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ELECTRONICALLY FILED
Superior Court of California,
County of San Benito
03/27/2025 at 01:32:51 PM
By: Angelica Valle, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO

OSBALDO MENDOZA, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

DK CHEVRON LLC, a limited liability
company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. CU-25-00034

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

(1) VIOLATION OF CAL. LABOR
CODE §§ 226.7 AND 512;

(2) VIOLATION OF CAL. LABOR
CODE § 226.7;

(3) VIOLATION OF CAL. LABOR
CODE § 226(a);

(4) UNFAIR OR UNLAWFUL
BUSINESS PRACTICES,
BUSINESS AND PROFESSIONS
CODE § 17200, *ET SEQ.*; AND

(5) VIOLATION OF LABOR CODE §
2698, *ET SEQ.*, THE PRIVATE
ATTORNEYS GENERAL ACT

DEMAND EXCEEDS \$25,000.00

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Superior Court of California,

County of San Benito

24 **03/27/2025 at 01:32:51 PM**

25 By: Angelica Valle, Deputy Clerk

1 Plaintiff Osbaldo Mendoza (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendants DK Chevron LLC
3 (collectively, the “Company” or “Defendant”) and DOES 1-50 (hereinafter collectively referred
4 to as “Defendants”), individually and on behalf of all other similarly situated current and former
5 employees of Defendants for penalties and/or damages for violations of the California Labor
6 Code, including without limitation, failure to provide employees with accurate itemized wage
7 statements, and failure to provide meal and rest period premium wages as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code §§
10 201-203, 226, 226.7, 512, and 2698, *et seq.*, , the California Industrial Welfare Commission’s
11 (“IWC”) Wage Orders, and the California Unfair Competition Law (the “UCL”), California
12 Business & Professions Code § 17200, *et seq.*

13 2. This Complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code and the Business & Professions Code against employees
15 of Defendants.

16 3. Plaintiff is informed and believes and based thereon alleges, that Defendants
17 jointly and severally have acted intentionally and with deliberate indifference and conscious
18 disregard to the rights of all employees by failing to provide accurate itemized wage statements
19 identifying all required information and failing to pay all meal and rest period premium wages
20 owed.

21 4. Plaintiff is informed and believes and based thereon alleges, that Defendants have
22 engaged in, among other things a system of willful violations of the California Labor Code,
23 California Business & Professions Code, and applicable IWC Wage Orders by creating and
24 maintaining policies, practices and customs that knowingly deny employees the above stated
25 rights and benefits.

26 **JURISDICTION AND VENUE**

27 5. The Court has jurisdiction over the violations of the California Labor Code §§
28 201-203, 226, 226.7, 512, 2698, *et seq.*, and the UCL.

6. Venue is proper in San Benito County because Defendants maintain business

1 locations in this County and Plaintiff performed work for Defendants in this County.

2 **PARTIES**

3 7. In or around March 2023, Plaintiff was hired by Defendants. Plaintiff worked as a
4 non-exempt, or hourly gas station attendant for Defendants in Hollister, California.

5 8. Plaintiff is informed and believes and based thereon alleges that Defendant is a
6 California limited liability company that operates gas stations throughout California.

7 9. Plaintiff is and was a victim of the policies, practices, and customs of Defendants
8 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
9 California Labor Code §§ 201-203, 226, 226.7, 512, and 2698, *et seq.*, the UCL, and the
10 applicable IWC Wage Orders.

11 10. Plaintiff is informed and believes and based thereon alleges, that at all times herein
12 mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and
13 partnerships, licensed to do business and actually doing business in the State of California.

14 11. As such, and based upon all the facts and circumstances incident to Defendants'
15 business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7,
16 512, and 2698, *et seq.*, the UCL, and the IWC Wage Orders.

17 12. Plaintiff does not know the true names or capacities, whether individual, partner or
18 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
19 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
20 complaint when the true names and capacities are known. Plaintiff is informed and believes and
21 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
22 matters alleged herein and proximately caused Plaintiff and members of the general public and
23 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

24 13. At all times herein mentioned, each of said Defendants participated in the doing of
25 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants and employees of each of the other
27 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
28 within the course and scope of said agency and employment.

14. Plaintiff is informed and believes and based thereon alleges, that at all times

1 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
2 joint venturer of, or working in concert with each of the other co- Defendants and was acting
3 within the course and scope of such agency, employment, joint venture, or concerted activity. To
4 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
5 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
6 Defendants.

7 15. At all times herein mentioned, Defendants, and each of them, were members of,
8 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
9 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

10 16. At all times herein mentioned, the acts and omissions of various Defendants, and
11 each of them, concurred and contributed to the various acts and omissions of each and all of the
12 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
13 herein mentioned, Defendants, and each of them, ratified each and every act or omission
14 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
15 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
16 the damages as herein alleged.

17 **CLASS ACTION ALLEGATIONS**

18 17. **Definition:** Plaintiff seeks class certification, pursuant to California Code of Civil
19 Procedure § 382, of the following classes (together, the “Class”):

- 20 a. All current and former non-exempt employees of Defendants in the State of
21 California who worked more than five (5) hours in any shift at any time
22 from February 3, 2021 through the present (the “Meal Period Class”); and
- 23 b. All current and former non-exempt employees of Defendants in the State of
24 California who worked at least three and one-half (3.5) hours in any shift at
25 any time from February 3, 2021, through the present (the “Rest Period
26 Class”).

27 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
28 that joinder of all members would be impractical, if not impossible. The identity of the members
of the Class is readily ascertainable by review of the Company’s records, including payroll

1 records. Plaintiff is informed and believes and based thereon alleges, that the Company: (a) failed
2 to provide meal and rest periods as required by law and/or pay the requisite meal/rest period
3 premium wages for said meal and rest period violations; (b) failed to provide accurate itemized
4 wage statements to employees in violation of Labor Code § 226; and (c) engaged in unfair
5 business practices in violation of the California Labor Code, the applicable IWC Wage Orders,
6 and the UCL.

7 19. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
8 steps to represent fairly and adequately the interests of the class defined above. Plaintiff's
9 attorneys are ready, willing and able to fully and adequately represent the class and the named
10 Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past
11 and currently have a number of wage-and-hour class actions pending in California courts.

12 20. **Common Question of Law and Fact:** There are predominant common questions
13 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
14 concerning the Company's policy and practice of: (a) failure to provide meal and rest periods as
15 required by law and/or pay the requisite meal/rest period premium wages for said meal and rest
16 period violations; (b) failure to provide accurate itemized wage statements to employees in
17 violation of Labor Code § 226; and (c) engaging in unfair business practices in violation of the
18 California Labor Code, the applicable IWC Wage Orders, and the UCL.

19 21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
20 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
21 and typical manner as the Class members. Defendants violated Labor Code §§ 201-203, 226,
22 226.7, 512, and the UCL by failing to provide meal periods and authorize and permit rest periods
23 to Plaintiff and Class Members. Plaintiff and Class Members were required to remain on-
24 premises during their meal and rest periods and continue to work their entire shifts without taking
25 meal and rest breaks. Further, whenever Plaintiff and Class Members were not provided with
26 meal and rest periods in compliance with Labor Code §§ 226.7 and 512, Defendants failed to pay
27 meal/rest period premium wages to Plaintiff and Class Members. Further, as a result of said
28 violations, the wage statements furnished to Plaintiff and Class Members failed to reflect the
accurate gross and net wages, hours worked and hourly rates for the missed meal/rest periods

1 and/or unpaid meal/rest period premium wages in violation of Labor Code § 226. Moreover,
2 Defendants violated Labor Code §§ 201-203 as to all separated employees whose employment
3 have ended by not paying all owed meal/rest period premium wages within the time requirements
4 set forth in these statutes. Thus, Plaintiff is a member of the Class and has suffered the alleged
5 violations of California Labor Code §§ 201-203, 226, 226.7, and 512, the UCL, and the
6 applicable IWC Wage Orders.

7 22. The California Labor Code and upon which Plaintiff bases these claims is broadly
8 remedial in nature. These laws and labor standards serve an important public interest in
9 establishing minimum working conditions and standards in California. These laws and labor
10 standards protect the average working employee from exploitation by employers who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment.

13 23. The nature of this action and the format of laws available to Plaintiff and members
14 of the Class identified herein make the class action format a particularly efficient and appropriate
15 procedure to redress the wrongs alleged herein. If each employee were required to file an
16 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage
17 since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff
18 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
19 pursue an individual remedy would also discourage the assertion of lawful claims by employees
20 who would be disinclined to file an action against their former and/or current employer for real
21 and justifiable fear of retaliation and permanent damage to their careers at subsequent
22 employment.

23 24. The prosecution of separate actions by the individual class members, even if
24 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
25 to individual Class members against the Company and which would establish potentially
26 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
27 individual Class members which would, as a practical matter, be dispositive of the interest of the
28 other Class members not parties to the adjudications or which would substantially impair or
impede the ability of the Class members to protect their interests. Further, the claims of the

individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

25. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action any and all applicable penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226, the applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

26. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is a representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

27. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by the Company. The Class is commonly entitled to restitution of those funds being improperly withheld by the Company. This action is brought for the benefit of the entire Class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7 AND 512

(BY PLAINTIFF AND THE MEAL PERIOD CLASS AGAINST ALL DEFENDANTS)

28. Plaintiff realleges and incorporates by reference the preceding paragraphs as though fully set for herein.

29. At all relevant times, Defendants failed in their affirmative obligation to ensure that Plaintiff, and other class members, had the opportunity to take and were provided with off-duty meal periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. Plaintiff and Class Members were suffered and permitted to work through legally required meal breaks and were denied the opportunity to take their full 30-minute off-duty meal breaks. As such, Defendants are responsible for paying premium compensation for missed meal periods pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order. Specifically, Labor Code § 226.7(c) provides that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday the

1 meal or rest or recovery period is not provided. Defendants failed to provide meal periods to
2 Plaintiff and Class Members within the first 5 hours of their shifts longer than 5 hours. Further,
3 whenever Plaintiff and Class Members were not provided with meal periods in compliance with
4 Labor Code §§ 226.7 and 512, Defendants failed to pay meal period premium wages to Plaintiff
5 and Class Members. As a result, Plaintiff and Class Members were not provided compliant meal
6 breaks.

7 30. Plaintiff is informed and believes, and based thereon allege, that Defendants'
8 willful failure to provide all meal period premium pay and/or wages due and owing Class
9 Members whose employment has ended results in a continued payment of wages up to thirty (30)
10 days from the time the wages were due. Therefore, Class Members who have separated from
11 employment are entitled to compensation pursuant to Labor Code § 203.

12 31. Such a pattern, practice and uniform administration of corporate policy as
13 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
14 Members identified herein, in a civil action, for the unpaid balance of the unpaid premium
15 compensation pursuant to Labor Code §§ 201, 202, 203, 226.7 and 512, and the applicable IWC
16 Wage Order, including interest thereon, penalties, and costs of suit.

17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 226.7**

19 **(BY PLAINTIFF AND THE REST PERIOD CLASS AGAINST ALL DEFENDANTS)**

20 32. Plaintiff realleges and incorporates by reference the preceding paragraphs as
21 though fully set for herein.

22 33. At all relevant times, Defendants failed in their affirmative obligation to ensure
23 that Plaintiff, and other class members, were authorized and permitted to take rest periods in
24 accordance with the mandates of the California Labor Code and the applicable IWC Wage Order.
25 Plaintiff and Class Members were suffered and permitted to work through legally required rest
26 breaks and were denied the opportunity to take their full 10-minute off-duty rest breaks for every
27 3.5 hours worked. As such, Defendants are responsible for paying premium compensation for
28 missed rest periods pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC Wage
Order. Defendants, as a matter of corporate policy and procedure, regularly failed to pay the rest

1 period premium wages for missed rest periods.

2 34. Plaintiff is informed and believes, and based thereon allege, that Defendants'
3 willful failure to provide all rest period premium pay and/or wages due and owing Class Members
4 upon separation from employment results in a continued payment of wages up to thirty (30) days
5 from the time the wages were due. Therefore, Class Members who have separated from
6 employment are entitled to compensation pursuant to Labor Code § 203.

7 35. Such a pattern, practice and uniform administration of corporate policy as
8 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
9 Members identified herein, in a civil action, for the unpaid balance of the unpaid premium
10 compensation pursuant to Labor Code §§ 201, 202, 203, 226.7 and 512, and the applicable IWC
11 Wage Order, including interest thereon, penalties, and costs of suit.

12 **THIRD CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 226(a)**

14 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS)**

15 36. Plaintiff realleges and incorporates by reference the preceding paragraphs as
16 though fully set for herein.

17 37. The Company failed in its affirmative obligation to provide accurate itemized
18 wage statements in violation of Labor Code § 226(a). Defendants violated Labor Code § 226(a)
19 as to Plaintiff and Class Members by not accurately reflecting gross and net wages and hourly
20 rates as a result of Defendants' failure to pay meal and rest period premium wages for missed
21 breaks. The wage statements provided to Plaintiff and the Class failed to provide the accurate,
22 requisite information.

23 38. The issuance of inaccurate wage statements caused actual injury to Plaintiff and
24 Class Members, as they were not able to accurately calculate their wages.

25 39. Such a pattern, practice and uniform administration of corporate policy as
26 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
27 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
28 including interest thereon, attorneys' fees, and costs of suit according to the mandate of California
Labor Code § 226.

1 **FOURTH CAUSE OF ACTION**

2 **UNFAIR OR UNLAWFUL BUSINESS PRACTICES, BUSINESS AND PROFESSIONS**
3 **CODE § 17200, *et seq.***

4 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)**

5 40. Plaintiff realleges and incorporates by reference the preceding paragraphs as
6 though fully set for herein.

7 41. Defendant has engaged and continue to engage in unfair and unlawful business
8 practices in California by practicing, employing and utilizing the employment practices outlined
9 above, include, to wit, by failing to provide meal and rest periods and/or pay the meal and rest
10 period premium wages and engaging in Unfair Business Practices in violation of the UCL, all in
11 violation of the California Labor Code and applicable IWC Wage Orders.

12 42. Defendant's utilization of such unfair and unlawful business practices constitutes
13 unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

14 43. Plaintiff seeks as an individual and on behalf of other members of the Class
15 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
16 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
17 practices complained of herein. Plaintiff also seeks injunctive relief to enjoin the unfair business
18 practices alleged herein. Specifically, Plaintiff seeks restitution for unpaid meal and rest break
19 premium wages.

20 44. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as
22 proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth
23 herein above thereby depriving Plaintiff and other members of the Class the minimum working
24 condition standards and conditions due to them under the California laws and the applicable IWC
25 Wage Orders as specifically described therein.

26 **FIFTH CAUSE OF ACTION**

27 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

28 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

45. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as

1 though fully set forth herein.

2 46. Plaintiff brings this cause of action as a proxy for the State of California and in this
3 capacity, seeks penalties on behalf of all Aggrieved Employees in the State of California from
4 January 17, 2024, through the present, for Defendants' violations of Labor Code §§ 201-203, 226,
5 226.7, and 512, arising from Defendants' failure to: (a) provide duty-free meal periods or pay
6 meal break premiums in lieu thereof; (b) provide duty-free rest periods or pay rest break
7 premiums in lieu thereof; (c) pay all wages owed to separated employees at separation of
8 employment; and (d) provide accurate itemized wage statements.

9 47. On or about January 17, 2025, Plaintiff sent written notice to the California Labor
10 & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-
11 203, 226, 226.7, and 512 pursuant to the PAGA. In addition to the LWDA, Plaintiff also sent his
12 notice to Defendant via certified mail pursuant to Labor Code § 2699.3.

13 48. As of the date of the filing of this Complaint, the LWDA has not responded to
14 Plaintiff's written notice nor indicated that it intends to investigate the Labor Code violations
15 provided for in the written notice. Therefore, Plaintiff may seek applicable penalties under the
16 PAGA.

17 49. Such a pattern, practice and uniform administration of corporate policy as
18 described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of
19 the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code §§ 226.3
20 and 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the mandate
21 of PAGA for Defendant's violations of Labor Code §§ 201-203, 226, 226.7, 512, as well as
22 attorneys' fees and costs.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
25 this suit is brought against Defendants, jointly and severally, as follows:

- 26 1. For an order certifying the proposed Class;
- 27 2. For an order appointing Plaintiff as the representative of the Classes as described
28 herein;
3. For an order appointing counsel for Plaintiff as Class counsel;

- 1 4. Upon the First Cause of Action, for damages and/or penalties according to proof
2 pursuant to Labor Code §§ 201-203, 226, 226.7 and 512, and for costs;
- 3 5. Upon the Second Cause of Action, for damages and/or penalties according to proof
4 pursuant to Labor Code §§ 201-203, 226, and 226.7, and for costs;
- 5 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to
6 California Labor Code § 226, and for costs and attorneys' fees;
- 7 7. Upon the Fourth Cause of Action, for restitution of all funds unlawfully acquired
8 by Defendants by any acts or practices declared to be in violation of the UCL, including interest
9 thereon, and for costs;
- 10 8. Upon the Fifth Cause of Action, for the full amount of penalties pursuant to
11 California Labor Code §§ 201-203, 226, 226.7, 512 and 2698, *et seq.* and for costs and attorneys'
12 fees; and
- 13 9. On all causes of action, for attorneys' fees and costs as provided by California
14 Labor Code § 226, and Code of Civil Procedure § 1021.5; and
- 15 10. For such other and further relief as the Court may deem just and proper.

16 DATED: March 27, 2025

DIVERSITY LAW GROUP, P.C.

17
18 By: 

Larry W. Lee
Attorneys for PLAINTIFF, the CLASS, and
AGGRIEVED EMPLOYEES

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On March 27, 2025, I served the following document(s) described as: **FIRST**
11 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES**
12 on the interested parties in this action as follows:

13 DK CHEVRON LLC
14 c/o Edwin Yim
15 42840 Christy Street, Suite 209
16 Fremont, CA 94538
17 *Agent for Service of Process*

18 X BY MAIL: by placing _____ the original or X a true and correct copy
19 thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
20 attached mailing list. I am readily familiar with the firm's practice for collection and processing
21 of correspondence and other materials for mailing with the United States Postal Service. On this
22 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
23 collection and mailing on this date at the address above following our office's ordinary business
24 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
25 in the ordinary course of business.

26 I declare under penalty of perjury under the laws of the State of California that the above
27 is true and correct. Executed on March 27, 2025, at Los Angeles, California.

28


Erika Mejia