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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSEPH J. HESKETH III, on his behalf  
and on behalf of other similarly situated  
persons,

Plaintiff,

v.

TOTAL RENAL CARE, INC., on its own  
behalf and on behalf of other similarly  
situated persons,

Defendants.

No. 2:20-cv-01733

NOTICE OF REMOVAL

**TO: THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES  
DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON**

Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d),  
1441, 1446, and 1453, Defendant Total Renal Care, Inc. (“Defendant” or “TRC”) removes this  
action to this Court from the Superior Court of the State of Washington for King County. In  
support of this Notice, TRC respectfully states:

**STATE COURT ACTION**

1. Plaintiff Joseph J. Hesketh III (“Plaintiff”) commenced this action on October 22,  
2020, by filing a Complaint for Damages in the Superior Court of the State of Washington for  
King County, where it was assigned Case No. 20-2-15575-6 SEA. TRC was served with the

NOTICE OF REMOVAL  
(No. 2:20-cv-01733) –1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 Summons and Complaint on October 26, 2020. No further proceedings in this matter have been  
2 held in the Superior Court for King County.

3 2. Plaintiff's Complaint alleges a single breach of contract claim and seeks related  
4 damages along with prejudgment interest on any liquidated damages. Complaint ("Compl.") at  
5 ¶¶ 54, 57-58.

### 6 **GROUND FOR REMOVAL**

7 3. This action is removeable under 28 U.S.C. § 1441 because the Court has original  
8 jurisdiction under CAFA. *See* 28 U.S.C. §§ 1332(d)(2) and 1453(b) (setting procedure for  
9 removing class actions).

10 4. CAFA allows defendants to remove class actions to federal court if three  
11 conditions are met: "[1] there must be minimal diversity of citizenship between the parties; [2]  
12 the proposed class must have at least 100 members; and [3] the aggregated amount in  
13 controversy must equal or exceed ... \$5 million." *Jordan v. Nationstar Mortg. LLC*, 781 F.3d  
14 1178, 1182 (9th Cir. 2015). Indeed, when passing CAFA, the Senate Judiciary Committee  
15 explained, "[b]ecause interstate class actions typically involve more people, more money, and  
16 more interstate commerce ramifications than any other type of lawsuit, the Committee firmly  
17 believes that such cases properly belong in federal court." S. Rep. No. 109-14, at 5 (2005).

18 5. This action satisfies all three of CAFA's removal requirements.

### 19 **There is Minimal Diversity**

20 6. CAFA's diversity requirement is met when "any member of a class of plaintiffs is  
21 a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

22 7. Plaintiff Hesketh is a citizen of, and resides in, the State of Washington. Compl.  
23 ¶ 17.

1 8. Defendant TRC is incorporated under the laws of the State of California and its  
2 principal place of business is in the State of Colorado. Defendant is therefore a citizen of  
3 Colorado and California.<sup>1</sup> See 28 U.S.C. § 1332(c)(1).

4 9. CAFA’s diversity requirement is satisfied because Plaintiff and Defendant are  
5 citizens of different states.

6 **There are More than One Hundred Class Members**

7 10. The proposed class includes “all non-exempt employees” who worked for  
8 Defendant “on and after January 31, 2020” and “were not paid the premium pay equal to 1/2  
9 times their based rates for any work performed after the declaration of emergency.” Compl. ¶ 27.

10 11. This class contains “hundreds, if not thousands of individuals.” Compl. ¶ 28.

11 12. A class of “hundreds, if not thousands” is sufficiently large to satisfy the CAFA’s  
12 at least 100-member class size requirement.

13 **The Amount in Controversy Exceeds Five Million Dollars**

14 13. Plaintiff does not plead a specific amount in controversy, so Defendant need only  
15 make “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”  
16 *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015) (citing *Dart Basin*  
17 *Operating Co. v. Owens*, — U.S. —, 135 S.Ct. 547, 554, 190 L.Ed.2d 495 (2014)).

18 14. “[A] defendant satisfies the amount-in-controversy requirement under CAFA if it  
19 is reasonably possible that it may be liable for the proffered punitive damages amount.” *Greene*  
20 *v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020). Undisputed declarations identifying  
21 an amount in controversy greater than five million dollars are sufficient to establish CAFA’s  
22 amount in controversy requirement is met. See *Watkins v. Vital Pharm., Inc.*, 720 F.3d 1179,  
23 1181 (9th Cir. 2013).

24  
25  
26 <sup>1</sup> TRC’s parent company, DaVita (not named as a defendant), is incorporated under the laws of the State of Delaware and its headquarters are located in Colorado.

1 15. Plaintiff alleges Defendant breached an agreement by failing to pay class  
2 members premium pay for the regularly schedule hours worked after a national emergency was  
3 declared on January 31, 2020, and seeks damages flowing from this alleged breach. Compl. ¶¶  
4 13, 54, 57.

5 16. Premium pay (.5 times regular base rate) for the regular hours worked by putative  
6 class members in Washington from January 31, 2020 through October 31, 2020 amounts to more  
7 than \$23 million. *See* Declaration of Carol Strong (“Strong Decl.”) at ¶ 4. Premium pay (.5  
8 times regular base rate) for the regular hours worked by putative class members in Washington  
9 between January 31, 2020 and the change to the Disaster Relief Policy on March 31, 2020, totals  
10 \$5,082,320. *Id.* at ¶ 6.

11 17. The calculations—\$23 million or \$5.08 million—satisfy CAFA’s amount in  
12 controversy requirement for even just a single state and no matter which of the two time periods  
13 are used.

14 **None of CAFA’s Jurisdictional Exceptions Bar Removal of This Case**

15 18. This action does not fall within any of the CAFA’s jurisdictional exceptions that  
16 bar removal.

17 19. Under CAFA, federal courts must decline to exercise jurisdiction over class  
18 actions where (1) more than two-thirds of the proposed plaintiff class members are citizens of the  
19 state in which the action was originally filed, (2) at least one defendant is a citizen of the state in  
20 which the action was originally filed, and (3) the principal injuries resulting from the alleged  
21 conduct were incurred in the state where the action was originally filed. *See* 28 U.S.C. §  
22 1332(d)(4)(A).

23 20. This action does not meet these requirements: Defendant TRC is not a citizen of  
24 Washington state, where the action was originally filed. Compl. ¶ 18.

25 21. Finally, none of CAFA’s subject-matter exceptions to federal jurisdiction apply  
26 because the Complaint does not bring claims involving securities or corporate governance. *See*

1 28 U.S.C. §§ 1332(d)(9), 1453(d) (both explaining § 1332(d)(2) does not apply to cases arising  
2 under certain sections of the Securities Act of 1933, the Securities Exchange Act of 1934, or  
3 state corporate governance laws).

4 **ACTION REMOVABLE AND INTRADISTRICT ASSIGNMENT**

5 22. This action is removeable to this Court under 28 U.S.C. § 1441 because this Court  
6 would have had original jurisdiction over Plaintiff’s claim had it been initially filed in federal  
7 court. This Court is the district court of the United States for the district and division “embracing  
8 the place where [the state court] action is pending,” and is therefore the appropriate court for  
9 removal. 28 U.S.C. § 1441(a).

10 23. TRC chooses to remove this action to the Seattle Division of this Court because,  
11 as pled, Plaintiff’s claims arose in King County and the action is pending there. *See* Compl. ¶ 19,  
12 20; LCR 3(e)(1).

13 24. This Notice is filed with the Court within thirty days after TRC received the  
14 Complaint, in accordance with 28 U.S.C. § 1446(b). *See also* 28 U.S.C. § 1453(b) (explaining  
15 class actions may be removed in accordance with § 1446).

16 **PLEADINGS FILED**

17 25. Copies of all process and pleadings filed in this case and found in the files of the  
18 Superior Court of the State of Washington for King County are attached to the Verification of  
19 State Court Record filed with this Notice. *See* LCR 101(b).

20  
21 DATED: November 23, 2020

By: s/ Chelsea Dwyer Petersen  
Chelsea Dwyer Petersen #33787  
Attorney for Defendant Total Renal Care, Inc.  
**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Telephone: 206.359.8000  
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Email: CDPetersen@perkinscoie.com

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on November 23, 2020, I electronically filed the foregoing **NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Christina L Henry, WSBA 31273  
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*Attorney for Plaintiffs*

Via Hand Delivery  
 Via U.S. Mail, 1st Class, Postage  
Prepaid  
 Via Overnight Courier  
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Prepaid  
 Via Overnight Courier  
 Via Facsimile  
 Via E-Filing

DATED this 23rd day of November 2020 in Seattle, Washington.

s/ Kyle Koats  
Kyle Koats, Legal Practice Assistant

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5 Other Counsel on Signature Page

9  
10 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
11 IN AND FOR THE COUNTY OF KING

12 Joseph J. Hesketh III,  
13 *on his behalf and on behalf of other similarly  
14 situated persons*

14 Plaintiff,

15 v.

16 Total Renal Care, Inc, on its own behalf and on  
17 behalf of other similarly situated persons,

17 Defendants.

Case No:

CLASS ACTION COMPLAINT

(JURY DEMAND)

18 Plaintiff, Joseph J. Hesketh III, individually, and on behalf of all other similarly situated,  
19 sues Defendant, Total Renal Care, Inc. ("Total") individually, and on behalf of all others  
20 similarly situated and alleges:

21  
22 **I. OVERVIEW**

23 1. An employee has the right to be paid for the time the employee does work for  
24 an employer at the rates the parties have agreed. This action is filed because the Defendants and  
25 others failed to pay the Plaintiff and the other class members the amounts they were due to be  
26 paid for the work they performed and which the Defendants agreed to pay.

1           2.       Total is an integral part of DaVita, Inc. (DaVita) (formerly known as Total Renal  
2 Care Holdings, Inc.) DaVita is a nationwide entity that employs 77,000 people to operate its  
3 profit driven business model through a number of entities controlled and operated by DaVita.  
4 Employees of Total and the other entities are led to believe that they all part of a single  
5 “village” down to including the registered trademark of DaVita on their paychecks. DaVita  
6 describes itself as entity that “...we provided dialysis and administrative services and related  
7 laboratory services throughout the U.S. via a network of 2,753 outpatient dialysis centers  
8 in 46 states and the District of Columbia,<sup>1</sup>

9  
10           3.       As of December 31, 2019, DaVita operated or provided administrative services  
11 through a network of 2,753 outpatient dialysis centers in the U.S.<sup>2</sup> This includes 53 locations in  
12 Washington State.

13           4.       Plaintiff is an employee of Total and a member of the DaVita village and began  
14 working Total over thirteen (13) years ago.

15           5.       DaVita maintains and publishes an employee handbook titled “Teammate  
16 Policies” which contains certain conditions of employment; the handbook states what is expected  
17 of DaVita employees and, inter alia, how DaVita will compensate its employees for their loyalty  
18 and work, under certain situations.  
19  
20  
21  
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23  
24           <sup>1</sup> See DaVita, Inc.’s 2019 10k available at  
25 <https://www.sec.gov/ix?doc=/Archives/edgar/data/927066/000092706620000014/dva-12311910k.htm#s967C77CBE804541FAE5B78B764C16026>

26           <sup>2</sup> Id.



1           6.           The Teammate Policies handbook, under the Compensation section, included a  
2 “Disaster Relief Policy” that sets out DaVita’s pay practices for non-exempt employees who miss  
3 work during a declared emergency, in whole or in part, and those non-exempt employees who  
4 can and do work during a declared emergency.

5           7.           The Disaster Relief Policy provides for pay continuance during an emergency  
6 time frame when a declared emergency or natural disaster prevents teammates from performing  
7 their regular duties and state that: “[a] declared emergency or natural disaster shall be proclaimed  
8 by either the President of the United States, a state Governor or other elected official, or if local  
9 leadership (DVP/Palmer) deems it appropriate. In the event of a state or federally declared natural  
10 disaster, this policy provides information relative to pay practices, work schedules and facility or  
11 business office coverage.”

12           8.           Under the section titled “Pay Practices For Non-Exempt Teammates” DaVita  
13 establishes the pay practices for three emergency or natural disaster scenarios:  
14

15                   a. if non-exempt employees are unable to work because “a facility or  
16 business office is closed during a declared emergency or natural disaster,” those  
17 non-exempt employees will be paid for their regularly scheduled hours at regular  
18 pay;  
19

20                   b. if “a facility or business office opens late or closes early a declared  
21 emergency or natural disaster,” non-exempt employees will be paid for their  
22 regularly scheduled hours at regular pay, even if the employees are unable to work  
23 their full schedules because of the emergency or natural disaster; and  
24

25                   c. if “a facility or business office is open during the designated time frame”  
26 employees who work their regularly scheduled hours will be paid premium pay.

1           9.           “Premium pay” is defined as one and one half times regular pay, unless state  
2 law dictates otherwise.

3           10.          The clear import of the “Pay Practices For Non-Exempt Teammates” is that  
4 every non-exempt DaVita employee who works his or her regularly scheduled hours during a  
5 declared emergency will be paid premium pay.

6           11.          The “Pay Practices For Non-Exempt Teammates” is a method of attracting and  
7 retaining employees whose knowledge and skills are valuable to the business profit model  
8 developed by DaVita. It is not altruism.

9           12.          DaVita’s policy and practice is to provide actual notice to its employees before  
10 any changes to its pay policies take effect.

11           13.          A national emergency was declared on January 31, 2020.

12           14.          The Plaintiff, who is a non-exempt employee, continued to work his regularly  
13 scheduled hours for Defendants after the state of emergency was declared.

14           15.          Defendants did not pay Plaintiff premium pay for the regularly scheduled hours  
15 he worked during the time of the state of emergency. Instead, DaVita attempted to later change  
16 the terms of the Teammate Policies handbook to now exclude the present emergency from those  
17 emergencies covered by the Disaster Relief Policy by a notice sent out in September, 2020.

18           16.          Whether or not DaVita’s effort to unilaterally change the pay agreement with  
19 its non-exempt employees is effective, there is a period of time before the attempted effort was  
20 made in which the Disaster Relief Policy applied and the premium pay was due to Plaintiff and  
21 all other non-exempt employees.

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**II. PARTIES**

17. Plaintiff, Joseph J. Hesketh, III, is an individual who is a citizen of and resides in, the State of Washington.

18. Defendant Total appears to be a California corporation although court disclosure filings made on its behalf are conflicting as to its state of incorporation. DaVita is a Delaware Corporation. Both list their principal place of business at the same address in Denver, Colorado. Its agent for service of process is Corporation Service Company, 1900 W. Littleton CO 80210.

**III. JURISDICTION AND VENUE**

19. This Court has jurisdiction over Total and the Defendant Class Members who regularly conduct business in Kings County, Washington.

20. Venue is proper in in King County Superior Court because Total and the Defendant Class Members transact business, in King County, Washington.

**IV. ALLEGATIONS COMMON TO PLAINTIFF AND THE CLASS AGAINST THE DEFENDANT AND THE CLASS OF DEFENDANTS.**

21. Plaintiff and class members (hereinafter collectively “Plaintiff Class Members”) are employed by Total and the Defendant Class Members.

22. Plaintiff Class Members provided services to the Defendant Class Members after the national emergency declared on January 31, 2020.

23. The Defendant Class Members failed to pay the Plaintiff Class Members premium time as promised in the Teammates Policy handbook.

1           24.       The Plaintiff Class Members are entitled to the premium pay for the hours they  
2 worked as they were promised.

3           25.       The amounts owed to the Plaintiff Class Members are liquidated amounts.

4                   **V.       CLASS ALLEGATIONS AS TO PLAINTIFF CLASS**

5  
6           26.       Plaintiff brings this complaint individually and on behalf of a class of all other  
7 persons similarly situated.

8           27.       The class is comprised of all non-exempt employees of the Defendant Class  
9 Members who:

10                   a. Worked for the Defendant Class Members on and after January 31,  
11 2020;

12                   b. Were not paid the premium pay equal to ½ times their base rate, for any  
13 work performed after the declaration of emergency.  
14

15           28.       Based on the number of clinics operated by the Defendant Class Members in  
16 the United States, upon information and belief, the class is so numerous as to make it  
17 impracticable to join all members of the class of plaintiffs. On information and belief, the class is  
18 comprised of hundreds, if not thousands of individuals.  
19

20           29.       There are questions of law and fact which are common to all members of the  
21 Plaintiff Class, which questions predominate over any question affecting only individual class  
22 members, the principal common issues are:

23                   a. whether Plaintiff Class Members are entitled to be paid the premium pay for the  
24 hours they worked for the Defendant Class Members since the declaration of an  
25 emergency; and  
26

1           b. Whether the Plaintiff Class Members are entitled to prejudgment interest on any  
2           amounts they are owed by the Defendant Class Members.

3           30.       The only individual questions concern the identification of class members and  
4           the computation of the relief to be afforded each class member and can be determined by a  
5           ministerial examination of the Defendant Class Members' records.

6           31.       Plaintiff's claims are typical of the claims of the Plaintiff Class Members. Upon  
7           information and belief, the Defendant Class Members treated all of the Plaintiff Class Members  
8           the same by failing to pay premium time since the declaration of an emergency.

9           32.       Plaintiff will fairly and adequately protect the interests of all class members in  
10          the prosecution of this action. He is similarly situated with, and has suffered similar injuries as,  
11          the members of the class he seeks to represent. He feels he has been wronged and wishes to obtain  
12          redress of the wrong. To that end, plaintiff has retained counsel experienced in handling class  
13          action suits involving claims as set forth in this complaint. Neither the named plaintiff nor his  
14          counsel have any interest which might cause them not to vigorously pursue this action.

15          33.       The Defendant Class Members have and are acting in a uniform manner with  
16          respect to the entire class and on grounds uniformly applicable to the class.

17          34.       A class action is superior to other available methods for the fair and efficient  
18          adjudication of the controversy.

19          35.       The amounts involved on an individual basis make pursuit of individual actions  
20          unlikely.

21          36.       The concentration of the litigation concerning this matter in this Court is  
22          desirable if the court.

23          37.       A failure of justice will result from the absence of a class action.

1 38. Plaintiff Class Members were damaged by the conduct complained of, in that  
2 they were not paid the amounts owed to them and that the Defendant Class Members promised to  
3 pay them.

4 **VI. CLASS ALLEGATIONS AS TO THE DEFENDANTS CLASS.**

5  
6 39. Plaintiff brings this complaint against the Defendant Total individually and on  
7 behalf of a class of all others similarly situated. DaVita operates as a single unit (or what it calls  
8 a village) for purposes of promises made to employees notwithstanding the creation of separate  
9 entities. To the extent there are separate entities operating different locations, each have the same  
10 interest as Total and DaVita and ultimately DaVita as the owner of any separate entities is affected  
11 by the claims made in this action.  
12

13 40. The Defendant Class is comprised of all entities which are owned or controlled  
14 by the DaVita who:

- 15 a. Has employees who are covered by the Teammates Policies Handbook  
16 published by DaVita, Inc.  
17  
18 b. The employees worked for the Defendant Class Members on and after  
19 January 31, 2020;  
20  
21 c. The Defendant Class Members did not pay premium pay, defined as 1.5  
22 times their base rate, for any work performed since the declaration of the  
23 emergency.

24 41. Based on the number of clinics operated by the Defendant Class Members in  
25 the United States, upon information and belief, the class is so numerous as to make it  
26 impracticable to join all members of the class of plaintiffs. On information and belief, the class is  
comprised of tens if not hundreds of entities.

1           42.       There are questions of law and fact which are common to all members of the  
2 Defendant Class, which questions predominate over any question affecting only individual  
3 Defendant Class Members, the principal common issues are:

4                   a. whether Plaintiff Class Members are entitled to be paid premium time for the  
5 hours they worked for the Defendant Class Members since the declaration of an  
6 emergency.

7                   b. Whether the Plaintiff Class Members are entitled to prejudgment interest on any  
8 amounts they are owed by the Defendant Class Members.  
9

10           43.       The only individual questions concern the identification of Defendant Class  
11 Members and the computation of the relief that the defendant class members may be liable for  
12 and can be determined by a ministerial examination of the Defendant Class Members'  
13 electronically stored information.

14           44.       Total's position or defenses to the claims are typical of the position or defenses  
15 of the Defendant Class Members. Upon information and belief, the Defendant Class Members  
16 treated all of the Plaintiff Class Members the same by failing to pay premium time since the  
17 declaration of an emergency as directed by DaVita.  
18

19           45.       Defendant Total will fairly and adequately protect the interests of all class  
20 members in the defense of this action. It is similarly situated to and provides its employees  
21 DaVita's company policies as set forth in the Teammates Policies Handbook and all of the  
22 Defendant Class Members treat its employees in accordance with its provisions. To that end,  
23 Defendant Total is likely to retain counsel experienced in handling class action suits involving  
24 claims as set forth in this complaint. Neither Total nor its counsel will have any interest which  
25  
26

1 might cause them not to vigorously defend this action and the interests of the Defendant Class  
2 Members.

3 46. The Defendant Class Members have and are acting in a uniform manner with  
4 respect to the entire class and on grounds uniformly applicable to the class.

5 47. A class action is superior to other available methods for the fair and efficient  
6 adjudication of the controversy.

7 48. The Defendant Class Members can more economically defend the claims rather  
8 than defend tens if not hundreds of individual actions.

9 49. The concentration of the litigation concerning this matter in this Court is  
10 desirable if the court.

11 50. A failure of justice will result from the absence of a class action.

12  
13  
14 **COUNT I – BREACH OF CONTRACT**

15 51. The Plaintiff incorporates the foregoing paragraphs.

16 52. The Plaintiff Class Members entered into a contract with the Defendant Class  
17 Members for the wages to be paid for their services.

18 53. The contract set forth the rate of pay for the Plaintiff Class Members if there  
19 was an emergency declared.

20 54. The Defendant Class Members have breached their agreements with the  
21 Plaintiff Class Members by failing to pay them premium time for their work since the declaration  
22 of an emergency.

23 55. The Plaintiff Class Members have fully performed their obligations under the  
24 parties' agreement for the payment of wages promised.



1           56.       The Plaintiff Class Members have been damaged by the Defendant Class  
2 Members breach.

3           57.       The Plaintiff Class Members are entitled to damages for the Defendant Class  
4 Members breach.

5           58.       The Plaintiff Class Members are entitled to prejudgment interest on any  
6 liquidated amount of damages.  
7

8                               **Wherefore**, Plaintiff and Class Members pray that this court:  
9

- 10           A. Certify this case as a class action with the named Plaintiff as class representative  
11              and his attorneys as counsel on behalf of the class described herein;  
12           B. Certify a class of Defendants with the named Defendant as the representative of the  
13              Defendant Class;  
14           C. Order appropriate compensatory damages in an amount to be determined at trial for  
15              the Plaintiff and the Class in excess of \$75,000;  
16           D. Award attorney's fees and costs if allowed by law;  
17           E. Award prejudgment interest on any award; and  
18           F. Provide such other or further relief as the Court deems appropriate.  
19

20  
21   Respectfully submitted,

22           Dated this 21st of October, 2020.

23   /s/ Christina L Henry  
24   Christina L Henry, WSBA 31273  
25   Counsel for Plaintiff  
26   HENRY & DEGRAAFF, PS  
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