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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

MARY CARDOZA on behalf of herself and all
others similarly situated

Plaintiff,

vs.

SURGICARE OF LOS GATOS, INC., a
California corporation, and HCA HEALTH
SERVICES OF CALIFORNIA, INC. a
California corporation; 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 Owed;**
- 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 Pay Correct Sick Pay Wages**
- 5) Failure to Timely Pay Wages During Employment;**
- 6) Failure to Timely Pay Wages At Termination;**
- 7) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions;**
- 8) Failure to Indemnify Employees and;**
- 9) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

Named Plaintiffs allege as follows

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I.

INTRODUCTION

1. Plaintiff MARY CARDOZA (“Plaintiff”) asserts the following Class Action claims, pursuant to Code of Civil Procedure section 382, against Defendants SURGICARE OF LOS GATOS, INC., (hereinafter “SURGICARE”) and HCA HEALTH SERVICES OF CALIFORNIA, INC, (hereinafter “HCA”) and Does 1 through 50 inclusive, (collectively "Defendants")

2. Plaintiff bring this class action on behalf of herself and all similarly situated employees not classified as “Exempt” or primarily employed in executive, professional, or administrative capacities, employed by, or formerly employed by Defendant in California. (hereinafter referred to as “Non-Exempt Employees” and/or “Class Members”).

3. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations not paid all lawful wages owed; not provided compliant rest and meal periods; not provided accurate itemized wage statements, not indemnified for expenses; and not paid timely wages during their employment and/or at termination.

4. Plaintiff on behalf of herself and Non-Exempt Employees, brings this action pursuant to Labor Code sections 201, 202, 203, 204, 218.5, 226, 226.7, 246, 510, 512, 558, 1194, 1198, 2802 Title 8, Section 11050, any other applicable Industrial Welfare Commission (“IWC”) Wage Orders seeking unpaid lawful wages, unpaid rest and meal period compensation, expense reimbursements, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

II.

VENUE

5. 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 Los Gatos and each Defendant is within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in Santa Clara County.

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

1 13. During the relevant time period, Defendants implemented policies and practices
2 which resulted in Plaintiff and Non Exempt Employees working “off the clock” and without
3 compensation. For instance, Plaintiff was required to don several pieces of clothing including
4 uniforms and protective gear prior to clocking in. They were also required to doff that same gear
5 after they clocked out. This process took approximately ten (10) minutes before and ten (10)
6 minutes after each shift. Plaintiff, and on information and belief, Non-Exempt Employees were
7 not compensated for the work performed “off the clock.”

8 14. During the relevant time period, Plaintiff and Non-Exempt Employees were
9 required to use their personal cell phones in discharge of their duties, both on and off the clock.
10 Plaintiff estimates that she spent approximately five hours each week communicating and
11 coordinating various work tasks “off the clock” and without pay.

12 15. Defendants have also failed indemnify Plaintiff and Class Members for expenses
13 incurred in direct consequence of the discharge of their duty. For example, as stated above,
14 Plaintiff and Class members were required to use their personal phones both during shifts and off
15 the clock for various tasks, and were not indemnified for this personal expense.

16 16. During the relevant time period, due to the demands of the work shifts, Plaintiff
17 and Non Exempt Employees were required to work without being permitted or authorized a
18 minimum ten (10) minute rest period for every four hours or major fraction thereof worked.
19 Also, Plaintiff and Non-Exempt Employees were not provided a third 10 minute rest period
20 when they worked in excess of ten hours in a shift. Plaintiff and, on information and belief, Non-
21 Exempt Employees were not paid one (1) hour of pay at their regular rate of compensation for
22 each workday that a compliant was rest period was not provided, in violation of California labor
23 laws, regulations and IWC Wage Order.

24 17. During the relevant time period, due to the demands of their work duties Plaintiff
25 and Non-Exempt Employees were frequently required to clock out and continue working
26 through their meal breaks, or had their meal breaks interrupted. As a result, Plaintiff and Non-
27 Exempt Employees were not provided with an uninterrupted 30 minute meal period within the
28 first five (5) hours of their shift, nor the one (1) hour of pay for each workday that a compliant
meal period was not provided, in violation of California labor laws, regulations, and IWC Wage
Orders.

 18. During the relevant time period, Plaintiff and Non-Exempt Employees were also

not provided a second 30 minute meal period when they worked in excess of ten (10) hours in a shift.

19. During the relevant time period, pursuant to uniform policy and practice, Defendants failed to include non-discretionary compensation such as shift differential payments in determining Plaintiff and Non Exempt Employees' regular rate of pay for purposes of sick pay and therefore paid sick leave compensation at a lower rate in violation of California law.

20. During the relevant time period, pursuant to uniform policy and practice, Defendants failed to include non-discretionary compensation such as shift differential payments in determining Plaintiff and Non Exempt Employees' regular rate of pay for purposes of overtime and therefore paid overtime compensation at a lower rate in violation of California law.

21. During the relevant time period, pursuant to uniform policy and practice, Defendants failed to include non-discretionary compensation such as shift differential payments in determining Plaintiff and Non Exempt Employees' regular rate of pay for purposes of double time and therefore paid double time compensation at a lower rate in violation of California law.

22. On information and belief, Defendants willfully failed to pay all earned wages in a timely manner to Non Exempt Employees during their employment and at the termination of their employment all compensation due, including but not limited to all wages owed and compensation for having failed to properly provide rest periods and meal periods.

23. 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.

24. During the liability period, Defendants implemented a timekeeping policy and practice for Non-Exempt Employees which rounded their clock-in and clock-out times in a manner that resulted in a loss of time worked. As a result, Class Members were consistently underpaid and were required to work off the clock and without pay. Plaintiff contends this policy is not neutral and results, over time, to the Class members' detriment by systematically undercompensating without pay.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendant

1 currently employ and during the relevant period have employed over one hundred (100) Non
2 Exempt Employees in California.

3 26. Non-Exempt Employees employed by Defendants, at all times pertinent hereto,
4 have been non-exempt employees within the meaning of the California Labor Code and the
5 implementing rules and regulations of the IWC California Wage Orders.

6 **V.**

7 **CLASS ALLEGATIONS**

8 27. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
9 are or were employed by Defendants in the state of California as hourly non-exempt employees
10 within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of
11 this lawsuit (collectively referred to as the “Class” and/or Class Members”).

12 25. Plaintiff also seeks to represent Subclasses which are composed of persons
13 satisfying the following definitions:

14 a. All Class Members in the state of California who were not accurately and
15 fully paid all lawful wages owed to them including proper minimum wage

16 b. All Class Members in the state of California who were not accurately and
17 fully paid all lawful wages owed to them including correct overtime compensation for all their
18 hours worked;

19 c. All Class Members in the state of California who have not been provided
20 compliant 30 minute meal period when they worked over five hours in a work shift by the end of
21 the fifth hour and were not provided compensation in lieu thereof;

22 d. All Class Members in the state of California who have not been provided
23 a compliant second 30 minute meal period when they worked over ten hours in a work shift
24 by the end of the tenth hour and were not provided compensation in lieu thereof;

25 e. All Class Members in the state of California who, within the liability
26 period, have not been authorized and permitted to take a minimum ten (10) minute rest period
27 for every four (4) hours or major fraction thereof worked per day and were not provided
28 compensation in lieu thereof;

f. All Class Members in the state of California who, within the liability
period, were not timely paid all wages due and owed to them during their employment with

Defendant;

g. All Class Members in the state of California who, within the liability period, were not timely paid all wages due and owed to them upon the termination of their employment with Defendant; and

h. All Class Members in the state of California who, within the liability period, were not provided with accurate and complete itemized wage statements.

i. All Class Members in the state of California who, within the statutory liability period and were not indemnified for expenses incurred in direct consequence of the discharge of their duty.

26. Plaintiff also seeks to represent a Subclass consisting of all Employees employed by Defendants in California who within the statutory liability period were not indemnified for expenses incurred in direct consequence of the discharge of their duty.

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

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

A. Numerosity

29. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and/or during the relevant time period employed, approximately over 100 Non-Exempt Employees in California who are or have been affected by Defendants' unlawful practices as alleged herein.

B. Commonality

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

i. Whether Defendant violated Labor Code sections 510, 1194 and applicable IWC

1 Wage Orders by failing to pay all earned wages including correct overtime compensation, to
2 Non-Exempt Employees who worked in excess of eight (8) hours in a work day and/or more
3 than forty (40) hours in a workweek;

4 ii. Whether Defendants also violated Labor Code sections 510, 1194 and applicable
5 IWC Wage Orders by failing to pay all earned wages including correct double time
6 compensation to Non-Exempt Employees who worked in excess of twelve (12) hours in a work
7 day;

8 iii. Whether Defendants also violated Labor Codes sections 200, 1194, and 1197 for
9 failing to pay minimum wages for time spent under the Defendants' control and working "off
10 the clock" without pay;

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

15 v. Whether Defendant violated Labor Code section 226.7 and applicable IWC Wage
16 Orders by failing to authorize and permit minimum 10 minute rest periods to Non-Exempt
17 Employees for every four hours or major fraction thereof worked and failing to compensate said
18 employees one hours wages in lieu of rest periods;

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

22 vii. Whether Defendant violated section 204 of the Labor Code by failing to pay
23 timely wages during employment.

24 viii. Whether Defendant violated sections 226 of the Labor Code and applicable IWC
25 Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt
26 Employees' earned wages, work periods, meal periods and deductions;

27 ix. Whether Defendants violated section 246 of the Labor Code by failing to pay the
28 correct sick pay compensation when Class Members took sick leave;

x. Whether Defendants violated section 2802 of the Labor Code by not indemnifying

Non-Exempt employees for expenses incurred in being required to use their personal phones in the performance of their job duties

xi. Whether Defendant violated section 17200 *et seq.* of the Business and Professions Code through their violation of the above-referenced Labor Code and Civil Code sections and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy.

C. Typicality

31. 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 Defendant's common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

32. 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

33. 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 Defendant's unlawful policy and/or practice herein complained of.

34. 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.

VI.

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Failure to Pay Lawful Wages Including Minimum and/or Overtime Wages
(Lab. Code §§ 510, 1194 1199)
(Against All Defendants)

36. As alleged herein, during the statutory liability period, Defendants' policies, practices and work shift requirements resulted in Plaintiff and Non-Exempt Employees working "off the clock" and not receiving compensation for all earned wages including overtime in violation of California state wage and hour laws.

38. As alleged herein, during the statutory liability period, Defendants' policies and/or practices resulted in Plaintiff and Non Exempt Employees working in excess of twelve (12) receiving the proper compensation at the rate of double of such employee's correct regular rate of pay

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

Failure to Provide Lawful Meal Periods

Or Compensation in Lieu Thereof
(Lab. Code §§226.7, 512, IWC Wage Orders)
(Against All Defendants)

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

42. As alleged herein, by their failure to provide Plaintiff and Non Exempt Employees an uninterrupted 30 minute meal period by the end of the fifth hour and/or a second uninterrupted 30 minute meal period by the end of the tenth hour and not providing compensation for such statutorily non-compliant meal periods, Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

43. 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.

44. 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.

45. 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)

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

47. As alleged herein, by their failure to provide a minimum 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,

1 Defendants willfully violated the provisions of Labor Code section 226.7 and IWC applicable
2 Wage Orders.

3 48. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
4 represent have been deprived of premium wages in amounts to be determined at trial, and are
5 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
6 §226.7.

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

9 **Fourth Cause of Action**
10 Failure to Timely Pay Wages During Employment
11 (Lab. Code § 204)
12 (Against All Defendants)

13 50. Labor Code section 204 requires that all wages are due and payable twice in each
14 calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, 1197 and other
15 sections became due and payable to Plaintiff and Class Members in each month that he or she
16 was not paid all lawful wages owed or provided with lawful meal period or rest period to which
17 he or she was entitled. Defendants violated Lab. Code §204 by failing to pay said wages when
18 they were due and payable.

19 51. Labor Code section 210 (a) provides that “In addition to, and entirely independent
20 and apart from, any other penalty provided in this article, every person who fails to pay the
21 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205,
22 205.5, and 1197.5, shall be subject to a penalty as follow:

23 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
24 employee.

25 (2) For each subsequent violation, or any willful or intentional violation, two hundred
26 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
27 withheld.

28 52. As a result of the unlawful acts of Defendants alleged herein, Plaintiff and the
Class she seeks to represent have been deprived of wages in amounts to be determined at trial,

1 and are entitled to recovery of such amounts, plus interest and penalties.

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

4 **Fifth Cause of Action**

Failure to Timely Pay Wages Due At Termination

(Lab. Code §§ 201-203)

(Against All Defendants)

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

8 55. Sections 201 and 202 of the California Labor Code require Defendant to pay its
9 employees all wages due within 72 hours of termination of employment. Section 203 of the
10 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
11 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
12 full or an action is commenced. The penalty cannot exceed 30 days of wages.

13 56. As alleged herein, affected class members are entitled to compensation for all
14 forms of wages earned, including, overtime compensation, minimum wage, and compensation
15 for non provided rest and meal periods but to date have not received such compensation
16 therefore entitling them Labor Code section 203 penalties.

17 57. More than 30 days have passed since Plaintiff and affected Class Members have
18 left Defendants' employ, and on information and belief, have not received payment pursuant to
19 Labor Code §203. As a consequence of Defendant's willful conduct in not paying all earned
20 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
21 section 203 for failure to pay legal wages.

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

24 **Sixth Cause of Action**

25 Knowing and Intentional Failure to Comply With Itemized Employee

Wage Statement Provisions

(Lab. Code § 226(b))

(Against All Defendants)

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

2 60. Section 226(a) of the California Labor Code requires Defendant to itemize in
3 wage statements all deductions from payment of wages and to accurately report total hours
4 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
5 Defendant to maintain time records showing, among others, when the employee begins and ends
6 each work period, meal periods, split shift intervals and total daily hours worked in an itemized
7 wage statement, and must show all deductions and reimbursements from payment of wages, and
8 accurately report total hours worked by Plaintiff and the members of the proposed class. On
9 information and belief, Defendant has failed to record all or some of the items delineated in
10 Industrial Wage Orders and Labor Code §226

11 61. As alleged herein, Plaintiff and Class Members have been injured by Defendant's
12 actions by rendering them unaware of the full compensation to which they were entitled under
13 applicable provisions of the California Labor Code and applicable IWC Wage Orders.

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

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

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19 **Seventh Cause of Action**
20 Failure to Indemnify Employees for Expenditures
21 (Lab. Code § 2802)
22 (Against All Defendants)

23 64. Plaintiff repeats and incorporates herein by reference every allegation set forth
24 above, as though fully set forth herein.

25 65. As set forth above, Section 2802 of the California Labor Code requires
26 Defendants to indemnify employees for all necessary expenditures incurred in direct
27 consequence of the discharge of her duties.

28 66. Defendants violated Section 2802 by, among other things, failing to indemnify
Plaintiff and Class Members for expenditures incurred for using personal cellular phone in

1 the performance of job duties.

2 67. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
3 represent have incurred expenditures in amounts to be determined at trial.

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

6
7 **Eighth Cause of Action**
8 Violation of Unfair Competition Law
9 (Bus. & Prof. Code, §§ 17200-17208)
10 (Against All Defendants)

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

13 70. Business & Professions Code Section 17200 provides:

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

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

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

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

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

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

1 **VII.**

2 **PRAYER**

3 WHEREFORE, Plaintiff prays for judgment as follows:

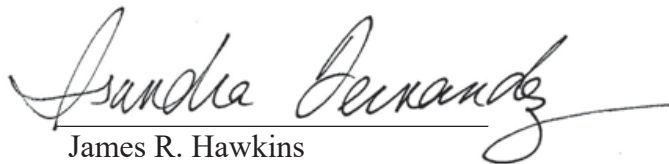
- 4 1. That the Court determine that this action may be maintained as a class action;
- 5 2. For compensatory damages in an amount according to proof with interest thereon;
- 6 3. For economic and/or special damages in an amount according to proof with interest
- 7 thereon;
- 8 4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
- 9 5. For premium pay and penalties pursuant to Labor Code §§203, 204, 226;
- 10 6. For attorneys' fees, interests and costs of suit under Labor Code §§ 226, 1194, 2802;
- 11 and
- 12 7. For such other and further relief as the Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

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

15 **Dated: November 2, 2021**

16 **JAMES HAWKINS, APLC**

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18 James R. Hawkins
19 Isandra Y. Fernandez
20 Kacey E. Cook
21 Attorneys for Plaintiff
22 MARY CARDOZA
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