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Attorneys for Plaintiff PEDRO BORJA RODRIGUEZ
 on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

PEDRO BORJA RODRIGUEZ, on behalf of
 himself and other aggrieved employees,

Plaintiff,

vs.

DIRECTBUY HOME IMPROVEMENT, INC.;
 and DOES 1 to 100, inclusive,

Defendants.

Case No.: **22STCV34408**

PAGA ACTION

**PLAINTIFF PEDRO BORJA
 RODRIGUEZ'S COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
 TO THE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004
 ("PAGA"), LABOR CODE
 SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff PEDRO BORJA RODRIGUEZ ("Plaintiff"), who alleges and
 complains against Defendants DIRECTBUY HOME IMPROVEMENT, INC.; and DOES 1 to
 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
 ("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
 and other current and former aggrieved employees of Defendants who worked as hourly non-

1 exempt employees in California during the relevant time period seeking civil penalties associated
2 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
3 hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
4 required and/or legally compliant meal and rest periods, indemnification for all necessary
5 expenditures or losses incurred by employees in direct consequence of discharging their duties;
6 failure to timely pay earned wages during employment, failure to provide complete and accurate
7 wage statements, and failure to timely pay all unpaid wages following separation of employment.
8 Plaintiff seeks on a representative basis, following notice to the Labor and Workforce
9 Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section
10 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

11 2. In response to the COVID-19 pandemic, the Judicial Council of California enacted
12 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
13 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
14 tolled from April 6, 2020, until October 1, 2020.

15 **II. JURISDICTION AND VENUE**

16 3. This Court has jurisdiction over the claims of Plaintiff and all other current and
17 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
18 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
19 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
20 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
21 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
22 aggrieved California-based hourly non-exempt employees occurred in locations throughout
23 California, including but not limited to Los Angeles County at 1855 139th Street, Gardena,
24 California 90249.

25 **III. PARTIES**

26 4. Plaintiff brings this action as a representative of the Labor and Workforce
27 Development Agency on behalf of himself and other current and former employees subject to
28 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
5 employed by Defendants in an hourly position at Defendants' location in Los Angeles from
6 approximately October 2003 until his termination on or about January 31, 2022.

7 5. Plaintiff is informed and believes and thereon alleges that Defendant DIRECTBUY
8 HOME IMPROVEMENT, INC. is authorized to do business within the State of California and is
9 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
10 relevant hereto were persons acting on behalf of Defendant DIRECTBUY HOME
11 IMPROVEMENT, INC. in the establishment of, or ratification of, the aforementioned illegal wage
12 and hour practices or policies. Defendant DIRECTBUY HOME IMPROVEMENT, INC. operates
13 in Los Angeles County and employed Plaintiff and aggrieved employees in Los Angeles County,
14 including but not limited to, at 1855 139th Street, Gardena, California 90249.

15 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 50 are corporations, or are other business entities or organizations of a nature unknown to
17 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
18 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
19 working conditions of employment of Plaintiff and aggrieved employees.

20 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
21 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
22 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
23 supervisor, independent contractor and/or employee of each defendant who violated or caused to
24 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
25 the Industrial Welfare Commission's wage orders regulating hours and days of work.

26 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said defendants by said fictitious names, and will amend this complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
2 named defendants is in some manner responsible for the events and allegations set forth in this
3 complaint.

4 9. Plaintiff makes the allegations in this complaint without any admission that, as to
5 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
6 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**
9 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

10 **(Against all Defendants by Plaintiff)**

11 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

12 11. During the period beginning one (1) year preceding Plaintiff sending the initial
13 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
14 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 2802, and Sections 14 and 15 of the applicable
15 Wage Orders.

16 12. Specifically, Defendants have committed the following violations of California
17 Labor Code:

18 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
19 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the
22 employee is suffered and permitted to work. This includes the time an employee spends, either
23 directly or indirectly, performing services which inure to the benefit of the employer.

24 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
25 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
26 Wage Orders.

27 15. In this case, Plaintiff and other current and former aggrieved California-based
28 hourly non-exempt employees worked more minutes per shift than Defendants credited them with

1 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
2 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
3 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
4 not limited to:

5 (a) Since the outbreak of COVID-19, requiring Plaintiff and other current and former
6 aggrieved California-based hourly non-exempt employees to arrive prior to their start shift to
7 undergo off-the-clock COVID-19 screenings, including temperature checks and medical
8 questionnaires, prior to being permitted to clock in before their start shift; and

9 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
10 non-exempt employees to set up the Paycom application profile on their personal cell phones in
11 order to be able to clock in and out for their shifts and meal break during their shifts.

12 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
13 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
14 control without paying wages for that time. This resulted in Plaintiff and other current and former
15 aggrieved California-based hourly non-exempt employees working time for which they were not
16 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
17 Wage Order.

18 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
19 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the
22 employee is suffered and permitted to work. This includes the time an employee spends, either
23 directly or indirectly, performing services that inure to the benefit of the employer.'

24 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
25 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
26 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

27 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
28 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
work in any one (1) workweek, shall be compensated at the rate of no less than one-and-

one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

19. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Since the outbreak of COVID-19, requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to arrive prior to their start shift to undergo off-the-clock COVID-19 screenings, including temperature checks and medical questionnaires, prior to being permitted to clock in before their start shift; and

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to set up the Paycom application profile on their personal cell phones in order to be able to clock in and out for their shifts and meal break during their shifts.

20. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

21. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

22. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of

1 all duties and the employer relinquishes control over the employee's activities prior to the
2 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 7 at §11; *Brinker*
3 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
4 employee for a work period of more than ten (10) hours per day without providing the employee
5 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
6 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
7 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
8 period is only permitted when: (1) the nature of the work prevents an employee from being
9 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

10 23. If an employer fails to provide an employee a meal period in accordance with the
11 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
12 for each workday that a legally required and compliant meal period was not provided. Labor Code
13 section 226.7; Wage Order 7 at §11.

14 24. In this case, Defendants failed to authorize or permit legally required and compliant
15 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
16 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
17 limited to:

18 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
19 non-exempt employees to leave their workstation and travel off-the-clock to a designated area for
20 meal breaks and travel back to their workstation before the end of the bell sound resulting in meal
21 periods that are on-duty and/or less than thirty (30) minutes.

22 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
23 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
24 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
25 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
26 employees did not receive legally required and compliant meal periods, in violation of Labor Code
27 section 226.7.

28 26. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff

1 and other current and former aggrieved California-based hourly non-exempt employees not
2 receiving wages to compensate them for workdays during which Defendants did not provide them
3 with meal periods in compliance with California law.

4 27. **Failure to pay wages to hourly non-exempt employees for workdays that**
5 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
6 current and former aggrieved California-based hourly non-exempt employees regularly worked
7 shifts of more than three-and-a-half (3.5) hours.

8 28. California law requires every employer to authorize and permit an employee a rest
9 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
10 Code section 226.7; Wage Order 7 at §12. Under California law, “[e]mployees are entitled to 10
11 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
12 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
13 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
14 section 226.7; Wage Order 7 at §12. Rest periods, insofar as practicable, shall be in the middle of
15 each work period. Wage Order 7 at §12. Additionally, the rest period requirement “obligates
16 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
17 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
18 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

19 29. If the employer fails to authorize or permit a required rest period, the employer
20 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
21 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
22 Wage Order 7 at § 12.

23 30. In this case, Defendants failed to authorize or permit all legally required and
24 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
25 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
26 limited to:

27 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
28 hourly non-exempt employees a third uninterrupted duty-free rest period of a net ten (10) minutes

1 for every ten (10) hours worked or major fraction thereof.

2 31. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
3 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
4 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
5 workday they did not receive legally required and compliant rest periods, in violation of Labor
6 Code section 226.7.

7 32. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
8 and other current and former aggrieved California-based hourly non-exempt employees not
9 receiving wages to compensate them for workdays in which Defendants did not provide them with
10 rest periods in compliance with California law.

11 33. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
12 **Employment:** California law requires that every employer must indemnify its employees for all
13 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
14 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
15 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
16 2802.)

17 34. Defendants have violated Labor Code Section 2802 by failing to indemnify
18 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
19 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
20 employed a policy, practice, and procedure included, but were not limited to, requiring Plaintiff
21 and other current and former aggrieved California-based hourly non-exempt employees to use or
22 purchase their own tools and/or resources in order to work for Defendants, including but not
23 limited to use their personal cell phone (including both telephone use and cellular data use) for
24 work-related purposes, such as clocking in and out for shifts and meal breaks - without
25 reimbursing Plaintiff and other current and former aggrieved California-based hourly non-exempt
26 employees for such use.

27 35. Moreover, Defendants employed policies and procedures which ensured Plaintiff
28 and aggrieved employees would not receive indemnification for their employment related

1 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
2 indemnification in compliance with California law.

3 36. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
4 employment related expenses, including but not limited to costs related to use of their personal
5 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

6 37. **Failure to timely pay earned wages during employment:** In California, wages
7 must be paid at least twice during each calendar month on days designated in advance by the
8 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
9 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
10 16th and the 26th day of that month and wages earned between the 16th and the last day,
11 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
12 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
13 paid within seven (7) calendar days following the close of the payroll period in which wages were
14 earned. Labor Code section 204(d).

15 38. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
16 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
17 exempt employees' earned wages (including minimum wages, overtime wages, meal period
18 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
19 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
20 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
21 their earned wages within the applicable time frames outlined in Labor Code section 204.

22 39. **Failure to provide complete and accurate wage statements:** Labor Code section
23 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
24 employee his or her wages, the employer must "furnish each of his or her employees ... an
25 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
26 employee, except for any employee whose compensation is solely based on a salary and who is
27 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
28 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable

1 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
2 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
3 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
4 name of the employee and his or her social security number, (8) the name and address of the legal
5 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by the employee.”

7 40. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
8 and other current and former aggrieved California-based hourly non-exempt employees all wages
9 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
10 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
11 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
12 section 226.

13 41. Defendants’ violations of Wage Order 7 constituted violations of Labor Code
14 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

15 42. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
16 employee, on behalf of himself or herself and other current or former employees, to bring a civil
17 action to recover civil penalties against all Defendants pursuant to the procedures specified in
18 Labor Code section 2699.3.

19 43. Plaintiff has complied with the procedures for bringing suit specified in Labor
20 Code section 2699.3. On August 4, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA
21 and provided notice to Defendants by certified mail which provided notice of the specific
22 provisions of the Labor Code alleged to have been violated, including the facts and theories to
23 support the violations alleged.

24 44. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
25 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
26 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
27 parties notice within 60 days of the date of Plaintiff’s PAGA Claim Notice that the LWDA intends
28 to investigate Plaintiff’s claims.

1 45. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
2 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
3 512, 1194, 1197, and 2802, beginning one (1) year preceding Plaintiff sending the initial PAGA
4 Claim Notice to the LWDA to the present, in the following amounts:

5 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512,
6 and 1197; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
7 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
8 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

9 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
10 for each employee for each pay period for the initial violation, and for each subsequent violation,
11 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
12 established by Labor Code section 226.3].

13 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
14 employee for each pay period for the initial violation, and for each subsequent violation, one
15 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
16 established by Labor Code section 558] and any unpaid wages.

17 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
18 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
19 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
20 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

21 46. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
22 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

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PRAYER FOR RELIEF

**WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER
AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: October 26, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



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