

1 **FALAKASSA LAW, P.C.**
Joshua S. Falakassa (Cal Bar No. 295045)
2 *josh@falakassalaw.com*
3 1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
4 Tel: (818) 456-6168; Fax: (888) 505-0868

5 **BOKHOUR LAW GROUP, P.C.**
Mehrdad Bokhour, Esq. (Cal Bar No. 285256)
6 *mehrdad@bokhourlaw.com*
7 1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
8 Tel: (310) 975-1493; Fax: (310) 675-0861

9 Attorneys for Plaintiff and Aggrieved Employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 **BRYNN SALVADOR LOPEZ BENAVIDES,**
13 on behalf of himself, the State of California and
all other aggrieved employees,

14 Plaintiff,

15 v.

16 **PRODUCTION FRAMING, INC.** a California
17 Corporation; and **DOES 1-50**, inclusive.

18 Defendants.
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FILED/ENDORSED

APR 13 2021

By: I. Romo
Deputy Clerk

CASE NO.: 30-2021-00295745

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT**

DEMAND FOR JURY TRIAL

1 Plaintiff Brynn Salvador Lopez Benavides ("Plaintiff") on behalf of himself, and all other
2 similarly situated non-exempt employees, brings this PAGA representative action lawsuit against
3 defendant Production Framing, Inc. ("Defendant"), and DOES 1-50, inclusive (collectively
4 "Defendants"), and complains and alleges as follows:

5 **INTRODUCTION**

6 1. Founded in 2002, Defendant Production Framing, Inc. is a contractor, manufacturer
7 and installer of framings serving customers across the State of California. Defendant is one of the
8 largest single-family residential framing contractors in the Sacramento area. Plaintiff brings this class
9 and representative action against Defendants for violations of the California Labor Code and Business
10 and Professions Code.

11 2. As set forth below, Plaintiff alleges that Defendants failed to pay him and all other
12 similarly situated non-exempt employees at the appropriate premium rate for all overtime hours
13 worked. Additional, Plaintiff also alleges that Defendants failed to properly pay him and other
14 similarly situated non-exempt employees at the correct overtime rate for all hours worked in excess
15 of eight (8) hours per workday and/or forty (40) hours per workweek due to Defendants' uniform
16 failure to include all forms of compensation/renumeration, including, but not limited to, "Incentive
17 Pay," when calculating the regular rate of pay used in overtime calculations. Plaintiff further alleges
18 that Defendants' rest period policies and practices failed to provide him and all other similarly
19 situated non-exempt employees with complaint and off-duty rest periods, or premium wages in lieu
20 thereof. Additionally, Plaintiff alleges that Defendants failed to reimburse him and all similarly
21 situated non-exempt employees for necessary business expenses incurred. Defendants also failed to
22 timely pay all wages owed upon separation of employment. Finally, Plaintiff alleges that Defendants
23 failed to provide non-exempt employees with accurate itemized wage statements, which, amongst
24 other things, failed to include the correct applicable hourly and corresponding overtime rates in effect
25 during the pay period in direct violation of Labor Code § 226(a)(9).

26 3. Based on these violations, Plaintiff now brings this representative PAGA action to
27 recover penalties and other related relief on behalf of himself and all other similarly aggrieved
28 employees.

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1 204, 210, 226a, 226.7, 510, 516, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2803, 2804, amongst
2 others, and applicable Wage Orders.

3 9. Plaintiff is informed and believes, and based thereon alleges, that during the relevant
4 statutory period and continuing to the present, Defendants did (and continue to do) business in the
5 State of California, County of Sacramento.

6 10. Plaintiff does not know the true names or capacities, whether individual, partner, or
7 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
8 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
10 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
11 corporate, were responsible in some manner for the acts and omissions alleged herein, and
12 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
13 practices, wrongs, injuries and damages complained of herein.

14 11. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
15 herein, Defendants were and are the employers of Plaintiff and all aggrieved employees. At all times
16 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
17 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
18 the agents, servants, and employees of each and every one of the other Defendants, as well as the
19 agents of all Defendants, and at all times herein mentioned were acting within the course and scope
20 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
21 otherwise ratified each and every one of the acts or omissions complained of herein.

22 12. At all times mentioned herein, Defendants, and each of them, were members of and
23 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
24 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
25 alleges that all Defendants were joint employers for all purposes of Plaintiff and all aggrieved
26 employees.

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14. Plaintiff worked for Defendants as a non-exempt employee in Sacramento, California from on or about January 2021 until his separation on or about February 20, 2021. Plaintiff and other aggrieved employees were responsible for all aspects of Defendants' operations in California.

15. First, as to Plaintiff and other similarly aggrieved employees, Defendants failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code § 226(a) obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

16. At all relevant times, the wage statements provided by Defendants to Plaintiff and other aggrieved employees failed and continue to fail to provide the correct applicable hourly and corresponding overtime rates in effect during the pay period in direct violation of Labor Code § 226(a)(9).

17. Attached hereto as **Exhibit “A”** is a true and correct copy of Plaintiff’s wage statement from Defendants. As indicated in the wage statement, Plaintiff’s applicable hourly rate in effect was \$16 per hour and \$24 per hour for overtime hours worked. However, at all relevant times, Plaintiff’s actual hourly rate of pay was \$22 per hour and associated overtime rate of pay was \$33 per hour. Thus, the wage statements issued to Plaintiff misstates Plaintiff’s hourly rate and overtime rate. As

1 such, Defendants intentionally failed and continue to fail to furnish Plaintiff and other aggrieved
2 employees with accurate itemized wage statements that accurately reflect the correct applicable
3 hourly rates in effect during the pay period as required by Labor Code § 226(a)(9).

4 18. Additionally, at all relevant times, Defendants also had a payroll practice of paying
5 “Incentive Pay” in a lump sum amount. However, Defendants’ wage statements fail to state what the
6 alleged “Incentive Pay” was for and how it was calculated and/or any applicable piece-rate units or
7 applicable piece rate, if any, in violation of Labor Code § 226(a)(3) and (9).

8 19. Plaintiff is informed and believes that Defendants uniformly deceived Plaintiff and
9 other aggrieved employees through their wage statements which failed to include the actual
10 applicable hourly rates in effect and required information about “Incentive Pay” during all pay
11 periods.

12 20. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
13 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
14 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
16 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

17 21. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
18 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
19 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other aggrieved
20 employees are in violation of Labor Code § 226(a)(3) and (9). Thus, Defendants has violated Labor
21 Code §226(a)(3) and (9) with respect to Plaintiff and other aggrieved employees. Consequently,
22 because Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff
23 and other aggrieved employees would be entitled to recover penalties under Labor Code §§ 226(e).

24 22. Moreover, at all relevant times, Defendants had and continue to have a uniform pay
25 practice that failed to pay Plaintiff and other aggrieved employees at the appropriate overtime rate(s)
26 in effect during the pay period(s). For instance, as indicated in the wage statement attached as **Exhibit**
27 **A**, Plaintiff’s applicable hourly overtime rate in effect was \$24.00 per hour. However, at all relevant
28 times, Plaintiff’s hourly rate of pay was \$22.00 per hour and overtime rate of pay thus should have

1 been \$33.00 per hour. Nevertheless, Defendants had a uniform pay practice of underpaying Plaintiff
2 and other aggrieved employees for overtime hours worked.

3 23. In addition, Plaintiff and other aggrieved employees were also not properly paid at the
4 correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40)
5 hours per workweek due to Defendants' uniform failure to include all forms of
6 compensation/renumeration, including, but not limited to, "Incentive Pay," when calculating the
7 regular rate of pay used in overtime calculations.

8 24. Under the California Labor Code (as well as the FLSA), courts have held that regularly
9 paid non-discretionary incentive pay/bonuses must be included in determining an employee's
10 "regular rate of pay" for purposes of calculating overtime. See *Haber v. The Americana Corp.* 378 F.
11 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in
12 calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057
13 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under California and federal law on the
14 grounds, tat defendant improperly calculated overtime by excluding annual bonuses paid to
15 employees from the "regular rate of compensation"].

16 25. Here, although Defendants regularly and consistently paid Plaintiff and other aggrieved
17 employees "Incentive Pay" during each and every pay period, Defendants omitted these non-
18 discretionary payments when calculating the regular rate of pay used in overtime calculations and
19 when paying overtime to Plaintiff and the other aggrieved employees. Attached hereto as **Exhibit A**
20 is a true and correct copy of Plaintiff wage statement indicating "Incentive Pay" and an inadequate
21 and unlawful overtime rate.

22 26. Labor Code § 510 requires an employer to compensate an employee who works more
23 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
24 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
25 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
26 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
27 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
28 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in

1 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
2 (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

3 27. By their policy of requiring Plaintiff and the other aggrieved employees to work in
4 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
5 them at the rate of one-half (11/2) their regular rate of pay, Defendants willfully violated the
6 provisions of Labor Code § 510 and the applicable Wage Orders.

7 28. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
8 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
9 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
10 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
11 is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred
12 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
13 underpaid regardless of whether the initial violation is intentionally committed.

14 29. As set forth above, Defendants failed to compensate Plaintiff and other aggrieved
15 employees for all overtime wages at the proper overtime rates and also by failing to include all forms
16 of compensation/renumeration, including but not limited to, "Incentive Pay," when calculating the
17 regular rate of pay used in overtime calculations. As a result of this practice, Plaintiff and other
18 aggrieved employees are not compensated at the appropriate premium overtime rate for all overtime
19 hours that they work in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable
20 Wage Orders. Accordingly, to the extent permitted by law, Plaintiff and other aggrieved employees
21 are entitled to recover penalties under Labor Code § 1199.

22 30. Furthermore, at all relevant times, Plaintiff and other aggrieved employees were not
23 provided with duty-free rest periods of at least ten (10) ten minutes for each four (4) hour work period,
24 or major fraction thereof due to Defendants' unlawful rest period policies and practices that did not
25 allow and permit aggrieved employees to take all legally compliant uninterrupted rest periods of at
26 least 10 minutes. Instead of providing rest periods as mandated by the California Labor Code,
27 Defendants' foreman and managers only allow aggrieved employees to take a single meal period, and
28 do not provide time for aggrieved employees to take rest periods consistent with the California Labor

1 Code and applicable Wage Orders. Indeed, Plaintiff and other aggrieved employees were regularly
2 unable to take legally complaint rest periods at all, and instead were required to remain working on
3 their respective job sites during rest periods. Thus, Defendants prevented Plaintiff and other aggrieved
4 employees from taking timely and legally complaint rest periods. This also includes failing to permit
5 aggrieved employees from taking a third rest period for shifts in excess of ten (10) hours in a workday.

6 31. Under the applicable Wage order, an employer must authorize and permit all employees
7 to take ten (10) minute duty free rest periods for every major fraction of four hours worked. This
8 includes a third rest period for shifts in excess of 10 hours in a workday. See *Augustus v. ABM Security*
9 *Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve
10 employees of all duties and relinquish control over how employees spend their time.”]. In *Augustus*,
11 the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to
12 employees who worked as security guards and further explained “that employers [must] relinquish
13 any control over how employees spend their break time, and relieve their employees of all duties.”
14 *Id.* at 273.

15 32. Here, Plaintiff and other aggrieved employees could not take their rest periods
16 “relinquished from all duties” as required by Labor Code § 226.7. Other aggrieved employees worked
17 in excess of ten (10) hours in a workday but were not permitted to take an uninterrupted third rest
18 period of ten (10) minutes. Additionally, based on information and belief, Defendants also failed to
19 maintain any mechanism for the payment of rest period premium payments as required by Labor
20 Code § 226.7. As a result of Defendants’ unlawful rest period policies and practices, Plaintiff seeks
21 to recover penalties on behalf of himself and all aggrieved employees. Consequently, Defendants has
22 violated Labor Code §§ 226.7, 512 and applicable Wage Orders.

23 33. As a result of Defendants’ failure to provide Plaintiff and other similarly aggrieved
24 employees with all overtime wages at the lawful/appropriate overtime rate, and failure to allow and
25 permit all legally compliant rest periods or compensation in lieu thereof, Defendants intentionally
26 failed and continue to fail to furnish aggrieved employees with itemized wage statements that
27 accurately reflect the correct amount of gross wages earned, net wages earned, or the applicable
28 hourly rates in effect during the pay period and premium wages due for missed rest periods as required

1 by Labor Code § 226(a)(1)(2)(5)(9). Consequently, because Defendants failed to comply with Labor
2 Code § 226(a) and applicable Wage Orders, Plaintiff and other aggrieved employees would also be
3 entitled to recover penalties under Labor Code §§ 226(e).

4 34. Moreover, at all relevant times, Defendants failed and continue to fail to reimburse
5 Plaintiff and other aggrieved employees for necessary business expenditures, including, but not
6 limited to, reimbursement for the use of their personal cell phones for business purposes. Pursuant to
7 section 2802(a) of the California Labor Code, “[a]n employer shall indemnify his or her employee
8 for all necessary expenditures or losses incurred by the employee in direct consequence of the
9 discharge of his or her duties, or of his or her obedience to the directions of the employer....” The
10 purpose of this statute is “to prevent employers from passing their operating expenses on to their
11 employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007). Specifically, under
12 Labor Code §2802, employers must reimburse employees for required work-related use of personal
13 cell phones – regardless of whether they incur any additional out-of-pocket expense from that work-
14 related use. See, *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (August 12, 2014)
15 (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that
16 “[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is
17 incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is
18 paid for by a third person, or at all...it is irrelevant whether the employee changed plans to
19 accommodate work-related cell phone usage...To show liability under section 2802, an employee
20 need only show that he or she was required to use a personal cell phone to make work-related calls,
21 and he or she was not reimbursed.” *Id.* at 1144.

22 35. Finally, due to Defendants’ failure to pay all overtime wages, and rest period premium
23 wages, Defendants also failed and continue to fail to pay Plaintiff and other aggrieved employees all
24 wages owed at their time of separation from employment in violation of Labor Code §§ 201-203 and
25 applicable Wage Orders. whether such separation was voluntary or involuntary, in violation of Labor
26 Code §§ 201-203. Pursuant to Labor Code §§ 201-202, an employer must provide an employee wages
27 at the time of involuntary discharge or within up to seventy-two (72) hours of their voluntary
28 resignation. Labor Code § 203 provides “if an employer willfully fails to pay ... any wages of an

1 employee who is discharged or who quits, the wages of the employee shall continue as a penalty ...”
2 for up to 30 days.

3 **FIRST CAUSE OF ACTION**

4 **(PRIVATE ATTORNEYS GENERAL ACT LABOR CODE § 2698 *et seq.*)**

5 **(AGAINST ALL DEFENDANTS)**

6 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 37. Defendants have committed several Labor Code violations against Plaintiff and other
8 similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
9 § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this
10 representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly
11 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
12 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent
13 violation per employee per pay period for those violations of the Labor Code for which no civil
14 penalty is specifically provided based on the following Labor Code violations:

15 a. Failing to provide Plaintiff and other similarly aggrieved employees all overtime
16 compensation at the appropriate premium rate in violation of Labor Code § 204, 510, 1194 & 1198;

17 b. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with
18 all of their statutorily-mandated rest periods in violation of Labor Code §§ 226.7, and 516;

19 c. Failing to compensate Plaintiff and similarly aggrieved employees with all earnings at
20 their separation of employment in violation of Labor Code §§ 201-203;

21 d. Failing to reimburse Plaintiff and similarly aggrieved employees for all necessary
22 business expenditures in violation of Labor Code §§ 2800 and 2802; and

23 e. Failing to furnish Plaintiff and other similarly situated employees with complete,
24 accurate, itemized wage statements in violations of Labor Code § 226(a).

25 38. Pursuant to Labor Code § 2699.3(a), on or about March 3, 2021, Plaintiff gave written
26 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified
27 mail to Defendant Production Framing, Inc. of the specific provisions of the Labor Code alleged to
28 have been violated, including the facts and theories to support the alleged violations. Therefore, once

1 more than sixty-five (65) days have passed since that date, Plaintiff will have fully satisfied the
2 administrative prerequisites to suit under the PAGA and this Complaint will be deemed amended to
3 include the PAGA allegations enumerated below. Once this occurs, Plaintiff seeks to recover all
4 applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees,
5 costs, and/or other damages as permitted by PAGA through a representative action pursuant to the
6 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff
7 is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil
8 Procedure § 382.

9 39. Plaintiff was compelled to retain the services of counsel to file this court action to
10 protect his interests and the interests of other similarly aggrieved employees, and to assess and collect
11 the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which
12 he is entitled to receive under California Labor Code § 2699 *et seq.*

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
15 this suit is brought against Defendants, as follows:

16 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
17 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
18 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each
19 subsequent violation per employee per pay period for those violations of the Labor Code for which
20 no civil penalty is specifically provided under the Labor Code;

21 2. Upon the First Cause of Action, reasonable for attorneys' fees and costs as provided by
22 Labor Code § 2699 *et seq.*; and

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

24 Dated: April 12, 2021

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C

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26 By: _____

Joshua S. Falakassa
Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Aggrieved Employees

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On April 13, 2021, I served the following document(s) described as **FIRST AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Production Framing, Inc.
c/o Doyle Headrick
2000 Opportunity Drive, Suite 140
Roseville, California 95678

Joshua Falakassa, Esq.
FALAKASSA LAW, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067

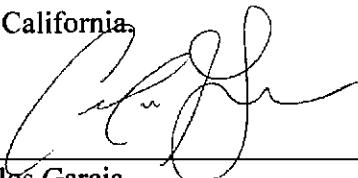
**Agent for Service of Process for
Defendant Production Framing, Inc.**

**Co-counsel for Plaintiff on behalf of himself
and all others similarly situated**

BY MAIL: I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully pre-paid. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

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

Executed on April 13, 2021, at Los Angeles, California,



Carlos Garcia