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Leticia Guevara

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

Leticia Guevara, individually, and on
behalf of other members of the general
public similarly situated, and on behalf
of other aggrieved employees pursuant
to the California Private Attorneys
General Act;

Plaintiff,

vs.

ABD Insurance & Financial Services,
Inc., a Delaware corporation; and DOES
1-50, inclusive,

Defendants.

Case No.: 21-CIV-02797

Honorable Robert D. Foiles
Department 21

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT**

- (1) FAILURE TO PAY PROPERLY
OVERTIME WAGES;**
- (2) FAILURE TO PAY MINIMUM
WAGES;**
- (3) FAILURE TO PROVIDE
COMPLAINT MEAL PERIODS AND
PREMIUMS IN LIEU THEREOF;**
- (4) FAILURE TO PROVIDE
COMPLAINT REST PERIODS AND
PREMIUMS IN LIEU THEREOF**
- (5) FAILURE TO TIMELY PAY WAGES
DURING EMPLOYMENT**
- (6) FAILURE TO TIMELY PAY WAGES
UPON TERMINATION**
- (7) FAILURE TO PROVIDE
COMPLIANT WAGE STATEMENTS**
- (8) FAILURE TO MAINTAIN
REQUISITE PAYROLL RECORDS**
- (9) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES;**
- (10) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.; and**

**(11) VIOLATION OF CALIFORNIA
LABOR CODE § 2698, ET SEQ.
(CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT OF
2004)**

DEMAND FOR JURY TRIAL

Plaintiff LETICIA GUEVARA (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employee pursuant to the California Private Attorneys General Act, hereby brings this complaint, demanding a trial by jury, against the above-named Defendants and states and alleges as follows:

THE PARTIES

1. At all times mentioned herein, Plaintiff LETICIA GUEVARA was an individual and a resident of the State of California.

2. At all times mentioned herein, Defendant ABD INSURANCE & FINANCIAL SERVICES, INC. (“Defendant”) was, upon information and belief, a Delaware corporation, doing business in the State of California, County of San Mateo, at 777 Mariners Island Boulevard, Suite 250, San Mateo, California 94404. At the time the causes of action arose, Defendants ABD INSURANCE & FINANCIAL SERVICES, INC. and DOES 1 through 50 were Plaintiff’s employers (collectively referred to as “Defendants”).

3. The true names and capacities, whether individual, corporate, associate or otherwise of DOES 1 through 50 are unknown to Plaintiff who therefore sues these defendants under fictitious names. Plaintiff is informed and believes that each of the Doe defendants are legally responsible in some manner for the events referred to in this Complaint, and are/were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE

1 herein. Plaintiff will in the future seek leave of this court to show the true names and capacities
2 of these Doe defendants when it has been ascertained.

3 4. Plaintiff further alleges that Defendants directly or indirectly controlled or affected
4 the working conditions, wages, working hours, and conditions of employment of Plaintiff and the
5 other class members so as to make each of said Defendants employers liable under the statutory
6 provisions set forth herein.

7 **JURISDICTION AND VENUE**

8 5. This class action is brought pursuant to the California Code of Civil Procedure section
9 382. The monetary damages and restitution Plaintiff seeks exceed the minimal jurisdiction limits
10 of the Superior Court and will be established according to proof at trial.

11 6. Pursuant to the California Constitution, Article VI, Section 10, which grants the
12 superior court “original jurisdiction in all other causes” except those given by statute to other
13 courts, this Court has jurisdiction over this class action. The statutes under which this class action
14 is brought do not specify any other basis for jurisdiction.

15 7. This Court has jurisdiction over Defendant because, upon information and belief,
16 Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise
17 intentionally avails itself of the California market so as to render the exercise of jurisdiction over
18 it by California courts consistent with traditional notions of fair play and substantial justice.

19 8. Venue is proper in this Court because, upon information and belief, Defendant
20 maintains offices, has agents, employs individuals, and/or transacts business in the State of
21 California, County of San Mateo. The majority of acts and omissions alleged herein relating to
22 Plaintiff and the other class members took place in the State of California, including the County
23 of San Mateo. At all relevant times, Defendant maintained its headquarters within the State of
24 California, County of San Mateo.

25 **GENERAL ALLEGATIONS**

26 9. At all times mentioned herein, Defendants employed Plaintiff and other class
27 members as hourly-paid or non-exempt employees within the State of California, including the
28 County of San Mateo.

1 10. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt
2 employee from approximately November 2018 to approximately December 2020 in the State of
3 California, County of San Mateo.

4 11. Defendants paid wages and benefits to Plaintiff and the other class members, had the
5 authority to hire and terminate them, set the rules and conditions governing their employment,
6 and supervised their daily employment activities. Defendants exercised sufficient authority over
7 the terms and conditions of Plaintiff's and the other class members' employment for them to be
8 their joint employers.

9 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged
10 in a pattern and practice of wage abuse of, *inter alia*, failing to pay against their hourly-paid or
11 non-exempt employees within the State of California all regular and/or overtime wages earned
12 and premiums owed due to missed meal periods and rest breaks in violation of California law.

13 13. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
14 or should have known that Plaintiff and the other class members were required to work over eight
15 (8) hours in a day and/or forty (40) hours in a week and were entitled to receive certain wages for
16 overtime compensation.

17 14. During the relevant time period, Defendants failed to pay properly pay all overtime
18 wages to Plaintiff and the other class members for all overtime hours worked.

19 15. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
20 or should have known that Plaintiff and the other class members were entitled to receive at least
21 minimum wages as compensation for all hours worked and that they were not receiving at least
22 minimum wages for all hours they worked.

23 16. During the relevant time period, Defendants failed to pay Plaintiff and the other class
24 members at least minimum wages for all hours worked.

25 17. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
26 to provide Plaintiff and the other class members with compliant meal and rest periods during the
27 relevant time period as required under the Industrial Welfare Commission Wage Orders and thus
28 they are entitled to any and all applicable premium payments.

1 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
2 or should have known that Plaintiff and the other class members were entitled to receive
3 compliant meal and rest periods or a premium payment in the amount of one additional hour of
4 pay at Plaintiff's and the other class member's regular rate of pay when a meal or rest period was
5 missed, short, late, or interrupted, and they did not receive all required meal and rest periods or
6 premium payments in lieu thereof.

7 19. During the relevant time period, Defendants failed to provide all compliant, timely,
8 and uninterrupted meal and rest periods or premiums in lieu thereof, to Plaintiff and the other
9 class members.

10 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
11 or should have known that Plaintiff and the other class members were entitled to receive all wages
12 owed to them upon discharge or resignation, including overtime and minimum wages and meal
13 and rest period premiums, and they did not, in fact, receive all such wages owed to them at the
14 time of their discharge or resignation.

15 21. During the relevant time period, Defendants failed to pay Plaintiff and the other class
16 members all wages within any time permissible under California law, including, *inter alia*,
17 California Labor Code section 204.

18 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
19 or should have known that Plaintiff and the other class members were entitled to timely receive
20 all wages owed to them during their employment. Plaintiff and the other class members did not
21 receive payment of all wages, including overtime and minimum wages and meal and rest period
22 premiums, within any time permissible under California Labor Code section 204.

23 23. During the relevant time period, Defendants failed to pay Plaintiff and the other class
24 members all wages owed to them upon discharge or resignation.

25 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
26 or should have known that Plaintiff and the other class members were entitled to receive complete
27 and accurate wage statements in accordance with California law, but, in fact, they did not receive
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1 complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*,
2 the failure to include the total number of hours worked by Plaintiff and the other class members.

3 25. During the relevant time period, Defendants failed to provide compliant wage
4 statements to Plaintiff and the other class members.

5 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
6 or should have known that Defendants were required to keep complete and accurate payroll
7 records for Plaintiff and the other class members in accordance with California law, but failed to
8 maintain complete and accurate payroll records.

9 27. During the relevant time period, Defendants failed to keep complete and/or accurate
10 payroll records for Plaintiff and the other class members.

11 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
12 or should have known that Plaintiff and the other class members were entitled to reimbursement
13 for necessary business-related expenses in accordance with California law, but knowingly failed
14 to do so.

15 29. During the relevant time period, Defendants failed to reimburse Plaintiff and the other
16 class members for all necessary business-related expenses and costs.

17 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
18 or should have known that they had a duty to properly compensate Plaintiff and the other class
19 members pursuant to California law, and that Defendants had the financial ability to pay such
20 compensation, but for their own financial gain, willfully, knowingly, and intentionally failed to
21 do so, and falsely represented to Plaintiff and the other class members that they were not properly
22 denied wages.

23 31. During the relevant time period, Defendants failed to properly compensate Plaintiff
24 and the other class members pursuant to California law in order to increase Defendants' profits.

25 32. California Labor Code section 218 states that nothing in Article 1 of the Labor Code
26 shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him
27 [or her] under this article."

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CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

34. The proposed class is defined as follows:

All current and former hourly-paid and/or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from May 17, 2017 to final judgment, that live in California.

35. Plaintiff reserves the right to establish subclasses as appropriate.

36. This action is certifiable as a class action because the class is ascertainable, as explained above, and there is a well-defined community of interest in the litigation.

- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The exact membership of the class is unknown to Plaintiff at this time; however, the class is estimated to be at least fifty (50) individuals and they are readily ascertainable through Defendants' employment records.
- b. Typicality: Plaintiff's claims are typical of the class's claims because they stem from Defendants' uniform policies, practices, and procedures which apply to all class members as explained herein. Plaintiff has a well-defined community of interest with the class and will fairly and adequately protect their interests.
- c. Adequacy: Plaintiff will fairly and adequately protect the class's interests because Plaintiff has no interests in opposition to the other class members. Plaintiff's attorneys are experienced in employment law and are educated in the rules governing class action litigation.
- d. Superiority: A class action is superior to other methods for the fair and efficient resolution of this litigation because due to the number of individuals in the class, the individual joinder of all class members is impractical.

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- 1 e. Public Policy Considerations: Certification of this lawsuit as a class action will
2 advance public policy objectives. Employers in California regularly violate
3 employment and labor laws without repercussion. Employees often fail to assert
4 their rights out of fear of direct or indirect retaliation and due to feeling that
5 individually, they lack power and strength. However, class actions provide the
6 class members who are not named in the complaint anonymity that allows for the
7 vindication of their rights and allow individuals to join together to pursue their
8 rights.

9 37. There are common questions of law and fact as to the class members that predominate
10 over questions affecting only individual members. The following common questions of law or
11 fact, among others, exist as to each class member:

- 12 a. Whether Defendants required Plaintiff and the other class members to work over
13 eight (8) hours per day and/or over forty (40) hours per week and failed to properly
14 pay the legally required overtime compensation to Plaintiff and the other class
15 members in violation of California Labor Code;
- 16 b. Whether Defendants failed to pay minimum wages to Plaintiff and the other class
17 members for all hours worked in violation of California Labor Code;
- 18 c. Whether Defendants deprived Plaintiff and the other class members of compliant
19 meal and/or rest periods or required Plaintiff and the other class members to endure
20 non-compliant (i.e., short, late, interrupted, and/or missed altogether) meal and/or
21 rest periods without compensation in violation of California Labor Code;
- 22 d. Whether Defendants failed to timely pay all wages due to Plaintiff and the other
23 class members during their employment in violation of California Labor Code;
- 24 e. Whether Defendants failed to timely pay all wages due to Plaintiff and the other
25 class members upon their discharge or resignation in violation of California Labor
26 Code;
- 27 f. Whether Defendants provided compliant wage statements to class members as
28 required by the California Labor Code;

- 1 g. Whether Defendants kept complete and accurate payroll records as required by the
2 California Labor Code;
- 3 h. Whether Defendants failed to reimburse Plaintiff and the other class members for
4 necessary business-related expenses and costs as required by the California Labor
5 Code;
- 6 i. Whether Defendants' conduct was willful and/or reckless;
- 7 j. Whether Defendants engaged in unfair business practices in violation of California
8 Business & Professions Code section 17200, *et seq.*;
- 9 k. The appropriate amount of damages, restitution, and/or monetary penalties
10 resulting from Defendants' violation of California law; and
- 11 l. Whether Plaintiff and the other class members are entitled to compensatory
12 damages pursuant to the California Labor Code.

13 **PAGA ALLEGATIONS**

14 38. At all relevant times herein set forth, PAGA was applicable to Plaintiff's employment
15 by Defendants.

16 39. At all relevant times herein set forth, PAGA provides that any provision of law under
17 the California Labor Code that provides for a civil penalty, to be assessed and collected by the
18 LWDA for violations of the California Labor Code may, as an alternative, be recovered through
19 a civil action brought by an aggrieved employee on behalf of herself and other current or former
20 employees pursuant to procedures outlined in California Labor Code section 2699.3.

21 40. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
22 employee," who is any person that was employed by the alleged violator and against whom one
23 or more of the alleged violations was committed.

24 41. Plaintiff was employed by Defendants and the alleged violations were committed
25 against her during her employment with Defendants and she is, therefore, an aggrieved employee.
26 Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code
27 section 2699(c) in that they are current or former employees of Defendants, and one or more of
28 the alleged violations were committed against them.

42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

43. The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

44. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employer by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

45. On May 11, 2021, Plaintiff provided written notice by online submission and certified mail respectively to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

FIRST CAUSE OF ACTION

FAILURE TO PROPERLY PAY OVERTIME WAGES

(Against ALL Defendants)

46. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 45 of this Complaint.

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47. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that depending on the number of hours worked by the person on a daily or weekly basis, it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay.

48. The applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of one-and-one-half times their regular rate of pay for all hours worked in excess of eight (8) hours in a day and/or more than forty (40) hours in a workweek at the rate of one-and-one-half.

49. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day and eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

50. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular rate for hours worked in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the regular rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

51. During the relevant time period, Plaintiff and the other class members were required to work in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

52. During the relevant time period, Defendants intentionally and willfully failed to properly pay overtime wages owed to Plaintiff and the other class members.

53. Defendants’ failure to properly pay Plaintiff and the other class members all overtime earned, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

54. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, litigation costs, and attorneys’ fees.

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SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against ALL Defendants)

55. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 54 of this Complaint.

56. At all times mentioned herein, California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and that the payment of a lesser wage than the minimum wage mentioned therein is unlawful.

57. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

58. Defendants' failure to pay Plaintiff and the other class members the minimum wage violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to California Labor Code, Plaintiff and the other class members are entitled to recover the amount of minimum wage compensation due to them as well as interest, litigation costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

59. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

60. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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THIRD CAUSE OF ACTION

FAILURE TO PROVIDE COMPLAINT MEAL PERIODS

AND PREMIUMS IN LIEU THEREOF

(Against ALL Defendants)

61. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 60 of this Complaint.

62. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

63. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

64. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for more than five (5) hours per day without providing the employee with an uninterrupted meal period of at least thirty (30) minutes. Notwithstanding the foregoing, if the total work period is not longer than six (6) hours, then the meal period may be waived by mutual consent of both the employer and employee.

65. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of at least thirty (30) minutes. Notwithstanding the foregoing, if the total hours worked is not longer than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived.

66. At all relevant times, Plaintiff and the other class members who worked for a time period six (6) hours or less, and who did not validly waive their legally-mandated meal periods, were required to work for periods longer than five (5) hours without a compliant meal period of at least thirty (30) minutes.

67. At all relevant times, Plaintiff and the other class members who worked for a period of time longer than six (6) hours were required to work for periods longer than five (5) hours without a compliant meal period of at least thirty (30) minutes.

68. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and experience late and/or interrupted meal periods and failed to compensate them with a meal period premium pursuant to California Labor Code section 226.7.

69. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

70. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that they experienced a non-compliant meal period.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLAINT REST PERIODS

AND PREMIUMS IN LIEU THEREOF

(Against ALL Defendants)

71. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 70 of this Complaint.

72. At all relevant times, Plaintiff's and the other class members' employment by Defendants was governed by the applicable IWC Wage Order and California Labor Code section 226.7.

73. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

74. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total

hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

75. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting them to take a ten (10) minute rest period for each four (4) hour period they worked.

76. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods, miss their rest periods, and/or take late rest periods and failed to pay Plaintiff and the other class members with a rest period premium for non-compliant rest periods.

77. During the relevant time period, Defendants failed to pay Plaintiff and the other class members every rest period premium due pursuant to California Labor Code section 226.7

78. Defendants’ conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

79. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees’ regular hourly rate of compensation for each non-compliant rest period was not provided.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

(Against ALL Defendants)

80. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 79 of this Complaint.

81. At all relevant times, California Labor Code section 204 provides that, other than those wages due upon termination of an employee, all wages earned by any person in any employment, between the 1st and 15th days, inclusive, of any calendar month, are due and payable between the 16th and the 26th day of the month during which the labor was performed and all wages earned by any person in any employment between the 16th and the last day,

1 inclusive, of any calendar month are due and payable between the 1st and the 10th day of the
2 following month.

3 82. At all relevant times, California Labor Code section 204 provides that all wages
4 earned for labor in excess of the normal work period shall be paid no later than the payday for the
5 next regular payroll period.

6 83. During the relevant time period, Defendants intentionally and willfully failed to pay
7 Plaintiff and the other class members all wages due to them, within any time period permissible
8 under California Labor Code section 204.

9 84. Plaintiff and the other class members are entitled to recover all remedies available for
10 violations of California Labor Code section 204.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION**

13 **(Against ALL Defendants)**

14 85. Plaintiff restates and incorporates by this reference as if fully set forth herein
15 paragraphs 1 through 76 of this Complaint.

16 86. At all relevant times, California Labor Code sections 201 and 202 provide that if an
17 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
18 and payable immediately, and if an employee quits his or her employment with less than seventy-
19 two (72) hours' notice, his or her wages shall become due and payable no later than seventy-two
20 (72) hours thereafter, and if the employee has given seventy-two (72) hours' notice, in which case
21 the employee is entitled to his or her wages at the time of quitting.

22 87. During the relevant time period, Defendants intentionally and willfully failed to pay
23 Plaintiff and the other class members who are no longer employed by Defendants their wages,
24 earned and unpaid, within seventy-two (72) hours of being termed.

25 88. Defendants' failure to pay Plaintiff and the other class members who were no longer
26 employed by Defendants' their earned and unpaid wages within seventy-two (72) hours of being
27 termed, is in violation of California Labor Code sections 201 and 202.

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1 89. California Labor Code section 203 provides that if an employer willfully fails to pay
2 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
3 accrue as a penalty from the due date thereof at the same rate until paid or until an action is
4 commenced; but for no longer than thirty (30) days.

5 90. Pursuant to California Labor Code section 203, Plaintiff and the other class members
6 are entitled to recover from Defendants the statutory penalty wages for each day they were not
7 paid, up to the thirty (30) day maximum.

8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS**

10 **(Against ALL Defendants)**

11 91. Plaintiff restates and incorporates by this reference as if fully set forth herein
12 paragraphs 1 through 90 of this Complaint.

13 92. At all material times set forth herein, California Labor Code section 226(a) provides
14 that every employer shall furnish each of his or her employees an accurate itemized statement in
15 writing containing (1) gross wages earned, (2) total hours worked by the employee, (3) the number
16 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
17 basis, (4) all deductions, provided that all deductions made on written orders of the employee may
18 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
19 for which the employee is paid, (7) the name of the employee and his or her social security
20 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at
22 each hourly rate by the employee. The deductions made from payments of wages must be
23 recorded in ink or other indelible form, properly dated, showing the month, day, and year.

24 93. Defendants have intentionally and willfully failed to provide Plaintiff and the other
25 class members with complete and accurate wage statements. The deficiencies include, but are
26 not limited to: Defendants' failure to include the total number of hours worked by Plaintiff and
27 the other class members.

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1 94. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
2 and the other class members have suffered irreparable injury and damage because they were
3 denied their legal right to receive and their interest in receiving accurate and itemized wage
4 statements pursuant to California Labor Code section 226(a).

5 95. Plaintiff and the other class members are entitled to recover from Defendants the
6 greater of their actual damages caused by Defendants' failure to comply with California Labor
7 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
8 employee.

9 96. Plaintiff and the other class members are also entitled to injunctive relief to ensure
10 compliance with this section, pursuant to California Labor Code section 226(h).

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO MAINTAIN REQUISITE PAYROLL RECORDS**

13 **(Against ALL Defendants)**

14 97. Plaintiff restates and incorporates by this reference as if fully set forth herein
15 paragraphs 1 through 96 of this Complaint.

16 98. Pursuant to California Labor Code section 1174(d), an employer must keep, at a
17 central location in the state or at the plants or establishments at which employees are employed,
18 payroll records showing the hours worked daily by and the wages paid to, and the number of
19 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
20 respective plants or establishments. These records must be kept in accordance with the
21 application California Labor Code and must be kept on file for no less than two years.

22 99. Defendants have intentionally and willfully failed to keep accurate and complete
23 payroll records showing the daily hours worked and the wages paid, to Plaintiff and the other
24 class members.

25 100. As a result of Defendants' violation of California Labor Code section 1174(d),
26 Plaintiff and the other class members have suffered injury and damage to their statutorily-
27 protected rights because they were denied both their legal right and protected interest, in having
28

1 available, accurate and complete payroll records pursuant to California Labor Code section
2 1174(d).

3 **NINTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

5 **(Against ALL Defendants)**

6 101.Plaintiff restates and incorporates by this reference as if fully set forth herein
7 paragraphs 1 through 100 of this Complaint.

8 102.Pursuant to California Labor Code sections 2800 and 2802, an employer must
9 reimburse its employee for all necessary business expenses incurred by the employee in direct
10 consequence of the discharge of his or her job duties or obedience to the employer's directions.

11 103.Plaintiff and the other class members incurred necessary business-related expenses
12 and costs that were not fully reimbursed by Defendants as required by the California Labor Code.

13 104.Defendants have intentionally and willfully failed to reimburse Plaintiff and the other
14 class members for all necessary business-related expenses and costs in violation of the California
15 Labor Code.

16 105.Plaintiff and the other class members are entitled to recover from Defendants their
17 business-related expenses and costs incurred during their employment but not reimbursed, plus
18 interest.

19 **TENTH CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET**

21 **SEQ.**

22 **(Against ALL Defendants)**

23 106.Plaintiff restates and incorporates by this reference as if fully set forth herein
24 paragraphs 1 through 105 of this Complaint.

25 107.Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
26 and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors.
27 Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the
28 meaning of Code of Civil Procedure section 1021.5.

1 108. Defendants' activities as alleged herein are violations of California law and constitute
2 unlawful business acts and practices in violation of California Business & Professions Code
3 section 17200, et seq.

4 109. A violation of California Business & Professions Code section 17200, et seq. may be
5 predicated on the violation of any state or federal law. Defendants' policies and practices of
6 requiring Plaintiff and the other class members, to work overtime without properly compensating
7 them violate California Labor Code sections 510 and 1198. Defendants' policies and practices
8 of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1.
9 Defendants' policies and practices of requiring Plaintiff and the other class members, to endure
10 non-compliant meal and rest periods without paying them proper compensation violate California
11 Labor Code sections 226.7 and 512(a). Moreover, Defendants' policies and practices of failing
12 to timely pay wages to Plaintiff and the other class members violate California Labor Code
13 sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a),
14 1174(d), 2800 and 2802.

15 110. As a result of violating California law, Defendants unlawfully gained an unfair
16 advantage over other businesses.

17 111. Plaintiff and the other class members have been personally injured by Defendants'
18 unlawful business acts and practices as alleged herein, including but not limited to the loss of
19 money and/or property.

20 112. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff
21 and the other class members are entitled to restitution of the wages withheld and retained by
22 Defendants during a period that commences four years preceding the filing of this Complaint; an
23 award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other
24 applicable laws; and an award of litigation costs.

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ELEVENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 2698, ET SEQ.

(Against ALL Defendants)

113. Plaintiff restates and incorporates by this reference as if fully set forth herein paragraphs 1 through 112 of this Complaint.

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

115. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

116. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

117. Defendants’ failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Pay Minimum Wage

118. Defendants’ failure to pay minimum wage in violation of the Wage Orders and California Labor Code sections 1194, 1197, 1197.1, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197, 1197.1.

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Failing to Provide Meal Periods

119. Defendants' failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

120. Defendants' failure to provide legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

Failure to Timely Pay Wages Upon Termination

121. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

122. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

123. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

124. Defendants' failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

125. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

1 126.Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf
2 of all aggrieved employees, requests and is entitled to recover from Defendants and each of them,
3 business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys'
4 fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against
5 Defendants, and each of them, including but not limited to:

- 6 a. Penalties under California Labor Code section 2699 in the amount of a hundred
7 dollars (\$100) for each aggrieved employee per pay period for the initial violation,
8 and two hundred dollars (\$200) for each aggrieved employee per pay period for
9 each subsequent violation;
- 10 b. Penalties under California Code of Regulations Title 8 section 11010, *et seq.* in
11 the amount of fifty dollars (\$50) for each aggrieved employee per pay period for
12 the initial violation, and one hundred dollars (\$100) for each aggrieved employee
13 per pay period for each subsequent violation;
- 14 c. Penalties under California Labor Code section 210 in addition to, and entirely
15 independent and apart from, any other penalty provided in the California Labor
16 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per
17 pay period for the initial violation, and two hundred dollars (\$200) for each
18 aggrieved employee per pay period for each subsequent violation; and
- 19 d. Any and all additional penalties and sums as provided by the California Labor
20 Code and/or other statutes.

21 127.Pursuant to California Labor Code section 2699(i), civil penalties recovered by
22 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
23 Workforce Development Agency for the enforcement of labor laws and education of employers
24 and employees about their rights and responsibilities and twenty-five percent (25%) to the
25 aggrieved employees.

26 128.Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
27 pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

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Wherefore, Plaintiff individually, and on behalf of other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the full names and most current/last known contact information (mailing address, e-mail address, and telephone number) of all class members.

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to properly pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at appropriate overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the Court may deem just and proper.

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

13. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

14. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

15. For liquidated damages pursuant to California Labor Code section 1194.2; and

16. For such other and further relief as the Court may deem just and proper.

AS TO THE THIRD CAUSE OF ACTION

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide compliant meal periods (including second meal periods) to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a non-compliant meal period was endured;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

22. For reasonable attorneys' fees and costs of suit incurred herein; and

23. For such other and further relief as the Court may deem just and proper.

AS TO THE FOURTH CAUSE OF ACTION

24. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide compliant rest periods to Plaintiff and the other class members;

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1 25. That the Court make an award to Plaintiff and the other class members of one (1) hour
2 of pay at each employee's regular rate of compensation for each workday that a non-
3 compliant rest period was endured;

4 26. For all actual, consequential, and incidental losses and damages, according to proof;

5 27. For premium wages pursuant to California Labor Code section 226.7(c);

6 28. For pre-judgment interest on any unpaid wages from the date such amounts were due;
7 and

8 29. For such other and further relief as the Court may deem just and proper.

9 **AS TO THE FIFTH CAUSE OF ACTION**

10 30. That the Court declare, adjudge and decree that Defendants violated California Labor
11 Code section 204 by willfully failing to pay all compensation owed at the time
12 required by California Labor Code section 204 to Plaintiff and the other class
13 members;

14 31. For all actual, consequential, and incidental losses and damages, according to proof;

15 32. For pre-judgment interest on any unpaid compensation from the date such amounts
16 were due; and

17 33. For such other and further relief as the Court may deem just and proper.

18 **AS TO THE SIXTH CAUSE OF ACTION**

19 34. That the Court declare, adjudge and decree that Defendants violated California Labor
20 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at
21 the time of termination of the employment of Plaintiff and the other class members
22 no longer employed by Defendants;

23 35. For all actual, consequential, and incidental losses and damages, according to proof;

24 36. For statutory wage penalties pursuant to California Labor Code section 203 for
25 Plaintiff and the other class members who have left Defendants' employment;

26 37. For pre-judgment interest on any unpaid compensation from the date such amounts
27 were due; and

28 38. For such other and further relief as the Court may deem just and proper.

AS TO THE SEVENTH CAUSE OF ACTION

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide them with accurate itemized wage statements;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

43. For such other and further relief as the Court may deem just and proper.

AS TO THE EIGHTH CAUSE OF ACTION

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiff and the other class members as required by California Labor Code section 1174(d);

45. For actual, consequential and incidental losses and damages, according to proof;

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

47. For such other and further relief as the Court may deem just and proper.

AS TO THE NINTH CAUSE OF ACTION

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

49. For actual, consequential and incidental losses and damages, according to proof;

50. For the imposition of civil penalties and/or statutory penalties;

51. For reasonable attorneys' fees and costs of suit incurred herein; and

52. For such other and further relief as the Court may deem just and proper.

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AS TO THE TENTH CAUSE OF ACTION

53.The Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to pay at least minimum wages to Plaintiff and the other class members for all hours worked, failing to provide compliant meal and rest periods to Plaintiff and the other class members, failing to timely pay Plaintiff's and the other class members' wages as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

54.For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

55.For the appointment of a receiver to receive, manage and distribute any and all funds acquired from Defendants and determined to have been wrongfully attained as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

56.For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

57.For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

AS TO THE ELEVENTH CAUSE OF ACTION

58.For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f), and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.3, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; and

59.For such other and further relief as the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, hereby demands a trial by jury

DATED: August 3, 2021

BROCK & GONZALES, LLP



By: _____

DANIELLE L. GRUPPCHANG

Attorneys for Plaintiff

PROOF OF SERVICE
1013a (3) CCP Revised 5/1/88
STATE OF CALIFORNIA, COUNTY OF SAN MATEO

I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action. My business address is 180 Grand Avenue, Suite 1500, Oakland, CA 94610.

On July 23, 2019, I served the foregoing documents described as: **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT** on the interested parties in this action, addressed as follows:

Kathryn T. McGuigan, Esq.
Sarah Zenewicz, Esq.
MORGAN LEWIS & BOCKIUS LLP
300 South Grand Avenue
Twenty-Second Floor
Los Angeles, CA 90071-3132
Email: kathryn.mcguigan@morganlewis.com; sarah.zenewicz@morganlewis.com
Attorney for Defendant
ABD INSURANCE & FINANCIAL SERVICES, INC.

☐ **By U.S. Mail**, I deposited such envelope(s) in the mail at Oakland, California, with postage thereon fully prepaid.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Oakland, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ **By Facsimile**, I transmitted such documents from Oakland, California, to the offices of the addressee(s).

☐ **By Personal Service**, I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s).

☒ **By E-Mail**, I transmitted the document to the e-mail address of the addressee(s).

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 3, 2021, at Oakland, California.



Francesca Deguzman