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FILED
SUPERIOR COURT

2010 FEB 16 PM 9:09

ROSA JUNGUELO, CLERK

BY *Rita L. Gomez*

No Summons Issued

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN JOAQUIN

11 JOSE A. ARIAS, individually, and
12 acting in the interest of other current and
13 former employees,

14 Plaintiff,

15 v.

16 ANGELO DAIRY, a California business
17 organization, form unknown; LUIS M.
18 ANGELO, MARIA D. ANGELO and
19 JOE ANGELO, individuals; LUIS M.
20 ANGELO, MARIA D. ANGELO and
21 JOE ANGELO dba ANGELO DAIRY;
22 and DOES ONE through TWENTY,
23 inclusive

24 Defendants.

CASE NO.: CV 028612

SECOND AMENDED COMPLAINT

1. Failure to Pay Overtime
2. Failure to Provide Rest Breaks
3. Failure to Provide Meal Periods
4. Failure to Maintain Time Records, Provide Itemized Statements
5. Failure to Provide Tools and Equipment
6. Failure to Pay All Wages Due
7. Restitution and Injunctive Relief and For an Accounting
8. Private Attorney General Act (Lab. Code §§ 2698, *et seq.*)

25 INTRODUCTION

26 1. Plaintiff is a dairy worker formerly employed by Defendants LUIS M. ANGELO,
27 MARIA D. ANGELO and JOE ANGELO dba ANGELO DAIRY, to push, milk, and care for cows.
28 Plaintiff alleges that he has suffered injury as a result of each Defendant's failure to comply with
labor laws. Each Defendant's employment practices are unlawful and contrary to the public policy
of the State of California; therefore, Plaintiff brings this action under California's Unfair
Competition Law (the "UCL") (Business and Professions Code §§ 17200, *et seq.*) individually to
enforce California labor laws and regulations. Plaintiff also brings this action under California's

1 Private Attorney General Act ("PAGA") (Lab. Code § 2698, *et seq.*) as an aggrieved employee and
2 seeks penalties for labor law violations for himself and for other current and former employees of
3 Defendants..

4 2. Plaintiff, for himself individually seeks restitution and other appropriate relief for
5 each Defendant's failure to pay overtime wages, authorize and permit rest and meal periods,
6 maintain proper payroll records and provide itemized wage statements, provide required work tools
7 and equipment, and accrued interest and enforcement of penalties pursuant to California law.

8 3. Plaintiff, for himself individually also seeks injunctive relief to require that each
9 Defendant comply with all applicable California labor laws in the future and to prevent each
10 Defendant from engaging in and continuing to engage in unlawful and unfair business practices.

11 **PARTIES**

12 4. Plaintiff JOSE A. ARIAS is an individual who currently resides in Fresno County
13 and, at all times material to this action, resided in San Joaquin County. Plaintiff JOSE A. ARIAS
14 was employed by Defendants in San Joaquin County from approximately November, 1995 through
15 June, 2005.

16 5. Plaintiff is informed and believes and thereon alleges that Defendant ANGELO
17 DAIRY is a business entity, form unknown. Defendant ANGELO DAIRY operates in San Joaquin
18 County producing milk at its principal place of business located at 11313 Collier Road, Acampo,
19 San Joaquin County, California.

20 6. Plaintiff is informed and believes and thereon alleges that Defendants LUIS M.
21 ANGELO, MARIA D. ANGELO and JOE ANGELO are individuals who are owners or major
22 interest holders of Defendant ANGELO DAIRY. Plaintiff further alleges that said Defendants are
23 responsible for the occurrences herein alleged and that the resulting damages were proximately
24 caused by said Defendants' conduct.

25 7. Each Defendant has directly or indirectly or through an agent or other person
26 exercised control over the wages, hours or working conditions of Plaintiff and other current and
27 former employees.

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1 8. Each Defendant directly or indirectly or through an agent or other person engaged,
2 suffered or permitted to work Plaintiff and other current and former employees.

3 9. Plaintiff is informed and believes and thereon alleges that at all times material to this
4 action, each Defendant has been and is doing business in San Joaquin County and has been and is
5 employing people to perform agricultural labor in this county.

6 10. Plaintiff is ignorant of the true names or capacities of the Defendants sued herein
7 under the fictitious names of DOES ONE through TWENTY, inclusive, and therefore sues said
8 Defendants under such fictitious names. Plaintiff will amend this complaint to allege the true
9 names or capacities of said Defendants once they have been ascertained. Plaintiff is informed and
10 believes and thereon alleges that each of the Defendants are responsible in some manner for the
11 occurrences herein alleged and that the damages herein alleged were actually and proximately
12 caused by their conduct.

13 11. Plaintiff is informed and believes and thereon alleges that at all times mentioned
14 herein, each Defendant was acting as the agent of every other Defendant, and all acts alleged to have
15 been committed by any Defendants were committed on behalf of every other Defendant; and, at all
16 times mentioned herein, each alleged act was committed by each Defendant, and/or agent, servant,
17 or employee of each Defendant, and each Defendant directed, authorized or ratified each such act.
18 Plaintiff is informed and believes and thereon alleges that each Defendant, and each of them, was
19 the agent, employee, coconspirator, business affiliate, subsidiary, parent entity, owner and/or joint
20 venturer of each other Defendant, and each of them; and, in doing the things alleged herein, was
21 acting at least in part within the course and scope of such agency, employment, conspiracy, joint
22 employer, alter ego status, and/or joint venture and with the permission and consent of each of the
23 other Defendants.

24 **FACTUAL ALLEGATIONS**

25 12. Each Defendant employed Plaintiff JOSE A. ARIAS as a milker pursuant to an oral
26 contract of employment from approximately November, 1995 through June, 2005 to work at
27 Defendants' dairy or work site in San Joaquin County, including the real property located at 5027
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1 W. Acampo Road, Lodi, San County, California and 11313 Collier Road, Acampo, San Joaquin
2 County, California.

3 13. Plaintiff is informed and believes and thereon alleges that since the year preceding
4 the filing of this complaint, each Defendant has employed other people as milkers and/or as field
5 workers, under the same or similar circumstances as Plaintiff, to work in the same dairy or work
6 sites that the Plaintiff worked, including the real property located at 5027 W. Acampo Road, Lodi,
7 San County, California and 11313 Collier Road, Acampo, San Joaquin County, California.

8 14. Plaintiff and other similarly-employed people satisfactorily performed all terms and
9 conditions of the employment contracts.

10 15. Throughout his tenure with ANGELO DAIRY, each Defendant required that
11 Plaintiff work six days a week. Plaintiff worked two shifts per day, each shift lasting between six
12 and seven and one half hours, with no meal periods or rest breaks during the shift.

13 16. During his employment by Defendants, Defendants paid Plaintiff JOSE A. ARIAS
14 an initial monthly salary of \$1,300.00, which increased to \$1,800.00 by the end of his employment
15 with the Defendants. The fixed monthly salary did not compensate Plaintiff for California overtime
16 wages due to Plaintiff for all work performed.

17 17. On information and belief, each Defendant required that other employees work
18 similar work weeks. On information and belief, each Defendant required that other employees
19 work, on average, six days a week with two daily shifts lasting approximately six to seven and one
20 half hours each shift, with no meal periods or rest breaks during the shift. On information and
21 belief, Defendants paid other workers a monthly salary that did not compensate them for California
22 overtime wages due for all work performed.

23 18. Plaintiff is informed and believes and thereon alleges that, at all times material to
24 this action, each Defendant has continuously failed to pay its dairy workers overtime, and failed to
25 allow workers to take required meal and rest periods.

26 19. Each Defendant failed to provide Plaintiff with records of the hours that he worked
27 or the hourly rate of pay, all of which are required by California and federal law.

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1 20. Each Defendant misrepresented to Plaintiff and, on information and belief other
2 employees, important terms and conditions of their employment, including but not limited to the
3 number of hours they would be expected to work each day and the amount of deductions or charges
4 for housing, if any.

5 21. On information and belief, each Defendant failed to provide Plaintiff and other
6 similarly-employed persons with records of the hours they worked with their hourly rate of their
7 pay, and failed to inform workers how much if anything, they were being charged for housing, all
8 of which are required by California.

9 22. Plaintiff is informed and believes and thereon alleges that each Defendant has been
10 and is charging Plaintiff and other employees for the cost of housing, and that these charges are
11 being deducted from the wages due the workers without written authorization. Neither Plaintiff nor,
12 on information and belief any other employee, ever authorized in writing or agreed that deductions
13 for housing could be taken from their wages.

14 23. At all times relevant to this action, each Defendant required that Plaintiff, and, on
15 information and belief, other similarly-employed people, spend their own money and time to
16 acquire and maintain tools and equipment necessary to the performance of their job, including, but
17 not limited to, work boots, clothing and gloves. Defendants have not reimbursed Plaintiff and/or
18 on information and belief, other workers, for these expenditures.

19 24. Plaintiff, and on information and belief, other similarly-employed individuals at
20 Defendants' Dairy, earn and have earned less than twice the minimum wage at all times relevant
21 to this Complaint.

22 25. Defendants fired Plaintiff JOSE A. ARIAS on or about June, 2005.

23 **FIRST CAUSE OF ACTION**
24 **(Failure to Pay Overtime –**
25 **Violation of Cal. Lab. Code § 1194;**
26 **Cal. Code Regs., tit. 8, § 11140; IWC Wage Order 14)**
27 **Plaintiff, individually, Against All Defendants**

26 26. Plaintiff incorporates by reference paragraphs 1 through 25 as if fully set forth
27 herein, and further alleges that:

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1 27. At all times relevant to this action, Plaintiff worked as a dairy worker in Defendants'
2 dairy in San Joaquin County more than ten (10) hours in a workday, and/or more than sixty (60)
3 hours in a workweek.

4 28. At all times relevant to this action, each Defendant failed to pay Plaintiff premium
5 overtime wages for all hours worked in excess of the ten (10) hours in a workday and/or sixty (60)
6 hours in a workweek, in violation of Industrial Welfare Commission Wage Order 14, 8 California
7 Code of Regulations § 11140 and California Labor Code § 1194.

8 29. As a result of each Defendant's failure to provide Plaintiff with overtime pay in
9 accordance with California law, Plaintiff was deprived of wages due to him in amounts to be proven
10 at time of trial.

11 **SECOND CAUSE OF ACTION**
12 **(Failure to Provide Rest Breaks –**
13 **Violation of Cal. Lab. Code § 226.7;**
14 **Cal. Code Regs., tit. 8, § 11140;**
 : IWC Wage Order 14)
 Plaintiff, individually, Against All Defendants

15 30. Plaintiff incorporates by reference paragraphs 1 through 29 as if fully set forth
16 herein, and further alleges that:

17 31. Industrial Welfare Commission Wage Order 14, 8 California Code of Regulations
18 § 11140, applies to employees working in Defendants' dairy in San Joaquin County, which provides
19 that employers shall authorize and permit all employees to take required rest periods.

20 32. California law, including without limitation Labor Code § 226.7, requires that each
21 Defendant provide Plaintiff all rest periods specified in the applicable wage order. Plaintiff was
22 neither provided nor authorized and permitted to take these rest periods and is entitled to be paid
23 one additional hour of pay per day at his regular rate of compensation as additional wages for the
24 denied rest periods.

25 33. At all relevant times while Plaintiff was employed as a dairy worker at Defendants'
26 dairy, each Defendant failed and refused to provide the required paid rest periods to Plaintiff, and/or
27 each Defendant failed to properly execute the rest period requirements of the law and suffered or
28 permitted Plaintiff to continue working through his rest periods in violation of the law.

FOURTH CAUSE OF ACTION
(Failure to Maintain Time Records, Provide Itemized Statements—
Violation of Cal. Lab. Code §§ 226 and 1174;
Cal. Code Regs., tit. 8, § 11140;
IWC Wage Order 14)
Plaintiff, individually, Against All Defendants

42. Plaintiff incorporates by reference paragraphs 1 through 41 as if fully set forth herein, and further alleges that:

43. Industrial Welfare Commission Wage Order 14, 8 California Code of Regulations § 11140 and Labor Code §§ 1174 and 226 require that each Defendant keep written daily records of each of its employee's hours of work and meal breaks and to maintain such records for at least three years; and to provide each employee with each periodic wage payment a writing setting forth, among other things, the dates of labor for which payment of wages is made, the total hours of work for which payment of wages is made, the gross and net wages paid, all deductions from those wages, and the name and address of the employer.

44. Plaintiff is informed and believes and therefore alleges that, during Plaintiff's employment, each Defendant knowingly and intentionally failed to keep and maintain written records of the daily hours Plaintiff worked and the meal breaks Plaintiff took as required by California law.

45. During Plaintiff's employment, each Defendant knowingly and intentionally failed to provide Plaintiff with itemized wage statements of each periodic wage payment as required by California law.

46. As a direct and proximate result of each Defendant's actions as alleged herein, Plaintiff was injured and suffered losses in amounts to be determined at trial.

FIFTH CAUSE OF ACTION
(Failure to Provide Tools and Equipment –
Violation of Cal. Code Regs., tit. 8, § 11140;
IWC Wage Order 14)
Plaintiff, individually, Against All Defendants

47. Plaintiff incorporates by reference paragraphs 1 through 46 as if fully set forth herein, and further alleges that:

1 48. At all times relevant to this action, each Defendant did not pay twice the minimum
2 wage to Plaintiff. At all times relevant to this action, each Defendant was required to provide and
3 maintain tools and equipment necessary to the performance of the job, including, but not limited
4 to, work boots, clothing and gloves, for Plaintiff pursuant to Industrial Welfare Commission Wage
5 Order 14, 8 California Code of Regulations § 11140.

6 49. At all times relevant to this action, each Defendant failed to provide and maintain
7 tools and equipment, such as work boots, clothing and gloves, for Plaintiff pursuant to Industrial
8 Welfare Commission Wage Order 14, 8 California Code of Regulations § 11140.

9 50. As a direct result of Defendants' failure to comply with the above-referenced section
10 of Wage Order 14, 8 California Code of Regulations Section 11140, Plaintiff expended funds to pay
11 for necessary protective clothing and equipment that were, in effect, an offset against wages due to
12 him and was injured and is entitled to recover those expenditures in an amount to be proven at trial.

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14 **SIXTH CAUSE OF ACTION**
15 **(Failure to Pay all Wages Due Upon Discharge –**
 Cal. Lab. Code §§ 201, 202, and 203)
16 **Plaintiff, individually, Against All Defendants**

17 51. Plaintiff incorporates by reference paragraphs 1 through 50 as if fully set forth
18 herein, and further alleges that:

19 52. Pursuant to California Labor Code §§ 201 and 202, terminated employees are entitled
20 to be paid all wages due upon termination in the event of a discharge or voluntary termination with
21 requisite notice, or within 72 hours of termination in the event of a voluntary termination without
22 notice.

23 53. At all times relevant to this action, Plaintiff was discharged from his employment
24 with each Defendant within the meaning of California Labor Code §§ 201 or 202.

25 54. At all times relevant to this action, each Defendant has willfully failed to pay
26 Plaintiff premium overtime wages and other wages due. Accordingly, pursuant to California Labor
27 Code §§ 201 and 202, payment of these wages were due to Plaintiff on the date of termination.

28 55. Pursuant to California Labor Code § 203, Plaintiff is entitled to waiting time
penalties of up to 30 days wages, for each occurrence, in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION
(Restitution and Injunctive Relief—
Business and Professions Code §§ 17200, *et seq.*)
Plaintiff, individually, Against All Defendants

56. Plaintiff incorporates by reference paragraphs 1 through 55 as if fully set forth herein, and further alleges that:

57. Plaintiff sues for his own interest pursuant to Bus. & Profs. Code §§ 17200 *et seq.*

58. Plaintiff was not paid wages owed for all hours worked, including, but not limited to, the hours he worked beyond ten (10) hours in a workday, and/or more than sixty (60) hours in a workweek in violation of IWC Order No. 14, 8 Cal. Code of Regs. §11140 and Cal. Labor Code § 1194; he was not compensated for mandatory meal and rest periods in violation of with IWC Order No. 14, §§ (11) and 12, 8. Cal. Code of Regulations §§11140; and he was not paid all wages due upon his discharge in violation of Labor Code §§201 or 202. As a direct and proximate result of the acts and/or omissions of the Defendants the Plaintiff has been deprived of wages in an amount to be proven at trial.

78. The Defendants, by the acts and/or omissions alleged herein have committed and are committing unlawful and unfair competition.

79. The Defendants, by the acts and/or omissions alleged herein have injured and are injuring the interests of the general public in that other employers who have been or currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws (including the laws violated by the Defendants) are at an unfair competitive disadvantage as a result of the Defendants' conduct.

80. The Plaintiff is entitled to restitution of his wages and the economic value of benefits unlawfully denied him by the Defendants in an amount to be determined at trial. In addition, the Plaintiff is entitled to and Plaintiff seeks a preliminary and permanent injunction enjoining the Defendants from failing to pay wages for all hours worked, provide mandatory rest and meal periods, and pay all wages due upon discharge as required by law.

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NINTH CAUSE OF ACTION
(Labor Code § 2698 *et seq.*)
Plaintiff, individually, and for the interest of other
current and former employees, Against All Defendants

59. Plaintiff incorporates by reference paragraphs 1 through 58 as if fully set forth herein, and further alleges that:

60. Plaintiff is an aggrieved employee as defined in Labor Code § 2699.

61. Each Defendant committed the following violations of the California Labor Code against Plaintiff, and, on information and belief, against other current or former employees while they were employed by each Defendant:

- a. Each Defendant violated Labor Code § § 210, 221, 1194, 558, and 1198 and 8 Cal. Code of Regulations § 11140 by failing to pay Plaintiff and, on information and belief, other current and former employees of each Defendant, all wages due for all hours worked.
- b. Each Defendant violated Labor Code § 226 by failing to provide Plaintiff and, on information and belief, other current and former employees of each Defendant with an accurate itemized statement in writing providing required information regarding (1) gross wages earned, (2) total hours worked by the employee,... (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 his or her 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 with each periodic payment of wages made by each Defendant to Plaintiff and, on information and belief, other current and former employees of each Defendant.
- c. Each Defendant violated Labor Code § 1174 by failing to maintain payroll records showing the hours worked daily by and the wages paid to Plaintiff and, on information and belief, other current and former employees of each Defendant.
- d. Each Defendant violated Labor Code §§ 201 and 202 by failing to pay Plaintiff and, on information and belief, other current and former employees of each Defendant all wages due on the date of the employee's involuntary termination or within 72 hours of receipt of notice of employee's voluntary termination.
- e. Each Defendant violated Labor Code §§ 226.7 and 558 by failing to provide to Plaintiff and, on information and belief, other current and former employees of each Defendant all rest periods and meal periods in accordance with IWC Wage Order 14.
- f. Each Defendant violated provisions of IWC Wage Order 14 by failing to pay overtime for all hours worked; failing to authorize and permit meal and rest

periods specified by the Wage Order; charging or deducting amounts in excess of the maximum allowable amounts for employer provided housing; failing to provide and maintain necessary tools and equipment; failing to keep accurate information with respect to hours worked, including the beginning and ending of each work period, meal periods, and split shift periods, total wages paid, total hours worked and applicable rates of pay.

62. Pursuant to Labor Code § 2699.3(a) prior to the filing of this complaint, Plaintiff gave written notice by certified mail to each Defendant and the Labor and Work Force Development Agency of the factual and legal basis for the labor law violations alleged in this complaint. LWDA has 30 calendar days to notify the Plaintiff that it does not intend to investigate the alleged violations (until March 17, 2006) and 33 calendar days to notify the Plaintiff that it does intend to investigate the alleged violations (until March 20, 2006). On March 15, 2006, LWDA notified the Plaintiff that it did not intend to investigate the allegations, as such Plaintiff amends this complaint in accordance with the provisions of Labor Code § 2699.3(a)(2)(C).

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays judgment against Defendants and each of them as follows:

As to the First Cause of Action:

1. For an award of all unpaid overtime wages in an amount to be proved at trial.

As to the Second Cause of Action:

1. For an award, commencing January 1, 2001, of an amount equal to one hour of additional wages at the applicable hourly rate of pay for each workday that the rest period was not provided.

As to the Third Cause of Action:

1. For an award, of an amount equal to one hour of additional wages at the applicable hourly rate of pay for each workday that the meal period was not provided.

As to the Fourth Cause of Action:

1. For an award for actual damages for defendants' failure to provide itemized wage statements in an amount to be proved at trial or statutory amounts, or in the alternative

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1 \$50.00 for the first violation and \$100.00 for each subsequent violation up to a maximum
2 of \$4,000.00, per each Plaintiff.

3 As to the Fifth Cause of Action:

- 4 1. For an award of the actual cost of the tools and equipment provided and/or maintained for
5 all applicable time periods.

6 As to the Sixth Cause of Action:

- 7 1. For an award of waiting time penalties in an amount equal to 30 times the daily rate of pay,
8 according to proof at trial.

9 As to the Seventh Cause of Action:

- 10 1. For a preliminary and permanent injunction ordering Defendants to cease the unlawful and
11 unfair business practices as heretofore alleged.
12 2. For restitution to Plaintiff in amounts to be proven at trial.

13 As to the Eighth Cause of Action:

- 14 1. For enforcement and award of penalties to Plaintiff and other similarly-employed people in
15 amounts to be proved at trial.

16 As to All Causes of Action:

- 17 1. For attorneys' fees and costs of suit herein generally and pursuant to California Code of
18 Civil Procedure § 1021.5 and Labor Code §§ 226 and 1194.
19 2. For an award of pre-judgment interest as authorized under the law.
20 3. For an award of post-judgment interest as authorized under the law.
21 4. For such other and further relief as this court deems just and proper.

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23 DATED: February 11, 2010

CALIFORNIA RURAL LEGAL ASSISTANCE
INC.

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27 Blanca A. Baniuelos
Attorney for Plaintiff

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PROOF OF SERVICE
(Code of Civil Procedure section 1013a)

I, Sylvia Escobar, am employed in San Joaquin County; I am over the age of eighteen (18) years and not a party to the within action; my business address is 20 North Sutter Street, Suite 203, Stockton, California 95202.

On February 11, 2010, I served the following document(s):

SECOND AMENDED COMPLAINT

by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein listed:

Anthony Raimondo
McCormick Barstow LLP
5 River Park Place East
P. O. Box 28912
Fresno, CA 93729-8912

☒ BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with California Rural Legal Assistance practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

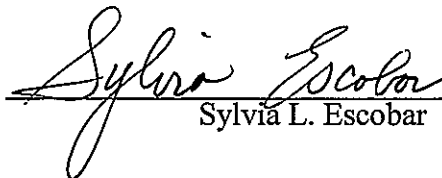
☐ BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the addressee(s) designated.

☐ BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated by placing the document(s) listed above in a sealed FED EX- OVERNIGHT envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a FED EX agent for a delivery.

☐ BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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

Executed at Stockton, California, on February 11, 2010.


Sylvia L. Escobar