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Attorneys for Plaintiff Diana Garcia
and Proposed Class Counsel

**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*

**~~[AMENDED PROPOSED]~~ ORDER (1)
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND (2)
GRANTING LEAVE TO FILE FIRST
AMENDED COMPLAINT**

**Date: September 4, 2020
Time: 9:30 a.m.
Dept.: T**

**Confirmation Code: CR-
QWCT44HZ3QGUGNKA**

Complaint Filed: January 24, 2019

FILED
Superior Court of California
County of Los Angeles
08/25/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: J. Nichols Deputy

1 Plaintiff's motion for preliminary approval of class and representative action settlement and
2 leave to file a First Amended Complaint came on for a continued hearing before this Court in
3 Department T, Judge Shirley K. Watkins presiding, on September 4, 2020. The Court, having
4 considered the papers submitted in support of the motion, including the supplemental briefing
5 requested by the Court, and having heard oral argument of the parties, **HEREBY ORDERS THE**
6 **FOLLOWING:**

7 1. The Court grants preliminary approval of the settlement based upon the terms set
8 forth in the Settlement and Release Agreement (the "Settlement Agreement") filed with the Court.
9 The settlement appears to be fair, adequate, and reasonable to the class;

10 2. The settlement falls within the range of reasonableness and appears to be
11 presumptively valid, subject only to any objections that may be raised at the final hearing;

12 3. The Court approves, as to form and content, the amended Notice of Class Action
13 Settlement ("Notice"), attached hereto as **Exhibit A**;

14 4. The Court directs the mailing of the Notice by first class mail to Class Members, in
15 both English and Spanish, in accordance with the schedule set forth below. The Court finds that
16 the dates selected for the mailing and distribution of the Notice, as set forth herein, meet the
17 requirements of due process and provide the best notice practicable under the circumstances and
18 shall constitute due and sufficient notice to all persons entitled thereto. The Court also directs the
19 Settlement Administrator to establish a settlement website which includes relevant case documents,
20 including a copy of the Settlement Agreement, the motion for preliminary approval papers and
21 motion for final approval papers (when they are filed), the Notice, and the date and time set for the
22 final approval hearing;

23 5. It is ordered that the Class is preliminarily certified for settlement purposes only.
24 The Class is defined as follows: "all current and former non-exempt or hourly employees who
25 worked for Defendant [Southern California Orthopedic Institute, L.P.] in the State of California at
26 any time during the Class Period [June 13, 2014 through September 20, 2019]";

27 6. The Court confirms Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines,
28 APLC as Class Counsel, and grants preliminary approval of an award of attorneys' fees of not more

than \$308,333.33 and documented litigation costs of up to \$25,000 to Class Counsel, subject to final approval by the Court following a further motion by Class Counsel;

7. The Court confirms Diana Garcia as the Class Representative and grants preliminary approval to a Service Payment not to exceed \$10,000 for her service in the Action;

8. The Court grants preliminary approval of the Private Attorneys General Act payment of \$15,000 to the Labor and Workforce Development Agency;

9. The Court hereby approves CPT Group, Inc. as the Settlement Administrator and grants preliminary approval of the payment of fees and other charges of the Settlement Administrator in an amount not to exceed \$15,000;

10. The Court grants Plaintiff leave to file the First Amended Complaint attached as **Exhibit B** to the Settlement Agreement, within ~~five~~^{GE} (5) court days of the entry of this Order; and

11. The Court orders the following schedule of dates for the specified actions/further proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide the Settlement Administrator a list containing the names, employee identification numbers, last known addresses, Workweeks, as calculated by the inclusive dates of active employment by Defendant in California during the Class Period, and social security numbers of the Class Members ("Settlement Class Data")	20 business days after entry of Court's Order granting preliminary approval of the Settlement Agreement
Last day for Settlement Administrator to mail Notice to Class Members	10 calendar days after Settlement Administrator's receipt of the Class Data
Last day for exclusion requests by Class Members to be postmarked to Settlement Administrator	45 calendar days after mailing of Class Notice
Last day for written objections to the settlement by Class Members to be postmarked to Settlement Administrator	45 calendar days after mailing of Class Notice
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA - COUNTY OF LOS ANGELES
Diana Garcia v. Southern California Orthopedic Institute, L.P.
Case No. 19VECV00112

NOTICE OF CLASS ACTION SETTLEMENT

«BarcodeString»
SIMID «SIMID»
ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

PLEASE READ THIS NOTICE CAREFULLY: IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

TO: ALL CURRENT AND FORMER NON-EXEMPT OR HOURLY EMPLOYEES WHO WORKED FOR SOUTHERN CALIFORNIA ORTHOPEDIC INSTITUTE, L.P. IN THE STATE OF CALIFORNIA AT ANY TIME DURING THE PERIOD FROM JUNE 13, 2014 TO SEPTEMBER 20, 2019 (“CLASS MEMBERS” OR “CLASS”).

1. Why Have I Received This Notice?

This Notice of Class Action Settlement (“Notice”) was sent to you to inform you that the Superior Court of the State of California - County of Los Angeles has preliminarily approved the terms of a class action settlement in a lawsuit filed against Southern California Orthopedic Institute, L.P. (“SCOI” or “Defendant”) by a former employee named Diana Garcia (“Plaintiff”), alleging denial of meal and rest periods, inaccurate wage statements, and failure to timely pay wages due upon separation, and seeking additional penalties and interest, including penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) and restitution under the Business & Professions Code. Plaintiff’s lawsuit was brought on behalf of all current and former hourly-paid or non-exempt individuals employed by SCOI within the State of California at any time between June 13, 2014 and September 20, 2019. SCOI’s records indicate that you may be a Class Member. The settlement will resolve all Class Members’ Released Claims (described in Section 8, below) for the time period from June 13, 2014 through September 20, 2019.

A Preliminary Approval Hearing was held on _____, 2020, at _____, in the Los Angeles County Superior Court. On _____, the Court preliminarily approved the class action settlement reached by the Plaintiff and SCOI (the “Parties”) and directed that you and the other Class Members receive this Notice. The Court also preliminarily appointed Plaintiff as the representative of the Class (“Class Representative”).

The Court will hold a Final Approval Hearing concerning the proposed settlement on _____, 2020 at _____ .m., in Department T of the Los Angeles County Superior Court, the Hon. Shirley K. Watkins presiding, located at 6230 Slymar Avenue, Van Nuys, California, 91401. Visit the settlement website at www.scoiwageandhourclassaction.com for more information, including relevant case documents and up-to-date information about the Final Approval Hearing date and time.

2. What Is This Case About?

On January 24, 2019, Plaintiff Diana Garcia filed a lawsuit against Defendant, on behalf of herself and all “aggrieved employees” (the “Action”). On _____, 2020, Plaintiff filed a First Amended Complaint in the Action.

Plaintiff alleges in the Action that SCOI failed to provide meal and rest periods, provided employees with inaccurate wage statements, failed to timely pay final wages, and engaged in unfair business practices. Plaintiff claims that SCOI owed alleged unpaid meal and rest period premiums, as well as penalties and interest. Plaintiff also claims that SCOI owed civil penalties pursuant to PAGA, California Labor Code § 2698, *et seq.*

SCOI denies all of the allegations made by Plaintiff in the Action and denies that it is liable or owes damages or other compensation or remedies to anyone with respect to the alleged facts or causes of action asserted in the Action.

3. *Am I a Class Member?*

You are a Class Member if you worked as a non-exempt or hourly employee for SCOI in California at any time from June 13, 2014 to September 20, 2019.

4. *How Does This Class Action Settlement Work?*

In this lawsuit, Plaintiff sues on behalf of other hourly employees who allegedly have similar claims. For purposes of this settlement, Plaintiff and these other employees are deemed to comprise a “Class” and are “Class Members.” The settlement of this lawsuit resolves the wage and hour claims of all Class Members, except for those who exclude themselves from the Class. Class Members who do not exclude themselves will be deemed “Settlement Class Members,” and will be eligible to receive a payment under the settlement based on their number of Workweeks (as defined in Section 7 below) from June 13, 2014 through September 20, 2019 (“Settlement Share”).

Persons who choose to exclude themselves from the Class will not receive a Settlement Share in this lawsuit, but they will preserve any claims they might have against SCOI that were asserted or that could have been asserted based on the allegations in the original and amended complaints in the Action.

The Court has not decided the Action in favor of Plaintiff or SCOI, or made any determination on the merits of the Action. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the Action, all parties avoid the risks and cost of a trial, and the people affected will receive compensation quickly. Plaintiff and her attorneys think the settlement is in the best interests of the Class. SCOI denies the allegations of wrongdoing and violations of law alleged and further denies any liability whatsoever to Plaintiff or the Class. SCOI is settling the Action as a compromise.

The Court file has the Settlement Agreement and Release of Claims (“Settlement Agreement”) and other papers in this case, which are available for your review during the Court’s normal hours of operation.

The Court must review the terms of the settlement and make a final determination as to whether it is fair, adequate and reasonable. A hearing will be held (“Final Approval Hearing”), at which time the Court will decide these issues. See Section 13 below for more information.

5. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained below.

STAY IN THE CLASS: If you do not request to be excluded from the Settlement Class, you will remain a member of the Settlement Class, and if the Court grants final approval of the settlement, you will receive a Settlement Share based on the number of weeks you worked for SCOI as a non-exempt or hourly-paid employee within the State of California during the time period from June 13, 2014 through September 20, 2019 (“Workweeks”). In exchange, you give up the right to sue SCOI for the Released Claims, which are defined in Section 8, below. To ensure you receive your Settlement Share, all you need to do is keep the Settlement Administrator informed of your current mailing address. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you.

ASK TO BE EXCLUDED: If you ask to be excluded or “opt out” of the Settlement Class, if the Court grants final approval of the settlement, you will not receive payment under the settlement, but you will retain any rights you might have to sue SCOI for the claims resolved through this settlement. **YOU CANNOT ASK TO BE EXCLUDED AND STILL RECEIVE A SETTLEMENT SHARE.**

OBJECT: You may object to the proposed settlement. Only Class Members who do not request to be excluded from the settlement (*i.e.*, Settlement Class Members) may

object to the settlement. If your objection is overruled by the Court, you will still receive a Settlement Share, and you will be bound by the terms of this settlement.

6. What Does the Settlement Provide?

Under the proposed settlement, SCOI will pay \$925,000.00 to fully and finally resolve all claims in the Action (the “Gross Fund Value”). The amount to be distributed to Class Members who do not exclude themselves from the settlement (the “Net Fund Value”) will be the Gross Fund Value, minus the following amounts:

(a) Settlement Administration Costs, which shall not exceed \$15,000.00; (b) enhancement payment to Plaintiff Diana Garcia not to exceed \$10,000.00 for her work and efforts in prosecuting this case; (c) Class Counsel’s attorney’s fees not to exceed \$308,333.33; (d) reimbursement of Class Counsel’s actual litigation costs and expenses in an amount not to exceed \$25,000.00; and (e) payment of \$15,000.00 to the Labor and Workforce Development Agency for its share of the penalties under the PAGA (“LWDA Payment”). **The attorneys’ fees, litigation costs and expenses, enhancement payment, Settlement Administration Costs, and LWDA Payment are all subject to Court approval.**

7. How Much Will My Settlement Share Be?

Each Class Member’s Settlement Share shall be calculated based upon his or her “Workweeks,” or the total number of weeks he or she worked at least one day in a non-exempt or hourly position for SCOI in California at any time from June 13, 2014, through September 20, 2019. In consideration for their release of claims arising under California Labor Code sections 201 to 203, the Class Members who were separated from employment with Defendant through September 20, 2019, will have their Workweeks increased by four (4) Workweeks.

To determine each Participating Class Member’s Individual Settlement Payment, the Settlement Administrator shall divide the Net Fund Value by the total number of Workweeks for all Participating Class Members resulting in a value for each week worked by the Participating Class Members during the Class Period (“Workweek Value”). The Settlement Administrator shall then take the number of Workweeks for each Participating Class Member and multiply it by the Workweek Value. This calculation yields the amount of the Participating Class Member’s “Individual Settlement Award.”

Each Settlement Share will be allocated as follows for tax purposes: 30% as wages, to be reported on an IRS W-2, and which will be reduced for the Class Member’s share of taxes and withholdings; and 70% as interest and penalties, which portion shall be reported on an IRS Form 1099, and which will not be subject to reduction for taxes and withholdings.

Based on Defendant’s records, you are credited with [] Workweeks between June 13, 2014 and September 20, 2019, and your Settlement Share based on these Workweeks is approximately \$____. This amount is subject to change based on the final order of the Court. To challenge your Workweeks, you must send a letter to the Settlement Administrator, postmarked no later than [Response Deadline], at the following address: [Administrator’s Address]. It is recommended that you provide documentation to support your challenge.

None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member. Settlement checks will remain valid for 120 days from issuance. If a settlement check remains uncashed after 120 days, the value of the uncashed check will be distributed to the California State Controller’s Unclaimed Property Fund. In such event, the Class Member will remain bound by the terms of the Settlement and all Court orders.

8. How Does This Settlement Affect My Rights?

If you do not exclude yourself from (“opt out of”) the settlement, and the settlement is approved by the Court, you will release the claims resolved by the settlement. This means you will not be able to sue, continue to sue,

or be part of any other lawsuit against SCOI that involves the same legal claims as those resolved through this settlement. Specifically, you will be giving up or “releasing” the “Released Claims” described below:

Released Claims: Upon the final approval by the Court of this Settlement, and except as to the right to enforce the terms and conditions of this Settlement, all Settlement Class Members who do not timely opt out of the Settlement shall fully release the Released Parties (defined as Defendant and all of its former or present parents, subsidiaries, successors, predecessors, agents, affiliates, partners, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals) from any and all claims, debts, liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory, which arose during employment by Defendant in an hourly or non-exempt position in California during the Class Period (June 13, 2014 through September 20, 2019) and arise out of the facts or allegations in the operative complaint, Action, and Amended Action, including claims for any alleged unpaid meal and/or rest period premiums, inaccurate or incomplete wage statements, failure to timely pay wages due upon separation, damages and penalties under the California Labor Code related to the claims above, claims for restitution under Business & Professions Code (including Section 17200 *et seq.*) related to the claims above, and PAGA penalties related to the claims above.

9. How Do I Opt Out or Exclude Myself From This Settlement?

To exclude yourself from the settlement, you must send a written request to be excluded from the settlement (“Opt Out”) to the Settlement Administrator, postmarked no later than [Response Deadline], at the following address: [Administrator’s Address].

To be valid, your Opt Out must include all of the following information: (1) your name, current address, phone number and last four digits of your Social Security number; (2) your signature, or the signature of a lawful representative; (3) the name of the case (the case name is *Diana Garcia v. Southern California Orthopedic Institute, L.P.*); and (4) a clear statement that you wish to be excluded from the settlement.

If you send an Opt Out to the Settlement Administrator which complies with the above requirements, you will not be a member of the Settlement Class, you will not participate in this settlement, and you will receive no benefit from this settlement. By opting out of the Settlement Class, you will retain whatever rights or claims you may have against SCOI, and you will be free to pursue them, at your own cost, if you choose to do so.

10. How Do I Object to The Settlement?

If you are a member of the Class who does not opt out of the Settlement Class, you may object to the settlement or any aspect of the settlement.

You can ask the Court to deny approval of the settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must: (a) contain your full name and current address; (b) clearly identify the case name and number (*Diana Garcia v. Southern California Orthopedic Institute, L.P.*, Case Number 19VECV00112), (c) contain a statement that you wish to object to the settlement and a clear statement of the grounds for your objection; (d) be submitted to the Court by filing them in person at the Los Angeles County Superior Court located at 6230 Sylmar Avenue, Van Nuys, California 91401, (e) be mailed to the Settlement Administrator at [Administrator’s Address], and (f) be filed or postmarked on or before [Response Deadline].

Additionally, if you wish to be heard at the time of the Final Approval Hearing, your objection must also clearly state the intention to appear at the Final Approval Hearing.

Objecting to the settlement will not remove you from the Settlement Class. A Settlement Class Member who submits an objection remains bound by the settlement. To remove yourself from the Settlement Class, you must opt out of the settlement by following the instructions in Section 9, above. If you opt out of the settlement, you may not object to the settlement.

11. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiff and the Settlement Class

GAINES & GAINES, APLC
Kenneth S. Gaines
Daniel P. Gaines
Alex P. Katofsky
Sepideh Ardestani
27200 Agoura Road., Suite 101
Calabasas, California 91301

Attorneys for SCOI

SEYFARTH SHAW LLP
Aaron R. Lubeley
Meagan S. O'Dell
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017

The Court has appointed the law firm of Gaines & Gaines, APLC to represent the Settlement Class. This law firm is referred to as "Class Counsel."

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

12. *How Will Class Counsel and the Class Representatives Be Paid?*

Class Counsel will be paid from the Gross Fund Value. Class Counsel will ask for up to \$308,333.33 of the Gross Fund Value as attorneys' fees and for reimbursement of actual litigation costs and expenses in an amount not to exceed \$25,000.00. The actual amounts awarded shall be determined by the Court.

Class Counsel will also request that the Court approve an enhancement payment to the Class Representative of up to \$10,000.00 to be paid from the Gross Fund Value, for her service on behalf of the Class.

13. *Notice of Hearing on Final Approval and Objections to Class Action Settlement*

You are hereby notified that a Final Approval Hearing will be held on _____, 2021 at _____.m., in Department T of the Los Angeles County Superior Court, the Hon. Shirley K. Watkins presiding, located at 6230 Sylmar Avenue, Van Nuys, California, 91401, to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved by the Court. The Court may change the date and time of the Final Approval Hearing without further notice to the Class Members. Class Members are advised to check the Court's Online Case Access site to confirm that the date has not been changed. You may also visit the settlement website at www.scoiwageandhourclassaction.com for more information, including relevant case documents and up-to-date information about the Final Approval Hearing date and time.

If final approval is granted by the Court, the Court will enter judgment pursuant to the Settlement, and all Class Members who have not requested exclusion from the Settlement Class will be deemed to have waived and released the Released Claims against the Released Parties, as defined in Section 8, above.

14. *How Do I Get More Information?*

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Settlement Agreement. You may request a copy of the Settlement Agreement from Class Counsel, at the address and telephone number listed above, and you may visit the settlement website at www.scoiwageandhourclassaction.com for more information, including relevant case documents (including the Settlement Agreement) and up-to-date information about the Final Approval Hearing date and time. If you have questions regarding the Settlement, you may contact the Settlement Administrator at XXX-XXXX.

PLEASE DO NOT TELEPHONE THE COURT OR CLERK'S OFFICE FOR INFORMATION ABOUT THIS SETTLEMENT.

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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

____ (For messenger) my business address is:

On August 24, 2020, I served the foregoing documents described as: **[AMENDED PROPOSED] ORDER (1) GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND (2) GRANTING G LEAVE TO FILE FIRST AMENDED COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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

 X (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit for mailing in affidavit.

____ (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 FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (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.

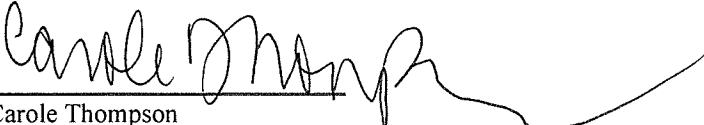
____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

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

I certify that the above document was printed on recycled paper.

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

Executed on August 24, 2020 at Calabasas, California.


Carole Thompson