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Clerk of the Superior Court

DEC 05 2022

By K. BRITTON
DEPUTY CLERK

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7 Attorneys for Plaintiff(s),
8 JASMINE POLLARD, and all others similarly situated
(additional attorneys for Plaintiff(s) on following page)

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SOLANO
12 (UNLIMITED JURISDICTION)

13 JASMINE POLLARD, on behalf of herself and
all others similarly situated, and the general
14 public, and as an "Aggrieved Employee" on
behalf of other "Aggrieved Employees" under
15 the Private Attorneys General Act of 2004,

16 *Plaintiff,*

17 vs.

18
19 GUARANTEED RATE AFFINITY, LLC, a
Delaware limited liability company; and DOES
20 1-50, inclusive,

21 *Defendants.*

Case No.: ~~FSC058845~~
FCS058845
rb

CLASS ACTION

FIRST AMENDED COMPLAINT FOR

1. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
2. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
3. Civil Penalties (Lab Code §§2698, et seq.).

JURY TRIAL DEMANDED

BY FAX



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JASMINE POLLARD, and all others similarly situated



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1 Plaintiff, Jasmine Pollard (hereafter “Plaintiff” or “Pollard”), on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Guaranteed Rate
7 Affinity, LLC, a Delaware limited liability company, and Does 1 through 50, inclusive
8 (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated workers for unreimbursed expenses, interest, and related relief. These
11 claims are based on Defendants’ failures to indemnify for necessary work-related expenditures.
12 Accordingly, Plaintiff now seeks to recover unreimbursed expenses, interest, liquidated damages,
13 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

14 **II. THE PARTIES**

15 3. Plaintiff Jasmine Pollard is a resident of California. At all relevant times, Plaintiff
16 was an “employee” within the meaning of Title 8 California Code of Regulations Section 11040,
17 and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

18 4. Defendant Guaranteed Rate Affinity, LLC is a limited liability company organized
19 and existing under the laws of Delaware and also a citizen of California based on Plaintiff’s
20 information and belief.

21 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
22 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
23 is informed and believes and thereon alleges that said Defendants are legally responsible for the
24 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
25 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
26 when ascertained.

27 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 herein, all Defendants were the agents, employees and/or servants, masters or employers of the



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1 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
2 within the course and scope of such agency, employment, direction and control, and with the
3 approval and ratification of each of the other Defendants.

4 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
5 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
6 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
7 Members or otherwise complying with their rights in accordance with applicable California labor
8 laws as alleged herein.

9 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
10 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
11 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
12 described class in accordance with applicable laws as alleged herein.

13 **III. CLASS ALLEGATIONS**

14 9. This action has been brought and may be maintained as a class action pursuant to
15 California Code of Civil Procedure section 382 because there is a well-defined community of
16 interest among the persons who comprise the readily ascertainable class defined below and
17 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
18 a class action.

19 10. **Class Definition:** The Class is defined as follows: All persons Defendants
20 employed in California, including, but not limited to, sales assistants, operations assistants, and
21 appraisal desk coordinators, and individuals performing work comparable to the aforementioned,
22 compensated comparably to the aforementioned, and individuals in similar positions, at any time
23 during the period beginning four years prior to the filing of this action and ending on the date that
24 final judgment is entered in this action (“Class” or “Class Members”).

25 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
26 right to amend or modify the class definition with greater specificity, by further division into
27 subclasses and/or by limitation to particular issues.

28 12. **Numerosity:** The Class Members are so numerous that the individual joinder of



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1 each individual Class Member is impractical. While Plaintiff does not currently know the exact
2 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
3 minimum required for numerosity under California laws.

4 13. **Commonality and Predominance:** Common questions of law and fact exist as to
5 all Class Members and predominate over any questions which affect only individual Class
6 Members. These questions include, but are not limited to:

7 A. Whether Defendants failed to indemnify the Class Members for the
8 reasonable expenses they incurred during the course of performing their duties;

9 B. Whether Defendants engaged in unfair competition within the meaning of
10 Business and Professions Code sections 17200, et seq., with respect to the Class; and

11 C. Whether Class Members are entitled to restitution of money or property
12 that Defendants may have acquired from them through alleged Labor Code violations.

13 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
14 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
15 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
16 Code, the Wage Order, and the Business and Professions Code.

17 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
18 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
19 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
20 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
21 Members.

22 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
23 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
24 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
25 Plaintiff and absent Class Members.

26 17. **Superiority:** A class action is vastly superior to other available means for fair and
27 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
28 Court. Class action treatment will allow a number of similarly situated persons to simultaneously



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1 and efficiently prosecute their common claims in a single forum without the unnecessary
2 duplication of effort and expense that numerous individual actions would entail. In addition, the
3 monetary amounts due to many individual Class Members are likely to be relatively small and
4 would thus make it difficult, if not impossible, for individual Class Members to both seek and
5 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
6 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
7 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

8 9 IV. STATEMENT OF FACTS

10 18. The Wage Order applies to “all persons employed in professional, technical,
11 mechanical, and similar occupations whether paid on a time, piece rate, commission, or other
12 basis...” Wage Order, § 1. The Wage Order defines “Professional, Technical, Clerical,
13 Mechanical, and Similar Occupations” to include

14 professional, semiprofessional, managerial, supervisorial, laboratory, research,
15 technical, clerical, office work, and mechanical occupations. Said occupations
16 shall include, but not be limited to, the following: accountants; agents; appraisers;
17 artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters;
18 canvassers; carriers; cashiers; checkers; clerks; collectors; communications and
19 sound technicians; compilers; copy holders; copy readers; copy writers; computer
20 programmers and operators; demonstrators and display representatives;
21 dispatchers; distributors; door-keepers; drafters; elevator operators; estimators;
22 editors; graphic arts technicians; guards; guides; hosts; inspectors; installers;
23 instructors; interviewers; investigators; librarians; laboratory workers; machine
24 operators; mechanics; mailers; messengers; medical and dental technicians and
25 technologists; models; nurses; packagers; photographers; porters and cleaners;
26 process servers; printers; proof readers; salespersons and sales agents; secretaries;
27 sign erectors; sign painters; social workers; solicitors; statisticians; stenographers;
28 teachers; telephone, radiotelephone, telegraph and call-out operators; tellers;
ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants
and other related occupations listed as professional, semiprofessional, technical,
clerical, mechanical, and kindred occupations

26 Wage Order, § 2(O). At all relevant times during the applicable limitations period, the
27 Defendants, Pollard, and all of the Class Members were covered by the Wage Order because
28 Pollard and all of the Class Members worked for the Defendants as clerks, their assistants and



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1 other related occupations listed as professional, semiprofessional, technical, clerical, mechanical,
2 and kindred occupations. Accordingly, Pollard and all of the other Class Members are entitled to
3 the protections the Wage Order provides.

4 19. On approximately December 8, 2020, the Defendants began to employ Pollard in
5 Fairfield in the position of sales assistant, operations assistant, and appraisal desk coordinator.
6 The Defendants continuously employed her in that capacity until on or about September 19, 2022
7 when her employment ended.

8 20. At all relevant times, the Defendants issued wages to Pollard and all of the other
9 Class Members on a semimonthly (24 paychecks/year) basis and paid them by the hour, salary,
10 commission, or piece rate. At all relevant times, the Defendants classified Pollard and all of the
11 other Class Members as employees whether or not entitled to the protections of the Labor Code
12 and the Wage Order.

13 21. At all relevant times, the Defendants required Pollard and all of the other Class
14 Members to incur certain business expenses in the course of performing their duties. The
15 Defendants required Pollard and all of the other Class Members to supply telecom, internet,
16 mobile phones to perform their job duties. However, the Defendants did not provide these items
17 and did not reimburse Pollard and the other Class Members for these items. Defendants required
18 Pollard and Class Members to work from home and to provide their own telecom and internet
19 connections and phones. Defendants did not reimburse Pollard and Class Members for these
20 expenses.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO INDEMNIFY**

23 **Lab. Code § 2802**

24 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

25 22. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

26 23. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
27 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
28 consequence of the discharge of his or her duties.”



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1 24. California Labor Code § 1198 prohibits employers from employing their
2 employees under conditions prohibited by the Wage Order.

3 25. At all relevant times, Defendants required Plaintiff and the Class Members to incur
4 certain business expenses in the course of performing their duties.

5 26. As described above, the Defendants required Pollard and all of the other Class
6 Members to incur certain business expenses in the course of performing their duties. The
7 Defendants required Pollard and all of the other Class members to supply telecom, internet,
8 mobile phones to perform their job duties. However, the Defendants did not provide these items
9 and did not reimburse Pollard and the other Class members for these items. Defendants required
10 Pollard and Class Members to work from home and to provide their own telecom and internet
11 connections and phones. Defendants did not reimburse Pollard and Class Members for these
12 expenses.

13 27. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
15 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
16 during the course of performing their duties.

17 **SECOND CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

20 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

21 28. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 29. At all relevant times during the applicable limitations period, Plaintiff and the
23 Class Members have been employees of Defendants and entitled to the benefits and protections
24 of the Business and Professions Code §§ 17200, *et seq.*

25 30. The unlawful conduct of Defendants alleged herein amount to and constitutes
26 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
27 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
28 gained a competitive advantage over other comparable companies doing business in California



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1 that comply with their legal obligations to reimburse employees for all business expenses.

2 31. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
3 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
4 Members were deprived of phone expenses, telecom expenses, home office expenses, and
5 comparable money and property.

6 32. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
7 Class Members are entitled to restitution of all monies rightfully belonging to them that
8 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
9 practices.

10 33. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
11 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
12 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

13 **THIRD CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab Code §§2698, *et seq.*)**

16 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

17 34. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 35. The "Aggrieved Employees" are all members of the Class defined above who
19 Defendants employed during the period beginning September 9, 2021 and ending on the date that
20 final judgment is entered in this action.

21 36. During the applicable time period, Defendants violated California Labor Code §
22 2802.

23 37. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
24 behalf of themselves and other current or former employees, to bring a civil action to recover civil
25 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

26 38. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
27 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
28 § 2802 during the applicable limitations period in the following amounts: For violations of
California Labor Code §2802, one hundred dollars (\$100.00) for each Aggrieved Employee per
pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved



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Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

39. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated September 9, 2022, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail 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. A true and correct copy of the notice to the LWDA dated September 9, 2022, is attached as **Exhibit A**. Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate these allegations.

1. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

34. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff’s claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Restitution;

E. Declaratory relief;

F. Actual damages;

G. Civil penalties;

H. Pre-judgment interest;

I. Costs of suit;

J. Reasonable attorneys’ fees; and



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K. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 2, 2022

By:



DAVID G. SPIVAK,
CAROLINE TAHMASSIAN,
Attorneys for Plaintiff(s), JASMINE
POLLARD, and all others similarly
situated



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EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 9, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Jasmine Pollard / Guaranteed Rate Affinity

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jasmine Pollard (hereafter “Pollard”) provides notice that Guaranteed Rate Affinity, LLC, a Delaware limited liability company, and related entities (collectively “the Guaranteed Rate Affinity Employers”) violated her rights and those of all other individuals the Guaranteed Rate Affinity Employers have employed or otherwise contracted with in California as employees (hereafter the “Aggrieved Employees”) under Labor Code sections 2802. On behalf of herself and all other Aggrieved Employees, Pollard hereby provides this notice to the Labor & Workforce Development Agency and the Guaranteed Rate Affinity Employers and their agents and representatives.

At all relevant times, the Guaranteed Rate Affinity Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Pollard and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately December 8, 2020, the Guaranteed Rate Affinity Employers began to employ Pollard in Fairfield and, during her employment, employed her in the positions of sales assistant, operations assistant, and appraisal desk coordinator. The Guaranteed Rate Affinity Employers continue to employ her.

At all relevant times, the Guaranteed Rate Affinity Employers issued wages to Pollard and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis and paid them by the hour, salary, commission, or piece rate. At all relevant times, the Guaranteed Rate Affinity Employers classified Pollard and all of the other Aggrieved Employees as all employees whether or not entitled to the protections of the Labor Code and the Wage Order.

At all relevant times, the Guaranteed Rate Affinity Employers required Pollard and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Guaranteed Rate Affinity Employers required Pollard and Aggrieved Employees to work from home and to provide their own telecom and internet connections and phones. The Guaranteed Rate Affinity Employers did not reimburse Pollard and Aggrieved Employees for these expenses.

For the reasons stated herein, Pollard alleges under the California Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees that the Guaranteed Rate Affinity Employers failed to indemnify Pollard and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties.

Accordingly, Pollard now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Guaranteed Rate Affinity Employers' alleged violations of the California Labor Code and the Wage Order.

Failure to Reimburse for Expenses

(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

As described above, the Guaranteed Rate Affinity Employers required Pollard and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. During the applicable limitations period, The Guaranteed Rate Affinity Employers required Pollard and Aggrieved Employees to work from home and to provide their own telecom and internet connections and phones. The Guaranteed Rate Affinity Employers did not reimburse Pollard and Aggrieved Employees for these expenses. Accordingly, Pollard seeks civil penalties for these Labor Code violations that the Guaranteed Rate Affinity Employers has committed against her and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under

LWDA / Guaranteed Rate Affinity

Re: Jasmine Pollard

September 9, 2022

Page 4 of 4

the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Ms. Jasmine Pollard

Mr. Walter L. Haines, Esq

walter@uelglaw.com

Guaranteed Rate Affinity, LLC

c/o Corporation Service Company dba CSC - Lawyers Incorporating Service

Agent for Service of Process

2710 Gateway Oaks Dr Ste 150n

Sacramento, CA 95833

Guaranteed Rate Affinity, LLC

c/o Julia Luster, Vice President & Assistant General Counsel, Labor & Employment

3940 N. Ravenswood Ave.,

Chicago, IL. 60613

julia.luster@rate.com

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Floor, Los Angeles, CA 90067.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Friday, December 02, 2022, I served the foregoing document described as **PLALINTIFF'S FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

**Alexander "Zander" Chemers
Paul M. Smith
Ogletree Deakins
400 S Hope St Ste 1200,
Los Angeles CA 90071
zander.chemers@ogletreedeakins.com
paul.smith@ogletree.com**

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address nora@spivaklaw.com

EXECUTED on Friday, December 02, 2022, at Burbank, California.

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

 (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



NORA GREER