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Attorneys for Plaintiff Diana Garcia,  
individually and on behalf of all similarly situated individuals

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

DIANA GARCIA, on behalf of herself and all  
“aggrieved employees” pursuant to Labor  
Code § 2698 *et seq.*,

Plaintiffs,

v.

SOUTHERN CALIFORNIA ORTHOPEDIC  
INSTITUTE, L.P. a California Limited  
Partnership, and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO: 19VECV00112

*Assigned to the Hon. Shirley K. Watkins,  
Department T*

**CLASS ACTION**

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

**1. FAILURE TO PROVIDE REST  
PERIODS OR COMPENSATION IN LIEU  
THEREOF (LABOR CODE § 226.7; IWC  
WAGE ORDER 4-2001)**

**2. FAILURE TO PROVIDE MEAL  
PERIODS OR COMPENSATION IN LIEU  
THEREOF (LABOR CODE §§ 226.7 AND  
512; IWC WAGE ORDER 4-2001)**

**3. KNOWING AND INTENTIONAL  
FAILURE TO COMPLY WITH  
ITEMIZED EMPLOYEE WAGE  
STATEMENT PROVISIONS (LABOR  
CODE § 226(a), (e))**

**4. FAILURE TO PAY WAGES DUE AT  
SEPARATION OF EMPLOYMENT  
(LABOR CODE §§ 201-203)**

**5. VIOLATION OF BUSINESS AND  
PROFESSIONS CODE § 17200**

**6. PENALTIES PURSUANT TO LABOR  
CODE § 2699(f) FOR VIOLATIONS OF  
LABOR CODE §§ 201-202, 226(a), 226.7,  
AND 512**

**DEMAND FOR JURY TRIAL**

*Complaint Filed: January 24, 2019*

Plaintiff DIANA GARCIA (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of SOUTHERN CALIFORNIA ORTHOPEDIC INSTITUTE, L.P., a California limited partnership, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows

**I.**

**INTRODUCTION AND FACTUAL BACKGROUND**

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and certain individuals who currently work or formerly worked for Defendants within the State of California.

2. From the date at least four (4) years prior to the filing of this Action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members (as defined below); failing to provide accurately itemized wage statements to Class Members; and failing to timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.7, and 512, seeking compensation for all unpaid wages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and members of the Class and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages to Class Members.

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5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties and wages for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendant herein arose in this judicial district in Los Angeles County, California.

## II.

## TOLLING AGREEMENT

7. Plaintiff and Defendant entered into agreements to toll the statute of limitations, pursuant to California Code of Civil Procedure § 360.5, from June 13, 2018 through and including February 11, 2019. As such, all periods of limitation (statutory or otherwise) affecting any and all claims or causes of actions which Plaintiff may have against Defendant have been tolled between June 13, 2018 and February 11, 2019.

### III.

## PARTIES

### A. Plaintiff

8. Plaintiff DIANA GARCIA was employed by Defendant from 2012 through February 2018 as a non-exempt employee.

9. During her work with Defendants, Plaintiff was:

- a. Willfully denied meal and rest breaks or compensation in lieu thereof;
- b. Willfully denied accurately itemized wage statements; and
- c. Denied the timely payment of wages upon separation of her employment.

## B. Defendants

10. Defendant SOUTHERN CALIFORNIA ORTHOPEDIC INSTITUTE, L.P. is a California limited partnership. Defendant employed Plaintiff and all similarly situated employees throughout the State of California, including in Los Angeles, California.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who

1 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is  
2 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a  
3 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will  
4 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants  
5 designated hereinafter as DOES when such identities become known.

6 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted  
7 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,  
8 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally  
9 attributable to the other Defendants.

10 13. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting  
11 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more  
12 provisions of the California Labor Code as alleged herein.

#### 13 IV.

#### 14 CLASS ACTION ALLEGATIONS

15 14. Plaintiff brings this action on behalf of himself and all others similarly situated as a  
16 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the  
17 following class composed of and defined as follows (hereinafter, "Class Members"):

#### 18 THE CLASS

19 All current and former non-exempt or hourly employees who worked  
20 for Defendant Southern California Orthopedic Institute, L.P. in the  
21 State of California at any time from June 13, 2014 and the earlier of the  
22 date of preliminary approval or December 31, 2019 (the "Class  
23 Period").

24 15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or  
25 modify these class descriptions with greater specificity or further division into subclasses or limitation  
26 to particular issues.

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

4 **A.     Numerosity**

5           17.     The potential members of the Class as defined are so numerous that joinder of all the  
6 members the Class is impracticable. While the precise number of members of the Class has not been  
7 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants  
8 currently employ, and during the relevant time periods employed, over 100 persons in the State of  
9 California who fall within the Class definition.

10          18.     Accounting for employee turnover during the relevant period necessarily increases this  
11 number. Plaintiff alleges Defendants' employment records would provide information as to the  
12 number and location of members of the Class. Joinder of members of the Class is not practicable.

13 **B.     Commonality**

14          19.     There are questions of law and fact common to the Class that predominate over any  
15 questions affecting only individual Class Members. These common questions of law and fact include,  
16 without limitation:

- 17               a.     Whether Defendants failed to properly provide rest periods or compensation in  
18 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7,  
19 and IWC Wage Order 4-2001;
- 20               b.     Whether Defendants failed to properly provide meal periods or compensation  
21 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§  
22 226.7 and 512 and IWC Wage Order 4-2001;
- 23               c.     Whether Defendants failed to provide Plaintiff and Class Members with  
24 accurately itemized wage statements, in accordance with Labor Code § 226(a)  
25 and (e);
- 26               d.     Whether Defendants failed to timely pay Plaintiff and members of the Class  
27 all wages due and owing at the separation of their employment, in violation of  
28 Labor Code §§ 201-203; and

e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

**C. Typicality**

20. The claims of the named Plaintiff are typical of the claims of members of the Class. Plaintiff and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

**D. Adequacy of Representation**

21. Plaintiff will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

**E. Superiority of Class Action**

22. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policies and/or practices.

23. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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**V.**

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

**FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

**(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)**

24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set forth herein.

25. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendant failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 4-2001.

26. Defendant failed to provide Plaintiff and Class Members proper rest periods, or compensation in lieu thereof, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Due to the busy nature of their work schedule, they were unable to always take, and not authorized to take, 10-minute rest periods for every four hours of work or major fraction thereof. When they were able to take a rest period, they were not permitted to leave the premises, thus resulting in an impermissible on-duty rest period. When they worked ten or more hours in a workday, they were not permitted to take a third rest period.

27. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all rest period compensation which she and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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**VI.**

1 **SECOND CAUSE OF ACTION**

2 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

3 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

4 **(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 4-2001)**

5 28. Plaintiff incorporates paragraphs 1 through 27 of this Complaint as though fully set  
6 forth herein.

7 29. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendant  
8 failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512 and  
9 IWC Wage Order 4-2001.

10 30. Defendant failed to provide Plaintiff and Class Members proper meal periods, or  
11 compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-  
12 2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an  
13 uninterrupted, 30-minute meal period for every shift worked that exceeds five or more hours in  
14 duration, but were not paid premium wages of one hour's pay for each missed meal period.  
15 Furthermore, Defendants impermissibly required Plaintiff and Class Members to remain on  
16 Defendants' premises during their meal breaks. This violates Labor Code §§ 226.7 and 512.

17 31. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff  
18 seeks the payment of all meal period compensation which she and Class Members are owed for four  
19 years preceding the filing of this Action, according to proof.

20 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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28 **VII.**



**THIRD CAUSE OF ACTION**  
**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**  
**KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**  
**EMPLOYEE WAGE STATEMENT PROVISIONS**  
**(LABOR CODE § 226(a), (e), (h))**

32. Plaintiff incorporates paragraphs 1 through 31 of this Complaint as though fully set forth herein.

33. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

34. As stated above, Plaintiff and Class Members were not paid all wages due. As such, certain wage statements issued by Defendants fail to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

35. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and members of the Class have been injured because they have not been paid all wages due and/or were issued wage statements which do not reflect, and

1 fail to state, all information required by Labor Code § 226(a). The missing information cannot be  
2 discerned at all from the face of the wage statements themselves. As a result, Plaintiff and members  
3 of the Class are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all  
4 actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee  
5 for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per  
6 employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code  
7 § 226(h).

8 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

9 **VIII.**

10 **FOURTH CAUSE OF ACTION**

11 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

12 **FAILURE TO TIMELY PAY WAGES UPON SEPARATION EMPLOYMENT**

13 **(LABOR CODE §§ 201-203)**

14 36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as though fully set  
15 forth herein.

16 37. Labor Code § 201 and § 202 require Defendants to pay employees all wages due within  
17 72 hours after resignation of employment or the day of termination of employment. Labor Code §  
18 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a  
19 penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or  
20 an action is commenced. The penalty cannot exceed 30 days of wages.

21 38. Defendants paid Plaintiffs and members of the Class their final wages beyond the time  
22 frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiffs and  
23 members of the Class were not paid all wages due, including all meal and rest period premium wages  
24 due and owing throughout the course of their employment, as detailed herein. Consequently, at the  
25 time of their separation from employment with Defendants, they were not paid all final wages due  
26 and owing for the entirety of their employment.

27 39. More than 30 days have passed since Plaintiffs and certain Class Members have left  
28 Defendants' employ.

40. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiffs and certain members of the Class are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

## IX.

## FIFTH CAUSE OF ACTION

**PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

## UNFAIR COMPETITION PURSUANT TO

**BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

43. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

44. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

45. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and

1 unlawful conditions, and to protect law-abiding employers and its employees from competitors who  
2 lower their costs by failing to comply with minimum labor standards.

3 46. Defendants have violated statutes and public policies. Through the conduct alleged  
4 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
5 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
6 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,  
7 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
8 guaranteed to all employees under law.

9 47. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of  
10 §17200 *et seq.* of the Business & Professions Code.

11 48. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise  
12 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §  
13 17200 *et seq.* of the Business & Professions Code.

14 49. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others  
15 similarly situated have been damaged in a sum as may be proven.

16 50. Unless restrained by this Court, Defendants will continue to engage in the unlawful  
17 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court  
18 should make such orders or judgments, including the appointment of a receiver, as may be necessary  
19 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or  
20 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited  
21 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to  
22 the money Defendants have unlawfully failed to pay.

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28 **X.**

**SIXTH CAUSE OF ACTION**  
**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**  
**PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**  
**LABOR CODE §§ 201-202, 226(a), 226.7, AND 512**

51. Plaintiff incorporates paragraphs 1 through 50 of this Complaint as though fully set forth herein.

52. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

53. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-202, 226(a), 226.7, and 512, \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.

54. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

55. On April 10, 2018, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendant setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 10, 2018. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

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**XI.**

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1. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;
3. For penalties pursuant to Labor Code § 203 for Plaintiff and members of the Class who are no longer employed by Defendants;
4. An award of prejudgment and post-judgment interest;
5. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
6. An award providing for payment of costs of suit;
7. An award of attorneys' fees; and
8. Such other and further relief as this Court may deem just and proper

Respectfully submitted,

By: Evan S. Gaines  
DANIEL F. GAINES  
EVAN S. GAINES  
Attorney for Plaintiff

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

1 Dated: August 25, 2020

Respectfully submitted,

2 GAINES & GAINES  
3 A Professional Law Corporation

4 By: Evan S. Gaines  
5 DANIEL F. GAINES  
6 EVAN S. GAINES  
7 Attorney for Plaintiff  
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\_\_\_\_\_ (For messenger) my business address is:

**Aaron R. Lubeley, Esq.  
Meagan Sue O'Dell, Esq.  
SEYFARTH SHAW LLP  
601 South Figueroa Street, Suite 300  
Los Angeles, CA 90017-5793**

\_\_\_\_ (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the LWDA.

\_\_\_\_ (BY FACSIMILE TRANSMISSION) On \_\_\_\_\_, at \_\_\_\_ 1:30 pm\_\_\_\_ a.m./p.m., at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (\_\_\_\_) \_\_\_\_-\_\_\_\_. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

\_\_\_\_ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission of File & ServeXpress on the counsel of record listed above.

*Beatriz Franco*  
BEATRIZ FRANCO