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13 EDUARDO GAA, SLYVIA LOPEZ, and the Proposed CLAIMS ADJUSTER CLASS

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES, CENTRAL DIVISION

BC489800

17 EDUARDO GAA and SYLVIA LOPEZ, on
18 behalf of themselves and all others similarly
19 situated,

20 Plaintiffs,

21 v.

22 INTERCARE HOLDINGS INC., a
23 corporation; INTERCARE INSURANCE
24 SOLUTIONS, INC., a corporation;
25 PACIFIC SECURED EQUITIES, INC. dba
26 INTERCARE INSURANCE SERVICES, a
27 corporation; and DOES 1 through 10
28 inclusive,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CALIFORNIA
LABOR CODE §§ 510, 1194(A), 1198,
1199 AND WAGE ORDER 2-2001
2. FAILURE TO PAY ALL WAGES
OWED UPON TERMINATION IN
VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202, 203
3. VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS CODE
§ 17200

JURY TRIAL DEMANDED BY PLAINTIFFS

1 Plaintiffs Eduardo Gaa and Sylvia Lopez ("Plaintiffs") allege as follows on knowledge as
2 to themselves and their own acts/interactions, and on information and belief as to all other
3 matters:

4 **PARTIES**

5 1. Plaintiffs, at all times relevant hereto, are and have been residents of the State of
6 California and former employees of Intercare (defined below).

7 2. Defendant Intercare Holdings Inc., at all times relevant hereto, is and has been a
8 Delaware corporation and an employer whose employees are engaged throughout California with
9 offices in Pasadena, Orange, Fresno, and Roseville.

10 3. Defendant Intercare Insurance Solutions, Inc., at all times relevant hereto, is and
11 has been a California corporation and an employer whose employees are engaged throughout
12 California with offices in Pasadena, Orange, Fresno, and Roseville.

13 4. Defendant Pacific Secured Equities, Inc. dba Intercare Insurance Services, at all
14 times relevant hereto, is and has been a California corporation and an employer whose
15 employees are engaged throughout California with offices in Pasadena, Orange, Fresno, and
16 Roseville.

17 5. Defendant Intercare Holdings Inc., Defendant Intercare Insurance Solutions, Inc.,
18 and Defendant Pacific Secured Equities, Inc. dba Intercare Insurance Services are collective
19 referred to herein as "Intercare."

20 6. The true names and capacities of the defendants named herein as Does 1 through
21 10, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiffs
22 who therefore sue such defendants by fictitious names pursuant to California Code of Civil
23 Procedure section 474. Plaintiffs are informed and believe that all of the Doe defendants are
24 California residents. Plaintiffs will amend this Complaint to show such true names and
25 capacities when they have been determined.

26 7. Plaintiffs are informed and believe that at all times relevant herein, each
27 defendant designated, including Does 1 through 10, was the agent, managing agent, principal,
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1 owner, partner, joint venturer, representative, manager, servant, employee and/or co-conspirator
2 of each of the other defendants, and was at all times mentioned herein acting within the course
3 and scope of said agency and employment, and that all acts or omissions alleged herein were
4 duly committed with the ratification, knowledge, permission, encouragement, authorization and
5 consent of each defendant designated herein.

6 JURISDICTION AND VENUE

7 8. This Court has personal jurisdiction over Intercare because it is a resident of
8 California and/or regularly does business in the State of California.

9 9. Under California Code of Civil Procedure section 395(a), venue is proper in this
10 county because Intercare maintains offices in Los Angeles County and the injury occurred in Los
11 Angeles County.

12 PLAINTIFFS' FACTUAL ALLEGATIONS

13 10. Plaintiffs and members of the Claims Adjuster Class' (defined below) are/were
14 employees jointly employed as Claims Adjusters by Defendant Intercare Holdings Inc.,
15 Defendant Intercare Insurance Solutions, Inc., and Defendant Pacific Secured Equities, Inc. dba
16 Intercare Insurance Services.

17 11. At all times relevant, Defendant Intercare Holdings Inc., Defendant Intercare
18 Insurance Solutions, Inc., and Defendant Pacific Secured Equities, Inc. dba Intercare Insurance
19 Services each had and exercised the power to control Plaintiffs' job duties, power to hire, fire,
20 and make all other decisions regarding controlling Plaintiffs' employment, and power to create
21 employee rules that governed Plaintiffs and members of the Claims Adjuster Class' employment.

22 12. Plaintiff Gaa worked as a claims adjuster for Intercare as a Claims Adjuster from
23 February 5, 2005 to April 5, 2011 in Intercare's Pasadena office.

24 13. Plaintiff Lopez worked as a claims adjuster for Intercare as a Claims Adjuster
25 from April 2007 to November 4, 2009 in Intercare's Orange office.

26 14. As Claims Adjusters for Intercare, Plaintiffs and members of the Claims Adjuster
27 Class' (defined below) duties consisted of routine clerical work in the handling and processing of
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1 claims, reviewing claims submitted to Intercare's clients, determining coverage, determining
2 liability, evaluating claims for settlement, and making recommendations for negotiating
3 settlement of claims, all pursuant to established protocols and micromanaged guidelines set forth
4 by Intercare.

5 15. As Claims Adjusters for Intercare, Plaintiffs and members of the Claims Adjuster
6 Class lacked any settlement authority and required approval for potential settlements from their
7 supervisors and/or Intercare's clients.

8 16. During their employment with Intercare, Plaintiffs and members of the Claims
9 Adjuster Class were wrongfully classified as "exempt" employees not entitled to overtime
10 compensation.

11 17. Plaintiffs and members of the Claims Adjuster Class worked over eight (8) hours
12 in a day, and/or forty (40) hours in a week during their employment with Intercare.

13 18. Plaintiffs and members of the Claims Adjuster Class worked over twelve (12)
14 hours in a day during their employment with Intercare.

15 19. Intercare engaged in a uniform policy and systematic scheme to deprive Plaintiffs
16 and members of the Claims Adjuster Class from overtime wages they are entitled to under the
17 law. This scheme involved falsely telling Plaintiffs and members of the Claims Adjuster Class
18 that they were exempt employees not entitled to overtime compensation, mandating that
19 Plaintiffs and members of the Claims Adjuster Class complete false timecards indicating that
20 they worked eight (8) hours a day when they in fact worked longer, and refusing to allow
21 Plaintiffs and members of the Claims Adjuster Class to note the true hours they worked.

22 20. Intercare even provided Plaintiff Gaa and members of the Claims Adjuster Class
23 with Citrix remote access to their work computers so that they can continue to work from home
24 late into the night or during the weekends.

25 21. Intercare and its management regularly witnessed Plaintiffs and members of the
26 Claims Adjuster Class working late into the evening, sending work emails late at night, and
27 leaving the office after much longer than eight (8) hours of work.

1 22. Intercare knew or should have knew that Plaintiffs and members of the Claims
2 Adjuster Class were entitled to receive certain wages for overtime compensation and that they
3 were not receiving wages for overtime compensation.

4 **CLASS ACTION ALLEGATIONS**

5 23. This class action is filed under the provisions of Code of Civil Procedure section
6 382, which provides that a class action may be brought when the question is one of common
7 interest to many persons, or when the number of persons is numerous and it is impracticable to
8 bring them all before the court. This action is properly maintained as a class action as set forth
9 below.

10 24. Plaintiffs bring this action on behalf of themselves and on behalf of and all others
11 similarly situated (the "**Claims Adjuster Class**"), as follows:

12 **All persons who worked for Defendant Intercare Holdings Inc. and/or**
13 **Defendant Pacific Secured Equities, Inc. dba Intercare Insurance**
14 **Services, within California, as a "Claims Adjuster" or persons with**
15 **similar titles and/or similar job duties at any time during the four (4)**
16 **years prior to filing the instant Complaint and ending on a date**
17 **determined by the Court.**

18 25. Plaintiffs reserve the right to amend the class definition to seek recovery on behalf
19 of additional persons as warranted as facts are learned in further investigation and discovery.

20 26. Plaintiffs do not know the number of members in the proposed class, but believe,
21 based on Intercare's number of Claims Adjusters and investigation of counsel, that the number is
22 in the hundreds, if not substantially higher. Thus, joinder of all members of the Claims Adjuster
23 Class is impractical due to the size and relatively small value of each member's claim.

24 27. Plaintiffs' claims are typical of the claims of each member of the Claims Adjuster
25 Class because Plaintiffs were Claims Adjusters working for Intercare, were improperly classified
26 as exempt, worked more than eight (8) hours in a day and/or forty (40) hours in a week during
27 their employment with Intercare, did not receive any overtime compensation, and upon discharge

1 were not paid all wages owed due to the lack of overtime pay that Plaintiffs were entitled to and
2 did not receive.

3 28. Plaintiffs will fairly and adequately represent and protect the interests of the
4 Claims Adjuster Class in that Plaintiffs have no interests antagonistic to any member of the class.

5 29. Plaintiffs have retained counsel highly experienced in handling class action claims
6 and claims for unpaid overtime. There are no material conflicts between the claims of the
7 Plaintiffs and the members of the Claims Adjuster Class that would make class certification
8 inappropriate.

9 30. The members of the Claims Adjuster Class share well defined community of
10 interest regarding questions of law and fact, which predominate over questions that may affect
11 individual members of the Claims Adjuster Class. These common questions of law and fact
12 include (but are not limited to):

13 (a) Whether Intercare paid Plaintiffs and members of the Claims Adjuster
14 Class for all hours Intercare suffered and/or permitted them to work;

15 (b) Whether Intercare can meet its burden of proving that it properly classified
16 Claims Adjusters as exempt;

17 (c) Whether Intercare required Plaintiffs and members of the Claims Adjuster
18 Class to work over eight (8) hours per day and/or over forty (40) hours per week, and
19 failed to pay the legally required overtime compensation;

20 (d) Whether Intercare required Plaintiffs and members of the Claims Adjuster
21 Class to work over twelve (12) hours per day and/or over forty (40) hours per week, and
22 failed to pay the legally required overtime compensation;

23 (e) Whether Intercare falsely informed Plaintiffs and members of the Claims
24 Adjuster Class that they were exempt employees not entitled to overtime compensation;

25 (f) Whether Intercare mandated that Plaintiffs and members of the Claims
26 Adjuster Class complete false timecards indicating that they worked eight (8) hours a day
27 when they in fact worked longer;

1 (g) Whether Intercare refused to allow Plaintiffs and members of the Claims
2 Adjuster Class to note the true hours they worked;

3 (h) Whether Intercare provided Plaintiff Gaa and other members of the Claims
4 Adjuster Class with Citrix remote access so that they can continue to work from home
5 late into the night or during the weekends;

6 (i) Whether Intercare and its management regularly witnessed Plaintiffs and
7 members of the Claims Adjuster Class working late into the evening;

8 (j) Whether Intercare and its management regularly witnessed Plaintiffs and
9 members of the Claims Adjuster Class sending work emails late at night;

10 (k) Whether Intercare and its management regularly witnessed Plaintiffs and
11 members of the Claims Adjuster Class leaving the office after much longer than eight (8)
12 hours of work;

13 (l) Whether Intercare and its management regularly witnessed Plaintiffs and
14 members of the Claims Adjuster Class leaving the office after much longer than twelve
15 (12) hours of work;

16 (m) Whether Intercare knew or should have known that Plaintiffs and
17 members of the Claims Adjuster Class were entitled to receive certain wages for overtime
18 compensation;

19 (n) Whether Intercare failed to timely pay all wages due to Plaintiffs and
20 members of the Claims Adjuster Class during their employment;

21 (o) Whether Intercare failed to pay all wages due to Plaintiffs and members of
22 the Claims Adjuster Class within the required time upon their discharge or resignation;

23 (p) Whether Intercare engaged in unfair business practices in violation of
24 California Business & Professions Code sections 17200, et seq.;

25 (q) The appropriate amount of damages, restitution, and/or monetary penalties
26 resulting from Intercare's violations of California law;

1 (r) Whether Plaintiffs and the class are entitled to compensatory damages
2 pursuant to the California Labor Code; and

3 (s) Whether Intercare's failure to pay overtime wages and reacted conduct
4 was willful.

5 31. Without class certification and determination of declaratory, injunctive, statutory
6 and other legal questions within the class format, prosecution of separate actions by individual
7 members of the Claims Adjuster Class will create the risk of inconsistent or varying
8 adjudications with respect to individual members of the Claims Adjuster Class. Additionally,
9 adjudication with respect to individual members of the Claims Adjuster Class would, as a
10 practical matter, be dispositive of interests of the other members not party to the adjudication or
11 substantially impair or impede their ability to protect their interests. Moreover, Intercare acted or
12 refused to act on grounds generally applicable to the Claims Adjuster Class, in that Intercare
13 uniformly and improperly classified and treated Claims Adjusters as exempt and, thereafter,
14 uniformly failed to take proper steps to determine whether these employees were properly
15 classified as exempt, and thereby denied these employees overtime wages as required by law.

16 32. A class action is a superior method for the fair and efficient adjudication of this
17 controversy because Intercare's practices are common to all class members and, given the
18 expense and burden of prosecuting individual actions, the damages of each individual class
19 member are relatively small. Even if the members of the Claims Adjuster Class could afford
20 such individual litigation, it would constitute a highly avoidable inefficiency in the
21 administration of justice by the courts and present the risks of inconsistent or contrary
22 judgments.

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CALIFORNIA LABOR
CODE §§ 510, 1194(A), 1198, 1199 AND WAGE ORDER 2-2001
(AGAINST ALL DEFENDANTS)

33. Plaintiffs incorporate by this reference all the preceding and subsequent paragraphs.

34. At all relevant times, the California Industrial Wage Orders and California Code of Regulations were in effect and binding on Intercare. Subdivision 3 of Wage Order 2-2001 provides that:

(A) Daily Overtime – General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess

1 of eight (8) hours on the seventh (7th) consecutive day of work in a
2 workweek.

3 (c) The overtime rate of compensation required to be paid to a nonexempt
4 full-time salaried employee shall be computed by using the
5 employee's regular hourly salary as one fortieth (1/40) of the
6 employee's weekly salary.

7 35. At all relevant times, Labor Code § 510 was in effect and binding on Intercare.
8 The pertinent part of Labor Code § 510 provides that:

9 (a) Eight hours of labor constitutes a day's work. Any work in excess of eight
10 hours in one workday and any work in excess of 40 hours in any one
11 workweek and the first eight hours worked on the seventh day of work in any
12 one workweek shall be compensated at the rate of no less than one and one-
13 half times the regular rate of pay for an employee. Any work in excess of 12
14 hours in one day shall be compensated at the rate of no less than twice the
15 regular rate of pay for an employee. In addition, any work in excess of eight
16 hours on any seventh day of a workweek shall be compensated at the rate of
17 no less than twice the regular rate of pay of an employee.

18 36. At all relevant times, California Labor § 1194 was in effect and binding on
19 Intercare. Labor Code § 1194 provides in relevant part:

20 (a) Notwithstanding any agreement to work for a lesser wage, any employee
21 receiving less than the legal minimum wage or the legal overtime compensation
22 applicable to the employee is entitled to recover in a civil action the unpaid
23 balance of the full amount of this minimum wage or overtime compensation,
24 including interest thereon, reasonable attorney's, and costs of suit.

25 37. At all relevant times, California Labor § 218.5 was in effect and binding on
26 Intercare. Labor Code § 218.5 provides in relevant part:

1 In any action brought for the nonpayment of wages, fringe benefits, or health and
2 welfare or pension fund contributions, the court shall award reasonable attorney's
3 fees and costs to the prevailing party if any party to the action requests attorney's
4 fees and costs upon the initiation of the action.

5 38. At all relevant times, Plaintiffs and members of the Claims Adjuster Class were
6 misclassified as exempt employee.

7 39. At all relevant times, Plaintiffs and members of the Claims Adjuster Class were
8 subject to the overtime provisions of the California Industrial Welfare Commission's Wage
9 Orders.

10 40. Throughout their employment, Plaintiffs members of the Claims Adjuster Class
11 regularly and with Intercare's knowledge worked more than eight (8) hours in working day.
12 Plaintiffs allege that they sometimes even worked more than 12 hours in a working day.

13 41. Plaintiffs allege that Intercare did not pay 1 ½ times the legal minimum hourly
14 wage rate for all the hours worked over eight (8) hours in a work day and/or 40 hours in a work
15 week. Plaintiffs allege that Intercare did not pay two times the legal minimum hourly rate for all
16 the hours worked over 12 hours in a work day.

17 42. During the relevant time period, Intercare intentionally and willfully failed to pay
18 for all hours Intercare suffered and/or permitted Plaintiffs and members of the Claims Adjuster
19 Class to work, including for overtime hours.

20 43. Plaintiffs and members of the Claims Adjuster Class allege that wages are due to
21 them for all hours worked during which they were not paid proper overtime wages pursuant
22 California Labor Code §§ 510 and 1194 and all applicable laws, rules, orders, requirements and
23 regulations.

24 44. Plaintiffs and members of the Claims Adjuster Class demand all applicable
25 reimbursements, interest and penalties for her lost overtime wages. Plaintiffs and members of
26 the Claims Adjuster Class further demand reasonable attorneys' fees and costs of suit pursuant to
27 California Labor Code §§ 218.5, 1194, and any other applicable statute or regulation.

SECOND CAUSE OF ACTION
FAILURE TO PAY ALL WAGES OWED UPON TERMINATION IN VIOLATION OF
CALIFORNIA LABOR CODE §§ 201, 202, 203
(AGAINST ALL DEFENDANTS)

45. Plaintiffs incorporate by this reference all the preceding and subsequent paragraphs.

46. At all relevant times herein set forth, California Labor Code sections 201 - 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

47. During the relevant time period, and as alleged above, Intercare intentionally and willfully failed to pay Plaintiffs and members of the Claims Adjuster Class who are no longer employed by Intercare their wages, earned and unpaid, within seventy-two (72) hours of their leaving Intercare employ.

48. Intercare's failure to pay Plaintiffs and members of the Claims Adjuster Class who are no longer employed by Intercare their wages, earned and unpaid, within seventy-two (72) hours of their discharge, is in violation of California Labor Code sections 201 and 202.

49. On information and belief, Plaintiffs contend that Intercare's failure to pay Plaintiffs and members of the Claims Adjuster Class all wages earned upon their termination or resignation of employment in accordance with Labor Code section 201 was willful. At all times relevant, Intercare had the ability to pay all earned and unpaid wages in accordance with Labor Code section 201 but intentionally chose not to comply.

50. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid or until an action is
2 commenced; but the wages shall not continue for more than thirty (30) days.

3 51. Pursuant to Labor Code § 218.5, Plaintiffs and members of the Claims Adjuster
4 Class are entitled to recover the full amount of her unpaid wages, waiting time penalties,
5 reasonable attorneys' fees, and costs of suit. Plaintiffs are entitled to recover interest on all due
6 and unpaid wages and waiting time penalties under Labor Code § 218.6 and/or Civil Code §
7 3287(a).

8 **THIRD CAUSE OF ACTION**

9 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200**

10 **(AGAINST ALL DEFENDANTS)**

11 52. Plaintiffs incorporate by this reference all the preceding and subsequent
12 paragraphs.

13 53. Business and Professions Code § 17200, et seq. ("UCL"), defines unfair
14 competition to include any "unfair," "unlawful," or "fraudulent" business practice.

15 54. At all times relevant herein the UCL was in full force and effect and binding on
16 Intercare.

17 55. Intercare's conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful and harmful to Plaintiffs, members of the Claims Adjuster Class, to the general public,
19 and Intercare's competitors

20 56. The actions alleged herein by Intercare were "unlawful" under the UCL based on
21 the violations of each of the statutes alleged herein.

22 57. Plaintiffs and members of the Claims Adjuster Class have been personally injured
23 by Intercare's unlawful business acts and practices as alleged herein, including, but not
24 necessarily limited to, the loss of money and/or property.

25 58. Pursuant to California Business & Professions Code sections 17200, et seq.,
26 Plaintiffs and members of the Claims Adjuster Class are entitled to restitution of the wages
27 withheld and retained by Intercare during a period that commences four years prior to the filing
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1 of this complaint; a permanent injunction requiring Intercare to pay all outstanding wages due to
2 Plaintiffs and class members

3 59. Plaintiffs and members of the Claims Adjuster Class are entitled to attorneys' fees
4 and costs under California Code of Civil Procedure section 1021.5 because: (a) this action
5 confers a significant benefit to a large class of persons impacted by the practices alleged herein;
6 (b) the necessity and financial burden of private enforcement makes the award appropriate; and
7 (c) such fees should not in the interest of justice be paid out of the recovery to Plaintiffs and/or
8 members of the Claims Adjuster Class.

9 **JURY TRIAL DEMANDED**

10 60. Plaintiffs demand a jury as to all causes of action.

11 **PRAYER FOR RELIEF**

12 61. WHEREFORE, Plaintiffs respectfully request the Court grants Plaintiffs and the
13 members of the Claims Adjuster Class the following relief against defendants:

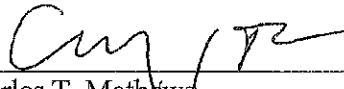
- 14 (a) For an order certifying the Claims Adjuster Class under California Code
15 of Civil Procedure section 382; appointing Plaintiffs and their counsel to represent
16 the proposed Claims Adjuster Class;
- 17 (b) For general unpaid wages at overtime wage rates and such general and
18 special damages as may be appropriate;
- 19 (c) That the Court declare, adjudge and declare that Intercare
20 violated California Business and Professions Code sections 17200, et seq. by
21 failing to provide Plaintiffs and members of the Claims Adjuster Class all
22 overtime compensation due to them;
- 23 (d) For restitution of unpaid wages to Plaintiffs and all members of the Claims
24 Adjuster Class;
- 25 (e) For prejudgment interest pursuant to California Civil Code section 3287
26 and/or California Civil Code section 3288 and/or any other provision of law
27 providing for prejudgment interest;

- 1 (f) For attorneys' fees where allowed by law;
2 (g) For costs of suit incurred herein;
3 (h) For such other and further relief as this Court deems just and proper; and
4 (i) Plaintiffs incorporate by this reference all the preceding and subsequent
5 paragraphs.

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7 Respectfully submitted,

8 THE MATHEWS LAW GROUP

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10 Dated: August 7, 2012

11 By: 
12 Charles T. Mathews
13 Attorneys for Plaintiffs,
14 EDUARDO GAA, SLYVIA LOPEZ, and
15 the Proposed CLAIMS ADJUSTER
16 CLASS
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