for Non Exempt Employees which rounded their clock-in and clock-out times in a
10 manner that resulted in a loss of time worked. Due to the time clock rounding, Plaintiff and, upon
11 information and belief, Class Members were consistently underpaid and thus required to work off
12 the clock and without pay.

13 21. As Non Exempt Employees, Plaintiff and Class Members were frequently
14 required to work in excess of five (5) hours without being provided an uninterrupted thirty (30)
15 minute meal period by the end of the fifth hour and/or in excess of ten (10) hours without a
16 second 30 minute meal period by the end of the tenth hour and not being compensated one (1)
17 hour of pay at their regular rate of compensation for each workday that a meal period was not
18 provided, in violation of California labor laws, regulations and IWC Wage Order;

19 22. Due to the work load requirements implemented by Defendants, Plaintiff and
20 Class Members were frequently required to work without being permitted or authorized a lawful
21 minimum ten (10) minute rest period for every four hours or major fraction thereof worked and
22 not compensated one (1) hour of pay at their regular rate of compensation for each workday that
23 a rest period was not provided, in violation of California labor laws, regulations, and IWC Wage
24 Orders.

25 23. During the liability period, due to the services provided being prime and
26 foremost, as well as the work load requirements Defendants placed upon employees, Plaintiff and
27 class members would often clock out for meal breaks and continue working.

24. During the liability period, Defendants would often require Plaintiff and Class Members to be on-call. While Plaintiff and Class Members were on-call they were paid below minimum wage, resulting in a violation of California labor laws and regulations.

26. Additionally, as Non-Exempt Employees, Plaintiff and Class Members were frequently required to use their personal vehicles in the performance of their job duties for which they did not receive reimbursement from Defendant.

28. Defendants have also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Non Exempt Employees with accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked.

30. Non-Exempt Employees employed by SUTTER OUTPATIENT SERVICES at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

CLASS ACTION ALLEGATIONS

1 exempt employees within four (4) years prior to the date this lawsuit is filed (“liability period”)
2 until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

3 32. Plaintiff also seeks to represent Subclasses which are composed of persons
4 satisfying the following definitions:

5 a. All persons who are or were employed by SUTTER OUTPATIENT
6 SERVICES in the state of California as non-exempt employees during the liability period and
7 were not accurately and fully paid all lawful wages owed to them including minimum wage and
8 overtime for all their hours worked;

9 b. All persons who are or were employed by SUTTER OUTPATIENT
10 SERVICES in the state of California as non-exempt employees who, within the liability period,
11 have not been provided an uninterrupted (30) minute meal period when they worked over five (5)
12 hours in a work shift by the end of the fifth hour and/or a second meal period for each day in
13 which such Non-Exempt employees worked in excess of five and/or ten hours and were not
14 provided compensation in lieu thereof;

15 c. All persons who are or were employed by SUTTER OUTPATIENT
16 SERVICES in the state of California as non-exempt employees who, within the liability period,
17 have not been provided lawful minimum ten (10) minute rest period for every four (4) hours or
18 major fraction thereof worked per day and were not provided compensation in lieu thereof;

19 d. All persons who are or were employed by SUTTER OUTPATIENT
20 SERVICES in the state of California as non-exempt employees who, within the liability period,
21 were not timely paid all wages due and owed to them upon the termination of their employment
22 with Defendants;

23 e. All persons who are or were employed by SUTTER OUTPATIENT
24 SERVICES in the state of California as non-exempt employees who, within the liability period,
25 were not provided with accurate and complete itemized wage statements; and

26 f. All persons who are or were employed by SUTTER OUTPATIENT
27 SERVICES in the state of California as non-exempt employees who, within the liability period,
28 used their personal mobile phones and/or personal vehicles, which were required in the

1 performance of their job duties, without receiving reimbursement from Defendant.

2 33. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
3 or modify the class description with greater specificity or further division into subclasses or
4 limitation to particular issues.

5 34. This action has been brought and may properly be maintained as a class action
6 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
7 defined community of interest in the litigation and the proposed Class is easily ascertainable.

8 **A. Numerosity**

9 35. The potential members of the Class as defined are so numerous that joinder of all
10 the members of the Class is impracticable. While the precise number of Class Members has not
11 been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
12 and/or during the relevant time period employed, approximately over one hundred Non-Exempt
13 Employees in California who are or have been affected by Defendants' unlawful practices as
14 alleged herein.

15 **B. Commonality**

16 36. There are questions of law and fact common to the Class predominating over any
17 questions affecting only individual Class Members. These common questions of law and fact
18 include, without limitation:

19 i. Whether Defendants violated Labor Code §§ 510, 1194 and applicable IWC
20 Wage Orders by failing to pay all earned wages including overtime compensation to
21 Non-Exempt Employees who worked in excess of eight (8) hours in a work day and/or
22 more than forty (40) hours in a workweek for the time spent under the control of
23 Defendants during the work shift.

24 ii. Whether Defendants also violated Labor Codes §§ 200, 1194, and 1197 for
25 failing to pay minimum wages for working "off the clock" without pay during the work
26 shifts as well as Defendant's time clock rounding practices and policies. Labor Code §
27 1197 provides that employees are to be paid minimum wage for each hour worked, and
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cannot be averaged the minimum and the payment of a lesser wage than the established is unlawful;

iii. Whether Defendants violated Labor Code §§ 226.7, 512 and applicable IWC Wage Order by failing to provide statutorily compliant 30 minute meal periods to Non-Exempt Employees on days in which they worked in excess of 5 hours and/or 10 hours and failing to compensate said employees one hour wages in lieu of meal periods;

iv. Whether Defendants violated Labor Code §§ 226.7 and applicable IWC Wage Orders by failing to authorize and permit 10 minute rest periods to Non-Exempt Employees for every four hours or major fraction thereof worked and failing to compensate said employees one hours wages in lieu of rest periods;

v. Whether Defendant violated Labor Code § 2802 and applicable IWC Wage Orders for failing to indemnify employees for the expenditures incurred in the performance of their job duties (i.e., personal mobile phones and/or personal vehicles necessary to the performance of their job duties);

vi. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay all earned wages and/or premium wages due and owing at the time that Plaintiff and any Class Members' employment with Defendants terminated;

vii. Whether Defendants violated §§ 226 of the Labor Code and applicable IWC Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt Employees' earned wages, work periods, meal periods and deductions;

viii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code by failing to pay lawful wages owed including overtime and minimum wages to Non-Exempt Employees; failing to provide lawful rest and/or meal periods and failing to pay compensation in lieu thereof; failing to pay wages due and owing at the time the employee's employment with Defendants terminated failing to keep accurate records all in violation of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1199, 2802 and applicable IWC Wage Orders.

ix. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code and Labor Code sections §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1199, 2802 and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy;

C. Typicality

37. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

38. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

39. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

40. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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1 VI.
2 **CAUSES OF ACTION**
3 **First Cause of Action**

4 Failure to Pay Lawful Wages
(Lab. Code §§ 510, 1194, 1199)
(Against All Defendants)

5 41. Plaintiff repeats and incorporates herein by reference each and every allegation set
6 forth above, as though fully set forth herein.

7 42. During the liability period, Defendants' policies and/or practices resulted in
8 Plaintiff and Non-Exempt Employees not receiving minimum wages for time spent working off
9 the clock while subject to the control of Defendant all without pay.

10 43. During the liability Defendants' policies, practices and work shift requirements
11 resulted in Plaintiff and Non-Exempt Employees working "off the clock" and not receiving
12 compensation for all earned wages including overtime in violation of California state wage and
13 hour laws.

14 44. As stated herein, during the relevant time period, Plaintiff was not compensated
15 for non-productive times and for work related tasks performed after work hours. All such time is
16 compensable time as required by Labor Code §§ 1194, 1197.

17 45. During the liability period, Defendants' policies and/or practices resulted in
18 Plaintiff and Non Exempt Employees not receiving minimum wages for time spent working "off
19 the clock" without pay. Labor Code §1197 provides that employees are to be paid minimum
20 wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser
21 wage than the established is unlawful.

22 46. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
23 represent have been deprived of compensation for all earned wages in amounts to be determined
24 at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
25 attorneys' fees, and costs, pursuant to Labor Code section 1194.

26 47. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
27 described herein and below.
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Second Cause of Action
Failure to Provide Lawful Meal Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, 512, IWC Wage Orders)
(Against All Defendants)

48. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

49. By their failure to provide 30 minute uninterrupted meal periods by the end of the fifth hour for days on which Non-Exempt employees work(ed) work periods in excess of 5 hours and/or failing to provide a second 30 minute uninterrupted meal period by the end of the 10th hour for days in which the Non Exempt Employees worked shifts in excess of 10 hours and failing to provide compensation for such statutorily non-compliant meal periods, Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

50. By failing to record and maintain adequate and accurate time records according to sections 226 and 1174 (d) of the Labor Code, Defendants have injured Plaintiff and Class Members and made it difficult to calculate the unpaid meal period compensation due Plaintiff and Class Members.

51. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

52. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

Third Cause of Action
Failure to Provide Rest Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, IWC Wage Orders)
(Against All Defendants)

53. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

54. By Defendant's failure to provide lawful ten (10) minute rest period for every four hours or major fraction thereof worked per day by Non Exempt Employees, and failing to provide compensation for such non-provided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

56. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

57. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

59. Affected class members are entitled to compensation for all forms of wages earned, including overtime compensation and compensation for non provided rest and meal periods but to date have not received such compensation therefore entitling them Labor Code section 203 penalties.

1 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
2 section 203 for failure to pay legal wages.

3 61. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
4 described herein and below.

5 **Fifth Cause of Action**

6 Knowing and Intentional Failure to Comply With Itemized Employee
7 Wage Statement Provisions
8 (Lab. Code § 226(b))
9 (Against All Defendants)

10 62. Plaintiff repeats and incorporates herein by reference each and every allegation set
11 forth above, as though fully set forth herein.

12 63. Section 226(a) of the California Labor Code requires Defendants to itemize in
13 wage statements all deductions from payment of wages and to accurately report total hours
14 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
15 Defendants to maintain time records showing, among others, when the employee begins and ends
16 each work period, meal periods, split shift intervals and total daily hours worked in an itemized
17 wage statement, and must show all deductions and reimbursements from payment of wages, and
18 accurately report total hours worked by Plaintiff and the members of the proposed class. On
19 information and belief, Defendants have failed to record all or some of the items delineated in
20 Industrial Wage Orders and Labor Code §226.

21 64. In addition, Section 1174 of the California Labor Code requires Defendants to
22 maintain and preserve, in a centralized location, among other items, records showing the names
23 and addresses of all employees employed, payroll records showing the hours worked daily by and
24 the wages paid to its employees. On information and belief and based thereon, Defendants have
25 knowingly and intentionally failed to comply with Labor Code section 1174. Defendant's failure
26 to comply with Labor Code section 1174 is unlawful.

27 65. Plaintiff and Class Members have been injured by Defendants' actions by
28 rendering them unaware of the full compensation to which they were entitled under applicable
provisions of the California Labor Code and applicable IWC Wage Orders.

66. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

67. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

Sixth Cause of Action

Failure to Reimburse Employee Expenses

(Lab. Code § 2802)

(Against All Defendants)

68. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

69. By failing to not reimburse Plaintiff and Class Members for expenses incurred as a result of personal mobile phone usage and/or personal vehicle usage, Defendant willfully violated the provisions of Lab. Code § 2802 and IWC Wage Order 5-2001.

70. As a result of the unlawful acts of Defendant, Plaintiff and the Class she seeks to represent are entitled to recovery of full amount of expenses incurred plus interest, attorneys' fees, and costs, under Labor Code§ 2802.

71. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as describe herein and below.

Seventh Cause of Action

Violation of Unfair Competition Law

(Bus. & Prof. Code, §§ 17200-17208)

(Against All Defendants)

72. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

73. Business & Professions Code Section 17200 provides:

As used in this chapter, unfair competition shall mean and include any ***unlawful, unfair*** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

74. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

75. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

76. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

77. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and members of the Plaintiffs Class as a result of the business acts and practices described herein.

78. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

VII.

PRAAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §203;
6. For attorneys' fees, interests and costs of suit under Labor Code §§ 226, 1194, 2802;
7. For such other and further relief as the Court deems just and proper.

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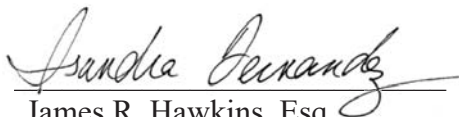
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Dated: January 6, 2021

JAMES HAWKINS, APLC



James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Attorneys for Plaintiff

Jody Hernandez-Moore