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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/23/2024
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **FOR THE COUNTY OF SAN FRANCISCO**

Case No:

CGC-24-611835

8 AYAUNNA MARTINEZ, on behalf of
9 herself and all others similarly situated;

10 Plaintiff,

11 v.

12 PHILZ COFFEE, INC., a California
13 Corporation; and DOES 1 through 50,
14 Inclusive,

Defendants.

PLAINTIFF'S CLASS ACTION
COMPLAINT

DEMAND FOR JURY TRIAL

15 Plaintiff Ayaunna Martinez, on behalf of herself, all other similarly situated and the general
16 public, by and through her undersigned counsel, hereby sues Philz Coffee, Inc. (Philz), and alleges
17 the following upon her own knowledge, or where she lacks personal knowledge, upon information
18 and belief, including the investigation of her counsel:

19 **NATURE OF THE ACTION**

20 1. Philz is a statewide coffee shop chain that own and operates "Philz Coffee" locations
21 throughout California. Each of Philz coffee shop locations sells a variety of foods and brewed coffee
22 blends. The food items that Philz markets to consumers includes a line of food that is advertised as
23 gluten free (the "Product"). As demonstrated by Plaintiff's experience, Philz misbrands and falsely
24 advertises the Product as gluten-free, even though in reality the Product contains gluten.

25 2. As described more fully below, consumers who purchased the Product were injured
26 by Philz's acts and omissions concerning the presence of gluten. No reasonable consumer would
27 know, or have reason to know, that the Product contained gluten, a dangerous and potentially fatal
28 allergen.

1 not live up to the advertising claims made by Philz. By way of the Product’s uniform labelling and
2 packaging, Philz represents the safety and composition of the food item in a false and misleading
3 manner. By way of its menus and advertising scheme for the Product, Philz labels the Product as a
4 gluten-free food item that is safe for individuals who have celiac disease or suffer from gluten
5 intolerance. Yet, as demonstrated by what transpired in August 2023, when Plaintiff ended up
6 suffering substantial bodily symptoms and injuries after consuming a Philz’s food product that was
7 misrepresented as “gluten free,” the Product is anything but safe to eat and clearly sold with
8 ingredients that can trigger physical detriment and bodily harm, as well as other dangerous side
9 effects, to humans.

10 10. The Product is marketed as a food item that is gluten free and contains no gluten.
11 However, in reality, in reality the Product has gluten as an ingredient and actually poses high health,
12 especially for individuals that suffer from celiac disease or have a gluten allergy.

13 11. The Product contains various gluten-filled ingredients that cause serious harm to pose
14 severe risk of harm to human health. As the manufacturer, distributor and seller of the Product, Philz
15 knows this. However, Philz fails to warn consumers that using the Product actually exposes their
16 health to a great risk of harm, including severe allergic reactions.

17 12. Philz could have implemented changes to the Product’s manufacturing process to
18 eliminate, or at least significantly reduce, the contamination of gluten ingredients in the Product it
19 sold to Plaintiff and the public, but chose not to. Thus, on information and belief, Philz itself is
20 responsible for gluten-based ingredients being present in the Product, at least in the levels at which
21 they are found in the Product.

22 13. Despite knowing that its Product contains gluten, Philz intentionally marketed the
23 food items so as to convey to reasonable consumers, including Plaintiff, that the Product did not
24 contain gluten as an ingredient.

25 14. Nationwide sales of gluten-free food products totaled about \$6.5 billion in 2022 and
26 is expected to rise to \$15.1 billion by 2032. To capitalize in the increasing demand for gluten-free
27 items, Philz marketed the Product as foods that are free of gluten and lack gluten. When a consumer
28 goes to a Philz coffee location, the Product is explicitly labelled and advertised as “gluten free.”

1 Especially in light of the fact that many individuals suffer from a gluten intolerance or allergy, the
2 question of whether a food product contains gluten is a material issue and attribute for reasonable
3 consumers. Most reasonable consumers would want to know that the item they are planning to buy
4 for consumption will actually create a serious risk of allergies and contravene their dietary
5 restrictions. Likewise, Philz's inclusion of gluten in the Product reflects a fact that is material to
6 reasonable consumers, including Plaintiff and Class Members.

7 15. A company that has a Statewide presence, with coffee shop locations spanning all
8 over California, Philz has earned public trust that its coffee and food items are safe and fit for
9 regular consumption. Reasonable consumers believe that Philz would not sell products are unsafe
10 or pose serious risk of bodily injury. If the presence, or the risk of presence of gluten in its Product
11 were disclosed to Plaintiff and the Class Members, they would be unwilling to purchase the Product
12 or would pay less for them. Philz knew this. In light of Philz's knowledge that Plaintiff and the Class
13 Members would be unwilling to purchase the Product or would pay less for the Product if they knew
14 that the Product contained gluten, Philz intentionally and knowingly concealed this fact from
15 Plaintiff and the Class Members and did not disclose the presence of gluten ingredients on the
16 Product's labelling or advertising. Philz knew or should have known that Plaintiff and the Class
17 Members would rely upon the packaging and marketing of the Product, and intended for them to do
18 so, but failed to disclose the presence of gluten ingredients.

19 16. Philz knew or should have known that it owed consumers a duty of care. As the
20 Product's distributor, seller and manufacturer, Philz knew or should have known that the Product
21 contained gluten and purposely hid that fact from consumers. Philz knew or should have known it
22 could control the levels of gluten in the Product by adjusting the formulation to reduce or eliminate
23 the gluten ingredients or improving the manufacturing processes to eliminate introduction of gluten
24 caused by Philz itself. Prior to purchasing the Product, Plaintiff and the Class Members were
25 exposed to, saw, read and understood the labels of the Product, and relied upon the same in
26 purchasing the Product, but Philz failed to disclose the presence of gluten.

1 17. As a result of Philz’s concealment of the fact that the Product contained gluten,
2 Plaintiff and the Class Members reasonably believed the Product was free from these substances
3 that would negatively affect their health.

4 18. Plaintiff and the Class Members purchased units of the Product in reliance upon
5 Philz’s labels that contained material omissions.

6 19. Had Plaintiff and Class Members known that the Product contained gluten ingredients
7 that aggravated gluten allergies and create risk of serious physical harm, they would not have been
8 willing to purchase the Product or would have paid less for it. Therefore, as a direct and proximate
9 result of Philz’s omissions concerning the Product, Plaintiff and the Class Members purchased the
10 Product and paid more than it was worth.

11 20. Plaintiff and the Class Members were harmed in the form of the monies they paid for
12 the Product which they would not otherwise have paid had they known the truth about the Product.
13 Since the presence of gluten ingredients in the Product renders them unsafe for human and
14 household use, the Product that Plaintiff and the Class paid for them.

15 21. Plaintiff paid for the Product and would only have been willing to pay less, or
16 unwilling to purchase it at all, absent the false and misleading labelling complained of herein. For
17 these reasons, the Product was worth less than what Plaintiff for them, and may have been worth
18 nothing if marketed and labelled accurately.

19 22. By use of its misleading labelling, Philz created increased marketplace demand for
20 the Product, and increased its market share, relative to what its demand and share would have been
21 had Philz labelled the Product truthfully.

22 23. Plaintiff lost money as a result of Philz’s deceptive claims and practices in that she
23 did not receive what she paid for when purchasing the Product. Additionally, Plaintiff incurred
24 physical injury because as a consequence of Philz’s deceptive advertising, Plaintiff suffered a severe
25 allergy attack and was also exposed to increased risk of bodily harm.

26 24. Plaintiff detrimentally altered her position and suffered damages in an amount equal
27 to what she paid for the Product, or at least some portion thereof.
28

1 25. Plaintiff bought a unit of the Product from one a San Francisco-based Philz location
2 in August 2023. She purchased the Product in reliance on its “gluten free” marketing and labelling
3 scheme, and used the Product as intended. Plaintiff would not have purchased it if she had known
4 that the advertising as described herein was false, misleading and deceptive and that the Product
5 actually contained gluten. Plaintiff suffered injury in fact and is entitled to restitution damages in an
6 amount to be determined at trial. Philz blatantly advertised false statements regarding the Product’s
7 identity, quality and safety. Reasonable consumers rely on product labelling in making their
8 purchasing decisions. When a consumer sees the labelling and packaging of the Product as “gluten
9 free”, she reasonably believes the food item lacks gluten, as well as safe for people that have celiac
10 disease or gluten allergies. In reliance on Philz’s dishonest and deceptive advertising practices of
11 the Product, Plaintiff and similarly situated class members reasonably thought they were purchasing
12 a food product that was free from gluten, and wholly safe to consume, without any potential risk to
13 human health. Philz has no reasonable basis for labelling, advertising, marketing and packaging the
14 Product as being safe or innocuous to health. As a result, consumers are consistently misled and
15 tricked into purchasing the Product. Moreover, Plaintiff has grounds to prevail on “benefit of the
16 bargain” approach to calculating damages, pursuant to *Nguyen v. Nissan N. Am. Inc.*, 932 F. 3d. 811
17 (July 26, 2019).

18 26. Plaintiff purchased a unit of the Product during the class period, and made her
19 purchases at one of Philz’s coffee shop locations in Alameda County. When purchasing the Product,
20 Plaintiff was looking for food item that lacked gluten and was gluten-free. Plaintiff would have
21 avoided buying the Product if she had known they would increase the risk of damaging her health,
22 and expose her to an allergic reaction triggered by digesting gluten.

23 27. Plaintiff acted reasonably in purchasing the Product, whose labels did not disclose the
24 presence, or risk of presence, of severe bodily harm, and in fact conveyed to reasonable consumers
25 that the Product did not contain ingredients that posed a substantial risk to human health.

26 28. By omitting that its Product contained, or were at risk for containing, gluten, Philz
27 was able to gain a greater share of the gluten-free food market, than it would have otherwise and to
28 increase the size of the market.

1 date of the filing of this Complaint to the time a class is notified (the “Class Period”), purchased,
2 for personal or household use, and not for resale or redistribution, the Product (the “Class”).

3 37. The members in the proposed Class are so numerous that individual joinder of all
4 members is impracticable, and the disposition of the claims of all Class Members in a single action
5 will provide a substantial benefit to the parties and Court.

6 38. Plaintiff’s claims are typical of Class Members’ claims because they are based on the
7 same underlying facts, events, and circumstances relating to Philz’s conduct. Specifically, all Class
8 Members, including Plaintiff, were subjected to the same unfair, misleading and unlawful conduct
9 when they purchased the Product and suffered economic injury because of Philz’s business
10 practices. Absent Philz’s business practice of unfairly, deceptively, and unlawfully labelling the
11 Product by omitting material information regarding their gluten ingredients, Plaintiff and Class
12 Members would not have purchased the Product or would have paid less for them.

13 39. Plaintiff will fairly and adequately represent and protect the interests of the Class,
14 have no interests incompatible with the interests of the Class, and have retained counsel competent
15 and experienced in class action litigation, and specifically litigation involving mislabeled food
16 products.

17 40. Class treatment is superior to other options for resolution of the controversy because
18 the relief sought for each Class Member is small, such that, absent representative litigation, it would
19 be infeasible for Class Members to redress the wrongs done to them.

20 41. Philz acted on grounds applicable to the Class, thereby making appropriate final
21 injunctive and declaratory relief concerning the Class as a whole.

22 42. Questions of law and fact common to Plaintiff and the Class include:

- 23 i. Whether Philz communicated a message through the Product’s packaging
24 and advertising that conveyed to reasonable consumers that the Product did
25 not contain gluten;
- 26 ii. Whether that message was material, or likely to be material, to a reasonable
27 consumer;
- 28

1 related to the Product was likely to mislead consumers acted reasonable, as to the risks, potential
2 harms and likely bodily harm or severe allergic reaction impact of the Product.

3 62. Plaintiff suffered injury in fact as a result of Philz’s actions as set forth herein because
4 Plaintiff purchased unit of the Product in reliance on Philz’s false and misleading marketing claims
5 stating or suggesting that the Product does not contain gluten.

6 63. Philz’s business practices as alleged herein constitute unfair, deceptive, untrue, and
7 misleading advertising pursuant to the FAL because Philz has advertised the Product in a manner
8 that is untrue and misleading, which Philz knew or reasonably should have known, and omitted
9 material information from the Product’s labelling.

10 64. Philz profited from the sale of the falsely and deceptively advertised Product to
11 unwary customers.

12 65. As a result, Plaintiff, and the Class, and the general public are entitled to injunctive
13 and equitable relief, and an order for the disgorgement of the funds by which Philz was unjustly
14 enriched.

15 66. Pursuant to Cal. Bus. & Prof. Code §17535, Plaintiff, on behalf of herself and the
16 Class, seeks and order enjoining Philz from continuing to engage in deceptive practices, false
17 advertising, and any other act prohibited by law, including those set forth in this Complaint.

18 67. Because the Court has broad discretion to award restitution under the FAL and could,
19 when assessing restitution under the FAL, apply a standard different than that applied to assessing
20 damages under the CLRA, and restitution is not limited to returning to Plaintiff and Class Members
21 monies in which they have an interest, but more broadly serves to deter the offender and others from
22 future violations, the legal remedies available under the CLRA and commercial code are more
23 limited than the equitable remedies available under the FAL, and are therefore inadequate.

24 **FOURTH CAUSE OF ACTION**

25 **Violation of Business & Professions Code § 17200, *et seq.***

26 68. Plaintiff re-alleges and incorporates by reference the allegations contained in the
27 paragraphs above as if fully set forth herein.

28 69. The UCL prohibits “any unlawful, unfair... or fraudulent business act or practice.”

1 Cal. Bus & Prof. Code § 17200.

2 70. Under California Business & Professions Code §17200, any business act or practice
3 that is likely to deceive members of the public constitutes a fraudulent business act or practice.

4 71. The acts, omissions, misrepresentations, practices, and non-disclosures as of the
5 alleged herein constitute business acts and practices.

6 **A. “Unfair” Prong**

7 72. Philz’s conduct within respect to the labelling, advertising and sale of the Product was
8 unfair because Philz’s conduct was immoral, unethical, unscrupulous or substantially injurious to
9 consumers, and the utility of Philz’s conduct, if any, does not outweigh the gravity of the harm to
10 their victims.

11 73. Philz’s conduct, including the manufacturing, processing and ultimate sale of the
12 Product to consumers is unfair because it unnecessarily introduced additional amounts of gluten
13 into the Product. Specifically, a significant amount of the gluten ingredients found in the Product
14 sold at retail locations is introduced into the Product by Philz. Philz’s unfair practices ultimately led
15 to unsafe levels of gluten ingredients being present in the Product.

16 74. Philz’s conduct with respect to the labelling, advertising, and sale of the Product was
17 also unfair because it violates public policy as declared by the specific constitutional, statutory or
18 regulatory provisions, including but not necessarily limited to the False Advertising Law, and the
19 Consumer Legal Remedies Act. Philz’s conduct with respect to the labelling, advertising and sale
20 of the Product was and is also unfair because the consumer injury was substantial, not outweighed
21 by the benefit to the consumers or competition, and not one that consumers themselves could have
22 reasonably avoided. Specifically, the increase in profits obtained by Philz’s through the misleading
23 labelling does not outweigh the harm to Class Members who were deceived into purchasing the
24 Product unaware that the Product contains gluten and the types of ingredients that can increase the
25 risk of serious physical harm. Consumers could not have reasonably avoided the harm because this
26 would have required consumers to conduct testing and analysis on the Product before they bought
27 it, which is not a reasonable or possible expectation. Further, the harm could have easily been
28 avoided by Philz because there were reasonable available alternatives to further Philz’s legitimate

1 business interests, other than the conduct described herein. Philz could have indicated to the
2 consumers that the Product contains gluten or that the Product is made with ingredients that
3 accelerate the risk of trigger of a severe allergic reaction. Taking such action would have cost Philz
4 a minimal sum. Also, Philz could have marketed, labelled, and advertised the Product truthfully,
5 without any dishonest claims about the Product's ingredients and benefits.

6 75. Philz profited from the sale of the falsely, deceptively and unlawfully advertised
7 Product to unwary consumers.

8 76. Plaintiff and Class Members are likely to continue to be damaged by Philz's deceptive
9 trade practices because Philz continues to disseminate misleading information. Thus, injunctive
10 relief enjoying Philz's practices is proper.

11 77. Philz's conduct caused and continues to cause substantial injury to Plaintiff and other
12 Class Members. Plaintiff has suffered injury in fact as a result of Philz's unlawful conduct.

13 78. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining
14 Philz from continuing to conduct business through unlawful, unfair and/or fraudulent acts and
15 practices.

16 79. Plaintiff and the Class also seek an order for the restitution of all monies from the sale
17 of the Product, which were unjustly acquired through acts of unlawful competition.

18 80. Because Plaintiff's claims under the "unfair" prong of the UCL sweep more broadly
19 than their claims under the FAL, CLRA, or UCL's "fraudulent" prong, Plaintiff's legal remedies
20 are inadequate to fully compensate Plaintiff for all of Philz's challenged behavior.

21 **B. "Fraudulent" Prong**

22 81. A statement or practice is fraudulent under the UCL if it likely to deceive a significant
23 portion of the public, applying an objective reasonable consumer standard.

24 82. Philz's marketing, labelling, and advertising of the Product, as alleged in the
25 preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes fraudulent
26 conduct. As alleged in the preceding paragraphs, the misrepresentations by Philz detailed above
27 constitute a fraudulent business practice in violation of California Business & Professions Code §
28 17200 because they are likely to, and did indeed, deceive members of the public.

1 **C. “Unlawful” Prong**

2 83. Pursuant to 21 U.S.C. § 331, amongst other things, the Food, Drug and Cosmetics Act
3 (“FDCA”) prohibits the following acts: the introduction or delivery for introduction of any
4 adulterated or misbranded food into interstate commerce; the adulteration or misbranding of any
5 food in interstate commerce; and the receipt in interstate commerce of any food that is adulterated
6 or misbranded, and “the delivery or proffered delivery thereof for pay or otherwise.” The FDCA
7 affirms that a food product is adulterated if: “it bears or contains any poisonous or deleterious
8 substance which may render it injurious to health; if it bears or contains any added poisonous or
9 added deleterious substance; if it is unfit for food, if it has been prepared, packed or held under
10 unsanitary conditions whereby it may have been rendered injurious to health; or if its container is
11 composed in whole or in part by any poisonous or deleterious substance which may render the
12 contents injurious to health².” Article 5 of California’s Sherman Law has adopted, without any
13 conflict, the FDCA’s approach to adulteration and the FDA’s definition of what can constitute
14 adulterated food.

15 84. 21 U.S.C. § 343 states that a food product is misbranded if “its labeling is false or
16 misleading in any manner.” Similarly, under California’s Sherman Food, Drug and Cosmetic Law
17 (“Sherman Law”), Article 6, §110660, “Any food is misbranded if its labeling is false or misleading
18 in any particular.” The FDCA defines “labeling” as “all labels and other written., printed or graphic
19 material (1) upon any article or any of [the food’s] containers or wrappers or (2) accompanying such
20 article.” 21 U.S.C. §601(p). Furthermore, precedent case law has notably found that website
21 descriptions can constitute labeling under the FDCA and the Sherman Law. *Gustavson v. Wrigley*
22 *Sales Co.*, 961 F. Supp.2d 1100, 1124 (N.D. Cal. Sep. 16, 2013).

23 85. Here, Philz’s marketing, labelling and packaging for the Product identified the food
24 items as being gluten free, when in fact the Product contain gluten. Gluten is an ingredient that can
25 unquestionably be dangerous to human health, especially for individuals that have celiac disease.
26 Indeed, the FDA has expressly identified gluten as a major food allergen that can result in severe or
27 life-threatening reaction, and requires food manufacturers to clearly apprise consumers about the
28 inclusion of gluten as an ingredient. *See* Food Allergen Labeling and Consumer Protection Act of

1 2004 (“FALPA”). Similarly, California deems foods as misbranded if their labels fail to conform
2 with FALPA’s requirements. Cal. Health & Safety Code §110673. Philz has engaged in unlawful
3 adulteration and perpetuated violations of the CLRA by manufacturing, packaging, processing,
4 distributing and selling a food item: that contains deleterious substances which render the Product
5 injurious to health, that contains added deleterious substances, that is unfit for food, and that has
6 been prepared, packed and held under unsanitary conditions whereby it has been rendered injurious
7 to health, and that has a container that is composed of deleterious substances which may render the
8 Product injurious to health.

9 86. As set forth herein, Philz’s labelling and marketing of the Product are “unlawful”
10 under the UCL in that they violate at least the following laws: The FDCA and the correlative
11 mandates of California’s Sherman Law, the Consumers Legal Remedies Act, Cal. Civ. Code §§
12 1750, *et. seq.*, and the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et. seq.*

13 87. By violating these laws, Philz has engaged in unlawful business acts and practices,
14 which constitute unfair competition within the meaning of Business & Professions Code §17200.

15 **FIFTH CAUSE OF ACTION**

16 **Common Law Fraud**

17 **By Plaintiff on Behalf of the Class**

18 88. Plaintiff re-alleges and incorporates by reference the allegations contained in the
19 paragraphs above as if fully set forth herein.

20 89. Plaintiff brings this cause of action for common law fraud individually and on behalf
21 of the members of her proposed Class against Philz.

22 90. Philz represented to Plaintiff and the other Class members that important facts were
23 true. More specifically, Philz represented to Plaintiff and other Class members through its
24 advertising for the Product, that the Product provided benefits which it actually did not. Philz’s
25 representations were false. Philz knew that the misrepresentations were false when it made them, or
26 Philz made the misrepresentations recklessly and without regard for their truth. Philz intended that
27 Plaintiff and the other Class members rely on the representations.

28 91. Plaintiff and the other Class members reasonably and justifiably relied on Philz’s

1 representations.

2 92. Plaintiff and other Class members were financially harmed and suffered other
3 damages. Philz's misrepresentations and/or nondisclosures were the immediate cause of Plaintiff
4 and the other Class members purchasing the Product. Plaintiff's and the other Class members'
5 reliance on Philz's representations was the immediate cause of the financial loss and legal injuries.
6 In absence of Philz's misrepresentations and/or nondisclosures, as described above, Plaintiff and
7 the other Class members, in all reasonable probability, paid monies to Philz that they otherwise
8 would not have provided.

9 93. The fraudulent actions of Philz caused damage to Plaintiff and the Class Members,
10 who seek damages and other legal and equitable relief as a result.

11 **SIXTH CAUSE OF ACTION**

12 **Negligent Misrepresentation**

13 **By Plaintiff on Behalf of the Class**

14 94. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 paragraphs above as if fully set forth herein.

16 95. Plaintiff brings this cause of action for negligent misrepresentation individually and
17 on behalf of the proposed Class against Philz.

18 96. As discussed above, Philz represented the Product provided certain value and
19 quantified benefit. Yet, Philz failed to disclose that the Product did not in fact possess its advertised
20 value or identity. Philz had a duty to disclose this information.

21 97. At the time Philz made these misrepresentations, Philz knew or should have known
22 that these misrepresentations were false or made them without knowledge of their truth or veracity.
23 At an absolute minimum, Philz negligently misrepresented or negligently omitted material facts
24 about the Product.

25 98. The negligent misrepresentations and omissions made by Philz, upon which Plaintiff
26 and the Class members reasonably and justifiably relied, were intended to induce and actually
27 induced Plaintiff and the Class members to pay monies to Philz that they otherwise would not have
28 paid, as well as retain services that they otherwise would not have.


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JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: January 23, 2024

DOGRA LAW GROUP PC

By: 

Shalini Dogra
Attorney for Plaintiff
AYAUNNA MARTINEZ

EXHIBIT A

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VENUE AFFIDAVIT

I, Ayaunna Martinez, declare as follows:

1. I am a Plaintiff in this action. I make this affidavit pursuant to California Civil Code Section 1780(d).
2. The Complaint in this action is filed in a proper place for the trial of this action because at least one named Defendant is doing business in this county, and one or more of the transactions that form the basis of this action occurred in this county.

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

Dated: January 23, 2024



Ayaunna Martinez