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Attorneys for Plaintiff(s),
CHARLES MIKICH, JONATHON GORDON, and all others similarly situated
(Additional attorneys for Plaintiff(s) on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(*UNLIMITED JURISDICTION*)

CHARLES MIKICH, on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD, also known as ED HADAD), an individual; and DOES 8-50, inclusive,

Defendant(s).

Case No. CGC-20-582385 to be consolidated with CGC-21-594289

DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFFS CHARLES MIKICH AND JONATHON GORDON'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Date:	March 27, 2024
Hearing Time:	9:30 a.m.
Hearing Dept.:	302, The Honorable Garrett L. Wong
Action filed:	January 22, 2020
Trial Date:	Not Set

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JONATHON GORDON on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorney General Act of 2004, *Plaintiff(s)*, vs. SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 1-50, inclusive, *Defendant(s).*	Case No.: CGC-21-594289 Action Filed: 08/04/2021 Dept: 610, Hon. Garrett L. Wong

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DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiffs Charles Mikich, Jonathon Gordon, and all others similarly situated (collectively "Plaintiffs") in his lawsuit against Defendants Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Ali Bozorghadad, and Green Planet Gas, Inc. (collectively "Defendants"). Plaintiffs and Defendants are collectively referred to as the "Parties."

2. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

3. The First Amended Joint Stipulation of Class Action Settlement and Release of Claims (the "Settlement") is attached hereto as **Exhibit 1.**

Factual and Procedural Background

4. Defendants employed Plaintiff Mikich as a gas station clerk from about January 5, 2018 until March 15, 2019.

5. On January 16, 2020, Plaintiff Mikich notified Defendants and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations committed by Defendants. A true and correct copy of the letter to the LWDA dated January 16, 2020 is attached hereto as **Exhibit 2**.

6. On January 22, 2020, Plaintiff Mikich filed a Class Action Complaint in the San Francisco County Superior Court, Case No. CGC-20-582385, against Defendants on behalf of himself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time

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Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.). On May 11, 2020, Plaintiff filed his First Amended Complaint adding a claim under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. ("PAGA"). On November 4, 2021, Defendants filed an answer to Plaintiffs' First Amended Complaint. Defendants deny all of Plaintiffs' allegations and strongly contend that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. A true and correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff Mikich's First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendants' Answer is attached hereto as **Exhibit 5**.

7. On February 11, 2021, Plaintiff Gordon notified Defendants and the LWDA, pursuant to PAGA, of alleged Labor Code violations committed by Defendants. A true and correct copy of Plaintiff Gordon's letter to the LWDA dated February 11, 2021 is attached hereto as **Exhibit 6.**

8. On August 4, 2021, Plaintiff Gordon filed a Class and Representative Action in the San Francisco County Superior Court, Case No. CGC-21-594289, against Defendants on behalf of himself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and (8) Civil Penalties under PAGA. A true and correct copy of Plaintiff Gordon's Complaint is attached hereto as **Exhibit 7.**

9. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced each Plaintiff's entire personnel file (including policies and agreements he signed and acknowledged), copies of their relevant company written policies, time-keeping records, email messages, and paycheck data and records for the putative class, and more detailed time and

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payroll data for a random sample of putative class members specifically selected by Plaintiffs' counsel.

10. On January 31, 2022, and May 6, 2022, following much of the foregoing informal discovery and exchange of information, the Parties participated in mediation sessions presided over by Mediator Michael J. Loeb, an experienced class action mediator. During then second session of mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement. During the mediation sessions, each side, represented by his/their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by a classwide settlement.

11. On May 6, 2021, Plaintiff Mikich through a fictitious name amendment, and having discovered the true names of the Doe Defendants, added the remaining Defendants to his lawsuit in place of the first seven Doe Defendants (HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD). Whereas both the Mikich and Gordon matters are assigned to the same judge (Honorable Judge Garrett L. Wong in Department 610 of the above-entitled Court) and allege the same violations against the same Defendants, the parties requested for the Court to consolidate the matters for settlement purposes. On July 28, 2022, the Court ordered the consolidation of the Mikich and Gordon matters for settlement purposes. A true and correct copy of the Court's consolidation order is attached as **Exhibit 8.**

12. On August 4, 2022, the Parties executed the original Joint Stipulation of Class Action Settlement and Release of Claims (the "Original Settlement"). A true and correct copy of the Original Settlement is attached as **Exhibit 9.** It provided for a gross settlement amount of $1,600,000.00 for all of Defendants' hourly, non-exempt California employees for the period of January 22, 2016 through preliminary approval or September 3, 2022, whichever is earlier. Defendants estimated there to be 1,200 Class Members. *Id.*, II.B. The Original Settlement contained the following escalation clause:

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Defendants estimated for purposes of mediation that there are 27,498 workweeks worked by the Class Members for the period of January 22, 2016 through May 6, 2022. For the avoidance of doubt, the term "workweeks" shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of workweeks worked. The Settlement Administrator shall determine the total number of workweeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats in connection with the Parties' mediation efforts, and multiplying that figure by two. If the workweeks worked as of the date the Court approves the settlement exceed 28,960 workweeks worked by more than 10.00%, the Gross Settlement Amount will increase proportionally according to the number of additional workweeks worked. For example, if the number of workweeks as of the date the Court approves the settlement exceeds 28,960 by 11%, the Gross Settlement Amount shall increase by 1%. If the workweeks worked as of the date the Court approves the settlement exceeds 28,960 workweeks by more than 20.00%, Defendants shall have the option to (a) vacate the Parties' settlement and this Memorandum of Understanding shall be null and void or (b) to cap the Class Period as of the date that the number of workweeks reaches but does not exceed 31,856.

Id., ¶ III.B.

13. On September 30, 2022, Plaintiffs moved for preliminary Court approval of the Original Settlement. A true and correct copy of the Motion for Preliminary Approval of the Original Settlement is attached as **Exhibit 10.** The Court granted preliminary approval on October 27, 2022. A true and correct copy of the Order Granting the Motion for Preliminary

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Approval of the Original Settlement is attached as **Exhibit 11.** By operation of the Original Settlement, the Class Period and PAGA Period end date became September 3, 2022. Ex. 9, ¶¶ I.F. and I.R.

14. Following the order preliminarily approving the Original Settlement but before notice of the Original Settlement to the Class, Defendants produced the Class Members' Data to the Settlement Administrator, CPT Group, Inc. On May 27, 2023, the Settlement Administrator notified the Parties that, according to the Class Members' Data, Defendants had overestimated the number of Class Members by 219. A true and correct copy of the email message of Abel Morales dated May 27, 2023, with its attached spreadsheet, is attached as **Exhibit 12.** On May 28, 2023, the Settlement Administrator also notified the Parties on that date that there were 46,844 workweeks during the Class Period. A true and correct copy of the email message of Abel Morales dated May 28, 2023 is attached as **Exhibit 13.** By application of the Escalation Clause, Defendants had three options: (1) Agree to an earlier Class Period and PAGA Period end date of January 10, 2020, over 2 ½ years before the anticipated end date of September 3, 2022; (2) Increase the gross settlement amount from $1,600,000.00 to $2,429,155.49 (an amount 51.82% higher than the original minimum gross settlement amount); or (3) Elect to vacate the Original Settlement. Ex. 9,¶ III.B.

15. Following receipt of the Settlement Administrator's workweeks total, Defendants notified Plaintiffs that they could not afford to pay more than $2,000,000.00 without terminating the employment of Class Members Defendants currently employed. A true and correct copy of the Declaration under penalty of perjury of Ed Hadad dated November 15, 2023 is attached as **Exhibit 14**, ¶ 8. Defendant Ed Hadad, the owner of the other named Defendants, made financial disclosures under penalty of perjury to Plaintiffs to support this assertion. As evidenced by those disclosures, in order to pay more than $2 million to settle this litigation, Defendants' financial situation would have necessitated workforce reductions that would have adversely affected Class Members A true and correct copy of the Wells Fargo balance statement dated October 23, 2023 is attached as **Exhibit 15.** A true and correct copy of the Wells Fargo Account Workbook dated October 23, 2023, is attached as **Exhibit 16.** Similarly, Defendants asserted that they could not

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risk the option of an earlier Class Period and PAGA Period end date of January 10, 2020 because it predates Plaintiff Mikich's original lawsuit. Such a short release period would leave Defendants open to additional lawsuits by other Class Members who had already received notice of the litigation during the *Belaire-West* process. Defendants asserted that the only option available to them would be to renegotiate the settlement terms to fit their financial limitations or continue to litigate the claims., However, Plaintiffs determined that, in view of Defendants financial limitations, resuming the litigation is a less favorable option to the Class than the First Amended Settlement. Thus, on January 22, 2024, the Parties agreed to the (First Amended) Settlement which provides for a Gross Settlement Amount of $2,000,000.00, the terms of which are discussed below.

Ascertainable and Numerous Class

16. A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, each Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

17. The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. The Settlement Administrator has determined that there are 981 Class Members. Each Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class' membership is sufficiently numerous.

Predominant Common Questions

18. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiffs assert all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay

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wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related labor law violations, all of which Plaintiffs claim constitute unfair business practices and give rise to PAGA penalties. Plaintiffs assert that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq*., with respect to the class.

Typicality

19. Plaintiffs contend that their claims are typical for the purposes of certifying the Settlement Class. Plaintiffs assert that they, like absent Class Members was subject to the same relevant policies and procedures governing their compensation, expenses, hours of work, and meal and rest periods. Because Plaintiffs contend that they were subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiffs will determine Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiffs' claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiffs' claims are typical of the Class.

Adequacy

20. The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may

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represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class.

21. Neither Plaintiffs nor I have any conflicts of interest with the absent Settlement Class Members. Each of the Plaintiffs contends that he is an adequate class representative. Plaintiffs and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendants during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiffs and the Class Members. Moreover, each Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. Thus, each Plaintiff is adequate to serve as settlement class representative.

Background of Class Counsel

22. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from Southwestern University School of Law.

23. In December of 1995, the Supreme Court for the State of California admitted me as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February 2013, I became admitted to the New York State Bar.

24. My law practice has always focused on representation of private and public employees with claims of unpaid wages, wrongful termination, harassment, family and medical leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites, FightWrongfulTermination.com, provides a further description of my practice.

25. I have tried many cases before California and federal courts, government agencies and neutral arbitrators. I am a member of the California Employment Lawyers Association (CELA).

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26. Since I started practicing law, I have tried many cases before courts, arbitrators and government agencies. Some of my cases are:

a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court, Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and discipline. The jury awarded compensatory damages. Court subsequently awarded additional back pay and gave Plaintiffs a retroactive promotion. *See* "Lawsuit Puts Customs Service on Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego Union-Tribune, April 29, 1998; "Customs Agent Is Awarded $200,000: Jury Says He Faced Bias And Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.

b. *Jorge Guzman v. Department of Justice*, United States District Court, Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation and police brutality by agents of the Office of the Inspector General. Jury found the Defendants liable. Case settled shortly before the damages phase. See "U.S. to Pay $400,000 to INS Agent in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21, 1999.

c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights claims and wrongful termination claims against employer in a month-long jury trial. The jury awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His Job" by Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to Fired Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004. Plaintiff, who I represented pro bono sought the return of $45,000.00 he paid to an attorney

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escrow officer who subsequently absconded with the money. The jury awarded compensatory damages. The Judgment with interest is now far in excess of that amount. Soon after this case was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono Legal Services.

e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs Agent, followed by an award of Attorneys' fees and costs.

f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and wrongful termination against his former employer. The Neutral Arbitrator awarded compensatory and liquidated damages. The claims for damages, attorney's fees and costs were resolved shortly thereafter by means of a confidential settlement.

g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no. BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the first and only case to be successfully prosecuted through trial under the Labor Code Private Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other aggrieved employees against someone other than an employer for civil penalties including unpaid wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that case, the Court awarded me an hourly rate of $600.00 hour based on my skill and experience.

27. Since 2007, I have prosecuted several traditional wage & hour class actions as the sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no. BC377114, a garden-variety wage & hour class action with many of the same claims at issue in this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with an hourly rate of $525.00 for my services.

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28. In my representation of employees, I have prosecuted several lawsuits on behalf of employees with claims of rest and meal period and overtime violations or other wage claims.

29. I have been involved in the prosecution of numerous wage and hour class actions at various stages of litigation. A small sampling of the wage and hour class action cases in which I have recently been counsel of records is as follows:

a. *Alafa v. Custom Built Personal Training, Inc*., Tulare County Superior Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action settlement on behalf of assistant fitness manager employees).

b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-000382146 (appointed Class Counsel and granted final approval of class action settlement by the court on behalf of nonexempt employees).

c. *Cunningham v. DPI Specialty Foods West, Inc*., Los Angeles Sup.Ct., Case No. BC465017 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of merchandiser employees).

d. *Deckard v. MSL Community Management LLC*, Riverside County Superior Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of class action settlement on behalf of caregivers and medical technicians).

e. *DiCato v. Francesca's Collections, Inc*., San Diego County Superior Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final approval of class action settlement on behalf of boutique manager and assistant manager employees).

f. *Evans v. Equinox, et al*., Los Angeles Sup.Ct., Case No. BC440058 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of personal trainer employees).

g. *Huynh v. Carefusion Resources, LLC, et al*., San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class action settlement on behalf of medical devices employees).

h. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.

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BC480808 (appointed Class Counsel and granted final approval of class action settlement on behalf of hourly employees).

i. *La Fleur v. Medical Management International, Inc.*, United States District Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel and granted final approval of class action settlement on behalf of practice managers).

j. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action settlement on behalf of non-exempt hourly employees excluding truck drivers).

k. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (appointed Class Counsel and granted final approval of class action settlement on behalf of security guard employees).

l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement on behalf of dairy and agricultural laborers).

m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No. BC442608 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of call concert rigging employees).*Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class action settlement by the court on behalf of hourly employees).

n. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (appointed Class Counsel and granted final approval of class action settlement on behalf of virtual customer account executives).

o. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No. BC511072 (appointed Class Counsel and granted final approval of class action settlement on behalf of bobtail truck drivers).

p. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No. BC431249 (granted class certification through contested motion and appointed Class Counsel in

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case on behalf of former pharmacy employees based on late final wage payments in violation of Labor Code §§ 201–203).

q. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final approval of class action settlement by the court on behalf of auditor employees).

r. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed Class Counsel and granted final approval by this Court of class action settlement involving alleged misclassification of sales employees and unpaid vacation pay).

s. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of service account manager employees).

t. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No. BC421485 (granted class certification through contested motion and appointed Class Counsel in case on behalf of former security workers based on late final wage payments in violation of Labor Code §§ 201–203).

u. *Vang v. Burlington Coat Factory Corporation,* United States District Court Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel and granted final approval of class action settlement by the court on behalf of assistant store manager employees).

v. *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class action settlement on behalf of customer specialist employees).

w. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class action settlement on behalf of hourly employees).

Class Action Treatment Is Superior

30. A class action is also superior to other means adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly

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adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only.

The Settlement is Presumptively Fair

31. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants' estimated exposure. Both defense counsel and I are particularly experienced in employment law and wage and hour class actions. We are experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and hour class settlements, including many involving the same issues presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable settlement in light of the complexities of the case and uncertainties of class certification and litigation, and a fair result for the Class Members.

32. The average Individual Class Payment under the First Amended Settlement is significantly higher than the Original Settlement. Under the Original Settlement, Defendants were obligated to pay no more than $1,600,000.00 without triggering the Escalation Clause._Ex. 9, ¶ III.B. Defendants estimated there to be 1,200 Class Members. Ex. 9, ¶ I.B. More than 31,856 workweeks were necessary to trigger the Escalation Clause. *Id.* The Net Settlement Amount under the Original Settlement was estimated to be $899,666.67. The average Individual Class Payment was estimated to be $749.72 ($899,666.67 NSA / 1,200 Class Members = $749.72 Individual Class Payment). A true and correct copy of my spreadsheet comparing the attributes of the Original Settlement to the First Amended Settlement is attached as **Exhibit 17.** In contrast

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with the Original Settlement, under the First Amended Settlement, Defendants are obligated to pay $2,000,000 without triggering the Escalation Clause. Ex. 1, ¶ III.B. The Settlement Administrator has determined there to be 981 Class Members with 46,844 workweeks. Ex. 12 (Abel Morales email); Ex. 12, ¶ I.B. The Net Settlement Amount under the First Amended Settlement is estimated to be $1,166,133.33. The average Individual Class Payment is estimated to be $1,188.92 ($1,166,133.33 NSA / 981 Class Members = $1,188.92 Individual Class Payment). Ex. 17 (Settlement Comparison Spreadsheet). This is an increase of almost 60% ($1,188.92 / $749.72 = 158.58%). While the Work Week value under the First Amended Settlement has declined, the difference is small: $28.24 under the Original Settlement and $24.90 under the First Amended Settlement, for a difference of $3.44 per workweek. Ex. 17 (Settlement Comparison Spreadsheet).

33. Plaintiffs prepared "damages" estimates in advance of the mediation sessions that led to the Original Settlement. A true and correct copy of Plaintiff's damages estimates prepared on May 4, 2022, is attached as **Exhibit 18.** In advance of the mediation sessions and based on an estimate of 26,064 workweeks, Plaintiffs determined Defendants' maximum exposure for restitution and penalties to be approximately $10,731,169.55 (consisting of $146,975.94 in unpaid wages, $910,175.92 in missed meal period premium wages, $1,475,394.34 in missed rest break premium wages, $722,000.00 for wage statement penalties, $2,615,796.86 for waiting time penalties, and $4,026,000.00 for civil penalties). Plaintiffs calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiffs' reports, and the sample data. *Id*.

34. Plaintiffs prepared new damages estimates in support of the First Amended Settlement. Attached as **Exhibit 19** (new damages spreadsheet). Plaintiffs determined Defendants' maximum exposure for restitution and penalties to be approximately $21,072,278.67 (consisting of $264,155.19 in unpaid wages, $1,636,817.77 in missed meal period premium wages, $2,653,280.12 in missed rest break premium wages, $1,992,500.00 for wage statement penalties, $2,615,796.86 for waiting time penalties, and $11,013,750.00 for civil penalties). Plaintiffs calculated the damages based on the number of workweeks and pay periods provided

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by the Settlement Administrator, Defendants, Plaintiffs' reports, and the sample data. *Id*.

35. Plaintiffs also considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Plaintiffs' Counsel applied discounts to the maximum exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendants would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 15.00% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.[1] Defendants also represent that all Class Members employed at any time since December 31, 2021 have signed arbitration agreements.

Exposure & Risk Analysis

36. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for $2,000,000.00 is fair and reasonable.

37. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiffs' recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that employees must record all time worked accurately on their

[1] *See, e.g., In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

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time records and strictly prohibit employees from performing any work off-the-clock. Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim.

38. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here, Plaintiffs may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a classwide methodology.

39. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiffs' meal period claim. According to Defendants, Plaintiffs' description of Defendants' scheduling practices accurately describes only a tiny fraction of Putative Class members: those who worked for stations that were staffed by a single employee ("Single- Employee Stations") during morning and afternoon shifts. Further, every employee who worked these shifts, including both named Plaintiffs, signed enforceable on-duty meal period agreements. Defendants presented evidence that other Putative Class Members either worked in a station with coworkers ("Multi-Employee Stations"), where employees were permitted and encouraged to take their meal breaks, or worked at a Single-Employee Station during the graveyard shift, when the policy requiring the station to

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remain open did not apply. Time records show Defendants instructed Putative Class Members to take meal and rest breaks and provided them the opportunity to do so. In other words, other than limited potential damages associated with unpaid premiums for rest breaks not taken by Putative Class Members working at Single-Employee Stations during the afternoon and graveyard shifts, Defendants contend they face no liability whatsoever with regard to Plaintiffs' first cause of action. Defendants argue that even for this group, however, there is no evidence that employees, whose job responsibilities were limited in light of the automation implemented at gas stations, were unable to take off-duty rest breaks. While it is true that Defendants required Putative Class Members to remain on premises throughout operating hours, this fact does not necessarily result in liability for Defendants. See, e.g. *Schmidtberger v. W. Refining Retail, LLC*, 2021 WL 5024714, at *19 (C.D. Cal. Sept. 28, 2021) ("The Court . . . rejects Plaintiff's contention that a policy of requiring employees stay on the premises is invalid facially") (citing Augustus v. ABM Sec. Servs., Inc., 2 Cal. 5th 257, 270 (2016)).

40. Defendants further argue that the law governing Plaintiffs' first cause of action is well-settled, and the dispute regarding the provision of meal periods and rest breaks is not likely to turn on questions of law, except with regard to the enforceability of the on-duty meal period agreements. All Putative Class Members, including both named Plaintiffs, executed on-duty meal period agreements at the outset of their employment with Defendants. Defendants contend that these agreements foreclose Plaintiffs' theory of liability regarding unpaid meal period premiums.

41. Defendants point out that on-duty meal period agreements are enforceable when the "nature of the work prevents an employee from being relieved of all duty" during their meal period. Industrial Welfare Commission Wage Order No. 7, 11(c). Like most gas stations, Defendants' stations are franchises of larger entities, such as Chevron, AMPM, Arco, 76, and Valero. Franchisors exert significant control over the operations of franchisee stations: they dictate branding practices (including employee uniforms), hours of operation, the types of services offered by the stations, and other matters. In general, these requirements are set forth in the franchise agreement, though they are sometimes set forth in branding agreements that mimic franchise agreements. For each of the Single-Employee Stations, the relevant agreement requires

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Defendants to keep the station open during daytime operating hours (i.e., whenever the station is open, other than during the "graveyard" shift). Since it would not make financial sense to staff these stations with multiple employees during these times, Defendants require employees to sign on-duty meal period agreements to account for the fact that they must eat their lunches while working.

42. Defendants argue that the nature of the work performed by Putative Class Members working daytime shifts at Single-Employee Stations meets the criteria for enforceability of on-duty meal period agreements. While there does not appear to be any precedent directly addressing employees working alone as gas stations, Defendants argue that two DLSE opinion letters, the Wage Order's plain language, the Ninth Circuit's opinion in Abdullah v. U.S. Sec. Associates, Inc., and the Department of Industrial Relations' informational publications regarding meal periods all support the enforceability of Defendants' on-duty meal period agreements. In the first opinion letter, issued in 1994, the DLSE opined that on-duty meal period agreements are enforceable "where the employee is the only person employed in the establishment and closing the business would work an undue hardship on the employer." DLSE Opinion Letter 1994.09.28, at 2. Defendants contend that this language clearly applies to the Putative Class Members working in Single-Employee Stations during daytime shifts, when allowing employees to close the station to take an off-duty meal period would have violated Defendants' franchise agreements, leading to potentially disastrous consequences for Defendants.

43. Similarly, Defendants contend, the DLSE opined in 2003 that on-duty meal period agreements are enforceable with regard to employees working at isolated gas stations in which only a single employee is present. DLSE Opinion Letter, 2003.11.03, at 3. The 9th Circuit cited this opinion letter approvingly in 2013 in Abdullah v. U.S. Sec. Associates, Inc., 731 F.3d 952, 960 (9th Cir. 2013) ("DLSE has . . . found that the 'nature of the work' exception would apply to an 'isolated' gas station 'in which only a single employee is present'"). In Abdullah, the Ninth Circuit explained that "we can characterize the instances in which DLSE has found that the 'nature of the work' exception applies into two categories: (1) where the work has some

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particular, external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer." Id. at 959. Rather than focusing solely on whether a station is "isolated," then, the standard for determining enforceability of on-duty meal period agreements takes into consideration all the circumstances relating to the employee's working environment. Further, as the Ninth Circuit itself noted, "the DLSE opinion letters do not provide a definite metric for deciding in what circumstances a lone employee may be permitted to take an on- duty meal break – for example, it is not clear if an employee must be (1) the sole employee on duty at a particular time, (2) the sole employee staffed at a particular location, or (3) the sole employee working for the employer in order to qualify for the 'nature of the work exception.'" Id. at 964, n. 18. However, as the DIR's FAQs regarding the exception imply, it appears that the DLSE interprets the exception to apply in all three of *Abdullah's* scenarios, as evidenced by the FAQs' offering the following examples of when the exception does apply: "a sole worker in a coffee kiosk, a sole worker in an all-night convenience store, and a security guard stationed alone at a remote site." See Dep't of Indus. Relations, Meal Periods FAQs, https://www.dir.ca.gov/dlse/faq_mealperiods.htm (last accessed January 25, 2022).

44. Defendants argue that Putative Class Members working daytime shifts at Single-Employee Stations clearly meet this standard because the need to keep those stations open throughout daytime operating hours is a contractual requirement imposed on the Entity Defendants by their franchise and branding partners (who have considerably greater bargaining power than Defendants). Further, as the DIR's FAQs make clear, economic realities requiring employers to single-staff convenience stores and other service sector operations create conditions under which the nature of the work exception applies, rendering the on- duty meal period agreements enforceable. While Plaintiffs will distinguish the convenience stores and coffee shops mentioned in the DIR's FAQs, Defendants contend that distinction is a distinction without a difference.

45. By contrast, Defendants argue, the DLSE also found that these agreements are not enforceable with regard to a night-shift manager at a fast-food restaurant because other employees are on duty and could cover for the manager. DLSE Opinion Letter 2002.09.04, at 2-

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3. The negative implication of this finding is that the absence of other employees would render the agreements enforceable. Taken together, these authorities could establish the enforceability of the on-duty meal period agreements signed by all Putative Class Members who worked at Single-Employee Stations.

46. Defendants contend that, as evidenced by named Plaintiffs' own time records, while Defendants' Single-Employee Stations were generally staffed by three employees working three successive eight-hour shifts, exceptions to this rule were relatively commonplace. See Exhibit C (showing the diversity in shift schedules worked by Mikich and Gordon). While it is true that the rule requiring the station to remain open throughout daytime operating hours was imposed by franchise and branding agreements governing each Entity Defendant as a whole and that stations' budgets were set at the Entity Defendant level, the staffing decisions necessary to effectuate these broad principles were made at the station manager level. In other words, Defendants' policies and practices relevant to the nature of the work determination mirror those of the Schmidtberger defendant. Accordingly, as in *Schmidtberger*, Defendants argue the enforceability of the on-duty meal period agreements signed by Putative Class Members in this matter is not capable of class-wide resolution. Accordingly, Defendants assert that the only potential liability Defendants face in connection with Plaintiffs' first cause of action is for rest breaks missed by dayshift employees working at Single-Employee Stations. However, as noted above, this claim is likely incapable of class-wide resolution. As such, while Defendants did not pay rest break premiums to these employees, Defendants believe that the settlement value of these unpaid premiums is significantly lower than the potential maximum exposure.

47. Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id*. "Thus, the crucial issue with regard to the meal break claim is the

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reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

48. Defendants contend they did not impede or discourage Plaintiffs, or any other employees, from taking their meal or rest periods. Defendants' policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. The time records that comprise the random sample Defendants produced to Plaintiffs for purposes of mediation show that meal periods were taken the vast majority of the time. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant risk that the value of Plaintiffs' meal period claim would be substantially reduced at trial.

49. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiffs' rest period claim. Plaintiffs face many of the same risks to their rest period claim that they do to their meal period claims. Defendants produced evidence that many of the shifts are staffed with at least two employees so one can cover for the other to take a ten-minute duty-free rest period., The time records may show that Defendants instructed Putative Class Members to take rest breaks and provided them the opportunity to do so. Defendants also provide evidence that the shifts the employees worked are largely duty free with employees sitting and waiting for customers most of the time. Employers are not required to record rest periods and such periods are paid. Defendants contend they provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendants' written policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. Plaintiffs will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *See Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining "[I]f

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sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

50. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the Court may consider Plaintiffs' claims as to Defendants' alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. In their third cause of action, Plaintiffs allege that Defendants failed to reimburse two business-related expenses they allege Putative Class Members incurred in connection with their work for Defendants: deductions from employee pay made by Defendants as deposits for the return of uniforms and cell phone-related expenses incurred by Putative Class Members.

51. With regard to deductions taken as deposits for the return of Defendant-provided uniforms, Defendants argue Plaintiffs cannot recover any damages on this theory. Payroll records show uniform deposit returns upon termination. They also show that some employees did not have uniform deductions in the first place.

52. Regarding the cell phone reimbursement claim, Defendants argue neither the nature of their work nor the nature of Defendants' operations appears to have involved any use of their cell phones. As such, Defendants do not believe they face any liability on Plaintiffs' third cause of action. Plaintiffs allege that Defendants required Plaintiffs and the Class Members to use their personal items including cellular phones, computers and other electronic devices, vehicles, and tools, and failed to indemnify them for these business expenses. Defendants presented evidence that they have supplied their employees with tools, equipment, and other supplies and had an expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiffs' claims to be individual in nature and unfit for class wide resolution.

53. **Risks Associated with the Statutory "Wage Statement" Penalty Claims.** Plaintiffs also assert claims for wage statement violations, untimely wage violations, and PAGA penalties. Plaintiffs' fourth cause of action alleges that, as a result of Defendants' other alleged Labor Code violations (i.e., the unpaid meal and break premiums, unpaid wages, and unreimbursed expenses), Defendants issued Putative Class Members deficient wage statements.

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Plaintiffs do not allege that the wage statements Defendants issued were deficient because they failed to include one of the enumerated categories of information required by the California Labor Code, only that the information included was rendered inaccurate because of the alleged underlying violations. This claim fails for multiple reasons.

54. First Defendants argue, derivative wage statement claims such as Plaintiffs are legally deficient as "California Labor Code § 226 requires employers to show employees what they were in fact paid, not what employee allege they should have been (but were not) paid." *Madeira v. Converse, Inc.*, 2022 WL 109365, at *11 (C.D. Cal. Jan. 11, 2022) (citing *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1337 (2018)); see also *Sagastume v. Psychemedic Corp.*, 2020 WL 8175597, at *5 (C.D. Cal. Nov. 30, 2020), *Hines v. Constellis Integrated Risk Mgmt. Servs.*, 2020 WL 5764400, at *6 (C.D. Cal. Sept. 25, 2020) (dismissing wage statement claims because 'Plaintiff appears to allege only that the amount he was paid was incorrect, not that the wage statements inaccurately reflected the wages he was paid"), and *Sherman v. Schneider Nat'l Carriers, Inc.*, 2019 WL 32200585, at *5 (C.D. Cal. Mar. 6, 2019) (same). This principle could impair Plaintiffs' recovery on their wage statement cause of action.

55. Next Defendants argue, even if Plaintiffs' theory of wage statement liability were legally sound, whether the wage statements issued by Defendants to Putative Class Members working daylight shifts at Single-Employee Stations were rendered deficient by Defendants' failure to pay premiums for miss rest breaks cannot be resolved on a class-wide basis. It is well established that "inaccurate wage statements alone do not justify penalties; the plaintiffs must establish injury flowing from the inaccuracy." *Maldonado*, 22 Cal. App. 5th at 1334. However, "[u]nder Maldonado, any failure of wage statements to reflect premium pay that should have been paid, but was not paid, implicates only the requirements to show wages earned, which do not support a statutory presumption of injury." *Kazi v. PNC Bank, N.A.*, 2021 WL 965372, at *21 (N.D. Cal. Mar. 15, 2021). Because these injuries are not subject to the presumption of injury, they may be inappropriate for resolution on a class basis because resolving the claim "would require individualized showings of actual harm to each [Putative Class Member], in a manner unsuitable for class resolution." *Id.*

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56. Additionally, Defendants argue, they did not fail to pay Putative Class Members for all hours worked and, thus, the wage statements they issued were entirely accurate with regard to the number of hours worked. They also paid overtime as appropriate and accurately represented these overtime payments on the wage statements issued to Putative Class Members. To the degree any Putative Class Members worked off-the-clock, they did so without Defendants' knowledge, precluding any recovery premised on the theory that the wage statements Defendants issued failed to account for this time. See *Arroyo v. Int'l Paper Co.*, 2020 WL 887771, at *10-12 (N.D. Cal. Feb. 24, 2020) ("[l]iability arises under § 226(e) only where an employee suffers 'injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)' . . . an employer's good faith belief that it is in compliance with § 226 precludes liability under the statute") (emphasis in original) (citing Cal. Lab. Code § 226(e)(1)).

57. Defendants do not believe they face any liability in connection with Plaintiffs' claim for inaccurate wage statements. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiffs' wage statement claim has the same underlying risks as the above claims, as it is derivative of them. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code section 226.

58. **Risks Associated with The Waiting Time Penalties Claim**. Plaintiffs' claim for untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor Code sec. 226, Plaintiffs must establish that the late payments were willful. The evidence of good faith Defendants put forth may defeat this claim. Like their wage statement cause of action, Plaintiffs' claim for waiting time penalties is derivative of Plaintiffs' other allegations of Labor Code violations and it, too, is meritless. While Plaintiff Mikich's final paycheck was untimely, this was the result of an administrative issue related to his sudden, unexpected termination for disciplinary issues. Plaintiffs do not identify any policy or practice that caused Defendants' alleged failure to timely pay final wages, except by virtue of alleging that the other alleged Labor Code violations automatically give rise to waiting time penalties.

59. **Risks Associated with the PAGA Claim.** Defendants believe that the value of

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Plaintiffs' PAGA claim is less than $173,600. PAGA explicitly gives courts have nearly unlimited discretion to limit PAGA penalties, or even eliminate them entirely. Cal. Lab. Code § 2699(e)(2) (providing that "a court may award a lesser amount than the maximum civil penalty . . . if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). This is especially relevant here, as both the United States Department of Labor and the California Department of Labor Standards Enforcement ("DLSE") initiated investigations into Defendants' operations and, after collecting various documents and communicating with management, both dropped their investigations without reaching findings. Further, Defendants have never previously been the subject of either an agency finding or a successful class, or even individual, wage & hour action. Finally, given that 75% of any PAGA recovery must be provided to the DLSE, Defendants argue it would be illogical to award that agency the maximum penalties allowed under the statute when that very agency investigated the same claims at issue in the Action and decided against pursuing them. Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiffs' PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. Moreover, the current COVID-19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may consider a confiscatory taking.

60. This uncertainty increases Plaintiffs' risk of pursuing the PAGA claims and required a significant discount for settlement purposes. For mediation purposes, Plaintiffs' counsel estimated a maximum exposure of approximately $4,026,000.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. *Id.* Plaintiffs' counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. Although two federal district court decisions held that "stacking" PAGA penalties in

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this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiffs' counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking.

61. I am aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.[2] PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.[3]

62. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a

[2] In *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of $12,277,500.00 where total adjusted damages were $18,695,692.58. In this regard, the district court stated,

> The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., ftnt. 9. The district court further stated, "Virgin "has not presented any evidence that the full penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened." *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately $102 million in damages, primarily based on the defendants' failures to comply with the requirements of California Labor Code section 226.

[3] In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the complaint is attached as **Exhibit 20**. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA. A true and correct copy of the statement of decision is attached as **Exhibit 21**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only $50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.

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prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only $50.00. *Shields v. Security Paving Company*, Inc., LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp*., 30 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed judgment which provided for a PAGA penalty of only $5 per pay period for the defendant's meal period violations. A similar result could occur here.

63. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class until it is no longer numerous enough for class certification. *Id.* Plaintiffs, then, may not have sufficient number of employees to represent. This could lead to a significant reduction of claim value in settlement negotiations.

64. While the evidence gathered through Plaintiffs' discovery supports the merits of the claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id*., *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's financial stability "strongly supports the reasonableness of the settlement"); *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. Additionally, in the wake of this lawsuit, Defendants began requiring employees to execute arbitration agreements.

Allocation of the PAGA Payment

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65. The settlement of PAGA penalties in the sum of $50,000.00, of which 75% ($37,500.00) will be paid to the LWDA and 25% ($12,500.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members.

Attorneys' Fees and Costs

66. I intend to request Class Counsel Attorneys' Fees of $666,666.00 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately $35,000.00 and will be no more than $35,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc*., San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc*., San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc*., Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc*., San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al*., Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc*., Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.,* Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc*., Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund);

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Sandoval, et al. v. Thrifty Payless, Inc., et al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc*., Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc*., Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al*., Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.,* United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.,* United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services,* Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company,* Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill,* Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.,* Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.,* San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

67. The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained information from putative class members, met and conferred with Defendants' counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided

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by Defendants and obtained through other sources, researched applicable law, and estimates of "damages" for purposes of settlement discussions, among other tasks.

68. Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

Class Representative Payment

69. The Settlement provides that each Plaintiff may seek a Class Representative Payment of $25,000.00. This amount is entirely reasonable given each Plaintiff's efforts in this Action and the risks he undertook on behalf of Class Members. Here, each Plaintiff has devoted many hours advancing the interests of the Settlement Class. Each Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Each Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that each Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Payment is fair, adequate, and reasonable, and thus warrant preliminary approval.

Settlement Shares

70. The Settlement Shares will be paid to each Class Member based on his or her eligible Work Weeks compared to the total Work Weeks. Settlement § III.B. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

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Notice By First Class U.S. Mail Only (No Email)

71. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, § IV.B.2. Although there are current employee Class Members, it is uncertain whether Defendants' records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as Exhibits A, B, and C to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class Member. Additionally, the Notice will include the number of Eligible Workweeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

Settlement Administration Duties

72. The duties of the Settlement Administrator are spelled out in section III(C) of the Settlement and in the bid provided by CPT Group, Inc. a true and correct copy of which is attached hereto as **Exhibit 22**.

Settlement Administration Costs

73. With regard to the settlement administration costs provision (Settlement §III.F), it is reasonable. Before agreeing to CPT Group, Inc. the Parties sought and reviewed bids from other reputable third-party administrators: (A) ILYM Group, Inc. = $26,990.00; (B) CPT Group,

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Inc. = $32,000.00; and C) Phoenix = $15,000.00. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 23**. A true and correct copy of the bid from Phoenix is attached hereto as **Exhibit 24**. The bid provided by CPT Group, Inc. was comparable. Thus, settlement administration costs provision should be given preliminary approval.

Notice of Settlement to the LWDA

74. Pursuant to Labor Code § 2699(l)(2), each Plaintiff submitted a copy of the Settlement with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiffs' Motion is being filed with the Court. A true and correct copy of Plaintiffs' submission with the LWDA and a confirmation email is attached hereto as **Exhibit 25**.

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

Executed on Wednesday, February 28, 2024 at Los Angeles, California.

DAVID SPIVAK,
Declarant

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EXHIBIT 1

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(Additional attorneys for parties on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(*UNLIMITED JURISDICTION*)

CHARLES MIKICH, JONATHON GORDON, and on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 8-50, inclusive,

Defendant(s).

Case No. CGC-20-582385

FIRST AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE OF CLAIMS

Action filed: January 22, 2020
Dept: 610, The Honorable Garrett L. Wong

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This First Amended Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement Agreement" or "Agreement") is made and entered into by and between Plaintiffs CHARLES MIKICH AND JONATHON GORDON (collectively "Plaintiffs" or "Class Representatives"), individually and on behalf of all putative class members, on the one hand, and Defendants Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad (also known as ED BOZORGHADAD also known as ED HADAD) (collectively "Defendants"). Plaintiffs and Defendants are collectively referred to herein as the "Parties."

I. DEFINITIONS.

The following definitions are applicable to this Settlement Agreement, in addition to other terms defined elsewhere in the Agreement:

A. **"Action"** shall mean collectively (A) The first lawsuit, originally filed on January 22, 2020 and entitled Charles Mikich v. Sayeh Petroleum, Inc., San Francisco County Superior Court No. CGC-20-582385 and amended on May 11, 2020 to include claims pursuant to the Private Attorneys General Act ("PAGA") and (2) the second lawsuit, originally filed on August 4, 2021 and entitled Jonathon Gordon v. Sayeh Petroleum, Inc., San Francisco County Superior Court No. CGC-21-594289.

B. "**Class," "Class Members," or "Settlement Class**" shall mean all persons Defendants employed in California as hourly, non-exempt employees during the Class Period. Defendants confirmed through the Settlement Administrator that as of September 3, 2022, there were approximately 981 members with 46,844 Work Weeks.

C. "**Class Counsel**" shall mean the attorneys representing Plaintiffs in the Action:

David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group.

D. "**Class Counsel Fees Payment**" and "**Class Counsel Litigation Expenses Payment**" shall mean the amounts awarded to Class Counsel by the Court to compensate them for, respectively, their fees and expenses in connection with the Action, including their pre-filing investigation, their filing of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

E. "**Class Notice**" shall mean the Notice of Proposed Settlement attached as **Exhibit A** and incorporated by reference into this Agreement.

F. "**Class Period**" shall mean the period of time from January 16, 2016 through October 31, 2022.

G. "**Class Representative Payment**" shall mean the special payment made to each Plaintiff in his capacity as Class Representative to compensate him for initiating the Action, performing work in support of the Action, and undertaking the risk of liability for attorneys' fees and expenses in the event he was unsuccessful in the prosecution of the Action.

H. "**Court**" shall mean the Superior Court for the County of San Francisco, Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680.

I. "**Defense Counsel**" shall mean the attorneys representing Defendants in the Action: Scott G. Lawson, Lisa G. Lawson, and Ian W. Forgie of Lawson & Lawson, LLP.

J. "**Effective Date**" is defined as follows: If no objection to this Settlement or to any of the terms and or conditions of the Settlement are filed by any of the Plaintiffs, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this Settlement; however, if any objection

to this Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ.

K. "**Final Approval Hearing**" shall mean the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement.

L. "**Gross Settlement Amount**" shall mean the Gross Settlement Amount of Two Million Dollars and Zero Cents ($2,000,000.00) payable by Defendants as provided by this Agreement. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will return to Defendants. Defendants' employer-side payroll taxes arising from the payments made under this Settlement will be paid by Defendants separate from and in addition to the Gross Settlement Amount. The Gross Settlement Amount is inclusive of all amounts to be paid to Class Members, attorney fees, costs, enhancement awards to the named Plaintiffs, PAGA penalties to both the California Labor and Workforce Development Agency ("LWDA") and allegedly aggrieved employees, and Settlement Administration expenses. With the exception of the operation of the Escalator Clause below, under no circumstances will Defendants' settlement payment exceed the Gross Settlement Amount.

M. "**Judgment**" shall mean the Order of Final Judgment entered by the Court that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in this Action.

N. "**Net Settlement Amount**" shall mean $2,000,000.00 payable by Defendants

pursuant to this Settlement, less:

1. the Class Representative Payments approved by the Court;

2. the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than $35,000.00) approved by the Court;

3. the Settlement Administrator's reasonable fees and expenses approved by the Court (not to exceed $32,000.00);

4. the amount of $50,000.00 as PAGA Penalties for the PAGA claim, of which $12,500.00 will be paid to the PAGA Members and $37,500.00 will be paid to the LWDA;

5. any other fees or expenses (other than attorneys' fees and expenses) incurred by Plaintiffs in implementing the terms and conditions of this Agreement as approved by the Court.

O. **"PAGA"** means the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*).

P. **"PAGA Members"** means all individuals Defendants employed in California as hourly, non-exempt employees during the PAGA Period.

Q. **"PAGA Penalties"** means the portion of the Gross Settlement Amount that the Parties have agreed to allocate as civil penalties in order to settle claims arising under PAGA. The Parties have agreed to allocate Fifty Thousand Dollars and Zero Cents ($50,000.00), of which, payment from the Gross Settlement Amount to the LWDA will be made in the amount of Thirty Seven Thousand Five Hundred Dollars and Zero Cents ($37,500.00), which is 75% of the PAGA Penalties. Twelve Thousand Five Hundred Dollars and Zero Cents ($12,500.00), 25% of the PAGA Penalties, will remain in the Net Settlement Amount for distribution pro rate to PAGA

Members as described in this agreement. PAGA Members will receive payment from the employee portion of the PAGA Penalties regardless of whether they submit a request for exclusion if the PAGA Penalties are approved by the Court.

R. **"PAGA Period"** shall mean January 16, 2019 through October 31, 2022.

S. **"Participating Class"** or **"Participating Class Members"** shall mean all Settlement Class members who do not submit a valid and timely letter requesting to be excluded from the Settlement, consistent with the terms set forth in this Settlement Agreement.

T. "**Preliminary Approval of the Settlement**" shall mean the Court's preliminary approval of the Settlement without material change.

U. "**Released Claims**" shall mean all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims during the period of January 16, 2016 through October 31, 2022 asserted in the Operative Complaint and/or in the letter(s) sent by any Plaintiff to the LWDA concerning Defendants and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s)

to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and 2699, and any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. The Parties acknowledge that Released Claims includes any claims for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet and confer in good faith if the Court requires changes to the scope of the Released Claims.

V. "Released Parties" shall mean Defendants, and any of their former and present agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert with any of them, and each of them.

W. "Response Deadline" shall mean the date 60 days after the Settlement Administrator mails the Class Notice to Class Members, which is the last date on which Class Members may submit Exclusion Requests, written objections to the Settlement, or Work Week disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for Exclusion Requests or Objections will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day

falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

X. "**Settlement**" shall mean the disposition of the Action and all related claims effectuated by this Agreement.

Y. **"Settlement Account"** shall mean a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members and PAGA Members.

Z. "**Settlement Administrator**" shall mean CPT Group, Inc. or another administrator proposed by the Parties and appointed by the Court to administer the Settlement. The Parties represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

AA. "**Settlement Share**" shall mean each Settlement Class Member's allocated share of the Net Settlement Amount as provided by this Agreement and any payment a PAGA Member is eligible to receive from the PAGA Penalties per Section III.C.4.

II. RECITALS

A. On or about January 16, 2020, Plaintiff Charles Mikich, through his attorneys, sent a letter to the Labor Workforce Development Agency ("LWDA") alleging the following against Defendant: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related allegations (the "PAGA letter"). Plaintiff Charles Mikich asserted these representative claims on behalf of all Class Members who are or

were employed during the applicable statutory period.

B. On January 22, 2020, Plaintiff Charles Mikich filed a class action complaint in the San Francisco Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter and adding a cause of action for unfair competition. On May 11, 2020, Plaintiff Charles Mikich filed a first amended class action complaint in the San Francisco County Superior Court, adding a cause of action under the Labor Code Private Attorneys General Act of 2004 ("PAGA"). The first amended complaint is the "Operative Complaint."

C. On June 23, 2022, Charles Mikich submitted his amended lawsuit to add Jonathon Gordon as a Plaintiff and Defendants ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD).

D. On November 04, 2021, Defendants answered Plaintiffs' First Amended Complaint and denied, and continue to deny, all of Plaintiffs' material allegations. Specifically, Defendants deny the failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related allegations in the Action. Defendants contend that they have complied with the Labor Code, the Business & Professions Code, and the applicable Wage Order at all times. Defendants further allege that the Plaintiffs' claims are not amenable to class treatment because common issues do not predominate.

E. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. The Parties exchanged discovery requests, documents, information, and data including but not limited to pre-suit evidence request and preservation letters, Form Interrogatories - General, Form

Interrogatories - Employment Law, Special Interrogatories, Requests for Production of Documents and Tangible, pre-mediation data and document exchanges, analysis of time and payroll records by a neutral third party analyst, EmployStats, and related activities.

F. On January 31, 2022, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Michael J. Loeb, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement during the second mediation session. During the mediation sessions, each side, represented by their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action. They entered into a written settlement agreement, and on September 3, 2022, the Court preliminarily approved the settlement. Subsequently, Defendants presented evidence that they could not afford to fund the gross settlement amount negotiated under the settlement due to a significant and unanticipated increase in the gross settlement amount as a result of the escalator provision being triggered and that the entire settlement was at risk of being nullified. Defendants also represented that they implemented significant changes to improve their compliance with the Labor Code sections at issue in the Action which they completed by February 1, 2022. The Parties resumed settlement negotiations and eventually reached the terms of this Settlement Agreement.

G. Based on their own thorough, independent investigation and evaluation of this case, Class Counsel are of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant costs and delay, the risk of non-certification of the Class, the defenses asserted by

Defendants, the risks of adverse determinations on the merits, and numerous potential appellate issues. Although Defendants contend they have no liability in this case, Defendants' counsel shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given the respective risks associated with the case.

H. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiffs or the Class on those claims or to the State, or as an admission by Plaintiffs that Defendants' defenses raised in the Action have merit. This Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Agreement.

Based on the foregoing Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

A. Certification for Settlement Purposes. Solely for the purposes of effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not preliminarily and finally approved, the conditional certification of the Settlement Class will be of no force or effect, does not constitute an admission by Defendants that class certification is proper, and will not be deemed admissible in this or any other proceeding, and that the Parties will litigate the issue of class certification.

B. Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Gross Settlement Amount of Two Million Dollars and Zero Cents ($2,000,000.00), plus Defendants' employer share of employer-side payroll taxes, is the

maximum amount payable by Defendants, subject to the following. Defendants confirmed through the Settlement Administrator and for purposes of further settlement negotiations that there are 46,844 Work Weeks worked by the Class Members for the period of January 22, 2016 through September 3, 2022. For the avoidance of doubt, the term "Work Weeks" shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and October 31, 2022. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of the total number of Work Weeks worked through October 31, 2022. The Settlement Administrator shall determine the total number of Work Weeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats in connection with the Parties' mediation efforts and multiplying that figure by two. If the Work Weeks worked as of October 31, 2022 exceed 46,844 Work Weeks worked by more than 10.00%, the Gross Settlement Amount will increase proportionally according to the number of additional Work Weeks worked. For example, if the number of Work Weeks as of October 31, 2022 exceeds 46,844 by 11%, the Gross Settlement Amount shall increase by 1%. If the workweeks worked as of October 31, 2022 exceeds 46,844 workweeks by more than 10.00%, Defendants shall have the option to (a) vacate the Parties' settlement and deem it null and void or (b) cap the Class Period as of the date the number of workweeks reaches but does not exceed 51,528.

C. Payments to Plaintiffs and Class Counsel and Others. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. To Plaintiffs.

a. Class Representative Payments. In addition to their Settlement Shares, each Plaintiff will apply to the Court for an award of not more than Twenty Five Thousand Dollars and Zero Cents ($25,000.00) as a Class Representative Payment. Defendants will not oppose a Class Representative Payment of not more than $25,000.00. The Plaintiffs will receive no other payment other than their Settlement Share and Class Representative Payment, and acknowledges that they are aware of no other facts or circumstances related to their employment with Defendants that could give rise to any additional entitlement to any further payments. The Settlement Administrator will pay the Class Representative Payment approved by the Court out of the Gross Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class Representative Payment, and instead a Form 1099 will be issued to Plaintiffs with respect to that payment. Each Plaintiff agrees to assume all responsibility and liability for the payment of taxes due on the Class Representative Payment. The Class Representative Payment is in exchange for the release of Released Claims against the Released Parties, the general Release of Claims by Plaintiffs, and for the Plaintiffs' time, effort and risk in bringing and prosecuting the Action. Any adjustments made by the Court to the requested Class Representative Payment shall not be deemed a material modification of this Settlement Agreement. In the event that the Court reduces or does not approve the requested Class Representative Payment, the Settlement Agreement remains in full force and effect, shall not have the right to revoke the Settlement for that reason, it shall remain binding, and any portion of the Class Representative Payment not awarded to Plaintiffs will not revert to Defendants, but instead shall be returned to the Net Settlement Amount.

2. To Class Counsel. Class Counsel will apply to the Court for an award of

not more than Six Hundred Sixty Six Thousand Six Hundred Sixty Dollars and Zero Cents ($666,666.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel Fees Payment and an amount not more than Thirty Five Thousand Dollars and Zero Cents ($35,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not oppose this request. The Settlement Administrator will pay the amount approved by the Court (but not more than Six Hundred Sixty-Six Thousand Six Hundred Sixty Dollars and Zero Cents ($666,666.00) in fees and not more than Thirty-Five Thousand Dollars and Zero Cents ($35,000.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more Forms 1099 will be issued to Class Counsel with respect to those payments.

3. To the Settlement Administrator. The Settlement Administrator will be paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the Court in an amount currently estimated to not exceed Thirty-Two Thousand Dollars and Zero Cents ($32,000.00).

4. To the LWDA. The Parties will jointly apply to the Court for approval of a settlement of claims under the Private Attorneys General Act ("PAGA"), California Labor Code section 2698, *et seq*., for Fifty Thousand Dollars and Zero Cents ($50,000.00), of which, payment from the Gross Settlement Amount to the LWDA will be made in the amount of Thirty Seven Thousand Five Hundred Dollars and Zero Cents ($37,500.00), which is 75% of the PAGA settlement. Twelve Thousand Five Hundred Dollars and Zero Cents ($12,500.00), 25% of the PAGA settlement, will remain in the Net Settlement Amount for distribution and will be distributed to PAGA Members on a *pro rata* basis based on the total number of Individual Work Weeks (full or partial) worked by each PAGA Member during the PAGA Period. Partial Work Weeks shall be rounded up to the nearest whole integer. PAGA Members shall receive their portion of the PAGA Penalties regardless of their decision to submit a

request for exclusion to opt out of the Settlement.

D. Allocation of Net Settlement Amount and Calculation of Settlement Shares. Subject to the terms and conditions of this Agreement, the Settlement Administrator will distribute a payment from the Net Settlement Amount to each Participating Class Member. The Settlement Share for each Participating Class Member will be calculated as follows, understanding that the formulas below do not constitute an admission by either party, and are intended only to provide a practical means to simplify and administer the claims process:

a. Participating Class Members' Settlement Shares. The settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted and W-2s issued) and 66.66% to penalties and interest (for which 1099s will be issued).

b. Class Portion of Settlement Ratio Calculation. The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the aggregate total of all Class Members' Individual Work Weeks as the denominator. The Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

c. PAGA Portion of Settlement Ratio Calculation. The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that PAGA Member's Individual Work Weeks during the PAGA Period as the numerator, and (b) the aggregate total of all PAGA Members' Individual Work Weeks during the PAGA Period as the denominator. The Settlement Administrator shall assign to each PAGA Member the "Settlement Share" which shall be calculated by multiplying that PAGA

Member's Settlement Ratio by amount allocated to PAGA Members from the Net Settlement Amount.

4. Settlement Share Worksheet. Upon calculation of the Class Members' and PAGA Members' Settlement Share, the Settlement Administrator shall furnish to Class Counsel and Defense counsel a worksheet containing a list unique identifying numbers for each of the Class Members with their corresponding Individual Work Weeks and Settlement Shares.

E. Taxes and Withholdings. Each Settlement Share is intended, in part, to settle the Class Members' claims for Defendants' failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of PAGA and the unfair competition law. Each Class Member shall be individually responsible for the employee's share of applicable payroll tax withholdings and deductions. Accordingly, each Settlement Share allocated to wages will be reduced by applicable employee-side payroll tax withholdings and deductions, and the Settlement Administrator will issue a Form W-2 to each Participating Class Member. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. For PAGA Members who submit a timely and valid request for exclusion to opt out of the class portion of the Settlement, 100% of the individual Settlement Share to that individual shall be allocated as penalties, and not wages, for which the Settlement Administrator will issue to the PAGA Member an IRS Form-1099. Defendants will be responsible for the normal employer's share of any payroll tax attributable to the wage portion of the Settlement Share payments. Defendants' payment of the normal employer's share of payroll taxes attributable to the wage portion of the Settlement Share payments will be in addition

to the Gross Settlement Amount or Net Settlement Amount.

F. Appointment of Settlement Administrator. The Parties will ask the Court to appoint CPT Group, Inc., a qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class Members; and using reasonable measures to contact all Class Members, including conducting a National Change of Address search on all Class Members before mailing the Class Notice to each Class Member's address. The Settlement Administrator's duties will also include re-mailing the Class Notice to the Class Member's new address for those Class Members whose address has changed; providing the Parties with weekly status reports about the delivery of Class Notice; calculating Settlement Shares; issuing and distributing checks to effectuate the payments due under the Settlement; reporting to the Court as required; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice, will be paid out of the Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of the Settlement Administrator's fees and expenses that are not used or which are not awarded by the Court will not revert to Defendants, but instead will be part of the Net Settlement Amount for distribution to Participating Class Members. If the Settlement Administrator's fees and expenses exceed Thirty-Two Thousand Dollars and Zero Cents ($32,000.00), such cost will be deducted from the Net Settlement Amount.

IV. PROCEDURES FOR APPROVING SETTLEMENT

A. Motion for Preliminary Approval of Settlement by the Court. Class Counsel

will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion for Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to this Agreement). Any disagreement among the Parties concerning the Class Notice or other documents necessary to implement the Settlement will be referred to the Court.

1. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that they will appear and support the granting of the motion, and that Class Counsel will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class and Setting Hearing for Final Approval of Settlement.

2. Should the Court decline to approve the Settlement, the Settlement will be null and void and the Parties will have no further obligations under it.

B. Notice to Class Members. After the Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with a "Class Notice."

1. List of Class Members. Within fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendants shall provide to the Settlement Administrator:

a. An electronic database of all Class Members, last known mailing address, Social Security number, and Defendants' employee identification number ("Class Members' Data").

b. Corresponding to each Class Member's name, Defendants shall provide a figure indicating the total number of Work Weeks during the Class Period in which that Class Member was employed by Defendants as a Class Member. That number of Work Weeks shall be referred to as that Class Member's "Individual Work Weeks."

c. If any of the Class Members' Data are unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data prior to when it must be submitted to the Settlement Administrator. Class Members' Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court.

2. Mailing of Class Notice. Within fourteen (14) days after receiving the Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

3. Returned Class Notice. If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed,

the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

4. Declaration of Settlement Administrator. Not later than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

C. Disputed Class Member Settlement Shares. If a Class Member disputes his/her estimated Settlement Share, the Class Member may produce evidence to the Settlement Administrator for the Class Period. In order for the dispute to be considered, he/she must follow the directions on the Class Notice. To be valid and timely, all disputes and supporting documents must be postmarked by the Response Deadline. A Class Member may use the Work Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to dispute information in the Class Notice. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence contrary to Defendants' records by the Response Deadline, the Settlement Administrator shall notify Class Counsel and Defense Counsel to discuss and resolve the dispute, including providing all available relevant information to all counsel. The Parties will resolve all disputes jointly, which shall be final and binding on any Class Member disputes and shall thereafter instruct the Settlement Administrator how to proceed in processing the dispute. If the Parties cannot reach an agreement, the dispute shall be submitted to the Court for final

determination. All such disputes are to be resolved or submitted to the Court not later than fourteen (14) calendar days after the Response Deadline.

D. Requests for Exclusion from Settlement; and Objections to Settlement. Class Members may submit requests to be excluded from the effect of the Settlement, or objections to the Settlement, pursuant to the following procedures:

1. Request for Exclusion from Settlement. A Class Member may request to be excluded from the effect of this Agreement, and any payment of amounts under this Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class Member wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, signature, and a clear statement requesting to be excluded from the settlement of the class claims, as set forth on the Request for Exclusion form or similar to the following: "I wish to exclude myself from the class settlement reached in the matter of *Mikich v. Sayeh Petroleum, Inc.*. I understand that by excluding myself, I will not receive money from the settlement of my individual claims." To be valid and timely, the request to be excluded must be postmarked by the Response Deadline and received by the Settlement Administrator. A Class Member may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is not obligated to do so to request exclusion from the Settlement. A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any payment of any kind in connection with this Agreement or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no standing to object to the Settlement, except that the request for exclusion shall not be effective as to the release of claims arising under PAGA and shall not preclude the Class Member from receiving their share of the PAGA Penalties. A request for exclusion must be mailed to the Settlement Administrator at the address

provided on the Class Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the Parties as follows:

To Class Counsel:	*To Defense Counsel*:
David G. Spivak, Esq. The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069	Scott G. Lawson, Esq. Lisa G. Lawson, Esq. Ian W. Forgie, Esq. Lawson & Lawson, LLP One Sansome Street 35th Floor San Francisco, CA 94104

2. Objections to Settlement. The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator. To be valid, an objection must be postmarked by the Response Deadline and received by the Settlement Administrator. The written objection to the Settlement should set forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:	*To Defense Counsel*:
David G. Spivak, Esq. The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069	Scott G. Lawson, Esq. Lisa G. Lawson, Esq. Ian W. Forgie, Esq. Lawson & Lawson, LLP One Sansome Street 35th Floor San Francisco, CA 94104

Counsel will promptly file such objection with the Court.

The written objection should state the objecting Class Member's full name, address, and

the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing.

Regardless of whether an objecting Class Member complies with the objection procedure encouraged above, the Court will provide a Class Member with the opportunity to speak at the final approval hearing regardless of whether he or she has filed an appearance or submitted a written opposition beforehand. If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement.

E. Report. Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

F. No Solicitation of Objection; Right to Void. Neither the Parties, nor their respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment. Defendants have the right in their sole and exclusive discretion to terminate and withdraw from the Settlement at any time prior to date the Court enters final approval of this Settlement if 5.00% or more than of Class Members timely and validly opt out of the Settlement or if the Court fails to approve material terms of the settlement, including the scope of the release. Defendants must make such election within 10 business days of being notified by the Settlement Administrator

5.00% or greater opt-out rate or the Court's denial of the settlement with prejudice.

G. Additional Briefing and Final Approval. Plaintiffs will file with the Court a motion for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees and expenses and a memorandum in support of their motion; and Plaintiffs and Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.

Before the Final Approval Hearing, the Parties shall be entitled to file and serve a response to any Class Member's objection to the Settlement and/or reply in support of their motion for final approval of the Settlement, and payment of the Settlement Administrator's reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiffs and Class Counsel may file replies in support of their motions for the Class Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

If the Court ultimately does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement, then either Party will have the unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount or any amounts that otherwise would have been payable under this Agreement, except that Defendants and Plaintiffs will jointly and equally pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the right to void the Settlement under this Paragraph. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representative Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not

constitute a material modification to the Settlement within the meaning of this Paragraph and shall not render the Settlement voidable. Plaintiffs and Class Counsel shall retain the right to appeal awards of attorneys' fees and costs less than requested.

Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment. The Final Order and Judgment shall permanently bar all Participating Class Members from prosecuting against Defendants any claims within the scope of the Releases contained in this Agreement.

After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

H. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of this Agreement, and that no Class Member timely objects to the Settlement ***and*** formally intervenes into the action as required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendants, and their counsel hereby waive, except as provided for in this Agreement or prohibited by law, any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the

Judgment, the time for consummation of the Settlement (including making any payments under the Settlement) will be suspended until the appeal is fully and finally resolved and the Judgment, consistent with the terms of this Agreement, becomes Final.

I. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review. If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiffs or Defendants will have the unilateral right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Court, not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final. The Party exercising his/its right to unilaterally void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement Administrator for services rendered. An order vacating, reversing or modifying the Court's award of the Class Representative Payment, or the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.

J. Establishment of Settlement Account and Installment Payments. Defendants will pay the Gross Settlement Amount to the Settlement Administrator for the PAGA settlement and for Class Members who do not opt-out. Any amount attributed to the share of class members who opt-out shall be redistributed to participating class members on a pro-rata basis, and the Settlement Administrator will then be responsible for making appropriate deductions, reporting

obligations, and issuing the individual settlement awards. Defendants shall deposit one half of the Gross Settlement Amount with the Settlement Administrator within 30 days of the Court's granting preliminary approval of the Settlement. Defendants shall deposit the remaining half of the Gross Settlement Amount with the Settlement Administrator within 365 days of their having deposited the first half of the Gross Settlement Amount.

K. Payment of Settlement Shares. There will be two distributions of the Gross Settlement Amount as follows:

1. First Distribution. Within fourteen (14) calendar days of the Effective Date, or within ten (10) calendar days of the deadline for the Defendants' first installment payment (whichever is later), the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement Amount Defendants paid by that date, including *pro rata* portions of the PAGA payment, Class Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administrator's payment.

2. Second Distribution. Within ten (10) calendar days of the Defendants' second Installment Payment, the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement Amount Defendants paid since the first distribution, including *pro rata* portions of the PAGA payment, Class Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administrator's payment.

L. Default on Payment. In the event Defendants fail to pay any portion of the Gross Settlement Amount, it shall be considered a default. In the event Defendants fail to make any payment on the date it is due, the Settlement Administrator will provide notice to Class Counsel and Defense Counsel within five (5) business days of the missed payment. Thereafter, Defendants will have fifteen (15) days to cure the default and tender payment to the Settlement

Administrator. In the event Defendants fail to cure the default within the times set forth herein, Plaintiffs may, among other remedies, elect to enter judgment against Defendants, on an ex parte basis, for the balance of the unpaid Gross Settlement Amount to date, and Plaintiffs will be entitled to recover interest at ten percent (10%) per year and reasonable attorneys' fees and costs.

M. Uncashed Settlement Share Checks. Any check issued by the Settlement Administrator to Class Members who do not timely and validly opt out shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by checks returned as undeliverable and those checks remaining un-cashed for more than 180 days after issuance (collectively, "Voided Settlement Checks"), plus any interest that has accrued on those funds, will be paid to the California Unclaimed Property Fund.

N. The Settlement Administrator will mail or wire all required payments no later than fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount from Defendants. Proof of payment will be filed with the Court.

O. Final Report by Settlement Administrator to Court. Within ten (10) calendar days after final disbursement of all funds from the Settlement Account, the Settlement Administrator will serve on the Parties for filing with the Court a declaration providing a final summary report on the disbursements of all funds from the Settlement Account.

V. RELEASE OF CLAIMS

A. Plaintiffs and Class Members. The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release

will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid requests for exclusion from the Settlement, will release all Released Claims under PAGA against the Released Parties. The State of California will also release all Released Claims under PAGA against the Released Parties.

B. Release of Claims by Plaintiffs. Upon the Effective Date, and only after Defendants pay the entirety of the Gross Settlement Amount, each Plaintiff will be deemed to have released the Released Parties of and from all of the Released Claims during the Class Period. These claims include all claims alleged or could have been alleged based on the facts, circumstances, and/or primary rights at issue in the Complaint and any amendments thereto. They include without limitation: (1) all claims for failure to pay wages earned, including minimum wages, and overtime wages; (2) all claims for failure to provide rest periods and claims for rest period premium pay; (3) all claims for failure to provide meal periods and claims for meal period premium pay; (4) all claims for failure to provide accurate wage statements and related penalties; (5) all claims for failure to timely pay wages during employment and at termination; (6) all claims for violation of California Business and Professions Code §§ 17200, et seq., to the extent such claims are predicated on the other claims released herein; and (7) all claims for violation of PAGA and all related claims for penalties, to the extent such claims are predicated on the other claims released herein. Each Plaintiff's release set forth herein shall include a waiver of all rights under California Civil Code §1542, which includes a release of all known and unknown claims against the Released Parties during the Class Period. Civil Code section 1542 provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**

BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, each Plaintiff will be deemed to have waived his rights under Civil Code §1542 during the Class Period, as set forth above. Each Plaintiff's release excludes any claim for worker's compensation. It also includes his claims, if any, for harassment, discrimination, wrongful termination, negligent infliction of emotional distress and intentional infliction of emotional distress and related prayers for compensatory and punitive damages, interest, attorney fees and costs.

C. Class Counsel. As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement, Class Counsel and any counsel associated with Class Counsel (The Spivak Law Firm, United Employees Law Group,), including without limitation David G. Spivak, Esq. and Walter L. Haines, Esq. waive any claim to costs and attorneys' fees and expenses against Defendants or the Released Parties arising from or related to the Action, except those incurred to enforce this Agreement and collect the Judgment, including but not limited to claims based on the California Labor Code, the California Civil Code, the California Code of Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class Counsel Released Claims").

D. Tax Liability. Defendants make no representation as to the tax treatment or legal effect of the payments called for in this Agreement, and Plaintiffs, Settlement Class Members, and PAGA Members are not relying on any statement, representation, or calculation by Defendants or by the Settlement Administrator in this regard. Plaintiffs, Settlement Class Members, and PAGA Members understand and agree that except for Defendants' payment of the employer's portion of any payroll taxes, they will be solely responsible for the payment of any

taxes and penalties assessed on the payments described herein.

E. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY

TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

VI. NON-PUBLICITY PROVISION

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement of this case in any manner that identifies the Defendants, including but not limited to any postings on any websites maintained by Class Counsel. Neither Plaintiffs nor Class Counsel will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3) other Class Members. Plaintiffs and Class Counsel agree not to publish any of the terms or conditions of this Settlement in any manner that identifies the Defendants. However, Class Counsel may identify this Settlement in other matters to demonstrate their adequacy as counsel in such other matters.

VII. MISCELLANEOUS TERMS

A. No Effect on Other Benefits. The Settlement Shares will not result in any additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiffs and Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

B. No Admission of Liability. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to

anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants, or an admission by any Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact that Plaintiffs and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

C. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

D. Integrated Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

E. Attorney Authorization. Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions and assistance of the court will be consistent with this Agreement.

F. Use and Return of Documents and Data. Upon written request from Defendants, Class Counsel will return or destroy all originals, copies, and summaries of documents and data provided to Class Counsel by Defendants in connection with the settlement negotiations in this matter. Class Counsel will confirm in writing to Defendants the destruction of all such documents and data within fourteen (14) days of such request.

G. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.

H. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

I. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

J. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

K. Fair Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors, current and potential.

L. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

M. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third calendar day after mailing by United States mail, addressed as follows:

To Class Counsel:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:
Scott G. Lawson, Esq.
Lisa G. Lawson, Esq.
Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed

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Counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: January 22, 2024 By: 

CHARLES MIKICH

Dated: January____, 2024 By: _____

JONATHON GORDON

Dated: January____, 2024 By: _____

ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., and Green Planet Gas, Inc.

THE SPIVAK LAW FIRM

Dated: January____, 2024 By: _____

DAVID G. SPIVAK, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: January____, 2024 By: _____

WALTER L. HAINES, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

Counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: January____, 2024 By: _____
CHARLES MIKICH

Dated: January 22, 2024 By: _____
JONATHON GORDON

Dated: January____, 2024 By: _____
ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., and Green Planet Gas, Inc.

THE SPIVAK LAW FIRM

Dated: January____, 2024 By: _____
DAVID G. SPIVAK, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: January____, 2024 By: _____
WALTER L. HAINES, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

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Counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: January____, 2024 By: _____
CHARLES MIKICH

Dated: January____, 2024 By: _____
JONATHON GORDON

Dated: January 19, 2024 By: _____
ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., and Green Planet Gas, Inc.

THE SPIVAK LAW FIRM

Dated: January____, 2024 By: _____
DAVID G. SPIVAK, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: January____, 2024 By: _____
WALTER L. HAINES, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

Counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: January____, 2024 By: _____
CHARLES MIKICH

Dated: January____, 2024 By: _____
JONATHON GORDON

Dated: January____, 2024 By: _____
ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., and Green Planet Gas, Inc.

THE SPIVAK LAW FIRM

Dated: January 22, 2024 By: David Spivak
DAVID G. SPIVAK, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: January____, 2024 By: _____
WALTER L. HAINES, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

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Counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: January____, 2024 By: _____
CHARLES MIKICH

Dated: January____, 2024 By: _____
JONATHON GORDON

Dated: January____, 2024 By: _____
ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., and Green Planet Gas, Inc.

THE SPIVAK LAW FIRM

Dated: January____, 2024 By: _____
DAVID G. SPIVAK, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: January 22 , 2024 By: 
WALTER L. HAINES, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

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LAWSON & LAWSON, LLP

Dated: January 19, 2024

By: 

SCOTT G. LAWSON, Attorneys for Defendants, SAYEH PETROLEUM, INC., HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD)

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL

Charles Mikich, et al. v. Sayeh Petroleum, Inc., et al., Case No. CGC-20-582385

As a current or former hourly, non-exempt employee of Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad, in California,

CPT ID: <<CPT ID>>
<<Name>>
<<Address1>>
<<Address2>>
<<City>>, <<State>> <<Zip Code>>

Please provide current address (if different) here:
_____
_____
_____
_____

you may be entitled to receive money from a class action settlement.

The San Francisco County Superior Court has authorized this Class Notice.
This is not a solicitation from a lawyer.

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT IF YOU ARE A CURRENT OR FORMER HOURLY, NON-EXEMPT EMPLOYEE OF SAYEH PETROLEUM, INC., HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., AND ALI BOZORGHADAD (ALSO KNOWN AS ED BOZORGHADAD ALSO KNOWN AS ED HADAD) IN THE STATE OF CALIFORNIA BETWEEN JANUARY 16, 2016 AND OCTOBER 31, 2022, WHICHEVER IS EARLIER.

A proposed settlement of $2,000,000.00 (the "Gross Settlement Amount") will be used to pay claims to: All persons Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad (also known as Ed Bozorghadad also known as Ed Hadad) employed in California as hourly, non-exempt employees during the "Class Period" of January 16, 2016 to October 31, 2022, whichever is earlier (the "Class Members"). The Gross Settlement Amount includes (a) expenses and fees of the Settlement Administrator up to $32,000.00; (b) an Class Representative Payment of $25,000.00 to the Plaintiffs CHARLES MIKICH AND JONATHON GORDON (collectively "Plaintiffs" or "Class Representatives") as the class representative; (c) attorneys' fees of up to $666,666.00 and litigation expenses of up to $35,000.00 to Class Counsel; and (d) $50,000.00 allocated to settle claims brought pursuant to the Private Attorneys General Act, California Labor Code Section 2698, *et seq*. ("PAGA") (75% of which will go to the California Labor & Workforce Development Agency ("LWDA") and 25% of which will go to Class Members). The Court must approve these payments at the Final Approval Hearing.

- Defendants confirmed through the Settlement Administrator for purposes of further settlement negotiations that there are 46,844 Work Weeks worked by the Class Members for the period

of January 22, 2016 through September 3, 2022. For the avoidance of doubt, the term "Work Weeks" shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and October 31, 2022. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of Work Weeks worked through October 31, 2022. The Settlement Administrator shall determine the total number of Work Weeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats, a payroll data analyst employed by the Parties, in connection with the Parties' mediation efforts, and multiplying that figure by two. If the Work Weeks worked as of October 31, 2022 exceed 46,844 Work Weeks worked by more than 10.00%, the Gross Settlement Amount, including the attorneys' fees to Class Counsel will increase proportionally according to the number of additional Work Weeks worked. For example, if the number of Work Weeks as of October 31, 2022 exceeds 46,844 by 11%, the Gross Settlement Amount, including the attorney fees to Class Counsel, shall increase by 1%. This provision is the "Escalation Clause." If the workweeks worked as of October 31, 2022 exceeds 46,844 workweeks by more than 10.00%, Defendants shall have the option to (a) vacate the Parties' settlement and deem it null and void or (b) cap the Class Period as of the date the number of workweeks reaches but does not exceed 51,528.

- The settlement resolves a lawsuit entitled *Charles Mikich, et al. v. Sayeh Petroleum, Inc., et al.*, Case No. CGC-20-582385 (the "Action") for Defendants' alleged failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and other legal consequences that would follow from these failures, including claims under California's Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendants from alleged liability.

- The Court has not made a determination of the validity of the claims in the Action. Defendants deny any and all liability arising from any of the claims and contend that they are not responsible for a failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, or related wrongs, and fully complied with all applicable laws.

- Class Members will receive a payment based on the number of Work Weeks, rounded up to the nearest full Work Week, during the Class Period.

PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.

HOW MUCH WILL I GET?

You have a total number of <<number of Work Weeks>> Work Weeks during the Class Period.
It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
OPT OUT	Receive no payment and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Action. However, you may not opt out of the PAGA Released Claims.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, CPT Group, Inc., about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
DISPUTE THE WORK WEEKS CALCULATION	If you feel that you worked a different amount of Work Weeks as an hourly, non-exempt employee than identified above, you may dispute that calculation by writing to the Settlement Administrator.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, CPT Group, Inc., providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Action and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Action, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the San Francisco County Superior Court. The persons who sued are called "Plaintiffs" and the organizations they sued are called "Defendants."

2. What is the Action about?

In the Action, Plaintiffs Charles Mikich and Jonathon Gordon alleged multiple violations of the California Labor Code, the California Business & Professions Code, and PAGA, including causes of action for: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure

to maintain required payroll records, unfair competition under California's Business & Professions Code, and claims for civil penalties for violations of the PAGA.

3. Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Plaintiffs won at trial. Defendants believe the Plaintiffs would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiffs or Defendants. There has been no trial in this case. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet Class Members are still entitled to receive payments if they comply with the instructions in this Class Notice. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Plaintiffs and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

4. What is a class action settlement?

The Court must approve the terms of the proposed settlement as fair and reasonable. Once approved, the settlement will affect all Class Members, except those who have properly opted out. This Class Notice explains your legal rights, the terms of the settlement, what you must do to participate, and the amount of money you may receive. Please read this entire Class Notice carefully.

5. What should I do?

You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

6. How much will my payment be?

After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is available for review), the remainder will be used to pay Class Members a pro-rata payment based on the number of Work Weeks each Class Member worked during the Class Period and PAGA Members a pro-rata payment based on the number of Work Weeks each PAGA Member worked during the PAGA Period ("Pro-Rata Share").

The Settlement Administrator shall determine by how many Work Weeks each such Class Member has.

Your estimated payment is listed above, on page 2 of this document. If you do not dispute your Work Weeks calculation, and do not opt out of the settlement, you will be bound by the

settlement and receive a settlement payment. **In other words, you do not need to take any action to receive a settlement payment.**

If you wish to dispute the number of Work Weeks credited to you or anything else about your employment status, you must write to the Settlement Administrator indicating what you believe is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You may use the enclosed Work Weeks Dispute Form for this purpose. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to write to the Settlement Administrator to dispute your Work Weeks information. You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendants' records and any information you provide. Please be advised that the information on this Notice is presumed to be correct unless the documents you submit are company records from Defendants.

7. When would I get my payment?

The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing time>> .m to decide whether to approve the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at <<settlement administrator phone number>>, or contact Class Counsel (see below for Class Counsel's contact information.). Please be patient.

Defendants will pay the Gross Settlement Amount in two annual $800,000.00 installments. There will be two annual distributions of the Gross Settlement Amount. The parties do not expect the final distribution to take place until _____, so please be patient and, if you change your address, advise the Settlement Administrator immediately.

You will have 180 days to cash your settlement check. If a mailed individual settlement payment is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check), all uncashed funds will be paid to the California State Controller's Office Unclaimed Property Fund with the identity of the Class Member to whom the funds belong, to be held for the Class Member.

8. What am I releasing?

If you do not exclude yourself from the settlement (according to the procedures explained below), you will release certain claims as follows:

> The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release will not take

effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid requests for exclusion from the Settlement, will release all Released Claims under PAGA against the Released Parties. The State of California will also release all Released Claims under PAGA against the Released Parties.

"**Released Claims**" shall mean all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims during the period of January 16, 2016 through October 31, 2022 asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiffs to the LWDA concerning Defendants and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and 2699; and any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. The Parties acknowledge that Released Claims includes any claims for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet and confer in good faith if the Court requires changes to the scope of the Released Claims.

"Released Parties" shall mean Defendants, and any of their former and present agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert with any of them, and each of them.

The release provisions of this Settlement will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement.

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail to the Settlement Administrator with the following sentence, or something similar, stating: "I request to be excluded from the class action proceedings in the matter of *Charles Mikich, et al. v. Sayeh Petroleum, Inc.,* Case No. CGC-20-582385." You may use the enclosed "Election not to Participate in Settlement Form" for this purpose. You will have 60 **days** from the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and mailed to the Settlement Administrator, CPT Group, Inc., <<settlement administrator mailing address>> and be postmarked no later than <<response deadline>>, or it will not be considered and you will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to opt out. You must include your full name (and former names, if any) and address in your request and you must sign the written request. However, you cannot opt-out of the PAGA Released Claims and will receive your pro rate share of the PAGA Penalties whether or not you opt of out of the settlement.

10. Do I have a lawyer in this case?

The Court has appointed David G. Spivak of The Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069, Telephone: (213) 725-9094, david@spivaklaw.com, and Walter L. Haines of United Employees Law Group, 4276 Katella Ave, Suite 301, Los Alamitos, CA 90720, Telephone: (562) 256-1047, walter@uelglaw.com to represent you and other Class Members in the Action. These lawyers are called Class Counsel. They will be compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Subject to the Escalation Clause above, Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third) of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs of not more than $35,000.00 incurred in connection with the Action. The Court may choose to award less than the amount requested by Class Counsel.

12. How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing or in person. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers should (a) clearly identify the case name and number (*Charles Mikich, et al. v. Sayeh Petroleum, Inc.,* Case No. CGC-20-582385), (b) be submitted to the Settlement Administrator by mailing them to the Settlement Administrator, CPT Group, Inc., <<settlement administrator mailing address>>, and (c) be filed or postmarked on or before <<response

deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to object. Class Members may appear at the final approval hearing to be heard on their objections, even if they have not previously served a written objection.

13. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval hearing time>> .m in Department 610 at the San Francisco County Superior Court, Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680, (The Honorable Garrett L. Wong presiding). At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections that were properly made, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

14. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you timely mailed your written objection, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

15. May I speak at the hearing?

Regardless of whether you properly objected to the settlement, you may speak at the fairness hearing.

16. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call <<settlement administrator phone number>> or write the Settlement Administrator, CPT Group, Inc., located at <<settlement administrator mailing address>>.

You can also access the San Francisco County Superior Court's Online Services at https://www._____, or by visiting the Clerk's Office at the San Francisco County Superior Court, Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680), between _:_0 a.m. and _:_0 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT B

Mikich, et al. v. Sayeh Petroleum, Inc., et al.
Superior Court of the State of California, County of San Francisco, Case No. CGC-20-582385

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR A SHARE OF THE SETTLEMENT PROCEEDS, DO NOT FILL OUT THIS FORM.

IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Mikich v. Sayeh Petroleum, Inc. Class Action Settlement Administrator
c/o _____
_____
_____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds.

_____
(Typed or Printed Name)

_____
(Address)

_____
(City, State, Zip Code)

_____
(Telephone Number, Including Area Code)

_____
(Identification Number)

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

Dated: _____. _____
(Signature)

EXHIBIT C

WORK WEEK DISPUTE FORM

Superior Court of The State of California
For The County of San Francisco
Charles Mikich, et al. v. Sayeh Petroleum, Inc., et al., Case No. CGC-20-582385

Indicate Name/Address Changes, if any:

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX – XX - __ __ __ __

TO ALL PERSONS DEFENDANTS EMPLOYED AS HOURLY, NON-EXEMPT EMPLOYEE IN THE STATE OF CALIFORNIA AT ANY TIME BETWEEN JANUARY 16, 2016 AND OCTOBER 31, 2022, WHICHEVER IS EARLIER.

The amount of your estimated Settlement Award is based upon the number of Eligible Work Weeks you worked between January 16, 2016 and October 31, 2022, and Eligible Work Weeks you worked between January 16, 2019 and October 31, 2022. "Individual Class Work Weeks" are defined as any Work Week in which you worked at least one (1) day as an hourly, non-exempt employee of Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad, (also known as Ed Bozorghadad also known as Ed Hadad) (collectively "Defendants") in California during the calendar week. "Individual PAGA Work Weeks" are defined as any Work Week in which you worked at least one (1) day as an hourly, non-exempt employee of Defendants in California during the calendar week during the period of January 16, 2019 through October 31, 2022. The number of Class and PAGA Work Weeks applicable to your claim are set forth below.

YOUR ELIGIBLE WORK WEEKS

Defendants' records indicate that you worked <<number of Work Weeks>> Work Weeks between January 16, 2016 and October 31, 2022, and <<number of Work Weeks>> Work Weeks between January 16, 2019 through October 31, 2022.

YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE

Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate estimated amount of <<$Settlement Share Amount>>, minus all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This process may take six months or more. You will receive a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the payment could vary, up or down.

If you wish to dispute the number of January 16, 2016 credited to you, or anything else about your employment status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendants' records and any information you provide. Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless the documents you submit are company records from Defendants.

UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK WEEKS, RECEIPT OF A SETTLEMENT AWARD, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(*UNLIMITED JURISDICTION*)

CHARLES MIKICH, JONATHON GORDON, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE INC., a California corporation; HADAD PETROLEUM, INC., a California corporation BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS INC., and ALI BOZORGHADAD, (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES ___–50 inclusive,

Defendant(s).

Case No. CGC-20-582385

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

Action filed: January 22, 2020
Dept: 610, The Honorable Garrett L. Wong

The Motion of Plaintiffs CHARLES MIKICH AND JONATHON GORDON

(collectively "Plaintiffs" or "Class Representatives") for Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the Court, The Honorable Garrett L. Wong presiding. The Court having considered the Motion, the First Amended Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement" or "Settlement Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court has determined there is sufficient evidence to preliminarily determine that (a) the terms of the Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final hearing and final approval by this Court. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the "Final Approval Hearing") as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the "Settlement Class" means all persons Defendants employed as hourly, non-exempt employees in California (collectively "Class Members"), who worked anytime during the Class Period. The "Class Period" shall mean the period of time from January 16, 2016, through October 31, 2022. Defendants confirmed with the Settlement Administrator for purposes of further settlement negotiations that there are 46,844 Work Weeks worked by the Class Members for the period of January 22, 2016 through September 3, 2022. For the avoidance of doubt, the term "Work Weeks" shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These

numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of Work Weeks worked through October 31, 2022. The Settlement Administrator shall determine the total number of Work Weeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats in connection with the Parties' mediation efforts and multiplying that figure by two. If the Work Weeks worked as of October 31, 2022 exceed 46,844 Work Weeks worked by more than 10.00%, the Gross Settlement Amount will increase proportionally according to the number of additional Work Weeks worked. For example, if the number of Work Weeks as of October 31, 2022 exceeds 46,844 by 11%, the Gross Settlement Amount shall increase by 1%. If the workweeks worked as of October 31, 2022 exceeds 46,844 workweeks by more than 10.00%, Defendants shall have the option to (a) vacate the Parties' settlement and deem it null and void or (b) cap the Class Period as of the date the number of workweeks reaches but does not exceed 51,528.

3. The "Effective Date" means as follows: If no objection to this Settlement or to any of the terms and or conditions of the Settlement are filed by any of the Plaintiffs, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this Settlement; however, if any objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after

the appeal has been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any funds into the Settlement Account.

4. This action is provisionally certified pursuant to section 382 of the California Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for purposes of settlement only with respect to the proposed Settlement Class.

5. The Court hereby preliminarily finds that the Settlement was the product of serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making this preliminary finding, the Court considered the nature of the claims set forth in the pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a compromise of the Parties' respective positions. The Court further preliminarily finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the Settlement was entered into in good faith.

6. The Court finds that the dates set forth in the Settlement for mailing and distribution of the Class Notice meet the requirements of due process and provide the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as set forth in the Settlement. Accordingly, the Court orders the following implementation schedule for further proceedings:

a. By _____, Defendants shall provide _____, the appointed Settlement Administrator,

with: (a) An electronic database of all Class Members, last known mailing address, Social Security number and Defendants' employee identification number ("Class Members' Data"); and (b) Corresponding to each Class Member's name, Defendants shall provide a figure indicating the total number of Work Weeks during the Class Period and the PAGA Period in which Defendants employed the Class Member. That number of Work Weeks shall be referred to as that Class Member's "Individual Work Weeks;" (c) If any of the Class Members' Data are unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data prior to when it must be submitted to the Settlement Administrator. Class Members' Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court.

b. **Mailing of Class Notice.** By _____, approximately fourteen (14) days after receiving the Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten

(10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

d. **Declaration of Settlement Administrator.** Not later than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

e. **Requests for Exclusion from Settlement; and Objections to Settlement.**

Class Members may submit requests to be excluded from the effect of the Settlement, or objections to the Settlement, pursuant to the following procedures:

i. **Request for Exclusion from Settlement.** A Class Member may request to be excluded from the effect of this Agreement, though not the PAGA Released Claims, and any payment of amounts under this Agreement, though not the PAGA Payment, by timely mailing a letter to the Settlement Administrator stating that the Class Member wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, and signature. To be valid and timely, the request to be excluded must be postmarked by the date specified in the Class Notice (_____, or 60 days from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any payment of any kind in connection with this Agreement or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no standing to object to the Settlement. A request for exclusion must be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Scott G. Lawson, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

ii. **Objections to Settlement.** The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator by _____, or 60 days after the Settlement Administrator mails the Class Notice, a written objection to the Settlement which sets forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Scott G. Lawson, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each

specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing. However, the objectors will be provided with the opportunity to speak at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition beforehand.

If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member may still be bound by the terms of this Agreement.

f. **Report.** Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

7. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement.

8. The Court approves, for settlement purposes only, David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

9. The Court approves, for settlement purposes only, Plaintiffs Charles Mikich and

Jonathon Gordon as the Class Representatives.

10. The Court approves CPT Group, Inc. as the Settlement Administrator.

11. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

12. The Court preliminarily approves the estimated Settlement Administrator costs payable to the Settlement Administrator subject to final review by the Court.

13. The Court preliminarily approves Plaintiff's Class Representative Payment subject to final review by the Court.

14. A Final Approval Hearing shall be held on _____ at _____**.m.** in Department 610 of the Superior Court for the State of California, County of San Francisco, located at the Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before _____.

15. If for any reason the Court does not execute and file a final approval order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the proposed Settlement that is the subject of this order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement.

16. The Court expressly reserves the right to adjourn or continue the Final Approval

Hearing from time to time without further notice to members of the Class. The Plaintiffs shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

DATE	**THE HONORABLE GARRETT L. WONG** **SUPERIOR COURT JUDGE**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(*UNLIMITED JURISDICTION*)

CHARLES MIKICH, JONATHON GORDON, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., and ALI BOZORGHADAD, also known as ED BOZORGHADAD, also known as ED HADAD, an individual; and DOES ___–50, inclusive,

Defendant(s).

Case No. CGC-20-582385

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed: January 22, 2020
Dept: 610, The Honorable Garrett L. Wong

This matter came on for hearing on _____ at _____.m. in

Department 610 of the above-captioned court on the Motion of Plaintiffs Charles Mikich and Jonathon Gordon (collectively "Plaintiffs" or "Class Representatives") for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the First Amended Joint Stipulation of Class Action Settlement and Release of Claims (the "Settlement") filed herewith which provides for a Gross Settlement Amount ("GSA") of up to $2,000,000.00 in compromise of all disputed claims on behalf of all persons hourly, non-exempt employees in California at any time during the period of January 16, 2016 to preliminary Court approval of this Settlement, or October 31, 2022, whichever is earlier ("Settlement Class Period"). All capitalized terms used herein shall have the same meaning as defined in the Settlement.

In accordance with the Court's prior Order Granting Preliminary Approval of Class Action Settlement, Class Members have been given notice of the terms of the Settlement and the opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its terms. Having received and considered the Settlement, the supporting papers filed by the Parties, and the evidence and argument received by the Court in conjunction with the motions for preliminary and final approval of the Settlement, the Court grants final approval of the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING DETERMINATIONS[1]:

1. The Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members. Pursuant to this Court's Order Granting

[1] A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by reference. A true and correct copy of the Court's Minute Order dated _____ is attached hereto as **Exhibit B** and incorporated by reference.

Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of the terms of the Settlement, their right to receive their proportional share of the Settlement, their right to request exclusion, their right to comment upon or object to the Settlement, and their right to appear in person or by counsel at the final approval hearing and be heard regarding final approval of the Settlement. Adequate periods of time were provided by each of these procedures. No member of the Settlement Class presented written objections to the proposed Settlement as part of this notice process, stated an intention to appear, or actually appeared at the final approval hearing.

2. For purposes of this Final Order and Judgment, the Class Members are all persons Defendants employed as hourly, non-exempt employees in California during the Class Period. at any time during the period of January 16, 2016 to preliminary Court approval of this Settlement, or October 31, 2022, whichever is earlier ("Settlement Class Period").

3. The Court finds and determines that the notice procedure afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding final approval of the Settlement based on the responses of Class Members. The Court finds and determines that the notice provided in this case was the best notice practicable, which satisfied the requirements of law and due process as to all persons entitled to such notice.

Release by Plaintiffs and Class Members. The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release

will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid requests for exclusion from the Settlement, will release all Released Claims under PAGA against the Released Parties. The State of California will also release all Released Claims under PAGA against the Released Parties. "**Released Claims**" shall mean all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims during the period of January 16, 2016 through October 31, 2022 asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiffs to the LWDA concerning Defendants and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and 2699; and any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation

benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. The Parties acknowledge that Released Claims includes any claims for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet and confer in good faith if the Court requires changes to the scope of the Released Claims. **"Released Parties"** shall mean Defendants, and any of their former and present agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert with any of them, and each of them.

2. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and provisions of the Settlement, including the release of claims contained therein, should be and hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement according to its terms. As of the Effective Date of Settlement, and for the duration of the Settlement Class Period, all Class Members are hereby deemed to have waived and released all Released Claims and are forever barred and enjoined from prosecuting the Released Claims against the Released Parties as fully set forth in the Settlement. No objections were received by the Parties or the Court through the date of this Final Order and Judgment. The Court finds _____ Class Member(s)—_____—submitted a request for exclusion from the Settlement as determined by the Settlement Administrator and therefore is/are not in the Settlement Class.

3. The Court finds and determines that (a) the Settlement Shares to be paid to

Participating Class Members and (b) the LWDA payment as civil penalties under the California Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants final approval to, and orders the payment of, those amounts be made to the Participating Class Members and to the California Labor & Workforce Development Agency ("LWDA"), in accordance with the terms of the Settlement.

4. The Court further grants final approval to and orders that the following payments be made in accordance with the terms of the Settlement:

a. Class Counsel fees & costs of $666,666.00 in attorneys' fees and $35,000.00 in litigation costs to Class Counsel;

b. $25,000.00 as a Class Representative Payment award payable to each Plaintiff for his service as a Class Representative;

c. $32,000.00 in costs of the Settlement Administrator payable to CPT Group, Inc. for its services as the Settlement Administrator; and

d. Payment of $37,500.00 (75% of the ($50,000.00 PAGA penalty) to the LWDA.

7. The settlement shall proceed as directed in the Settlement, and no payments pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of Court 3.769(h).

8. Within ten (10) calendar days of the Effective Date of Settlement and pursuant to

the Settlement's installment payment plan, Defendants shall begin to deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.

9. Defendants' payment of such sums shall be the sole financial obligation of Defendants under the Settlement and shall be in full satisfaction of all claims released herein, including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and expenses.

10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement Share check. After the expiration of the 180-day period, on Defendants' behalf, the Settlement Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of the initial judgement to the California Unclaimed Property Fund.

11. The Parties shall file a final accounting report by _____. A non-appearance case review re submission of a final report is scheduled for _____ **at** _____**.m. in Department 610**. The Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for the class and defense counsel in accord with the proposed Amended Final Order and Judgment. If there are objections by any party or non-party, class counsel shall immediately notify the Court

and the matter will be set for further hearing. A non-appearance hearing for the lodging of the stipulation and proposed order and separate amended judgment is scheduled for **_____ at _____.m. in Department 610**.

12. Nothing in this Final Order and Judgment shall preclude any action to enforce the Parties' obligations under the Settlement or hereunder, including the requirement that Defendants deposit funds for distribution by the Settlement Administrator to Participating Class Members in accordance with the Settlement.

13. The Court hereby enters final judgment in this case in accordance with the terms of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final Order and Judgment.

14. The Parties are hereby ordered to comply with the terms of the Settlement.

15. The Parties shall bear their own costs and attorneys' fees except as otherwise provided by the Settlement and this Final Order and Judgment.

16. The Settlement is not an admission by Defendants nor is this Final Order and Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order and Judgment, the Settlement, any document referred to herein, any exhibit to any document referred to herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an admission or concession with regard to, the denials or defenses of Defendants, and shall not be offered in evidence in any proceeding against the Parties hereto in any Court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this

Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto, and any other papers and records on file in the Action may be filed in this Court or in any other litigation as evidence of the settlement by Defendants to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.

17. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE	**THE HONORABLE GARRETT L. WONG** **SUPERIOR COURT JUDGE**

EXHIBIT 2

SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 16, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
http://dir.tflaforms.net
Via Electronic Submission

RE: *Charles Mikich / Sayeh Petroleum, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Charles Mikich (hereafter "Mikich") provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to gas station clerks and workers employed in comparable positions (hereafter "Aggrieved Employees") by Sayeh Petroleum, Inc., a California corporation and gas station operator (hereafter "Sayeh"), of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Sayeh has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Mikich and the Aggrieved Employees are "employees" within the meaning of Wage Order 7-2001 (hereafter "the Wage Order") § 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

Sayeh employed Mikich as a gas station clerk from approximately January 5, 2018 to approximately March 15, 2019 at its gas station located at 1200 La Playa Street in San Francisco, California. At all relevant times, Mikich resided in California.

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ENCINO, CA 91436

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SPIVAKLAW.COM

At all relevant times, Sayeh employed Mikich and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Sayeh classified Mikich and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Sayeh failed to provide Mikich and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Sayeh typically scheduled Mikich and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Sayeh prohibited Mikich and the Aggrieved Employees from taking off-duty meal periods. Neither Mikich nor the Aggrieved Employees entered into on duty meal period agreements with Sayeh.

At all relevant times, Sayeh failed to authorize and permit Mikich and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. As a result of its inadequate staffing (discussed above), Sayeh failed to provide duty-free rest periods to Mikich and the Aggrieved Employees. At the start of his employment, Mikich asked his manager, Nasser (last name unknown), what time he would get his breaks. Nasser simply laughed in response. Sayeh has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement.

Sayeh failed to pay premium wages for days on which it failed to provide Mikich and the Aggrieved Employees with all timely meal and rest periods.

Sayeh further required Mikich and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Sayeh.

At all relevant times, Sayeh failed to compensate Mikich and the Aggrieved Employees for all hours worked by requiring Mikich and the Aggrieved Employees to engage in work after clocking out at the end of their scheduled shifts. Sayeh instructed Mikich and the Aggrieved Employees to clock out after

exactly eight hours of work. Sayeh directed them to perform additional tasks after they were clocked out, including cleaning the store, reviewing inventory, and locking up. These tasks would take approximately 20 to 30 minutes to complete.

Sayeh required Mikich and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Sayeh failed to pay one and one half times (1 ½ x) the hourly rates of pay of Mikich and the Aggrieved Employees by failing to pay for off-the-clock work performed by Mikich and the Aggrieved Employees after clocking out at the end of their shifts.

Further, Sayeh failed to pay Mikich and the Aggrieved Employees for all hours worked by rounding down their work times. In the instances in which Mikich and the Aggrieved Employees recorded more than eight hours in a given workday, Sayeh edited their time records to state that they had only worked eight or fewer hours. As a result, Sayeh failed to compensate Mikich and the Aggrieved Employees for the additional time that Sayeh shaved from their time records. Because Mikich worked eight-hour shifts, Sayeh was required to pay him overtime pay for these times.

As set forth below, Mikich alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

a) Sayeh failed to provide Mikich and the Aggrieved Employees with all meal periods as required by law;

b) Sayeh failed to provide Mikich and the Aggrieved Employees with all rest periods as required by law;

c) Sayeh failed to compensate Mikich and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more meal periods in a workday;

d) Sayeh failed to compensate Mikich and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more rest periods in a workday;

e) Sayeh failed to pay Mikich and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;

f) Sayeh failed to indemnify Mikich and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

g) Sayeh failed to timely pay Mikich and the Aggrieved Employees all earned and unpaid wages during employment; and

h) Sayeh failed to timely pay Mikich and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Mikich now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Sayeh's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include:

> "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities as wholesale or retail; or for the purpose of renting goods or commodities."

§ 2(H).

At all relevant times during the applicable limitations period, Sayeh operated gas stations for the purpose of retailing gasoline. Accordingly, Mikich and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

> Rest Periods:
>
> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each workday that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

> An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.
>
> An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

> Meal Periods:
>
> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
>
> ...
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

By not providing adequate staff to relieve its hourly employees of their duties, Sayeh has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Mikich and the Aggrieved Employees as required by law. In failing to do so, Sayeh violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Mikich seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and $100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

3. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states,

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

> (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

> (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 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek.
>
> (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 of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Sayeh knowingly failed to pay Mikich and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed after clocking out at the end of their shifts.

Accordingly, Mikich seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and $200 for each Aggrieved Employee for each

subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and

3. $100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and $250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

At all relevant times during the applicable limitations period, Sayeh required Mikich and the Aggrieved Employees to use personal mobile telephones to communicate with Sayeh as a necessary condition of employment. Sayeh failed to indemnify Mikich and the Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Mikich seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: $100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and $200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).
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/
/
/

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

1) Gross wages earned

2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

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 only the last four digits of his or her social security number or an employee identification 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.

At relevant times during the applicable limitations period, Sayeh violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,

the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Sayeh failed to state in the wage statements it issued to Sayeh and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed after clocking out at the ends of their shifts as described above.

Accordingly, Mikich now seeks civil penalties for the Labor Code violations that Sayeh has committed against him and the other Aggrieved Employees as follows: $250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and $1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Sayeh's failure to pay Mikich and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Sayeh failed to timely pay all wages due during employment. Accordingly, Mikich seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

(1) $100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and

(2) $200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment (Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, 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 previous 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. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As explained above, Sayeh failed to pay Mikich and the other Aggrieved Employees all wages owed for hours worked off-the-clock or recorded hours that Sayeh shaved from the time records. As a result, Sayeh failed to pay Mikich and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock at the end of their shifts.

Additionally, Sayeh failed to timely pay Mikich his final paycheck. Sayeh terminated Mikich on approximately March 15, 2019. However, Sayeh failed to issue Mikich his final paycheck until approximately March 18, 2019.

As a result, Sayeh failed to pay Mikich and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Sayeh has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Mikich seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: $100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and $200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

> Every person employing labor in this state shall:
>
> ...
>
> (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any

case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

> Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500).

Section 7 of the Wage Order states:

> (A) Every employer shall keep accurate information with respect to each employee including the following:
>
> (1) Full name, home address, occupation and social security number.
>
> (2) Birth date, if under 18 years, and designation as a minor.
>
> (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
>
> (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Sayeh failed to maintain for Mikich and the Aggrieved Employees accurate records of time worked and all wages earned, including off the clock work, worked deleted from time records, and unpaid meal and rest period premium wages as described above. As a result, Sayeh has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Mikich and the Aggrieved Employees. Accordingly, Mikich seeks civil penalties from Sayeh on behalf of himself and other Aggrieved Employees as follows:

1. $500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and

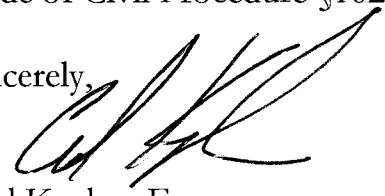
2. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699,

subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



Carl Kaplan, Esq.
carl@spivaklaw.com

cc: Charles Mikich
Walter Haines, Esq.

Sayeh Petroleum, Inc.
c/o Agent for Service of Process
Ed Bozorghadad
700 S Bernardo Avenue, Suite 103
Sunnyvale, CA 94087

EXHIBIT 3

DAVID G. SPIVAK (SBN 179684)
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Attorneys for Plaintiff,
CHARLES MIKICH, and all others similarly situated
(Additional Attorney for Plaintiff on Following Page)

ENDORSED
FILED
San Francisco County Superior Court

JAN 22 2020

CLERK OF THE COURT
BY: ANGELICA SUNGA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

CHARLES MIKICH, on behalf of himself and all others similarly situated,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; and DOES 1-50, inclusive,

Defendant(s).

Case No.: CGC-20-582305

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*).

JURY TRIAL DEMANDED

BY FAX

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
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Plaintiff CHARLES MIKICH (hereafter "Plaintiff"), on behalf of himself and all others similarly situated, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order") and the Business and Professions Code against defendants SAYEH PETROLEUM, INC., a California corporation; and DOES 1 through 50, inclusive (collectively "Defendants").

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated current and former employees who worked in California as non-exempt employees, including, but not limited to gas station workers and persons in similar positions, at any time during the period beginning four years prior to the filing of this action to the present, for unpaid wages and other related relief. These claims are based on Defendants' alleged failures to (1) provide all rest and meal periods, (2) compensate Plaintiff and the below-described Class for all hours worked at the correct rates of pay; (3) indemnify Plaintiff and the below-described Class for reasonable expenses incurred performing their duties, (4) provide accurate written wage statements, (5) timely pay wages upon termination of employment, and (6) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this class action.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff and the Class Members, inclusive of all relief, place more than $25,000 in controversy.

4. There is no basis for federal question subject matter jurisdiction in this case. Specifically, Plaintiff asserts claims on behalf of himself and the Class Members that solely arise under California law, rather than federal law.

5. There is also no basis for federal diversity jurisdiction in this case.

6. Venue is proper in San Francisco County pursuant to California Code of Civil Procedure § 395(a) and § 395.5 in that liability arose in San Francisco County because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or because each defendant is found, maintains offices, transacts business, and/or has an agent therein.

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PARTIES

7. Plaintiff CHARLES MIKICH is a resident of California.

8. Defendant SAYEH PETROLEUM, INC. is a corporation organized and existing under the laws of California based on Plaintiff's information and belief.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

10. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

11. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the Class in accordance with applicable California labor laws as alleged herein.

12. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

14. **Class Definition:** The Class is defined as follows: all persons Defendants

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employed in California as non-exempt employees, including but not limited to gas station clerks and persons in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is rendered in this action.

15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses and/or by limitation to particular issues.

16. **Numerosity:** The Class is so numerous that the joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of the Class, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

17. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class with all rest periods as required by section 11 of the Wage Order;

B. Whether Defendants failed to provide the Class with all off-duty meal periods as required by section 12 of the Wage Order;

C. Whether Defendants failed to compensate the Class Members at one hour's pay on days when Defendants failed to provide them with one or more meal periods in a workday.

D. Whether Defendants failed to compensate the Class Members at one hour's pay on days when Defendants failed to provide them with one or more off-duty meal periods in a workday;

E. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay;

F. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

G. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate and complete wage statements;

H. Whether Defendants knew or should have known that Class Members regularly worked over 40 hours per week and/or eight hours per day;

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I. Whether Defendants failed to pay Class Members overtime wages for time worked in excess of 40 hours per week and/or eight hours per day;

J. Whether Defendants failed to timely pay final wages upon termination of the Class Members' employment;

K. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class;

L. Whether the Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations;

M. Whether the Class Members are entitled to prejudgment interest; and

N. Are the Class Members entitled to attorneys' fees?

18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class.

20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and the absent Class.

21. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of class' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the

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potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

22. On approximately January 5, 2018, Defendants first employed Plaintiff to work in California as a gas station clerk at their gas station located at 1200 La Playa Street in San Francisco, California. Defendants continuously employed Plaintiff from that time until approximately March 15, 2019, when his employment ended. At all relevant times, the position of gas station clerk was an hourly, nonexempt position.

23. Plaintiff and the Class Members earned their wages at an hourly rate and Defendants provided them with paychecks on a bi-weekly basis. At relevant times, Plaintiff and the Class Members worked shifts in excess of eight hours, worked between five and seven days in a workweek, and also worked over 40 hours in a workweek.

24. At all relevant times, as a result of their staffing choices, Defendants failed to provide Plaintiff and the Class with an off-duty, 30-minute meal period before the end of the fifth hour worked. Defendants typically scheduled Plaintiff and the Class to work shifts during which only one individual was on duty. As a result of this understaffing, Defendants prohibited Plaintiff and the Class from taking off-duty meal periods. On information and belief, neither Plaintiff nor the Class entered into on-duty meal period agreements with Defendants.

25. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class to take a ten-minute, paid, duty-free rest break every four hours or major fraction thereof. As a result of its inadequate staffing (discussed above), Defendants failed to provide duty-free rest periods to Plaintiff and the Class. At the start of his employment, Plaintiff asked his manager, Nasser (last name unknown), what time he would get his breaks. Nasser simply laughed in response. Defendants have not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement.

26. Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class with all timely meal and rest periods.

27. Defendants further required Plaintiff and the Class to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Defendants.

28. At all relevant times, Defendants failed to compensate Plaintiff and the Class Members for all hours worked by requiring them to engage in work after clocking out at the end

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of their scheduled shifts. Defendants instructed Plaintiff and the Class to clock out after exactly eight hours of work. Defendants directed Plaintiff and the Class to perform additional tasks after they were clocked out, including cleaning the store, reviewing inventory, and locking up. These tasks would take approximately 20 to 30 minutes to complete.

29. Defendants required Plaintiff and the Class to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Defendants failed to pay one and one half times (1 ½ x) the hourly rates of pay of Plaintiff and the Class by failing by failing to pay for off-the-clock work performed by Plaintiff and the Class after clocking out at the end of their shifts.

30. Further, Defendants failed to pay Plaintiff and the Class for all hours worked by rounding down their work times. In the instances in which Plaintiff and the Class recorded more than eight hours in a given workday, Defendants edited their time records to state that they had only worked eight or fewer hours. As a result, Defendants failed to compensate Plaintiff and the Class for the additional time that Defendants removed from their time records. Because Plaintiff worked eight-hour shifts, Defendants were required to pay him overtime pay for these times.

31. Defendants failed to maintain accurate written employee records pertaining to Plaintiff and the Class, including accurate wage statements itemizing each Class Member's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Class Member, and other requirements of California Labor Code § 226.

32. At all relevant times, upon resignation or termination, Defendants failed to pay final wages in a timely manner as a result of their failure to pay employees for all work performed off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for off the clock work performed before the beginning of their shifts, during meal periods, and after clocking out at the end of their shifts. Further, Defendants failed to timely pay Plaintiff upon terminating his employment. Defendants terminated Plaintiff's employment on approximately March 15, 2019. However, Defendants failed to issue Plaintiff his final paycheck until approximately March 18, 2019.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

33. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

34. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

35. In relevant part, California Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

36. In relevant part, California Labor Code § 512 states:

> An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.
>
> An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

37. In relevant part, Section 12 of the Wage Order states:

> **Rest Periods**
>
> (A) "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2)

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hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided."

38. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

39. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of

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> Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

40. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

41. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

42. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods and rest breaks required by California law.

43. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period.

44. By reason of the above, pursuant to California Labor Code section 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them, and for workdays in which one or more rest breaks were not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

45. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

46. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code § § 510, 1194, 1197, 1198, and the Wage Order.

47. Section 2 of the Wage Order defines "hours worked" as "the time during which

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an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

48. Section 3 of the Wage Order states:

(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 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
>
> (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 of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek.
>
> (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

49. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

50. Labor Code section 510 states:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of

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> pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

51. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

52. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

53. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

54. In conjunction, these provisions of the California Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

55. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to him and the Class Members with respect to working conditions and compensation arrangements.

56. At all relevant times, Defendants paid Plaintiff and the Class Members at an hourly rate of pay on a bi-weekly basis.

57. At all relevant times, Defendants failed to pay Plaintiff and the Class Members for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime wages for all regular and overtime hours they worked while clocked out, as well as all wages for work they performed and recorded in excess of eight hours in a workday, that Defendants subsequently removed from their time records.

58. Plaintiff is informed and believes and thereon alleges that, at all relevant times,

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Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate the Class for all hours worked at the correct rate of pay as required by California law.

59. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent that they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

60. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

61. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

62. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802 and the Wage Order.

63. In pertinent part, California Labor Code § 2802(a) states:

> "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

64. Section 9(B) of the Wage Order states:

> When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

65. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

66. At relevant times during the applicable limitations period, Defendants required

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Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the Class Members to use personal cell phones to communicate with Defendants as a necessary condition of employment. Defendants, however, failed to reimburse Plaintiff and the Class Members for these expenses.

67. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

68. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

69. Accordingly, with respect to this cause of action, on behalf of himself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

71. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing, among other items, 1) gross wages earned; 2) total hours worked, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

72. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from

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the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

73. "Promptly and easily determine," as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

74. As alleged herein, Defendants failed to provide Plaintiff and the Class Members all wages owed, including but not limited to, all regular and overtime wages owed at the correct rates for work performed off-the-clock. As a result, Defendants have failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees, and other requirements of California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

75. Defendants' failure to provide Plaintiff and the Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Class with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

76. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the Class have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and

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expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

77. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to recover the greater of actual damages, or penalties of fifty dollars ($50.00) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars ($100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000.00) per Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

79. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201-203 and the Wage Order.

80. California Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

81. California Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

82. By failing to pay earned regular and overtime wages to Plaintiff and the Class Members at the correct rates, Defendants failed to timely pay them all earned and unpaid wages in violation of California Labor Code § 201 or § 202.

83. Moreover, Defendants failed to timely issue Plaintiff his final paycheck. Defendants terminated Plaintiff on approximately March 15, 2019. However, Defendants failed to issue Plaintiff his final paycheck until approximately March 18, 2019.

84. Plaintiff is informed and believes that Defendants' failures to timely pay all final

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wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally adopted and maintained policies or practices that are incompatible with those requirements.

85. California Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with California Labor Code § 201 or § 202.

86. Pursuant to California Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff and the Class against all Defendants)

87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

88. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

89. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, reimburse their employees for reasonable expenses incurred during the course of performing their duties, and pay them all earned wages for all regular and overtime hours worked.

90. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and have lost money or property. Defendants deprived Plaintiff and the Class Members of minimum wages, overtime wages, premium wages for all workdays one or more meal periods was not provided, premium wages for all workdays a rest period was not provided, and reimbursement for expenses that Plaintiff and the other Class Members incurred during the course of performing their duties.

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91. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

92. Plaintiff and the Class are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

93. Accordingly, with respect to this cause of action, on behalf of himself and the Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages;

E. Actual damages;

F. Statutory damages;

G. Liquidated damages;

H. Restitution;

I. Declaratory relief;

J. Equitable relief;

K. Statutory penalties;

L. Pre-judgment and post-judgment interest;

M. Costs of suit;

N. Interest;

O. Reasonable attorneys' fees; and

P. Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: January 21, 2020

By: _____
DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, CHARLES MIKICH and all others similarly situated

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EXHIBIT 4

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Attorneys for Plaintiff,
CHARLES MIKICH, and all others similarly situated
(Additional Attorney for Plaintiff on Following Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

CHARLES MIKICH, on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; and DOES 1-50, inclusive,

Defendant(s).

Case No.: CGC-20-582385

CLASS ACTION

[PROPOSED] FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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Plaintiff CHARLES MIKICH (hereafter "Plaintiff"), on behalf of himself and all others similarly situated, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class and representative action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order") and the Business and Professions Code against defendants SAYEH PETROLEUM, INC., a California corporation; and DOES 1 through 50, inclusive (collectively "Defendants").

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated current and former employees who worked in California as non-exempt employees, including, but not limited to gas station workers and persons in similar positions, at any time during the period beginning four years prior to the filing of this action to the present, for unpaid wages and other related relief. These claims are based on Defendants' alleged failures to (1) provide all rest and meal periods, (2) compensate Plaintiff and the below-described Class for all hours worked at the correct rates of pay; (3) indemnify Plaintiff and the below-described Class for reasonable expenses incurred performing their duties, (4) provide accurate written wage statements, (5) timely pay wages upon termination of employment, and (6) fairly compete. Additionally, Plaintiff seeks civil penalties under the California Labor Code Private Attorneys General Act, Labor Code §§ 2698, *et seq.* ("PAGA"). Accordingly, Plaintiff now seeks to recover civil penalties, unpaid wages and related relief through this class action.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff and the Class Members, inclusive of all relief, place more than $25,000 in controversy.

4. There is no basis for federal question subject matter jurisdiction in this case. Specifically, Plaintiff asserts claims on behalf of himself and the Class Members that solely arise under California law, rather than federal law.

5. There is also no basis for federal diversity jurisdiction in this case.

6. Venue is proper in San Francisco County pursuant to California Code of Civil Procedure § 395(a) and § 395.5 in that liability arose in San Francisco County because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or

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because each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

7. Plaintiff CHARLES MIKICH is a resident of California. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations Section 11160 and an "aggrieved employee" within the meaning of Labor Code Section 2699(c).

8. Defendant SAYEH PETROLEUM, INC. is a corporation organized and existing under the laws of California based on Plaintiff's information and belief.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

10. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

11. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the Class in accordance with applicable California labor laws as alleged herein.

12. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest

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among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

14. **Class Definition:** The Class is defined as follows: all persons Defendants employed in California as non-exempt employees, including but not limited to gas station clerks and persons in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is rendered in this action.

15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses and/or by limitation to particular issues.

16. **Numerosity:** The Class is so numerous that the joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of the Class, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

17. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class with all rest periods as required by section 11 of the Wage Order;

B. Whether Defendants failed to provide the Class with all off-duty meal periods as required by section 12 of the Wage Order;

C. Whether Defendants failed to compensate the Class Members at one hour's pay on days when Defendants failed to provide them with one or more meal periods in a workday.

D. Whether Defendants failed to compensate the Class Members at one hour's pay on days when Defendants failed to provide them with one or more off-duty meal periods in a workday;

E. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay;

F. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

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G. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate and complete wage statements;

H. Whether Defendants knew or should have known that Class Members regularly worked over 40 hours per week and/or eight hours per day;

I. Whether Defendants failed to pay Class Members overtime wages for time worked in excess of 40 hours per week and/or eight hours per day;

J. Whether Defendants failed to timely pay final wages upon termination of the Class Members' employment;

K. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class;

L. Whether the Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations;

M. Whether the Class Members are entitled to prejudgment interest; and

N. Are the Class Members entitled to attorneys' fees?

18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class.

20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and the absent Class.

21. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of class' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary

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amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

22. On approximately January 5, 2018, Defendants first employed Plaintiff to work in California as a gas station clerk at their gas station located at 1200 La Playa Street in San Francisco, California. Defendants continuously employed Plaintiff from that time until approximately March 15, 2019, when his employment ended. At all relevant times, the position of gas station clerk was an hourly, nonexempt position.

23. Plaintiff and the Class Members earned their wages at an hourly rate and Defendants provided them with paychecks on a bi-weekly basis. At relevant times, Plaintiff and the Class Members worked shifts in excess of eight hours, worked between five and seven days in a workweek, and also worked over 40 hours in a workweek.

24. At all relevant times, as a result of their staffing choices, Defendants failed to provide Plaintiff and the Class with an off-duty, 30-minute meal period before the end of the fifth hour worked. Defendants typically scheduled Plaintiff and the Class to work shifts during which only one individual was on duty. As a result of this understaffing, Defendants prohibited Plaintiff and the Class from taking off-duty meal periods. On information and belief, neither Plaintiff nor the Class entered into on-duty meal period agreements with Defendants.

25. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class to take a ten-minute, paid, duty-free rest break every four hours or major fraction thereof. As a result of its inadequate staffing (discussed above), Defendants failed to provide duty-free rest periods to Plaintiff and the Class. At the start of his employment, Plaintiff asked his manager, Nasser (last name unknown), what time he would get his breaks. Nasser simply laughed in response. Defendants have not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement.

26. Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class with all timely meal and rest periods.

27. Defendants further required Plaintiff and the Class to incur certain business

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expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Defendants.

28. At all relevant times, Defendants failed to compensate Plaintiff and the Class Members for all hours worked by requiring them to engage in work after clocking out at the end of their scheduled shifts. Defendants instructed Plaintiff and the Class to clock out after exactly eight hours of work. Defendants directed Plaintiff and the Class to perform additional tasks after they were clocked out, including cleaning the store, reviewing inventory, and locking up. These tasks would take approximately 20 to 30 minutes to complete.

29. Defendants required Plaintiff and the Class to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Defendants failed to pay one and one half times (1 ½ x) the hourly rates of pay of Plaintiff and the Class by failing by failing to pay for off-the-clock work performed by Plaintiff and the Class after clocking out at the end of their shifts.

30. Further, Defendants failed to pay Plaintiff and the Class for all hours worked by rounding down their work times. In the instances in which Plaintiff and the Class recorded more than eight hours in a given workday, Defendants edited their time records to state that they had only worked eight or fewer hours. As a result, Defendants failed to compensate Plaintiff and the Class for the additional time that Defendants removed from their time records. Because Plaintiff worked eight-hour shifts, Defendants were required to pay him overtime pay for these times.

31. Defendants failed to maintain accurate written employee records pertaining to Plaintiff and the Class, including accurate wage statements itemizing each Class Member's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Class Member, and other requirements of California Labor Code § 226.

32. At all relevant times, upon resignation or termination, Defendants failed to pay final wages in a timely manner as a result of their failure to pay employees for all work performed off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for off the clock work performed before the beginning of their shifts, during meal periods, and after clocking out at the end of their shifts. Further, Defendants failed to timely pay Plaintiff upon terminating his employment. Defendants terminated Plaintiff's employment on approximately March 15, 2019. However, Defendants failed to issue Plaintiff his final paycheck until approximately March 18, 2019.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

33. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

34. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

35. In relevant part, California Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

36. In relevant part, California Labor Code § 512 states:

> An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.
>
> An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

37. In relevant part, Section 12 of the Wage Order states:

> **Rest Periods**
>
> (A) "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees

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whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided."

38. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

39. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational

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> Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

40. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

41. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

42. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods and rest breaks required by California law.

43. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period.

44. By reason of the above, pursuant to California Labor Code section 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them, and for workdays in which one or more rest breaks were not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

45. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

46. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code § § 510, 1194, 1197, 1198, and the Wage Order.

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47. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

48. Section 3 of the Wage Order states:

(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 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
>
> (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 of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek.
>
> (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

49. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

50. Labor Code section 510 states:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

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> seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

51. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

52. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

53. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

54. In conjunction, these provisions of the California Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

55. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to him and the Class Members with respect to working conditions and compensation arrangements.

56. At all relevant times, Defendants paid Plaintiff and the Class Members at an hourly rate of pay on a bi-weekly basis.

57. At all relevant times, Defendants failed to pay Plaintiff and the Class Members for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime wages for all regular and overtime hours they worked while clocked out, as well as all wages for work they performed and recorded in excess of eight hours in a workday, that Defendants subsequently removed from their time records.

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58. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate the Class for all hours worked at the correct rate of pay as required by California law.

59. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent that they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

60. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

61. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

62. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802 and the Wage Order.

63. In pertinent part, California Labor Code § 2802(a) states:

> "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

64. Section 9(B) of the Wage Order states:

> When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

65. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

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66. At relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the Class Members to use personal cell phones to communicate with Defendants as a necessary condition of employment. Defendants, however, failed to reimburse Plaintiff and the Class Members for these expenses.

67. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

68. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

69. Accordingly, with respect to this cause of action, on behalf of himself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

71. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing, among other items, 1) gross wages earned; 2) total hours worked, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

72. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by

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California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

73. "Promptly and easily determine," as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

74. As alleged herein, Defendants failed to provide Plaintiff and the Class Members all wages owed, including but not limited to, all regular and overtime wages owed at the correct rates for work performed off-the-clock. As a result, Defendants have failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees, and other requirements of California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

75. Defendants' failure to provide Plaintiff and the Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Class with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

76. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the Class have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and

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mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

77. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to recover the greater of actual damages, or penalties of fifty dollars ($50.00) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars ($100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000.00) per Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

79. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201-203 and the Wage Order.

80. California Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

81. California Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

82. By failing to pay earned regular and overtime wages to Plaintiff and the Class Members at the correct rates, Defendants failed to timely pay them all earned and unpaid wages in violation of California Labor Code § 201 or § 202.

83. Moreover, Defendants failed to timely issue Plaintiff his final paycheck. Defendants terminated Plaintiff on approximately March 15, 2019. However, Defendants failed to issue Plaintiff his final paycheck until approximately March 18, 2019.

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84. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally adopted and maintained policies or practices that are incompatible with those requirements.

85. California Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with California Labor Code § 201 or § 202.

86. Pursuant to California Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff and the Class against all Defendants)

87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

88. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

89. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, reimburse their employees for reasonable expenses incurred during the course of performing their duties, and pay them all earned wages for all regular and overtime hours worked.

90. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and have lost money or property. Defendants deprived Plaintiff and the Class Members of minimum wages, overtime wages, premium wages for all workdays one or more meal periods was not provided, premium wages for all workdays a rest period was not provided, and reimbursement for expenses that Plaintiff and the other Class

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Members incurred during the course of performing their duties.

91. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

92. Plaintiff and the Class are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

93. Accordingly, with respect to this cause of action, on behalf of himself and the Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

95. Labor Code § 204 states

> (a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and last day, inclusive, of any calendar month, shall be paid between the 1st and 10th day of the following month. . . .
>
> (b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.
>
> (2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.
>
> (c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall

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apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

96. Defendants paid wages to employees on bi-weekly intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked, including, but not limited to, regular and overtime wages for all regular and overtime hours they worked while clocked out, as well as all wages for work they performed and recorded in excess of eight hours in a workday, that Defendants subsequently removed from their time records. On information and belief, Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such intervals for all wages earned and all hours worked.

97. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

98. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

99. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars ($250.00) for each aggrieved employee for initial violations and one thousand dollars ($1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars ($50.00) for each aggrieved employee for initial violations and one hundred dollars ($100.00) for each aggrieved employee for each subsequent violation, per pay period (penalty amounts

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established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars ($500.00) for each aggrieved employee for each violation (penalty amounts established by California Labor Code § 1174.5).

E. For violations of California Labor Code § 1197, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial and intentional violation and two hundred fifty dollars ($250.00) for each aggrieved employee per pay period for each subsequent violation (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and 1198, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

100. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated January 16, 2020, Plaintiff filed written notice online with the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories in support of the alleged violations. Plaintiff accompanied his LWDA notice with a fee in the amount of $75.00. A true and correct copy of Plaintiff's letter to the LWDA dated January 16, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff's letter.

101. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved employees are entitled to an award of civil penalties, reasonable attorneys' fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action;

B. An order that Plaintiff be appointed class representative;

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C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages;

E. Actual damages;

F. Statutory damages;

G. Liquidated damages;

H. Restitution;

I. Declaratory relief;

J. Equitable relief;

K. Statutory penalties;

L. Civil Penalties;

M. Pre-judgment and post-judgment interest;

N. Costs of suit;

O. Interest;

P. Reasonable attorneys' fees; and

Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 11, 2020

By: _____

DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, CHARLES MIKICH and all others similarly situated

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EXHIBIT A

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SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 16, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
http://dir.tflaforms.net
Via Electronic Submission

RE: *Charles Mikich / Sayeh Petroleum, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Charles Mikich (hereafter "Mikich") provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to gas station clerks and workers employed in comparable positions (hereafter "Aggrieved Employees") by Sayeh Petroleum, Inc., a California corporation and gas station operator (hereafter "Sayeh"), of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Sayeh has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Mikich and the Aggrieved Employees are "employees" within the meaning of Wage Order 7-2001 (hereafter "the Wage Order") § 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

Sayeh employed Mikich as a gas station clerk from approximately January 5, 2018 to approximately March 15, 2019 at its gas station located at 1200 La Playa Street in San Francisco, California. At all relevant times, Mikich resided in California.

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At all relevant times, Sayeh employed Mikich and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Sayeh classified Mikich and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Sayeh failed to provide Mikich and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Sayeh typically scheduled Mikich and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Sayeh prohibited Mikich and the Aggrieved Employees from taking off-duty meal periods. Neither Mikich nor the Aggrieved Employees entered into on duty meal period agreements with Sayeh.

At all relevant times, Sayeh failed to authorize and permit Mikich and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. As a result of its inadequate staffing (discussed above), Sayeh failed to provide duty-free rest periods to Mikich and the Aggrieved Employees. At the start of his employment, Mikich asked his manager, Nasser (last name unknown), what time he would get his breaks. Nasser simply laughed in response. Sayeh has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement.

Sayeh failed to pay premium wages for days on which it failed to provide Mikich and the Aggrieved Employees with all timely meal and rest periods.

Sayeh further required Mikich and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Sayeh.

At all relevant times, Sayeh failed to compensate Mikich and the Aggrieved Employees for all hours worked by requiring Mikich and the Aggrieved Employees to engage in work after clocking out at the end of their scheduled shifts. Sayeh instructed Mikich and the Aggrieved Employees to clock out after

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exactly eight hours of work. Sayeh directed them to perform additional tasks after they were clocked out, including cleaning the store, reviewing inventory, and locking up. These tasks would take approximately 20 to 30 minutes to complete.

Sayeh required Mikich and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Sayeh failed to pay one and one half times (1 ½ x) the hourly rates of pay of Mikich and the Aggrieved Employees by failing to pay for off-the-clock work performed by Mikich and the Aggrieved Employees after clocking out at the end of their shifts.

Further, Sayeh failed to pay Mikich and the Aggrieved Employees for all hours worked by rounding down their work times. In the instances in which Mikich and the Aggrieved Employees recorded more than eight hours in a given workday, Sayeh edited their time records to state that they had only worked eight or fewer hours. As a result, Sayeh failed to compensate Mikich and the Aggrieved Employees for the additional time that Sayeh shaved from their time records. Because Mikich worked eight-hour shifts, Sayeh was required to pay him overtime pay for these times.

As set forth below, Mikich alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

a) Sayeh failed to provide Mikich and the Aggrieved Employees with all meal periods as required by law;

b) Sayeh failed to provide Mikich and the Aggrieved Employees with all rest periods as required by law;

c) Sayeh failed to compensate Mikich and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more meal periods in a workday;

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d) Sayeh failed to compensate Mikich and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more rest periods in a workday;

e) Sayeh failed to pay Mikich and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;

f) Sayeh failed to indemnify Mikich and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

g) Sayeh failed to timely pay Mikich and the Aggrieved Employees all earned and unpaid wages during employment; and

h) Sayeh failed to timely pay Mikich and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Mikich now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Sayeh's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include:

> "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities as wholesale or retail; or for the purpose of renting goods or commodities."

§ 2(H).

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At all relevant times during the applicable limitations period, Sayeh operated gas stations for the purpose of retailing gasoline. Accordingly, Mikich and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

> Rest Periods:
>
> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the

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employee's regular rate of compensation for each workday that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

> An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.
>
> An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

> Meal Periods:
>
> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
>
> ...
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the

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employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

By not providing adequate staff to relieve its hourly employees of their duties, Sayeh has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Mikich and the Aggrieved Employees as required by law. In failing to do so, Sayeh violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Mikich seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and $100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and

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3. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states,

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

> (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

> (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

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> 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 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek.
>
> (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 of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Sayeh knowingly failed to pay Mikich and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed after clocking out at the end of their shifts.

Accordingly, Mikich seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and $200 for each Aggrieved Employee for each

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subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and

3. $100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and $250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

At all relevant times during the applicable limitations period, Sayeh required Mikich and the Aggrieved Employees to use personal mobile telephones to communicate with Sayeh as a necessary condition of employment. Sayeh failed to indemnify Mikich and the Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Mikich seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: $100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and $200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).
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Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

1) Gross wages earned

2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

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 only the last four digits of his or her social security number or an employee identification 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.

At relevant times during the applicable limitations period, Sayeh violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,

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the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Sayeh failed to state in the wage statements it issued to Sayeh and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed after clocking out at the ends of their shifts as described above.

Accordingly, Mikich now seeks civil penalties for the Labor Code violations that Sayeh has committed against him and the other Aggrieved Employees as follows: $250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and $1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Sayeh's failure to pay Mikich and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Sayeh failed to timely pay all wages due during employment. Accordingly, Mikich seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

(1) $100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and

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(2) $200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment (Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, 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 previous 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. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As explained above, Sayeh failed to pay Mikich and the other Aggrieved Employees all wages owed for hours worked off-the-clock or recorded hours that Sayeh shaved from the time records. As a result, Sayeh failed to pay Mikich and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock at the end of their shifts.

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Additionally, Sayeh failed to timely pay Mikich his final paycheck. Sayeh terminated Mikich on approximately March 15, 2019. However, Sayeh failed to issue Mikich his final paycheck until approximately March 18, 2019.

As a result, Sayeh failed to pay Mikich and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Sayeh has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Mikich seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: $100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and $200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

> Every person employing labor in this state shall:
>
> ...
>
> (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any

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case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500).

Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

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(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Sayeh failed to maintain for Mikich and the Aggrieved Employees accurate records of time worked and all wages earned, including off the clock work, worked deleted from time records, and unpaid meal and rest period premium wages as described above. As a result, Sayeh has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Mikich and the Aggrieved Employees. Accordingly, Mikich seeks civil penalties from Sayeh on behalf of himself and other Aggrieved Employees as follows:

1. $500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and

2. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

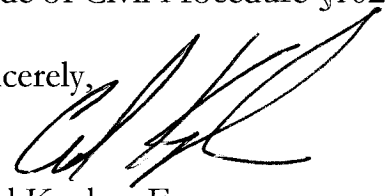
Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699,

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subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



Carl Kaplan, Esq.
carl@spivaklaw.com
cc: Charles Mikich
Walter Haines, Esq.

Sayeh Petroleum, Inc.
c/o Agent for Service of Process
Ed Bozorghadad
700 S Bernardo Avenue, Suite 103
Sunnyvale, CA 94087

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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Monday, May 11, 2020, On Monday, May 11, 2020, I caused to have electronically served the following document described as **CLASS ACTION [PROPOSED] FIRST AMENDED COMPLAINT FOR: 1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198); 2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198); 3. Failure to Indemnify (Lab. Code §§ 1198 and 2802); 4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226); 5. Waiting Time Penalties (Lab. Code §§ 201-203); 6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and 7. Civil Penalties (Lab. Code §§ 2698, et seq.).** with the email listed below:

Stephen W. Cusick, Esq.
Nielsen Haley & Abbott LLP
100 Smith Ranch Rd, Suite 350
San Rafael, CA 94903
steve@cusick.law
scusick@nielsenhaley.com

____(BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203, Encino, California 91436.

XXXX (BY EMAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address silvia@spivaklaw.com.

EXECUTED on Monday, May 11, 2020, at Encino, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



SILVIA KIROLLOS

EXHIBIT 5

Stephen W. Cusick, Attorney (SBN 111353)
100 Smith Ranch Road, Suite 350
Telephone: (415) 248-0166
Facsimile: (415) 693-9674

steve@cusick@law

Attorneys for defendant Sayeh Petroleum Inc.

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
03/13/2020
Clerk of the Court
BY: MADONNA CARANTO
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CHARLES MIKICH, on behalf of himself and all others similarly situated, Plaintiffs, vs. SAYEY PETROLEUM INC., a California corporation, and Does 1 through 50, inclusive, Defendants.	Case No.: **CGC-20-582385** **SAYEH PETROLEUM INC.'s ANSWER TO COMPLAINT** **No trial date set.**

Defendant SAYEH PETROLEUM INC. answers the complaint in this matter as follows:

GENERAL DENIAL

1. Defendant denies each and every allegation in the complaint and denies that plaintiff or the alleged plaintiff class, or any of them, have been damaged in any sum, or at all.

AFFIRMATIVE DEFENSES

2. As a first affirmative defense to the complaint, and each cause of action alleged therein, defendant alleges that the complaint fails to state a cause of action.

3. As a second affirmative defense to the complaint, and each cause of action alleged therein, defendant alleges that the complaint and claims made therein are barred in whole or in part by the applicable statutes of limitations for alleged violations of statutes or relief under applicable statutes, including but not limited to Cal. Bus. & Prof. Code § 17200 et seq.

4. As a third affirmative defense to the complaint, and each cause of action alleged therein, defendant alleges that the complaint is barred by the doctrine of laches.

Wherefore, defendant requests judgment in its favor, costs of suit, and all other appropriate relief.

DATED: February 28, 2020

STEPHEN W. CUSICK, ATTORNEY

By _____
Stephen W. Cusick
Attorneys for defendant Sayeh Petroleum Inc.

CHARLES MIKICH and others similarly situated v. SAYEH PETROLEUM INC., et al., CASE NO. CGC-20-582385

PROOF OF SERVICE

I declare that:

I am a citizen of the United States, employed in the County of Marin. I am over the age of eighteen years, and not a party to the within cause. My business address is 100 Smith Ranch Road, Suite 350, San Rafael, California 94903. On the date set forth below, I served true and correct copies of the following document(s) described as follows:

ANSWER BY DEFENDANT SAYEH PETROLEUM INC. TO COMPLAINT

[ ] (BY CM/ECF NOTICE OF ELECTRONIC FILING) I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

[X] (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Rafael, California.

[X] (By ELECTRONIC SERVICE) by transmitting via email the document(s) listed above to the email address(es) set forth below on this date.

Attorneys for plaintiffs CHARLES MIKICH and all others similarly situated:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 28, 2019 at San Rafael, California.

STEPHEN W. CUSICK

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Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
and Green Planet Gas, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CHARLES MIKICH, an individual,

Plaintiff,

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., a California corporation; and DOES 7-50,

Defendants.

Case No. CGC-20-582385

ANSWER – GREEN PLANET GAS, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

Defendant Green Planet Gas, Inc. ("Defendant") hereby answers the Complaint filed by Charles Mikich ("Plaintiff") as follows:

GENERAL DENIAL

In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies both generally and specifically each and every allegation contained in the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses. Defendant currently has insufficient information available upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates such additional defendants would be appropriate.

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

The Complaint, and every cause of action therein, fails to state facts sufficient to constitute any claim or cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Some or all of Plaintiff's causes of action are barred by the applicable statutes of limitations, including California Code of Civil Procedure section 338.

THIRD AFFIRMATIVE DEFENSE

(WAIVER, ESTOPPEL, AND CONSENT)

The Complaint, and every cause of action therein, is barred by the doctrines of waiver, estoppel, and/or consent. Plaintiff's causes of action relating to the provision of meal and rest periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their off-duty meal periods, including for workdays in which they worked six hours or less, and for workdays in which they worked more than ten and no more than twelve hours. To the extent Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

inter alia, Plaintiff and/or the putative class members, through his and their actions and representations, led Defendant to believe that he and they were properly paid and received all wages to which he and they were legally entitled.

FOURTH AFFIRMATIVE DEFENSE

(GOOD FAITH)

The Complaint, and every cause of action therein, is barred because Defendant's alleged acts or omissions, if any, were made in good faith and were not willful or intentional. Defendant had reasonable grounds for believing that the alleged acts or omissions did not violate any California Labor Code provision, any orders issued by the Industrial Welfare Commission, or California Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because any failure by Defendant to pay wages upon termination was based on a good faith dispute as to whether any claimed pay was owed.

FIFTH AFFIRMATIVE DEFENSE

(ON-DUTY MEAL PERIOD AGREEMENTS)

To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff and other putative class members prevented Plaintiff and other putative class members from taking any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and putative class members worked pursuant to on-duty meal period agreements.

SIXTH AFFIRMATIVE DEFENSE

(PRIOR CLAIMS)

The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff or any putative class member pursued any claims before the California Labor Commissioner, Division of Labor Standards Enforcement, or the United States Department of Labor. The Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata, collateral estoppel, or the doctrine barring duplicative litigation.

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SEVENTH AFFIRMATIVE DEFENSE

(RELEASE)

The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff and/or putative class members have released such claims by prior agreement with Defendant and/or associated entities.

EIGHTH AFFIRMATIVE DEFENSE

(DE MINIMIS TIME)

Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has requested payment (and/or penalties) and for which Plaintiff was not compensated was too insubstantial or insignificant to be precisely recorded for payroll purposes.

NINTH AFFIRMATIVE DEFENSE

(LABOR CODE 2856)

Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially comply with directions regarding their work when they failed to promptly report any missed meal or rest periods or payroll errors.

TENTH AFFIRMATIVE DEFENSE

(AVOIDABLE CONSEQUENCES)

Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or policies and promptly reported any missed meal or rest periods and/or payroll errors.

ELEVENTH AFFIRMATIVE DEFENSE

(EXCESSIVE FINE)

An award of penalties against Defendant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

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TWELFTH AFFIRMATIVE DEFENSE

(OFFSET)

If any damages have been sustained by Plaintiff and/or the putative class members, Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra payments or overpayments against any judgment that may be entered against it.

THIRTEENTH AFFIRMATIVE DEFENSE

(UNNECESSARY BUSINESS EXPENSES)

Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in whole or in part because any alleged expenditures or losses were not necessary and/or were not the direct consequence of the discharge of Plaintiff's and/or the putative class members' employment duties to Defendant or because Plaintiff and/or the putative class members failed to submit to Defendant any proof or documents showing that any alleged expenditures or losses were necessary and were made in the direct consequence of the discharge of their employment duties to Defendant.

Dated: September 16, 2021

Respectfully submitted,

LAWSON & LAWSON LLP

By: _____*/s/ Lisa G. Lawson*_____
Lisa G. Lawson
Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.; Hadad Enterprise, Inc.; Hadad Petroleum, Inc.; Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.; and Green Planet Gas, Inc.

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Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
and Green Planet Gas, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CHARLES MIKICH, an individual,

Plaintiff,

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., a California corporation; and DOES 7-50,

Defendants.

Case No. CGC-20-582385

ANSWER – HOUTAN PETROLEUM, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

Defendant Houtan Petroleum, Inc. ("Defendant") hereby answers the Complaint filed by Charles Mikich ("Plaintiff") as follows:

GENERAL DENIAL

In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies both generally and specifically each and every allegation contained in the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses. Defendant currently has insufficient information available upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates such additional defendants would be appropriate.

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

The Complaint, and every cause of action therein, fails to state facts sufficient to constitute any claim or cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Some or all of Plaintiff's causes of action are barred by the applicable statutes of limitations, including California Code of Civil Procedure section 338.

THIRD AFFIRMATIVE DEFENSE

(WAIVER, ESTOPPEL, AND CONSENT)

The Complaint, and every cause of action therein, is barred by the doctrines of waiver, estoppel, and/or consent. Plaintiff's causes of action relating to the provision of meal and rest periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their off-duty meal periods, including for workdays in which they worked six hours or less, and for workdays in which they worked more than ten and no more than twelve hours. To the extent Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

inter alia, Plaintiff and/or the putative class members, through his and their actions and representations, led Defendant to believe that he and they were properly paid and received all wages to which he and they were legally entitled.

FOURTH AFFIRMATIVE DEFENSE

(GOOD FAITH)

The Complaint, and every cause of action therein, is barred because Defendant's alleged acts or omissions, if any, were made in good faith and were not willful or intentional. Defendant had reasonable grounds for believing that the alleged acts or omissions did not violate any California Labor Code provision, any orders issued by the Industrial Welfare Commission, or California Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because any failure by Defendant to pay wages upon termination was based on a good faith dispute as to whether any claimed pay was owed.

FIFTH AFFIRMATIVE DEFENSE

(ON-DUTY MEAL PERIOD AGREEMENTS)

To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff and other putative class members prevented Plaintiff and other putative class members from taking any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and putative class members worked pursuant to on-duty meal period agreements.

SIXTH AFFIRMATIVE DEFENSE

(PRIOR CLAIMS)

The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff or any putative class member pursued any claims before the California Labor Commissioner, Division of Labor Standards Enforcement, or the United States Department of Labor. The Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata, collateral estoppel, or the doctrine barring duplicative litigation.

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SEVENTH AFFIRMATIVE DEFENSE

(RELEASE)

The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff and/or putative class members have released such claims by prior agreement with Defendant and/or associated entities.

EIGHTH AFFIRMATIVE DEFENSE

(DE MINIMIS TIME)

Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has requested payment (and/or penalties) and for which Plaintiff was not compensated was too insubstantial or insignificant to be precisely recorded for payroll purposes.

NINTH AFFIRMATIVE DEFENSE

(LABOR CODE 2856)

Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially comply with directions regarding their work when they failed to promptly report any missed meal or rest periods or payroll errors.

TENTH AFFIRMATIVE DEFENSE

(AVOIDABLE CONSEQUENCES)

Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or policies and promptly reported any missed meal or rest periods and/or payroll errors.

ELEVENTH AFFIRMATIVE DEFENSE

(EXCESSIVE FINE)

An award of penalties against Defendant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

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TWELFTH AFFIRMATIVE DEFENSE

(OFFSET)

If any damages have been sustained by Plaintiff and/or the putative class members, Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra payments or overpayments against any judgment that may be entered against it.

THIRTEENTH AFFIRMATIVE DEFENSE

(UNNECESSARY BUSINESS EXPENSES)

Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in whole or in part because any alleged expenditures or losses were not necessary and/or were not the direct consequence of the discharge of Plaintiff's and/or the putative class members' employment duties to Defendant or because Plaintiff and/or the putative class members failed to submit to Defendant any proof or documents showing that any alleged expenditures or losses were necessary and were made in the direct consequence of the discharge of their employment duties to Defendant.

Dated: September 16, 2021

Respectfully submitted,

LAWSON & LAWSON LLP

By: _____*/s/ Lisa G. Lawson*_____
Lisa G. Lawson
Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.; Hadad Enterprise, Inc.; Hadad Petroleum, Inc.; Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.; and Green Planet Gas, Inc.

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Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
and Green Planet Gas, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CHARLES MIKICH, an individual,

Plaintiff,

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., a California corporation; and DOES 7-50,

Defendants.

Case No. CGC-20-582385

ANSWER – HADAD PETROLEUM, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

Defendant Hadad Petroleum, Inc. ("Defendant") hereby answers the Complaint filed by Charles Mikich ("Plaintiff") as follows:

GENERAL DENIAL

In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies both generally and specifically each and every allegation contained in the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses. Defendant currently has insufficient information available upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates such additional defendants would be appropriate.

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

The Complaint, and every cause of action therein, fails to state facts sufficient to constitute any claim or cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Some or all of Plaintiff's causes of action are barred by the applicable statutes of limitations, including California Code of Civil Procedure section 338.

THIRD AFFIRMATIVE DEFENSE

(WAIVER, ESTOPPEL, AND CONSENT)

The Complaint, and every cause of action therein, is barred by the doctrines of waiver, estoppel, and/or consent. Plaintiff's causes of action relating to the provision of meal and rest periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their off-duty meal periods, including for workdays in which they worked six hours or less, and for workdays in which they worked more than ten and no more than twelve hours. To the extent Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

inter alia, Plaintiff and/or the putative class members, through his and their actions and representations, led Defendant to believe that he and they were properly paid and received all wages to which he and they were legally entitled.

FOURTH AFFIRMATIVE DEFENSE

(GOOD FAITH)

The Complaint, and every cause of action therein, is barred because Defendant's alleged acts or omissions, if any, were made in good faith and were not willful or intentional. Defendant had reasonable grounds for believing that the alleged acts or omissions did not violate any California Labor Code provision, any orders issued by the Industrial Welfare Commission, or California Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because any failure by Defendant to pay wages upon termination was based on a good faith dispute as to whether any claimed pay was owed.

FIFTH AFFIRMATIVE DEFENSE

(ON-DUTY MEAL PERIOD AGREEMENTS)

To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff and other putative class members prevented Plaintiff and other putative class members from taking any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and putative class members worked pursuant to on-duty meal period agreements.

SIXTH AFFIRMATIVE DEFENSE

(PRIOR CLAIMS)

The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff or any putative class member pursued any claims before the California Labor Commissioner, Division of Labor Standards Enforcement, or the United States Department of Labor. The Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata, collateral estoppel, or the doctrine barring duplicative litigation.

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SEVENTH AFFIRMATIVE DEFENSE

(RELEASE)

The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff and/or putative class members have released such claims by prior agreement with Defendant and/or associated entities.

EIGHTH AFFIRMATIVE DEFENSE

(DE MINIMIS TIME)

Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has requested payment (and/or penalties) and for which Plaintiff was not compensated was too insubstantial or insignificant to be precisely recorded for payroll purposes.

NINTH AFFIRMATIVE DEFENSE

(LABOR CODE 2856)

Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially comply with directions regarding their work when they failed to promptly report any missed meal or rest periods or payroll errors.

TENTH AFFIRMATIVE DEFENSE

(AVOIDABLE CONSEQUENCES)

Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or policies and promptly reported any missed meal or rest periods and/or payroll errors.

ELEVENTH AFFIRMATIVE DEFENSE

(EXCESSIVE FINE)

An award of penalties against Defendant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

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TWELFTH AFFIRMATIVE DEFENSE

(OFFSET)

If any damages have been sustained by Plaintiff and/or the putative class members, Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra payments or overpayments against any judgment that may be entered against it.

THIRTEENTH AFFIRMATIVE DEFENSE

(UNNECESSARY BUSINESS EXPENSES)

Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in whole or in part because any alleged expenditures or losses were not necessary and/or were not the direct consequence of the discharge of Plaintiff's and/or the putative class members' employment duties to Defendant or because Plaintiff and/or the putative class members failed to submit to Defendant any proof or documents showing that any alleged expenditures or losses were necessary and were made in the direct consequence of the discharge of their employment duties to Defendant.

Dated: September 16, 2021

Respectfully submitted,

LAWSON & LAWSON LLP

By: _____*/s/ Lisa G. Lawson*_____
Lisa G. Lawson
Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.; Hadad Enterprise, Inc.; Hadad Petroleum, Inc.; Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.; and Green Planet Gas, Inc.

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LAWSON & LAWSON LLP
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San Francisco, California 94104
Telephone: (415) 484-4345
Facsimile: (415) 480-6706

Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
and Green Planet Gas, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CHARLES MIKICH, an individual,

Plaintiff,

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., a California corporation; and DOES 7-50,

Defendants.

Case No. CGC-20-582385

ANSWER – BAY AREA AUTO CARE, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

Defendant Bay Area Auto Care, Inc. ("Defendant") hereby answers the Complaint filed by Charles Mikich ("Plaintiff") as follows:

GENERAL DENIAL

In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies both generally and specifically each and every allegation contained in the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses. Defendant currently has insufficient information available upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates such additional defendants would be appropriate.

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

The Complaint, and every cause of action therein, fails to state facts sufficient to constitute any claim or cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Some or all of Plaintiff's causes of action are barred by the applicable statutes of limitations, including California Code of Civil Procedure section 338.

THIRD AFFIRMATIVE DEFENSE

(WAIVER, ESTOPPEL, AND CONSENT)

The Complaint, and every cause of action therein, is barred by the doctrines of waiver, estoppel, and/or consent. Plaintiff's causes of action relating to the provision of meal and rest periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their off-duty meal periods, including for workdays in which they worked six hours or less, and for workdays in which they worked more than ten and no more than twelve hours. To the extent Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

inter alia, Plaintiff and/or the putative class members, through his and their actions and representations, led Defendant to believe that he and they were properly paid and received all wages to which he and they were legally entitled.

FOURTH AFFIRMATIVE DEFENSE

(GOOD FAITH)

The Complaint, and every cause of action therein, is barred because Defendant's alleged acts or omissions, if any, were made in good faith and were not willful or intentional. Defendant had reasonable grounds for believing that the alleged acts or omissions did not violate any California Labor Code provision, any orders issued by the Industrial Welfare Commission, or California Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because any failure by Defendant to pay wages upon termination was based on a good faith dispute as to whether any claimed pay was owed.

FIFTH AFFIRMATIVE DEFENSE

(ON-DUTY MEAL PERIOD AGREEMENTS)

To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff and other putative class members prevented Plaintiff and other putative class members from taking any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and putative class members worked pursuant to on-duty meal period agreements.

SIXTH AFFIRMATIVE DEFENSE

(PRIOR CLAIMS)

The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff or any putative class member pursued any claims before the California Labor Commissioner, Division of Labor Standards Enforcement, or the United States Department of Labor. The Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata, collateral estoppel, or the doctrine barring duplicative litigation.

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SEVENTH AFFIRMATIVE DEFENSE

(RELEASE)

The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff and/or putative class members have released such claims by prior agreement with Defendant and/or associated entities.

EIGHTH AFFIRMATIVE DEFENSE

(DE MINIMIS TIME)

Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has requested payment (and/or penalties) and for which Plaintiff was not compensated was too insubstantial or insignificant to be precisely recorded for payroll purposes.

NINTH AFFIRMATIVE DEFENSE

(LABOR CODE 2856)

Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially comply with directions regarding their work when they failed to promptly report any missed meal or rest periods or payroll errors.

TENTH AFFIRMATIVE DEFENSE

(AVOIDABLE CONSEQUENCES)

Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or policies and promptly reported any missed meal or rest periods and/or payroll errors.

ELEVENTH AFFIRMATIVE DEFENSE

(EXCESSIVE FINE)

An award of penalties against Defendant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

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TWELFTH AFFIRMATIVE DEFENSE

(OFFSET)

If any damages have been sustained by Plaintiff and/or the putative class members, Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra payments or overpayments against any judgment that may be entered against it.

THIRTEENTH AFFIRMATIVE DEFENSE

(UNNECESSARY BUSINESS EXPENSES)

Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in whole or in part because any alleged expenditures or losses were not necessary and/or were not the direct consequence of the discharge of Plaintiff's and/or the putative class members' employment duties to Defendant or because Plaintiff and/or the putative class members failed to submit to Defendant any proof or documents showing that any alleged expenditures or losses were necessary and were made in the direct consequence of the discharge of their employment duties to Defendant.

Dated: September 16, 2021

Respectfully submitted,

LAWSON & LAWSON LLP

By: _____*/s/ Lisa G. Lawson*_____
Lisa G. Lawson
Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.; Hadad Enterprise, Inc.; Hadad Petroleum, Inc.; Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.; and Green Planet Gas, Inc.

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Telephone: (415) 484-4345
Facsimile: (415) 480-6706

Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
and Green Planet Gas, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CHARLES MIKICH, an individual,

Plaintiff,

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., a California corporation; and DOES 7-50,

Defendants.

Case No. CGC-20-582385

ANSWER – HADAD ENTERPRISE, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

Defendant Hadad Enterprise, Inc. ("Defendant") hereby answers the Complaint filed by Charles Mikich ("Plaintiff") as follows:

GENERAL DENIAL

In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies both generally and specifically each and every allegation contained in the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses. Defendant currently has insufficient information available upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates such additional defendants would be appropriate.

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

The Complaint, and every cause of action therein, fails to state facts sufficient to constitute any claim or cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Some or all of Plaintiff's causes of action are barred by the applicable statutes of limitations, including California Code of Civil Procedure section 338.

THIRD AFFIRMATIVE DEFENSE

(WAIVER, ESTOPPEL, AND CONSENT)

The Complaint, and every cause of action therein, is barred by the doctrines of waiver, estoppel, and/or consent. Plaintiff's causes of action relating to the provision of meal and rest periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their off-duty meal periods, including for workdays in which they worked six hours or less, and for workdays in which they worked more than ten and no more than twelve hours. To the extent Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

inter alia, Plaintiff and/or the putative class members, through his and their actions and representations, led Defendant to believe that he and they were properly paid and received all wages to which he and they were legally entitled.

FOURTH AFFIRMATIVE DEFENSE

(GOOD FAITH)

The Complaint, and every cause of action therein, is barred because Defendant's alleged acts or omissions, if any, were made in good faith and were not willful or intentional. Defendant had reasonable grounds for believing that the alleged acts or omissions did not violate any California Labor Code provision, any orders issued by the Industrial Welfare Commission, or California Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because any failure by Defendant to pay wages upon termination was based on a good faith dispute as to whether any claimed pay was owed.

FIFTH AFFIRMATIVE DEFENSE

(ON-DUTY MEAL PERIOD AGREEMENTS)

To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff and other putative class members prevented Plaintiff and other putative class members from taking any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and putative class members worked pursuant to on-duty meal period agreements.

SIXTH AFFIRMATIVE DEFENSE

(PRIOR CLAIMS)

The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff or any putative class member pursued any claims before the California Labor Commissioner, Division of Labor Standards Enforcement, or the United States Department of Labor. The Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata, collateral estoppel, or the doctrine barring duplicative litigation.

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SEVENTH AFFIRMATIVE DEFENSE

(RELEASE)

The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff and/or putative class members have released such claims by prior agreement with Defendant and/or associated entities.

EIGHTH AFFIRMATIVE DEFENSE

(DE MINIMIS TIME)

Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has requested payment (and/or penalties) and for which Plaintiff was not compensated was too insubstantial or insignificant to be precisely recorded for payroll purposes.

NINTH AFFIRMATIVE DEFENSE

(LABOR CODE 2856)

Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially comply with directions regarding their work when they failed to promptly report any missed meal or rest periods or payroll errors.

TENTH AFFIRMATIVE DEFENSE

(AVOIDABLE CONSEQUENCES)

Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or policies and promptly reported any missed meal or rest periods and/or payroll errors.

ELEVENTH AFFIRMATIVE DEFENSE

(EXCESSIVE FINE)

An award of penalties against Defendant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

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TWELFTH AFFIRMATIVE DEFENSE

(OFFSET)

If any damages have been sustained by Plaintiff and/or the putative class members, Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra payments or overpayments against any judgment that may be entered against it.

THIRTEENTH AFFIRMATIVE DEFENSE

(UNNECESSARY BUSINESS EXPENSES)

Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in whole or in part because any alleged expenditures or losses were not necessary and/or were not the direct consequence of the discharge of Plaintiff's and/or the putative class members' employment duties to Defendant or because Plaintiff and/or the putative class members failed to submit to Defendant any proof or documents showing that any alleged expenditures or losses were necessary and were made in the direct consequence of the discharge of their employment duties to Defendant.

Dated: September 16, 2021

Respectfully submitted,

LAWSON & LAWSON LLP

By: _____*/s/ Lisa G. Lawson*_____
Lisa G. Lawson
Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.; Hadad Enterprise, Inc.; Hadad Petroleum, Inc.; Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.; and Green Planet Gas, Inc.

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Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
and Green Planet Gas, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CHARLES MIKICH, an individual,

Plaintiff,

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., a California corporation; and DOES 7-50,

Defendants.

Case No. CGC-20-582385

ANSWER – HEDIA PETROLEUM, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

Defendant Hedia Petroleum, Inc. ("Defendant") hereby answers the Complaint filed by Charles Mikich ("Plaintiff") as follows:

GENERAL DENIAL

In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies both generally and specifically each and every allegation contained in the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses. Defendant currently has insufficient information available upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates such additional defendants would be appropriate.

FIRST AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

The Complaint, and every cause of action therein, fails to state facts sufficient to constitute any claim or cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Some or all of Plaintiff's causes of action are barred by the applicable statutes of limitations, including California Code of Civil Procedure section 338.

THIRD AFFIRMATIVE DEFENSE

(WAIVER, ESTOPPEL, AND CONSENT)

The Complaint, and every cause of action therein, is barred by the doctrines of waiver, estoppel, and/or consent. Plaintiff's causes of action relating to the provision of meal and rest periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their off-duty meal periods, including for workdays in which they worked six hours or less, and for workdays in which they worked more than ten and no more than twelve hours. To the extent Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

inter alia, Plaintiff and/or the putative class members, through his and their actions and representations, led Defendant to believe that he and they were properly paid and received all wages to which he and they were legally entitled.

FOURTH AFFIRMATIVE DEFENSE

(GOOD FAITH)

The Complaint, and every cause of action therein, is barred because Defendant's alleged acts or omissions, if any, were made in good faith and were not willful or intentional. Defendant had reasonable grounds for believing that the alleged acts or omissions did not violate any California Labor Code provision, any orders issued by the Industrial Welfare Commission, or California Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because any failure by Defendant to pay wages upon termination was based on a good faith dispute as to whether any claimed pay was owed.

FIFTH AFFIRMATIVE DEFENSE

(ON-DUTY MEAL PERIOD AGREEMENTS)

To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff and other putative class members prevented Plaintiff and other putative class members from taking any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and putative class members worked pursuant to on-duty meal period agreements.

SIXTH AFFIRMATIVE DEFENSE

(PRIOR CLAIMS)

The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff or any putative class member pursued any claims before the California Labor Commissioner, Division of Labor Standards Enforcement, or the United States Department of Labor. The Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata, collateral estoppel, or the doctrine barring duplicative litigation.

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SEVENTH AFFIRMATIVE DEFENSE

(RELEASE)

The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff and/or putative class members have released such claims by prior agreement with Defendant and/or associated entities.

EIGHTH AFFIRMATIVE DEFENSE

(DE MINIMIS TIME)

Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has requested payment (and/or penalties) and for which Plaintiff was not compensated was too insubstantial or insignificant to be precisely recorded for payroll purposes.

NINTH AFFIRMATIVE DEFENSE

(LABOR CODE 2856)

Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially comply with directions regarding their work when they failed to promptly report any missed meal or rest periods or payroll errors.

TENTH AFFIRMATIVE DEFENSE

(AVOIDABLE CONSEQUENCES)

Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or policies and promptly reported any missed meal or rest periods and/or payroll errors.

ELEVENTH AFFIRMATIVE DEFENSE

(EXCESSIVE FINE)

An award of penalties against Defendant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

TWELFTH AFFIRMATIVE DEFENSE

(OFFSET)

If any damages have been sustained by Plaintiff and/or the putative class members, Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra payments or overpayments against any judgment that may be entered against it.

THIRTEENTH AFFIRMATIVE DEFENSE

(UNNECESSARY BUSINESS EXPENSES)

Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in whole or in part because any alleged expenditures or losses were not necessary and/or were not the direct consequence of the discharge of Plaintiff's and/or the putative class members' employment duties to Defendant or because Plaintiff and/or the putative class members failed to submit to Defendant any proof or documents showing that any alleged expenditures or losses were necessary and were made in the direct consequence of the discharge of their employment duties to Defendant.

Dated: September 16, 2021

Respectfully submitted,

LAWSON & LAWSON LLP

By: _____*/s/ Lisa G. Lawson*_____
Lisa G. Lawson
Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.; Hadad Enterprise, Inc.; Hadad Petroleum, Inc.; Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.; and Green Planet Gas, Inc.

EXHIBIT 6

SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

February 11, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
http://dir.tflaforms.net
Via Electronic Submission

RE: *Jonathon Gordon / Sayeh*

To Whom It May Concern:

This notice concerns the following employers:

1. Sayeh Petroleum, Inc., a California corporation;
2. Green Planet Gas, Inc., a California corporation;
3. Hedia Petroleum, Inc., a California corporation;
4. Hadad Enterprise, Inc., a California corporation;
5. Hadad Petroluem, Inc., a California corporation;
6. Bay Area Auto Care, Inc., a California corporation;
7. Houtan Petroleum, Inc., a California corporation; and
8. Ali Bozorghadad, also known as Ed Hadad, an individual.

Collectively, the aforementioned employers are herein referred to as "Sayeh."

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Jonathan Gordon (hereafter "Gordon") provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to cashiers, gas station clerks and workers employed in comparable positions (hereafter "Aggrieved Employees") by Sayeh of violations of Labor Code §§ 201, 202,

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436
TEL (818) 582-3086
FAX (818) 582-2561
SPIVAKLAW.COM

204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Sayeh has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Gordon and the Aggrieved Employees are "employees" within the meaning of Wage Order 7-2001 (hereafter "the Wage Order") § 2, subdivision (E) and "aggrieved employees" within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

On approximately July 3, 2020, Sayeh first employed Gordon as a cashier at its gas station located at 1400 19th Avenue, San Francisco California. Sayeh continuously employed Gordon from July 3, 2020 at this location, and at times at its gas station located at 1200 La Playa Street in San Francisco, California. Gordon remains an employee of Sayeh.

At all relevant times, Sayeh employed Gordon and the other Aggrieved Employees at an hourly rate of pay and issued their wages to them on a bi-weekly basis. At all relevant times, Sayeh classified Gordon and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Sayeh failed to provide Gordon and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Sayeh typically scheduled Gordon and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Sayeh prohibited Gordon and the Aggrieved Employees from taking off-duty meal periods.

At all relevant times, Sayeh failed to authorize and permit Gordon and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. As a result of its inadequate staffing levels, Sayeh failed to provide duty-free rest periods to Gordon and the Aggrieved Employees. Sayeh has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement.

Sayeh did not enter into valid on-duty meal period agreements with Gordon or the Aggrieved employees. Sayeh could not enter into valid on-duty meal period agreements with him or the Aggrieved Employees because the nature of their work did not prevent Sayeh from relieving them of all duties to take a duty-free meal period. Sayeh further failed to pay premium wages for days on which it failed to provide Gordon and the Aggrieved Employees with all timely meal and rest periods.

Sayeh further required Gordon and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Sayeh.

At all relevant times, Sayeh failed to compensate Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay. Sayeh regularly required Gordon and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Sayeh issued Gordon and the Aggrieved Employees separate wage statements for each gas station it operated, dividing the hours worked in the same pay period between the gas stations as if they were separate employers. By not aggregating the hours Gordon and the Aggrieved Employees worked in the same pay period, Sayeh treated hours that would qualify for overtime and doubletime premium wages as regular hours not entitled to such premium pay rates. For example, Sayeh scheduled Gordon to work two consecutive eight-hour shifts, one at each Gordon's two assigned gas stations. However, Sayeh failed to pay Gordon overtime and double time wages for work performed in excess of eight hours in a workday. In order to avoid paying Gordon overtime and double time wages for work performed during his second consecutive eight- hour shift, Sayeh issued Gordon different wage statements for each gas station, treating them as separate employers. For work Gordon performed at the 19th Avenue gas station, Sayeh issued Gordon paychecks bearing the employer name Green Planet Gas Inc. For work Gordon performed at the La Playa Street gas station, Sayeh issued Gordon paychecks bearing the employer name Sayeh Petroleum Inc.

As set forth below, Gordon alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

a) Sayeh failed to provide Gordon and the Aggrieved Employees with all meal periods as required by law;

b) Sayeh failed to authorize and permit Gordon and the Aggrieved Employees with all rest periods as required by law;

c) Sayeh failed to compensate Gordon and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more meal periods in a workday;

d) Sayeh failed to compensate Gordon and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more rest periods in a workday;

e) Sayeh failed to pay Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum, regular, overtime, and double time pay due to Sayeh's practice of compensating Gordon and the Aggrieved Employees at straight time rates for work performed at a second Sayeh gas station during a subsequent eight-hour shift in the same workday;

f) Sayeh failed to indemnify Gordon and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

g) Sayeh failed to timely pay Gordon and the Aggrieved Employees all earned and unpaid wages during employment;

h) Sayeh failed to provide Gordon and the Aggrieved Employees with accurate and complete wage statements; and

i) Sayeh failed to timely pay the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Gordon now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Sayeh's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include:

> "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities as wholesale or retail; or for the purpose of renting goods or commodities."

§ 2(H).

At all relevant times during the applicable limitations period, Sayeh operated gas stations for the purpose of retailing gasoline. Accordingly, Gordon and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods (Lab. Code §§ 226.7, 512, 558.1, and 1198)

In relevant part, California Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

> Meal Periods:
>
> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
>
> …
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

> (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
>
> (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

In relevant part, California Labor Code § 558.1 states

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or

violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner," "managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

By not providing adequate staff to relieve its hourly employees of their duties, Sayeh has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Gordon and the Aggrieved Employees as required by law. In failing to do so, Sayeh violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Gordon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and $100 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

3. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 558.1, 1194, 1197, and 1198)

Under California Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states,

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

> (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the […] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of […] overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

> (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 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek.

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

In relevant part, California Labor Code § 510 states,

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any

> seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In relevant part, California Labor Code § 558.1 states:

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner,"

"managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

Employers must compensate non-exempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Sayeh knowingly failed to pay Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all minimum or regular wages for the work they performed while clocked out for meal periods, and all overtime and double time wages for work performed during second eight-hour shifts in the same workday, for which Sayeh paid them on a straight time basis.

Accordingly, Gordon seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and

3. $100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and $250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of

whether the initial violations were intentionally committed)(penalties set by California Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code §§ 558.1 & 2802)

In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

In relevant part, California Labor Code § 558.1 states:

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner," "managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

At all relevant times during the applicable limitations period, Sayeh required Gordon and the Aggrieved Employees to use personal mobile telephones to communicate with Sayeh as a necessary condition of employment. Sayeh failed to indemnify Gordon and the Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Gordon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: $100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and $200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Accurate Written Wage Statements
(Lab. Code §§ 226 & 558.1)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

1) Gross wages earned

2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

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 only the last four digits of his or her social security number or an employee identification 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.

In relevant part, California Labor Code § 558.1 states:

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner," "managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

At relevant times during the applicable limitations period, Sayeh violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Sayeh failed to state in the wage statements it issued to Sayeh and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed after clocking out at the ends of their shifts as described above.

Accordingly, Gordon now seeks civil penalties for the Labor Code violations that Sayeh has committed against him and the other Aggrieved Employees as follows: $250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and $1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Sayeh's failure to pay Gordon and the Aggrieved Employees wages for off-the-clock work, overtime and double time wages at the correct rates, and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Sayeh failed to timely pay all wages due during employment. Accordingly, Gordon seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

(1) $100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and

(2) $200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment (Lab. Code §§ 201, 202, 203 and 558.1)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, 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 previous 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. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of

> work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner," "managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

As explained above, Sayeh failed to pay Gordon and the other Aggrieved Employees all wages owed for hours worked off-the-clock. Sayeh further failed to pay Gordon and the Aggrieved Employees at overtime and double time rates for work performed after the eight hour and twelfth hour in a workday, respectively. As a result, Sayeh failed to pay the Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock during meal periods and overtime and double time wages at the correct rates of pay.

As a result, Sayeh failed to pay the Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Sayeh has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Gordon seeks civil penalties on behalf of the other Aggrieved Employees as follows: $100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and $200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

> Every person employing labor in this state shall:
>
> ...
>
> (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

> Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect

records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500).

Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Sayeh failed to maintain for Gordon and the Aggrieved Employees accurate records of time worked and all wages earned, including overtime and double time wages paid at the incorrect rates, unpaid wages for work performed off the clock during meal periods, and unpaid meal and rest period premium wages as described above. As a result, Sayeh has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Gordon and the Aggrieved Employees. Accordingly, Gordon seeks civil penalties from Sayeh on behalf of himself and other Aggrieved Employees as follows:

1. $500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and

2. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com
cc: Jonathon Gordon
Walter Haines, Esq.

Doc ID: fabdbbc657331c01c7e142262be05f2ced42599b

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EXHIBIT 7

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Attorneys for Plaintiff,
JONATHON GORDON, and all others similarly situated
(Additional Attorney for Plaintiff on Following Page)

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
08/04/2021
Clerk of the Court
BY: ANGELICA SUNGA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

JONATHON GORDON on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorney General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 1-50, inclusive,

Defendant(s).

Case No.: **CGC-21-594289**

CLASS ACTION

COMPLAINT FOR

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.)

JURY TRIAL DEMANDED

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Plaintiff JONATHON GORDON (hereafter "Plaintiff"), hereby submits his complaint against defendants SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California Corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 1 through 50, inclusive (collectively "Defendants") on behalf of himself and all others similarly situated and/or aggrieved current and former employees of Defendants for penalties and/or damages for violations of the California Labor Code as follows:.

INTRODUCTION

1. Plaintiff brings this class and representative action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order") and the Business and Professions Code.

2. Plaintiff brings this action on behalf of all individuals currently and formerly employed as non-exempt hourly gas station cashier employees and employees in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (hereinafter referred to as "similarly situated employees").

3. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him and other similarly situated current and former employees who worked in California for unpaid wages, civil penalties, and other related relief. These claims are based on Defendants' alleged failures to (1) provide all rest and meal periods, (2) compensate for all hours worked at the correct rates of pay; (3) indemnify for reasonable expenses incurred performing their duties, (4) provide accurate written wage statements, (5) timely pay wages upon termination of employment, and (6) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages, civil penalties, and related relief through this representative and class action.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

5. This Court has jurisdiction over Plaintiff's and Class Members' claims for unpaid overtime wages under Labor Code §§ 201, 202, 203, 226, 226.7, 510, 1194, 1197, and 1198.

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6. This Court has jurisdiction over Plaintiff's and Class Members' claims for restitution arising from Defendants' unlawful business practices under Business & Professions Code §§ 17203 and 17204.

7. Plaintiff has exhausted his administrative remedies, and this Court has jurisdiction over Plaintiff's and Class Members' claims for civil penalties for Defendants' Labor Code violations under Labor Code §§ 2699 and 2699.3.

PARTIES

8. Plaintiff JONATHON GORDON is an individual and a resident of California. On approximately July 6, 2020, Defendants first employed Plaintiff to work as a gas station cashier at two of Defendants' stations located at 1200 La Playa Street in San Francisco, California and 1400 19th Avenue, San Francisco, California until approximately April 18, 2021 when he was effectively terminated. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations Section 11040 and an "aggrieved employee" within the meaning of Labor Code Section 2699(c).

9. Defendant SAYEH PETROLEUM, INC., is a California corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times Defendant was and is doing business in San Francisco, California.

10. Defendant HEDIA PETROLEUM, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times, Defendant was and is doing business in San Francisco, California.

11. Defendant HADAD ENTERPRISE, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times Defendant was and is doing business in San Francisco, California.

12. Defendant HADAD PETROLEUM, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times Defendant was and is doing business in San Francisco, California.

13. Defendant BAY AREA AUTO CARE, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times Defendant was and is doing business in San Francisco, California.

14. Defendant HOUTAN PETROLEUM, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times,Defendant was and is doing business in San Francisco, California.

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15. Defendant GREEN PLANET GAS, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times, Defendant was and is doing business in San Francisco, California.

16. Defendant ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD) is a natural person and resident of California. At all relevant times, Defendant was and is doing business in San Francisco, California.

17. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

18. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

19. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the Class in accordance with applicable California labor laws as alleged herein.

20. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ACTION ALLEGATIONS

21. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

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22. **Class Definition:** The Class is defined as follows: all persons Defendants employed in California as non-exempt, hourly employees, including but not limited to gas station cashiers, clerks, and persons in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is rendered in this action.

23. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

24. **Numerosity:** The Class is so numerous that the joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of the Class, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

25. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class with all rest periods as required by section 11 of the Wage Order;

B. Whether Defendants failed to provide the Class with all off-duty meal periods as required by section 12 of the Wage Order;

C. Whether Defendants failed to compensate the Class Members at one hour's pay on days when Defendants failed to provide them with one or more meal periods in a workday.

D. Whether Defendants failed to compensate the Class Members at one hour's pay on days when Defendants failed to provide them with one or more off-duty meal periods in a workday;

E. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay;

F. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

G. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate and complete wage statements;

H. Whether Defendants knew or should have known that Class Members

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regularly worked over 40 hours per week and/or eight hours per day;

I. Whether Defendants failed to pay Class Members overtime wages for time worked in excess of 40 hours per week and/or eight hours per day;

J. Whether Defendants failed to timely pay final wages upon termination of the Class Members' employment;

K. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class;

L. Whether the Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations;

M. Whether the Class Members are entitled to prejudgment interest; and

N. Are the Class Members entitled to attorneys' fees?

26. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

27. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class.

28. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and the absent Class.

29. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of class' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the

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potential for inconsistent or contradictory judgments inherent in individual litigation.

30. On approximately July 6, 2020, Defendants first employed Plaintiff and the Class Members to work in California as a gas station cashier at two of Defendants' stations located at 1200 La Playa Street in San Francisco, California and 1400 19th Avenue, San Francisco, CA. Plaintiff worked three days in each location for the first three months of his employment with Defendants. Between both locations, Plaintiff worked for Defendants approximately 52 hours per week. Thereafter, Plaintiff was working at Defendants' gas stations as a cashier only at the 1400 19th Avenue, San Francisco, CA location. Defendant did not schedule Plaintiff to work after April 18, 2021 and April 18, 2021 was the final date he performed work for Defendants. At all relevant times, the position of gas station cashier was an hourly, nonexempt position. Defendants did not issue Plaintiff his final wages via direct deposit until April 23, 2021.

31. Pursuant to Defendants policies at all relevant times, Monday at midnight was the beginning of the work week for Plaintiff and the Class Members and Sunday at 11:59 p.m. was the end. Defendants never paid Plaintiff overtime or double time for any of these hours. Plaintiff and the Class Members earned their wages at an hourly rate and provided them with paychecks on a bi-weekly basis. At relevant times, Plaintiff and the Class Members worked shifts in excess of eight hours, worked between five and seven days in a workweek, and also worked over 40 hours in a workweek. Plaintiff also worked more than 12 hours in a day. Plaintiff also worked more than eight hours a day on the seventh workday in the same work week on several occasions. Plaintiff is informed and believes that the Class Members were also denied overtime and double time wage payments. At all relevant times, as a result of their staffing choices, Defendants failed to provide Plaintiff and the Class with an off-duty, 30-minute meal period before the end of the fifth hour worked. Defendants typically scheduled Plaintiff and the Class members to work shifts alone. Perhaps as a result of this understaffing, Defendants as a matter of policy and practice prohibited Plaintiff and the Class from taking off-duty meal periods. On information and belief, neither Plaintiff nor the Class entered into valid written on-duty meal period agreements with Defendants.

32. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class to take a ten-minute, paid, duty-free rest break every four hours worked or major fraction thereof. As a result of their inadequate staffing (discussed above), Defendants failed to provide duty-free rest periods to Plaintiff and the Class. Defendants prohibited Plaintiff and the Class Members from leaving their worksite for rest breaks. Defendants have not requested an

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exemption from California's rest period law from the Division of Labor Standards Enforcement. Defendants prohibited Plaintiff and the class members from leaving the Defendants' worksites for rest breaks. Therefore, Plaintiff and the Class never got any rest breaks.

33. Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class with all timely meal and rest periods. Defendants further required Plaintiff and the Class to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Defendants.

34. At all relevant times, Defendants failed to compensate Plaintiff and the ClasMembers for all hours worked by requiring them to continue working after clocking out at the end of their scheduled shifts. Defendants instructed Plaintiff and the Class to clock out after exactly eight hours of work. Defendants directed Plaintiff and the Class to thereafter perform additional tasks while clocked out, including cleaning the store, reviewing inventory, and locking up. These tasks would take approximately 20 to 30 minutes to complete.

35. Defendants required Plaintiff and the Class to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Defendants failed to pay one and one half times (1 ½ x) the hourly rates of pay of Plaintiff and the Class by failing to pay for the off-the-clock work Plaintiff and the Class performed.

36. Further, Defendants failed to pay Plaintiff and the Class for all hours worked by rounding down their work times. In the instances in which Plaintiff and the Class recorded more than eight hours in a given workday, Defendants edited their time records to state that Plaintiff and the Class had only worked eight or fewer hours. As a result, Defendants failed to compensate Plaintiff and the Class for the additional time that Defendants removed from their time records. Because Plaintiff and the Class Members worked in excess of the periods of eight hours or less that Defendants limited their recorded work hours to, Defendants failed to pay them overtime premium pay for all of the work Plaintiff and the Class recorded.

37. Defendants knowingly and intentionally failed to maintain accurate written employee records pertaining to Plaintiff and the Class, including accurate wage statements itemizing each Class Member's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Class Member, and other requirements of California Labor Code § 226. Defendants knowingly and intentionally failed to state the earned but unpaid wages discussed above on the wage statements Defendants issued to Plaintiff and the

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Class Members.

38. At all relevant times, upon resignation or termination, Defendants failed to pay final wages in a timely manner as a result of their failure to pay employees for all work performed off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for off the clock work performed before the beginning of their shifts, during meal periods, and after clocking out at the end of their shifts. Further, Defendants failed to timely pay Plaintiff upon terminating his employment. Defendants terminated Plaintiff's employment on April 18, 2021. However, Defendants failed to issue Plaintiff his final paycheck via direct deposit until approximately on April 23, 2021.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

39. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

40. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, and 1198, and the Wage Order.

41. In relevant part, California Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

42. In relevant part, California Labor Code § 512 states:

> An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.
>
> An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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43. In relevant part, Section 12 of the Wage Order states:

Rest Periods

> (c) "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided."

44. In relevant part, Section 11 of the Wage Order states:

Meal Periods

> (d) "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty'

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> meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

> (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

45. In relevant part, California Labor Code § 226.7 states:

> (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
>
> (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

46. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked over five hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

47. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

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48. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods and 10-minute duty-free rest periods in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods and rest breaks required by California law. Defendants scheduled Plaintiff and the other Class Members to work their shifts alone and prohibited them from leaving the worksites.

49. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period.

50. By reason of the above, pursuant to California Labor Code section 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them, and for workdays in which one or more off-duty rest breaks were not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 221, 510, 1194, 1197, and 1198)

51. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

52. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code § § 510, 1194, 1197, 1198, and the Wage Order.

53. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

54. Section 3 of the Wage Order states:

(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

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> 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 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
>
> (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 of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek.
>
> (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

55. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

56. Labor Code section 510 states:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

57. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

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58. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

59. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

60. In conjunction, these provisions of the California Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

61. Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Defendants deducted wages from Plaintiff's wages and from the wages of all of the other aggrieved employees for hours spent working or in on-duty meal periods and the purchase and maintenance of their uniform polo shirts and name tags, in violation of Labor Code § 221. Accordingly, Plaintiff seeks civil penalties on behalf of himself and all of the other aggrieved employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

62. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to him and the Class Members with respect to working conditions and compensation arrangements.

63. At all relevant times, Defendants paid Plaintiff and the Class Members at an hourly rate of pay and issued their wages on a bi-weekly basis.

64. At all relevant times, Defendants failed to pay Plaintiff and the Class Members for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime wages for all regular and overtime hours they worked while clocked out, as well as all wages for work they performed and recorded in excess of eight hours in a workday, that Defendants subsequently deducted from their time records.

65. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'

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failure to compensate the Class for all hours worked at the correct rate of pay as required by California law. Plaintiff worked more than 12 hours a day.

66. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent that they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

67. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

68. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

69. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802 and the Wage Order.

70. In pertinent part, California Labor Code § 2802(a) states:

> "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

71. Section 9(B) of the Wage Order states:

> When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

72. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

73. At relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the Class Members to use personal cell phones to

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communicate with Defendants as a necessary condition of employment. At the time of Plaintiff and the Class Members' employment with Defendants, they were required to purchase two uniform polo shirts and one name tag in order to perform their job. Said costs were deducted from Plaintiff and the Class Members' paycheck. Defendants never reimbursed them for the costs of these shirts and the name tag. The cost of the shirts and the name tag was approximately $30.00. Defendants, however, failed to reimburse Plaintiff and the Class Members for these expenses.

74. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

75. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

76. Accordingly, with respect to this cause of action, on behalf of himself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

77. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

78. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing, among other items, 1) gross wages earned; 2) total hours worked, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

79. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to

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suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

80. "Promptly and easily determine," as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

81. As alleged herein, Defendants failed to provide Plaintiff and the Class Members all wages earned and owed discussed above, including but not limited to, all regular and overtime wages owed at the correct rates for work performed off-the-clock. Additionally with regard to the unpaid hours worked and unpaid wages earned discussed above, Defendants failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees, and other requirements of California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

82. Defendants' failure to provide Plaintiff and the Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Class with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

83. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the Class have suffered an injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements

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prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

84. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to recover the greater of actual damages, or penalties of fifty dollars ($50.00) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars ($100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000.00) per Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

85. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

86. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201-203 and the Wage Order.

87. California Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

88. California Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

89. Defendants failed to pay Plaintiff and the Class for all hours worked and all wages earned as explained above during employment or at the time Plaintiff and the formerly employed Class Members ended their employment or were terminated. By failing to pay earned minimum, regular, meal and rest premium, overtime and double time wages to Plaintiff and the Class Members at the correct rates by the end of the employment relationship, Defendants failed to timely pay them all earned and unpaid wages in violation of California Labor Code § 201 or

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§ 202.

90. Moreover, Defendants failed to timely issue Plaintiff and the Class Members their final paychecks by the final date of employment. With regard to Plaintiff, Defendants terminated him on April 18, 2021. However, Defendants failed to issue Plaintiff his final paycheck through direct deposit until April 23, 2021.

91. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally adopted and maintained policies or practices that are incompatible with those requirements.

92. California Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with California Labor Code § 201 or § 202.

93. Pursuant to California Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff and the Class against all Defendants)

94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

95. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

96. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, reimburse their employees for reasonable expenses incurred during the course of performing their duties, and pay them all earned wages for all regular and overtime hours worked off the clock and deducted from their wages.

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97. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and have lost money or property. Defendants deprived Plaintiff and the Class Members of minimum wages, overtime wages, premium wages for all workdays one or more meal periods was not provided, premium wages for all workdays a rest period was not provided, and reimbursement for expenses that Plaintiff and the other Class Members incurred during the course of performing their duties. At the time of Plaintiff and the Class Members' employment with Defendants, they were required to purchase two uniform polo shirts and one name tag in order to perform their job. Said costs were deducted from Plaintiff and the Class Members' paycheck. Defendants never reimbursed them for the costs of these shirts and the name tag. The cost of the shirts and the name tag was approximately $30.00.

98. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

99. Plaintiff and the Class are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

100. Accordingly, with respect to this cause of action, on behalf of himself and the Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(Labor Code §§ 2698, et seq.)

(By Plaintiff, on behalf of himself, the other Aggrieved Employees, and the state of California against all Defendants and Doe Defendants)

101. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §2699(c), and is a proper representative to bring a civil action on behalf of herself and other current and former employees of Defendants pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff is or was employed by Defendants and the alleged violations of the California Labor Code were and continue to be committed by Defendants.

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102. Labor Code § 204 states:

> (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. …
>
> (b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.
>
> (2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.
>
> (c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.
>
> (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

103. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

104. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

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105. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

A. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each Aggrieved Employee for each initial violation and two hundred dollars ($200.00) for each Aggrieved Employee plus twenty-five percent (25%) of the amount unlawfully withheld from each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 221, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 225.5).

C. For violations of Labor Code § 226(a), two hundred fifty dollars ($250.00) for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and one thousand dollars ($1,000) for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code§ 226.3).

D. For violations of California Labor Code §§ 510 and 512, fifty dollars ($50.00) for each Aggrieved Employee for initial violation and one hundred dollars ($100.00) for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code § 1174, five hundred dollars ($500.00) for each Aggrieved Employee for each violation (penalty amounts established by California Labor Code § 1174.5).

F. For violations of California Labor Code § 1197, one hundred dollars ($100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars ($250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars ($100.00) for each Aggrieved Employee per pay period for

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each initial violation and two hundred dollars ($200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

106. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated February 11, 2021, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff's letter to the LWDA dated February 11, 2021 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff's letter. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to pursue a representative action under PAGA.

PRAYER FOR RELIEF

107. WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages;

E. Actual damages;

F. Statutory damages;

G. Liquidated damages;

H. Restitution;

I. Civil penalties;

J. Declaratory relief;

K. Equitable relief;

L. Statutory penalties;

M. Pre-judgment and post-judgment interest;

N. Costs of suit;

O. Interest;

P. Reasonable attorneys' fees; and

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Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 30, 2021

By:_____

DAVID SPIVAK
MICHELLE GRIMBERG
Attorneys for Plaintiff, JONATHON GORDON and all others similarly situated

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EXHIBIT A

SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

February 11, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
http://dir.tflaforms.net
Via Electronic Submission

RE: *Jonathon Gordon / Sayeh*

To Whom It May Concern:

This notice concerns the following employers:

1. Sayeh Petroleum, Inc., a California corporation;
2. Green Planet Gas, Inc., a California corporation;
3. Hedia Petroleum, Inc., a California corporation;
4. Hadad Enterprise, Inc., a California corporation;
5. Hadad Petroluem, Inc., a California corporation;
6. Bay Area Auto Care, Inc., a California corporation;
7. Houtan Petroleum, Inc., a California corporation; and
8. Ali Bozorghadad, also known as Ed Hadad, an individual.

Collectively, the aforementioned employers are herein referred to as "Sayeh."

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Jonathan Gordon (hereafter "Gordon") provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to cashiers, gas station clerks and workers employed in comparable positions (hereafter "Aggrieved Employees") by Sayeh of violations of Labor Code §§ 201, 202,

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204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Sayeh has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Gordon and the Aggrieved Employees are "employees" within the meaning of Wage Order 7-2001 (hereafter "the Wage Order") § 2, subdivision (E) and "aggrieved employees" within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

On approximately July 3, 2020, Sayeh first employed Gordon as a cashier at its gas station located at 1400 19th Avenue, San Francisco California. Sayeh continuously employed Gordon from July 3, 2020 at this location, and at times at its gas station located at 1200 La Playa Street in San Francisco, California. Gordon remains an employee of Sayeh.

At all relevant times, Sayeh employed Gordon and the other Aggrieved Employees at an hourly rate of pay and issued their wages to them on a bi-weekly basis. At all relevant times, Sayeh classified Gordon and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Sayeh failed to provide Gordon and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Sayeh typically scheduled Gordon and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Sayeh prohibited Gordon and the Aggrieved Employees from taking off-duty meal periods.

At all relevant times, Sayeh failed to authorize and permit Gordon and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. As a result of its inadequate staffing levels, Sayeh failed to provide duty-free rest periods to Gordon and the Aggrieved Employees. Sayeh has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement.

Sayeh did not enter into valid on-duty meal period agreements with Gordon or the Aggrieved employees. Sayeh could not enter into valid on-duty meal period agreements with him or the Aggrieved Employees because the nature of their work did not prevent Sayeh from relieving them of all duties to take a duty-free meal period. Sayeh further failed to pay premium wages for days on which it failed to provide Gordon and the Aggrieved Employees with all timely meal and rest periods.

Sayeh further required Gordon and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Sayeh.

At all relevant times, Sayeh failed to compensate Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay. Sayeh regularly required Gordon and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Sayeh issued Gordon and the Aggrieved Employees separate wage statements for each gas station it operated, dividing the hours worked in the same pay period between the gas stations as if they were separate employers. By not aggregating the hours Gordon and the Aggrieved Employees worked in the same pay period, Sayeh treated hours that would qualify for overtime and doubletime premium wages as regular hours not entitled to such premium pay rates. For example, Sayeh scheduled Gordon to work two consecutive eight-hour shifts, one at each Gordon's two assigned gas stations. However, Sayeh failed to pay Gordon overtime and double time wages for work performed in excess of eight hours in a workday. In order to avoid paying Gordon overtime and double time wages for work performed during his second consecutive eight- hour shift, Sayeh issued Gordon different wage statements for each gas station, treating them as separate employers. For work Gordon performed at the 19th Avenue gas station, Sayeh issued Gordon paychecks bearing the employer name Green Planet Gas Inc. For work Gordon performed at the La Playa Street gas station, Sayeh issued Gordon paychecks bearing the employer name Sayeh Petroleum Inc.

As set forth below, Gordon alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

a) Sayeh failed to provide Gordon and the Aggrieved Employees with all meal periods as required by law;

b) Sayeh failed to authorize and permit Gordon and the Aggrieved Employees with all rest periods as required by law;

c) Sayeh failed to compensate Gordon and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more meal periods in a workday;

d) Sayeh failed to compensate Gordon and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more rest periods in a workday;

e) Sayeh failed to pay Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum, regular, overtime, and double time pay due to Sayeh's practice of compensating Gordon and the Aggrieved Employees at straight time rates for work performed at a second Sayeh gas station during a subsequent eight-hour shift in the same workday;

f) Sayeh failed to indemnify Gordon and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

g) Sayeh failed to timely pay Gordon and the Aggrieved Employees all earned and unpaid wages during employment;

h) Sayeh failed to provide Gordon and the Aggrieved Employees with accurate and complete wage statements; and

i) Sayeh failed to timely pay the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Gordon now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Sayeh's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include:

> "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities as wholesale or retail; or for the purpose of renting goods or commodities."

§ 2(H).

At all relevant times during the applicable limitations period, Sayeh operated gas stations for the purpose of retailing gasoline. Accordingly, Gordon and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods (Lab. Code §§ 226.7, 512, 558.1, and 1198)

In relevant part, California Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

> Meal Periods:
>
> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
>
> …
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

> (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
>
> (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

In relevant part, California Labor Code § 558.1 states

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or

violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner," "managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

By not providing adequate staff to relieve its hourly employees of their duties, Sayeh has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Gordon and the Aggrieved Employees as required by law. In failing to do so, Sayeh violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Gordon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and $100 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

3. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 558.1, 1194, 1197, and 1198)

Under California Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states,

> "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

> (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the […] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of […] overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

> (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 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek.

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

In relevant part, California Labor Code § 510 states,

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any

> seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In relevant part, California Labor Code § 558.1 states:

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner,"

"managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

Employers must compensate non-exempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Sayeh knowingly failed to pay Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all minimum or regular wages for the work they performed while clocked out for meal periods, and all overtime and double time wages for work performed during second eight-hour shifts in the same workday, for which Sayeh paid them on a straight time basis.

Accordingly, Gordon seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and

3. $100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and $250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of

whether the initial violations were intentionally committed)(penalties set by California Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code §§ 558.1 & 2802)

In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

In relevant part, California Labor Code § 558.1 states:

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner," "managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

At all relevant times during the applicable limitations period, Sayeh required Gordon and the Aggrieved Employees to use personal mobile telephones to communicate with Sayeh as a necessary condition of employment. Sayeh failed to indemnify Gordon and the Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Gordon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: $100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and $200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Accurate Written Wage Statements
(Lab. Code §§ 226 & 558.1)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

1) Gross wages earned

2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

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 only the last four digits of his or her social security number or an employee identification 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.

In relevant part, California Labor Code § 558.1 states:

> (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner," "managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

At relevant times during the applicable limitations period, Sayeh violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Sayeh failed to state in the wage statements it issued to Sayeh and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed after clocking out at the ends of their shifts as described above.

Accordingly, Gordon now seeks civil penalties for the Labor Code violations that Sayeh has committed against him and the other Aggrieved Employees as follows: $250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and $1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Sayeh's failure to pay Gordon and the Aggrieved Employees wages for off-the-clock work, overtime and double time wages at the correct rates, and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Sayeh failed to timely pay all wages due during employment. Accordingly, Gordon seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

(1) $100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and

(2) $200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment (Lab. Code §§ 201, 202, 203 and 558.1)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, 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 previous 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. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of

> work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193, 1194, or 2802, may be held liable as the employer for such violation.
>
> (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the "owner," "managing agent," Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

As explained above, Sayeh failed to pay Gordon and the other Aggrieved Employees all wages owed for hours worked off-the-clock. Sayeh further failed to pay Gordon and the Aggrieved Employees at overtime and double time rates for work performed after the eight hour and twelfth hour in a workday, respectively. As a result, Sayeh failed to pay the Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock during meal periods and overtime and double time wages at the correct rates of pay.

As a result, Sayeh failed to pay the Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Sayeh has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Gordon seeks civil penalties on behalf of the other Aggrieved Employees as follows: $100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and $200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

> Every person employing labor in this state shall:
>
> ...
>
> (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

> Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect

records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500).

Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Sayeh failed to maintain for Gordon and the Aggrieved Employees accurate records of time worked and all wages earned, including overtime and double time wages paid at the incorrect rates, unpaid wages for work performed off the clock during meal periods, and unpaid meal and rest period premium wages as described above. As a result, Sayeh has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Gordon and the Aggrieved Employees. Accordingly, Gordon seeks civil penalties from Sayeh on behalf of himself and other Aggrieved Employees as follows:

1. $500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and

2. $100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com
cc: Jonathon Gordon
Walter Haines, Esq.

Doc ID: fabdbbc657331c01c7e142262be05f2ced42599b

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EXHIBIT 8

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FILED
Superior Court of California
County of San Francisco
JUL 28 2022
CLERK OF THE COURT
BY: Deputy Clerk

Attorneys for Plaintiffs,
CHARLES MIKICH, JONATHON GORDON, and all others similarly situated
(Additional Attorneys for Parties on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

CHARLES MIKICH, on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD, also known as ED HADAD), an individual; and DOES 8-50, inclusive,

Defendant(s).

JONATHON GORDON on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved

Case No. CGC-20-582385 to be consolidated with CGC-21-594289

JOINT STIPULATION AND [PROPOSED] ORDER TO CONSOLIDATE MATTERS FOR SETTLEMENT PURPOSES

Action filed: 01/22/2020
Dept.: 610, Hon. Garrett L. Wong

JUL 22 2022

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employees" under the Labor Code Private Attorney General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 1-50, inclusive,

Defendant(s).

Case No.: CGC-21-594289

Action Filed: 08/04/2021
Dept: 610, Hon. Garrett L. Wong

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Plaintiff CHARLES MIKICH (the plaintiff in *Charles Mikich v. Sayeh Petroleum, Inc.*, (Case No. CGC-20-582385) and referred to as "Plaintiff Mikich"), and Plaintiff JONATHON GORDON (the plaintiff in *Gordon v. Sayeh Petroleum, Inc* (Case No. CGC-21-594289) and referred to as "Plaintiff Gordon") and Defendants SAYEH PETROLEUM, INC., HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD (the defendants in both matters and referred to collectively as "Defendants")[1] by and through their attorneys, do hereby stipulate and agree as follows:

1. WHEREAS, the matter entitled *Charles Mikich v. Sayeh Petroleum, Inc.*, San Francisco County Superior Court, Case No. CGC-20-582385 ("*Mikich* Matter") was filed on January 22, 2020, and is assigned to Honorable Judge Garret L. Wong in Department 610 of the above-entitled Court for all purposes;

2. WHEREAS, the *Mikich* Matter Class Action Complaint presented the following causes of action: (1) Failure to pay all wages earned at the correct rates of pay, (2) Failure to provide meal periods and rest breaks, (3) Failure to reimburse for expenses, (4) Wage statement penalties, (5) Waiting time penalties, and (6) Unfair Competition;

3. WHEREAS, on May 11, 2020, Plaintiff Mikich filed his First Amended Complaint adding a Seventh Cause of Action for Civil Penalties under the Private Attorneys General Act ("PAGA");

4. WHEREAS, on May 6, 2021, Plaintiff Mikich, through a fictious name amendment, and having discovered the true names of the Doe Defendants, added the remaining Defendants to his lawsuit in place of the first seven Doe Defendants (HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD);

5. WHEREAS, the matter entitled Jonathon *Gordon v. Sayeh Petroleum, Inc.*, San

[1] Plaintiffs and Defendants are collectively referred to as the "Parties".

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Francisco County Superior Court, Case No. CGC-21-594289 ("*Gordon* Matter") was filed on August 4, 2021, and is also assigned to Honorable Judge Garret L. Wong in Department 610 of the above-entitled Court for all purposes;

6. WHEREAS, the *Gordon* Matter Class Action Complaint alleges the same violations against the same Defendants, and presents the same causes of actions presented in the *Mikich* Matter: (1) Failure to pay all wages earned at the correct rates of pay, (2) Failure to provide meal periods and rest breaks, (3) Failure to reimburse for expenses, (4) Wage statement penalties, (5) Waiting time penalties, (6) Unfair Competition, and (7) Civil Penalties under PAGA;

7. WHEREAS, on January 31, 2022 and May 6, 2022, Plaintiffs Mikich and Gordon participated in mediation with Defendants before mediator Michael J. Loeb Esq. regarding the claims made in the two class actions;

8. WHEREAS, the parties to the Actions have reached a class and PAGA representative action settlement ("Settlement"), subject to Court approval, which is intended to be a full and final resolution of Plaintiffs' claims as well as all Released Claims;

9. WHEREAS, the allegations of the *Mikich* Matter and the *Gordon* Matter arise out of the same or similar transactions or occurrences, involve the same putative class members, involve the same Defendants, involved the same witnesses, and involve the same allegations of systemic wage and hour practices;

10. WHEREAS, in light of the foregoing, the Parties wish for the actions to be consolidated, in order to file jointly for approval of the Settlement, as it is a global settlement, and have agreed that consolidation of the two cases for settlement purposes would promote convenience to the Parties and conserve judicial resources by avoiding unnecessary costs, delays, and duplication;

11. THEREFORE, accordingly, in consideration of the foregoing, the Parties, by and through their counsel respectfully request that the Court:

1) Consolidate the *Mikich* and *Gordon* Matters for settlement purposes; and

///

///

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2) Designate the *Mikich* Matter (Case No. CGC-20-582385) as the lead case because it was filed first and is the lowest numbered case.

IT IS SO STIPULATED.

THE SPIVAK LAW FIRM

Dated: June 23, 2022

By: _____
DAVID G. SPIVAK,
Attorney for Plaintiffs

LAWSON & LAWSON, LLP

Dated: June 23, 2022

By: _____
LISA LAWSON,
Attorney for Defendants

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2) Designate the *Mikich* Matter (Case No. CGC-20-582385) as the lead case because it was filed first and is the lowest numbered case.

IT IS SO STIPULATED.

THE SPIVAK LAW FIRM

Dated: June 23, 2022

By: _____
DAVID G. SPIVAK,
Attorney for Plaintiffs

LAWSON & LAWSON, LLP

Dated: June 23, 2022

By: _____
LISA LAWSON,
Attorney for Defendants

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[PROPOSED] ORDER

In light of the foregoing Stipulation of the Parties, and for good cause show, it is HEREBY ORDERED that

1) *Charles Mikich v. Sayeh Petroleum, Inc.*, San Francisco County Superior Court, Case No. CGC-20-582385 and *Gordon v. Sayeh Petroleum, Inc.,* San Francisco County Superior Court, Case No. CGC-21-594289 be consolidated for settlement purposes; and
2) *Charles Mikich v. Sayeh Petroleum, Inc.*, San Francisco County Superior Court, Case No. CGC-20-582385 is designated as the lead case. All further filings will be in the lead case only.

IT IS SO ORDERED.

Dated: 7/28/22

Honorable Richard Ulmer
Judge of the Superior Court

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Attorneys for Plaintiff(s),
CHARLES MIKICH, JONATHON GORDON, and all others similarly situated
(Additional attorneys for parties on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(*UNLIMITED JURISDICTION*)

CHARLES MIKICH, JONATHON GORDON, and on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 8-50,

Case No. CGC-20-582385

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE OF CLAIMS

Action filed: January 22, 2020
Dept: 610, The Honorable Garrett L. Wong

inclusive,

Defendant(s).

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Attorneys for Defendant(s),
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This Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement Agreement" or "Agreement") is made and entered into by and between Plaintiffs Charles Mikich and Jonathon Gordon (collectively "Plaintiffs" or "Class Representatives"), individually and on behalf of all putative class members, on the one hand, and Defendants Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad (also known as Ed Bozorghadad, Ed Ali Bozorghadad, and Ed Hadad) (collectively "Defendants"). Plaintiffs and Defendants are collectively referred to herein as the "Parties."

I. DEFINITIONS.

The following definitions are applicable to this Settlement Agreement, in addition to other terms defined elsewhere in the Agreement:

A. "Action" shall mean collectively (A) The first lawsuit, originally filed on January 22, 2020 and entitled Charles Mikich v. Sayeh Petroleum, Inc., San Francisco County Superior Court No. CGC-20-582385 and amended on May 11, 2020 to include claims pursuant to the Private Attorneys General Act ("PAGA") and (2) the second lawsuit, originally filed on August 4, 2021 and entitled Jonathon Gordon v. Sayeh Petroleum, Inc., San Francisco County Superior Court No. CGC-21-594289.

B. "**Class," "Class Members," or "Settlement Class**" shall mean all persons Defendants employed in California as hourly, non-exempt employees during the Class Period. Defendants estimate that, as of preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier, there were approximately 1,200 members.

C. "**Class Counsel**" shall mean the attorneys representing Plaintiffs in the Action:

David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group.

D. "**Class Counsel Fees Payment**" and "**Class Counsel Litigation Expenses Payment**" shall mean the amounts awarded to Class Counsel by the Court to compensate them for, respectively, their fees and expenses in connection with the Action, including their pre-filing investigation, their filing of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.

E. "**Class Notice**" shall mean the Notice of Proposed Settlement attached as **Exhibit A** and incorporated by reference into this Agreement.

F. "**Class Period**" shall mean the period of time from January 22, 2016 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier.

G. "**Class Representative Payment**" shall mean the special payment made to each Plaintiff in his capacity as Class Representative to compensate him for initiating the Action, performing work in support of the Action, and undertaking the risk of liability for attorneys' fees and expenses in the event he was unsuccessful in the prosecution of the Action.

H. "**Court**" shall mean the Superior Court for the County of San Francisco, Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680.

I. "**Defense Counsel**" shall mean the attorneys representing Defendants in the Action: Scott G. Lawson, Lisa G. Lawson, and Ian W. Forgie of Lawson & Lawson, LLP.

J. "**Effective Date**" is defined as follows: If no objection to this Settlement or to any of the terms and or conditions of the Settlement are filed by any of the Plaintiffs, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this Settlement; however, if

any objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ.

K. "**Final Approval Hearing**" shall mean the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement.

L. "**Gross Settlement Amount**" shall mean the Gross Settlement Amount of One Million Six Hundred Thousand Dollars and Zero Cents ($1,600,000.00) payable by Defendants as provided by this Agreement. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will return to Defendants. Defendants' employer-side payroll taxes arising from the payments made under this Settlement will be paid by Defendants separate from and in addition to the Gross Settlement Amount. The Gross Settlement Amount is inclusive of all amounts to be paid to Class Members, attorney fees, costs, enhancement awards to the named Plaintiffs, PAGA penalties to both the California Labor and Workforce Development Agency ("LWDA") and allegedly aggrieved employees, and Settlement Administration expenses. With the exception of the operation of the Escalator Clause below, under no circumstances will Defendants' settlement payment exceed the Gross Settlement Amount.

M. "**Judgment**" shall mean the Order of Final Judgment entered by the Court that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in this Action.

N. "**Net Settlement Amount**" shall mean $1,600,000.00 payable by Defendants pursuant to this Settlement, less:

1. the Class Representative Payments approved by the Court;

2. the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than $35,000.00) approved by the Court;

3. the Settlement Administrator's reasonable fees and expenses approved by the Court (not to exceed $32,000.00);

4. the amount of $50,000.00 as PAGA Penalties for the PAGA claim, of which $12,500.00 will be paid to the PAGA Members and $37,500.00 will be paid to the LWDA; and

5. any other fees or expenses (other than attorneys' fees and expenses) incurred by Plaintiffs in implementing the terms and conditions of this Agreement as approved by the Court.

O. **"PAGA"** means the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*).

P. **"PAGA Members"** means all individuals Defendants employed in California as hourly, non-exempt employees during the PAGA Period.

Q. **"PAGA Penalties"** means the portion of the Gross Settlement Amount that the Parties have agreed to allocate as civil penalties in order to settle claims arising under PAGA. The Parties have agreed to allocate Fifty Thousand Dollars and Zero Cents ($50,000.00), of which, payment from the Gross Settlement Amount to the LWDA will be made in the amount of Thirty Seven Thousand Five Hundred Dollars and Zero Cents ($37,500.00), which is 75% of

the PAGA Penalties. Twelve Thousand Five Hundred Dollars and Zero Cents ($12,500.00), 25% of the PAGA Penalties, will remain in the Net Settlement Amount for distribution pro rate to PAGA Members as described in this agreement. PAGA Members will receive payment from the employee portion of the PAGA Penalties regardless of whether they submit a request for exclusion if the PAGA Penalties are approved by the Court.

R. **"PAGA Period"** shall mean January 16, 2019 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier.

S. **"Participating Class"** or **"Participating Class Members"** shall mean all Settlement Class members who do not submit a valid and timely letter requesting to be excluded from the Settlement, consistent with the terms set forth in this Settlement Agreement.

T. "**Preliminary Approval of the Settlement**" shall mean the Court's preliminary approval of the Settlement without material change.

U. "**Released Claims**" shall mean all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims during the period of January 16, 2016 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier asserted in the Operative Complaint and/or in the letter(s) sent by any Plaintiff to the LWDA concerning Defendants and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, unfair business practices that could have been premised on the claims, causes of action

or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2699, and any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. The Parties acknowledge that Released Claims includes any claims for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet and confer in good faith if the Court requires changes to the scope of the Released Claims.

V. "Released Parties" shall mean Defendants, and any of their former and present agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert with any of them, and each of them.

W. "Response Deadline" shall mean the date 60 days after the Settlement Administrator mails the Class Notice to Class Members, which is the last date on which Class

Members may submit Exclusion Requests, written objections to the Settlement, or Workweek disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for Exclusion Requests or Objections will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

X. "**Settlement**" shall mean the disposition of the Action and all related claims effectuated by this Agreement.

Y. **"Settlement Account"** shall mean a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members and PAGA Members.

Z. "**Settlement Administrator**" shall mean CPT Group, Inc. or another administrator proposed by the Parties and appointed by the Court to administer the Settlement. The Parties represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

AA. "**Settlement Share**" shall mean each Settlement Class Member's allocated share of the Net Settlement Amount as provided by this Agreement and any payment a PAGA Member is eligible to receive from the PAGA Penalties per Section III.C.4.

II. RECITALS

A. On or about January 16, 2020, Plaintiff Charles Mikich, through his attorneys, sent a letter to the Labor Workforce Development Agency ("LWDA") alleging the following

against Defendant: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related allegations (the "PAGA letter"). Plaintiff Charles Mikich asserted these representative claims on behalf of all Class Members who are or were employed during the applicable statutory period.

B. On January 22, 2020, Plaintiff Charles Mikich filed a class action complaint in the San Francisco Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter and adding a cause of action for unfair competition. On May 11, 2020, Plaintiff Charles Mikich filed a first amended class action complaint in the San Francisco County Superior Court, adding a cause of action under the Labor Code Private Attorneys General Act of 2004 ("PAGA"). The first amended complaint is the "Operative Complaint."

C. On June 23, 2022, the parties stipulated to consolidation of the Action for settlement purposes.

D. On November 04, 2021, Defendants answered Plaintiffs' First Amended Complaint and denied, and continue to deny, all of Plaintiffs' material allegations. Specifically, Defendants deny the failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related allegations in the Action. Defendants contend that they have complied with the Labor Code, the Business & Professions Code, and the applicable Wage Order at all times. Defendants further allege that the Plaintiffs' claims are not amenable to class treatment because common issues do not predominate.

E. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. The Parties exchanged discovery requests, documents, information, and data including but not limited to pre-suit evidence request and preservation letters, Form Interrogatories - General, Form Interrogatories - Employment Law, Special Interrogatories, Requests for Production of Documents and Tangible, pre-mediation data and document exchanges, analysis of time and payroll records by a neutral third party analyst, EmployStats, and related activities.

F. On January 31, 2022, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Michael J. Loeb, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement during the second mediation session held May 6, 2022. During the mediation sessions, each side, represented by their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

G. Based on their own thorough, independent investigation and evaluation of this case, Class Counsel are of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant costs and delay, the risk of non-certification of the Class, the defenses asserted by Defendants, the risks of adverse determinations on the merits, and numerous potential appellate issues. Although Defendants contend they have no liability in this case, Defendants' counsel shares Class Counsel's belief that the Agreement represents a fair and adequate settlement

given the respective risks associated with the case.

H. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiffs or the Class on those claims or to the State, or as an admission by Plaintiffs that Defendants' defenses raised in the Action have merit. This Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Agreement.

Based on the foregoing Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

A. Certification for Settlement Purposes. Solely for the purposes of effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not preliminarily and finally approved, the conditional certification of the Settlement Class will be of no force or effect, does not constitute an admission by Defendants that class certification is proper, and will not be deemed admissible in this or any other proceeding, and that the Parties will litigate the issue of class certification.

B. Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Gross Settlement Amount of One Million Six Hundred Thousand Dollars and Zero Cents ($1,600,000.00), plus Defendants' employer share of employer-side payroll taxes, is the maximum amount payable by Defendants, subject to the provisions of this Paragraph III.B. Defendants estimated for purposes of mediation that there are 27,498 workweeks worked by the Class Members for the period of January 22, 2016 through May 6, 2022. For the avoidance of

doubt, the term "workweeks" shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of workweeks worked. The Settlement Administrator shall determine the total number of workweeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats in connection with the Parties' mediation efforts, and multiplying that figure by two. If the workweeks worked as of the date the Court approves the settlement exceed 28,960 workweeks worked by more than 10.00%, the Gross Settlement Amount will increase proportionally according to the number of additional workweeks worked. For example, if the number of workweeks as of the date the Court approves the settlement exceeds 28,960 by 11%, the Gross Settlement Amount shall increase by 1%. If the workweeks worked as of the date the Court approves the settlement exceeds 28,960 workweeks by more than 20.00%, Defendants shall have the option to (a) vacate the Parties' settlement and this Memorandum of Understanding shall be null and void or (b) to cap the Class Period as of the date that the number of workweeks reaches but does not exceed 31,856.

C. Payments to Plaintiffs and Class Counsel and Others. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. To Plaintiffs.

(a) Class Representative Payments. In addition to their Settlement

Shares, each Plaintiff will apply to the Court for an award of not more than Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) as a Class Representative Payment. Defendants will not oppose a Class Representative Payment of not more than $25,000.00. The Plaintiffs will receive no other payment other than their Settlement Share and Class Representative Payment, and acknowledge that they are aware of no other facts or circumstances related to their employment with Defendants that could give rise to any additional entitlement to any further payments. The Settlement Administrator will pay the Class Representative Payment approved by the Court out of the Gross Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class Representative Payment, and instead a Form 1099 will be issued to Plaintiffs with respect to that payment. Each Plaintiff agrees to assume all responsibility and liability for the payment of taxes due on the Class Representative Payment. The Class Representative Payment is in exchange for the release of Released Claims against the Released Parties, the general Release of Claims by Plaintiffs, and for the Plaintiffs' time, effort and risk in bringing and prosecuting the Action. Any adjustments made by the Court to the requested Class Representative Payment shall not be deemed a material modification of this Settlement Agreement. In the event that the Court reduces or does not approve the requested Class Representative Payment, the Settlement Agreement remains in full force and effect, shall not have the right to revoke the Settlement for that reason, it shall remain binding, and any portion of the Class Representative Payment not awarded to Plaintiffs will not revert to Defendants, but instead shall be returned to the Net Settlement Amount.

2. To Class Counsel. Class Counsel will apply to the Court for an award of not more than Five Hundred Thirty-Three Thousand Three Hundred Thirty Three Dollars and Zero Cents ($533,333.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their

Class Counsel Fees Payment and an amount not more than Thirty Five Thousand Dollars and Zero Cents ($35,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not oppose this request. The Settlement Administrator will pay the amount approved by the Court (but not more than Five Hundred Thirty Three Thousand Three Hundred Thirty Three Dollars and Zero Cents ($533,333.00) in fees and not more than Thirty Five Thousand Dollars and Zero Cents ($35,000.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more Forms 1099 will be issued to Class Counsel with respect to those payments.

3. To the Settlement Administrator. The Settlement Administrator will be paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the Court in an amount currently estimated to not exceed Thirty Two Thousand Dollars and Zero Cents ($32,000.00).

4. To the LWDA. The Parties will jointly apply to the Court for approval of a settlement of claims under the Private Attorneys General Act ("PAGA"), California Labor Code section 2698, *et seq*., for Fifty Thousand Dollars and Zero Cents ($50,000.00), of which, payment from the Gross Settlement Amount to the LWDA will be made in the amount of Thirty Seven Thousand Five Hundred Dollars and Zero Cents ($37,500.00), which is 75% of the PAGA settlement. Twelve Thousand Five Hundred Dollars and Zero Cents ($12,500.00), 25% of the PAGA settlement, will remain in the Net Settlement Amount for distribution and will be distributed to PAGA Members on a *pro rata* basis based on the total number of Individual Work Weeks (full or partial) worked by each PAGA Member during the PAGA Period. Partial Work Weeks shall be rounded up to the nearest whole integer. PAGA Members shall receive their portion of the PAGA Penalties regardless of their decision to submit a

request for exclusion to opt out of the Settlement.

D. Allocation of Net Settlement Amount and Calculation of Settlement Shares. Subject to the terms and conditions of this Agreement, the Settlement Administrator will distribute a payment from the Net Settlement Amount to each Participating Class Member. The Settlement Share for each Participating Class Member will be calculated as follows, understanding that the formulas below do not constitute an admission by either party, and are intended only to provide a practical means to simplify and administer the claims process:

(a) Participating Class Members' Settlement Shares. The settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted and W-2s issued) and 66.66% to penalties and interest (for which 1099s will be issued).

(b) Class Portion of Settlement Ratio Calculation. The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the aggregate total of all Class Members' Individual Work Weeks as the denominator. The Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

(c) PAGA Portion of Settlement Ratio Calculation. The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that PAGA Member's Individual Work Weeks during the PAGA Period as the numerator, and (b) the aggregate total of all PAGA Members' Individual Work Weeks during the PAGA Period as the denominator. The Settlement Administrator shall assign to each PAGA Member the "Settlement Share" which shall be

calculated by multiplying that PAGA Member's Settlement Ratio by amount allocated to PAGA Members from the Net Settlement Amount.

2. Settlement Share Worksheet. Upon calculation of the Class Members' and PAGA Members' Settlement Share, the Settlement Administrator shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of unique identifying numbers for each of the Class Members with their corresponding Individual Work Weeks and Settlement Shares.

E. Taxes and Withholdings. Each Settlement Share is intended, in part, to settle the Class Members' claims for Defendants' failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of PAGA and the unfair competition law. Each Class Member shall be individually responsible for the employee's share of applicable payroll tax withholdings and deductions. Accordingly, each Settlement Share allocated to wages will be reduced by applicable employee-side payroll tax withholdings and deductions, and the Settlement Administrator will issue a Form W-2 to each Participating Class Member. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. For PAGA Members who submit a timely and valid request for exclusion to opt out of the class portion of the Settlement, 100% of the individual Settlement Share to that individual shall be allocated as penalties, and not wages, for which the Settlement Administrator will issue to the PAGA Member an IRS Form-1099. Defendants will be responsible for the normal employer's share of any payroll tax attributable to the wage portion of the Settlement Share payments. Defendants' payment of the normal

employer's share of payroll taxes attributable to the wage portion of the Settlement Share payments will be in addition to the Gross Settlement Amount or Net Settlement Amount.

F. Appointment of Settlement Administrator. The Parties will ask the Court to appoint CPT Group, Inc., a qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class Members; and using reasonable measures to contact all Class Members, including conducting a National Change of Address search on all Class Members before mailing the Class Notice to each Class Member's address. The Settlement Administrator's duties will also include re-mailing the Class Notice to the Class Member's new address for those Class Members whose address has changed; providing the Parties with weekly status reports about the delivery of Class Notice; calculating Settlement Shares; issuing and distributing checks to effectuate the payments due under the Settlement; reporting to the Court as required; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice, will be paid out of the Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of the Settlement Administrator's fees and expenses that are not used or which are not awarded by the Court will not revert to Defendants, but instead will be part of the Net Settlement Amount for distribution to Participating Class Members. If the Settlement Administrator's fees and expenses exceed Thirty Two Thousand Dollars and Zero Cents ($32,000.00), such cost will be deducted from the Net Settlement Amount.

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IV. PROCEDURES FOR APPROVING SETTLEMENT

A. Motion for Preliminary Approval of Settlement by the Court. Class Counsel will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion for Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to this Agreement). Any disagreement among the Parties concerning the Class Notice or other documents necessary to implement the Settlement will be referred to the Court.

1. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that they will appear and support the granting of the motion, and that Class Counsel will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class and Setting Hearing for Final Approval of Settlement.

2. Should the Court decline to approve the Settlement, the Settlement will be null and void and the Parties will have no further obligations under it.

B. Notice to Class Members. After the Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with a "Class Notice."

1. List of Class Members. Within fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendants shall provide to the Settlement Administrator:

(a) An electronic database of all Class Members, last known mailing address, Social Security number (if available), and Defendants' employee identification number ("Class Members' Data").

(b) Corresponding to each Class Member's name, Defendants shall

provide a figure indicating the total number of Work Weeks during the Class Period in which that Class Member was employed by Defendants as a Class Member and during which they actually performed work for Defendants. That number of Work Weeks shall be referred to as that Class Member's "Individual Work Weeks."

(c) If any of the Class Members' Data are unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data prior to when it must be submitted to the Settlement Administrator. Class Members' Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court.

2. Mailing of Class Notice. Within fourteen (14) days after receiving the Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

3. Returned Class Notice. If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace

the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

4. Declaration of Settlement Administrator. Not later than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

C. Disputed Class Member Settlement Shares. If a Class Member disputes his/her estimated Settlement Share, the Class Member may produce evidence to the Settlement Administrator for the Class Period. In order for the dispute to be considered, he/she must follow the directions on the Class Notice. To be valid and timely, all disputes and supporting documents must be postmarked by the Response Deadline. A Class Member may use the Work Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to dispute information in the Class Notice. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence contrary to Defendants' records by the Response Deadline, the Settlement Administrator shall notify Class Counsel and Defense Counsel to discuss and resolve the

dispute, including providing all available relevant information to all counsel. The Parties will resolve all disputes jointly, and such resolution shall be final and binding on any Class Member disputes, and shall thereafter instruct the Settlement Administrator how to proceed in processing the dispute. If the Parties cannot reach an agreement, the dispute shall be submitted to the Court for final determination. All such disputes are to be resolved or submitted to the Court not later than fourteen (14) calendar days after the Response Deadline.

D. Requests for Exclusion from Settlement; and Objections to Settlement. Class Members may submit requests to be excluded from the effect of the Settlement, or objections to the Settlement, pursuant to the following procedures:

1. Request for Exclusion from Settlement. A Class Member may request to be excluded from the effect of this Agreement, and any payment of amounts under this Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class Member wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, signature, and a clear statement requesting to be excluded from the settlement of the class claims, as set forth on the Request for Exclusion form or similar to the following: "I wish to exclude myself from the class settlement reached in the matter of *Mikich v. Sayeh Petroleum, Inc.*. I understand that by excluding myself, I will not receive money from the settlement of my individual claims." To be valid and timely, the request to be excluded must be postmarked by the Response Deadline and received by the Settlement Administrator. A Class Member may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is not obligated to do so to request exclusion from the Settlement. A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any payment of any kind in connection with this Agreement

or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no standing to object to the Settlement, except that the request for exclusion shall not be effective as to the release of claims arising under PAGA and shall not preclude the Class Member from receiving their share of the PAGA Penalties. A request for exclusion must be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the Parties as follows:

To Class Counsel:	*To Defense Counsel*:
David G. Spivak, Esq. The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069	Scott G. Lawson, Esq. Lisa G. Lawson, Esq. Ian W. Forgie, Esq. Lawson & Lawson, LLP One Sansome Street 35th Floor San Francisco, CA 94104

2. Objections to Settlement. The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator. To be valid, an objection must be postmarked by the Response Deadline and received by the Settlement Administrator. The written objection to the Settlement should set forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:	*To Defense Counsel*:
David G. Spivak, Esq. The Spivak Law Firm	Scott G. Lawson, Esq. Lisa G. Lawson, Esq.

8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

Counsel will promptly file such objection with the Court.

The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing.

Regardless of whether an objecting Class Member complies with the objection procedure encouraged above, the Court will provide a Class Member with the opportunity to speak at the final approval hearing regardless of whether he or she has filed an appearance or submitted a written opposition beforehand. If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement.

E. Report. Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

F. No Solicitation of Objection; Right to Void. Neither the Parties, nor their respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.

Defendants have the right in their sole and exclusive discretion to terminate and withdraw from the Settlement at any time prior to date the Court enters final approval of this Settlement if 5.00% or more than of Class Members timely and validly opt out of the Settlement or if the Court fails to approve material terms of the settlement, including the scope of the release. Defendants must make such election within 10 business days of being notified by the Settlement Administrator 5.00% or greater opt-out rate or the Court's denial of the settlement with prejudice.

G. Additional Briefing and Final Approval. Plaintiffs will file with the Court a motion for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees and expenses and a memorandum in support of their motion; and Plaintiffs and Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.

Before the Final Approval Hearing, the Parties shall be entitled to file and serve a response to any Class Member's objection to the Settlement and/or reply in support of their motion for final approval of the Settlement, and payment of the Settlement Administrator's reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiffs and Class Counsel may file replies in support of their motions for the Class Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

If the Court ultimately does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement, then either Party will have the

unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount or any amounts that otherwise would have been payable under this Agreement, except that Defendants and Plaintiffs will jointly and equally pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the right to void the Settlement under this Paragraph. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representative Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this Paragraph and shall not render the Settlement voidable. Plaintiffs and Class Counsel shall retain the right to appeal awards of attorneys' fees and costs less than requested.

Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment. The Final Order and Judgment shall permanently bar all Participating Class Members from prosecuting against Defendants any claims within the scope of the Releases contained in this Agreement.

After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

H. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of this Agreement, and that no Class Member timely objects to the Settlement *and* formally intervenes into the action as required under the California Supreme

Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106 (2018) or files a motion pursuant to Civil Procedure Code section 663, the Parties, and their counsel hereby waive, except as provided for in this Agreement or prohibited by law, any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making any payments under the Settlement) will be suspended until the appeal is fully and finally resolved and the Judgment, consistent with the terms of this Agreement, becomes Final.

I. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review. If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiffs or Defendants will have the unilateral right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Court, not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final. The Party exercising his/its right to unilaterally void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement Administrator for services rendered. An order vacating, reversing or modifying the Court's award of the Class Representative Payment, or the Class Counsel Fees

Payment and/or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.

J. Establishment of Settlement Account and Installment Payments. Defendants will pay the Gross Settlement Amount to the Settlement Administrator for the PAGA settlement and for Class Members who do not opt-out. Any amount attributed to the share of class members who opt-out shall be redistributed to participating class members on a pro-rata basis, and the Settlement Administrator will then be responsible for making appropriate deductions, reporting obligations, and issuing the individual settlement awards. Defendants shall deposit one half of the Gross Settlement Amount with the Settlement Administrator within 30 days of the Court's granting preliminary approval of the Settlement. Defendants shall deposit the remaining half of the Gross Settlement Amount with the Settlement Administrator within 365 days of their having deposited the first half of the Gross Settlement Amount.

K. Payment of Settlement Shares. There will be two distributions of the Gross Settlement Amount as follows:

1. First Distribution. Within fourteen (14) calendar days of the Effective Date, or within ten (10) calendar days of the deadline for the Defendants' first installment payment (whichever is later), the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement Amount Defendants paid by that date, including *pro rata* portions of the PAGA payment, Class Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administrator's payment.

2. Second Distribution. Within ten (10) calendar days of the Defendants'

second Installment Payment, the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement Amount Defendants paid since the first distribution, including *pro rata* portions of the PAGA payment, Class Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administrator's payment.

L. Default on Payment. In the event Defendants fail to pay any portion of the Gross Settlement Amount, it shall be considered a default. In the event Defendants fail to make any payment on the date it is due, the Settlement Administrator will provide notice to Class Counsel and Defense Counsel within five (5) business days of the missed payment. Thereafter, Defendants will have fifteen (15) days to cure the default and tender payment to the Settlement Administrator. In the event Defendants fail to cure the default within the times set forth herein, Plaintiffs may, among other remedies, elect to enter judgment against Defendants, on an ex parte basis, for the balance of the unpaid Gross Settlement Amount to date.

M. Uncashed Settlement Share Checks. Any check issued by the Settlement Administrator to Class Members who do not timely and validly opt out shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by checks returned as undeliverable and those checks remaining un-cashed for more than 180 days after issuance (collectively, "Voided Settlement Checks"), plus any interest that has accrued on those funds, will be paid to the California Unclaimed Property Fund.

N. The Settlement Administrator will mail or wire all required payments no later than fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount from Defendants. Proof of payment will be filed with the Court.

O. Final Report by Settlement Administrator to Court. Within ten (10) calendar

days after final disbursement of all funds from the Settlement Account, the Settlement Administrator will serve on the Parties for filing with the Court a declaration providing a final summary report on the disbursements of all funds from the Settlement Account.

V. RELEASE OF CLAIMS

A. Plaintiffs and Class Members. The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid requests for exclusion from the Settlement, will release all Released Claims under PAGA against the Released Parties. The State of California will also release all Released Claims under PAGA against the Released Parties.

B. Release of Claims by Plaintiffs. Upon the Effective Date, and only after Defendants pay the entirety of the Gross Settlement Amount, each Plaintiff will be deemed to have released the Released Parties of and from all of the Released Claims during the Class Period. These claims include all claims alleged or could have been alleged based on the facts, circumstances, and/or primary rights at issue in the Complaint and any amendments thereto. They include without limitation: (1) all claims for failure to pay wages earned, including minimum wages, and overtime wages; (2) all claims for failure to provide rest periods and claims for rest period premium pay; (3) all claims for failure to provide meal periods and claims for meal period premium pay; (4) all claims for failure to provide accurate wage

statements and related penalties; (5) all claims for failure to timely pay wages during employment and at termination; (6) all claims for violation of California Business and Professions Code §§ 17200, et seq., to the extent such claims are predicated on the other claims released herein; and (7) all claims for violation of PAGA and all related claims for penalties, to the extent such claims are predicated on the other claims released herein. Each Plaintiff's release set forth herein shall include a waiver of all rights under California Civil Code §1542, which includes a release of all known and unknown claims against the Released Parties during the Class Period. Civil Code section 1542 provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Upon the Effective Date, each Plaintiff will be deemed to have waived his rights under Civil Code §1542 during the Class Period, as set forth above. Each Plaintiff's release excludes any claim for worker's compensation. It also includes his claims, if any, for harassment, discrimination, wrongful termination, negligent infliction of emotional distress and intentional infliction of emotional distress and related prayers for compensatory and punitive damages, interest, attorney fees and costs.

C. Class Counsel. As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement, Class Counsel and any counsel associated with Class Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees and expenses against Defendants or the Released Parties arising from or related to the Action, except those incurred to enforce this Agreement and collect the Judgment, including but not limited to claims based on the California Labor Code, the California Civil

Code, the California Code of Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class Counsel Released Claims").

D. **Tax Liability**. Defendants make no representation as to the tax treatment or legal effect of the payments called for in this Agreement, and Plaintiffs, Settlement Class Members, and PAGA Members are not relying on any statement, representation, or calculation by Defendants or by the Settlement Administrator in this regard. Plaintiffs, Settlement Class Members, and PAGA Members understand and agree that except for Defendants' payment of the employer's portion of any payroll taxes, they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

E. **Circular 230 Disclaimer**. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR

ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

VI. NON-PUBLICITY PROVISION

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement of this case in any manner that identifies the Defendants, including but not limited to any postings on any websites maintained by Class Counsel. Neither Plaintiffs nor Class Counsel will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3) other Class Members. Plaintiffs and Class Counsel agree not to publish any of the terms or conditions of this Settlement in any manner that identifies the Defendants. However, Class Counsel may identify this Settlement in other matters to demonstrate their adequacy as counsel in such other matters.

VII. MISCELLANEOUS TERMS

A. No Effect on Other Benefits. The Settlement Shares will not result in any additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiffs and Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

B. No Admission of Liability. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants, or an admission by any Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact that Plaintiffs and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

C. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action,

or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

D. Integrated Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

E. Attorney Authorization. Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions and assistance of the court will be consistent with this Agreement.

F. Use and Return of Documents and Data. Upon written request from Defendants, Class Counsel will return or destroy all originals, copies, and summaries of documents and data provided to Class Counsel by Defendants in connection with the settlement negotiations in this matter. Class Counsel will confirm in writing to Defendants the destruction

of all such documents and data within fourteen (14) days of such request.

G. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.

H. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

I. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

J. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

K. Fair Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors, current and potential.

L. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

M. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third calendar day after mailing by United States mail, addressed as follows:

To Class Counsel:	*To Defense Counsel*:
David G. Spivak, Esq.	Scott G. Lawson, Esq.

The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

Lisa G. Lawson, Esq.
Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

08 / 04 / 2022

Dated: July____, 2022 By: _____
CHARLES MIKICH

Dated: July___ , 2022 By: _____
JONATHON GORDON

Dated: July_____, 2022 By: _____
ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., and Green Planet Gas, Inc.

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8605 Santa Monica Bl
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Dated: July____, 2022

By: _____
CHARLES MIKICH

07 / 19 / 2022

Dated: July___ , 2022

By: _____
JONATHON GORDON

Dated: July_____, 2022

By: _____
ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., and Green Planet Gas, Inc.

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THE SPIVAK LAW FIRM

07 / 19 / 2022

Dated: July____, 2022

By: David Spivak

DAVID G. SPIVAK, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: July____, 2022

By: _____

WALTER L. HAINES, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

LAWSON & LAWSON, LLP

Dated: July ___, 2022

By: _____

LISA G. LAWSON, Attorneys for Defendants, SAYEH PETROLEUM, INC., HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD)

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THE SPIVAK LAW FIRM

Dated: July____, 2022

By: _____

DAVID G. SPIVAK, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: July 19, 2022

By: _____

WALTER L. HAINES, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

LAWSON & LAWSON, LLP

Dated: July ___, 2022

By: _____

LISA G. LAWSON, Attorneys for Defendants, SAYEH PETROLEUM, INC., HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD)

The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

Lisa G. Lawson, Esq.
Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: July____, 2022

By: _____
CHARLES MIKICH

Dated: July___, 2022

By: _____
JONATHON GORDON

Dated: July 29, 2022

By: _____
ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., and Green Planet Gas, Inc.

THE SPIVAK LAW FIRM

Dated: July____, 2022

By: _____

DAVID G. SPIVAK, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: July____, 2022

By: _____

WALTER L. HAINES, Attorneys for Plaintiff, CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

LAWSON & LAWSON, LLP

Dated: July 21, 2022

By: _____

LISA G. LAWSON, Attorneys for Defendants, SAYEH PETROLEUM, INC., HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD)

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL

Charles Mikich, et al. v. Sayeh Petroleum, Inc., et al., Case No. CGC-20-582385

As a current or former hourly, non-exempt employee of Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad, in California,

CPT ID: <<CPT ID>>
<<Name>>
<<Address1>>
<<Address2>>
<<City>>, <<State>> <<Zip Code>>

Please provide current address (if different) here:
_____
_____
_____
_____

you may be entitled to receive money from a class action settlement.

The San Francisco County Superior Court has authorized this Class Notice.
This is not a solicitation from a lawyer.

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT IF YOU ARE A CURRENT OR FORMER HOURLY, NON-EXEMPT EMPLOYEE OF SAYEH PETROLEUM, INC., HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., AND ALI BOZORGHADAD (ALSO KNOWN AS ED BOZORGHADAD ALSO KNOWN AS ED HADAD) IN THE STATE OF CALIFORNIA BETWEEN JANUARY 16, 2016 AND PRELIMINARY COURT APPROVAL OF THIS SETTLEMENT, OR SEPTEMBER 3, 2022, WHICHEVER IS EARLIER.

A proposed settlement of $1,600,000.00 (the "Gross Settlement Amount") will be used to pay claims to: All persons Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad (also known as Ed Bozorghadad also known as Ed Hadad) employed in California as hourly, non-exempt employees during the "Class Period" of January 16, 2016 to preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier (the "Class Members"). The Gross Settlement Amount includes (a) expenses and fees of the Settlement Administrator up to $32,000.00; (b) an Class Representative Payment of $25,000.00 to the Plaintiffs CHARLES MIKICH AND JONATHON GORDON (collectively "Plaintiffs" or "Class Representatives") as the class representative; (c) attorneys' fees of up to $533,333.00 and litigation expenses of up to $35,000.00 to Class Counsel; and (d) $50,000.00 allocated to settle claims brought pursuant to the Private Attorneys General Act, California Labor Code Section 2698, *et seq*. ("PAGA") (75% of which will go to the California Labor & Workforce Development Agency ("LWDA") and 25% of which will go to Class Members). The Court must approve these payments at the Final Approval Hearing.

- Defendants estimated for purposes of mediation that there are 27,498 workweeks worked by the Class Members for the period of January 22, 2016 through May 6, 2022. For the avoidance of doubt, the term "workweeks" shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of workweeks worked. The Settlement Administrator shall determine the total number of workweeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats in connection with the Parties' mediation efforts, and multiplying that figure by two. If the workweeks worked as of the date the Court approves the settlement exceed 28,960 workweeks worked by more than 10.00%, the Gross Settlement Amount, including the attorneys fees to Class Counsel. will increase proportionally according to the number of additional workweeks worked. For example, if the number of workweeks as of the date the Court approves the settlement exceeds 28,960 by 11%, the Gross Settlement Amount, including the attorney fees to Class Counsel, shall increase by 1%. If the workweeks worked as of the date the Court approves the settlement exceeds 28,960 workweeks by more than 20.00%, Defendants shall have the option to (a) vacate the Parties' settlement and this Memorandum of Understanding shall be null and void or (b) to cap the Class Period as of the date that the number of workweeks reaches but does not exceed 31,856. This provision is the "Escalation Clause."

- The settlement resolves a lawsuit entitled *Charles Mikich, et al. v. Sayeh Petroleum, Inc., et al.,* Case No. CGC-20-582385 (the "Action") for Defendants' alleged failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and other legal consequences that would follow from these failures, including claims under California's Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendants from alleged liability.

- The Court has not made a determination of the validity of the claims in the Action. Defendants deny any and all liability arising from any of the claims and contend that they are not responsible for a failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, or related wrongs, and fully complied with all applicable laws.

- Class Members will receive a payment based on the number of Work Weeks, rounded up to the nearest full Work Week, during the Class Period.

PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.

HOW MUCH WILL I GET?
You have a total number of <<number of Work Weeks>> Work Weeks during the Class Period.
It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
OPT OUT	Receive no payment and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Action. However, you may not opt out of the PAGA Released Claims.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, CPT Group, Inc., about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
DISPUTE THE WORK WEEKS CALCULATION	If you feel that you worked a different amount of Work Weeks as an hourly, non-exempt employee than identified above, you may dispute that calculation by writing to the Settlement Administrator.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, CPT Group, Inc., providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Action and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Action, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the San Francisco County Superior Court. The persons who sued are called "Plaintiffs" and the organizations they sued are called "Defendants."

2. What is the Action about?

In the Action, Plaintiffs Charles Mikich and Jonathon Gordon alleged multiple violations of the California Labor Code, the California Business & Professions Code, and PAGA, including causes of action for: failure to pay wages, unauthorized and unlawful wage deductions, failure

to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, unfair competition under California's Business & Professions Code, and claims for civil penalties for violations of the PAGA.

3. Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Plaintiffs won at trial. Defendants believe the Plaintiffs would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiffs or Defendants. There has been no trial in this case. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet Class Members are still entitled to receive payments if they comply with the instructions in this Class Notice. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Plaintiffs and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

4. What is a class action settlement?

The Court must approve the terms of the proposed settlement as fair and reasonable. Once approved, the settlement will affect all Class Members, except those who have properly opted out. This Class Notice explains your legal rights, the terms of the settlement, what you must do to participate, and the amount of money you may receive. Please read this entire Class Notice carefully.

5. What should I do?

You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

6. How much will my payment be?

After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is available for review), the remainder will be used to pay Class Members a pro-rata payment based on the number of Work Weeks each Class Member worked during the Class Period and PAGA Members a pro-rata payment based on the number of Work Weeks each PAGA Member worked during the PAGA Period ("Pro-Rata Share").

The Settlement Administrator shall determine by how many Work Weeks each such Class Member has.

Your estimated payment is listed above, on page 4 of this document. If you do not dispute your Work Weeks calculation, and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, you do not need to take any action to receive a settlement payment.**

If you wish to dispute the number of Work Weeks credited to you or anything else about your employment status, you must write to the Settlement Administrator indicating what you believe is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You may use the enclosed Work Weeks Dispute Form for this purpose. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to write to the Settlement Administrator to dispute your Work Weeks information. You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendants' records and any information you provide. Please be advised that the information on this Notice is presumed to be correct unless the documents you submit are company records from Defendants.

7. When would I get my payment?

The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing time>> .m to decide whether to approve the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at <<settlement administrator phone number>>, or contact Class Counsel (see below for Class Counsel's contact information.). Please be patient.

Defendants will pay the Gross Settlement Amount in two annual $800,000.00 installments. There will be two annual distributions of the Gross Settlement Amount. The parties do not expect the final distribution to take place until December of 2023, so please be patient and, if you change your address, advise the Settlement Administrator immediately.

You will have 180 days to cash your settlement check. If a mailed individual settlement payment is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check), all uncashed funds will be paid to the California State Controller's Office Unclaimed Property Fund with the identity of the Class Member to whom the funds belong, to be held for the Class Member.

8. What am I releasing?

If you do not exclude yourself from the settlement (according to the procedures explained below), you will release certain claims as follows:

> The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit,

administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid requests for exclusion from the Settlement, will release all Released Claims under PAGA against the Released Parties. The State of California will also release all Released Claims under PAGA against the Released Parties.

"**Released Claims**" shall mean all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims during the period of January 16, 2016 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiffs to the LWDA concerning Defendants and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2699; and any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. The Parties acknowledge that Released Claims includes any claims for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet and confer in good faith if the Court requires changes to the scope of the Released Claims.

"Released Parties" shall mean Defendants, and any of their former and present agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert with any of them, and each of them.

The release provisions of this Settlement will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement.

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail to the Settlement Administrator with the following sentence, or something similar, stating: "I request to be excluded from the class action proceedings in the matter of *Charles Mikich, et al. v. Sayeh Petroleum, Inc.,* Case No. CGC-20-582385." You may use the enclosed "Election not to Participate in Settlement Form" for this purpose. You will have 60 **days** from the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and mailed to the Settlement Administrator, CPT Group, Inc., <<settlement administrator mailing address>> and be postmarked no later than <<response deadline>>, or it will not be considered and you will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to opt out. You must include your full name (and former names, if any) and address in your request and you must sign the written request. However, you cannot opt-out of the PAGA Released Claims and will receive your pro rate share of the PAGA Penalties whether or not you opt of out of the settlement.

10. Do I have a lawyer in this case?

The Court has appointed David G. Spivak of The Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069, Telephone: (213) 725-9094, david@spivaklaw.com, and Walter L. Haines of United Employees Law Group, 4276 Katella Ave, Suite 301, Los Alamitos, CA 90720, Telephone: (562) 256-1047, walter@uelglaw.com to represent you and other Class Members in the Action. These lawyers are called Class Counsel. They will be compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Subject to the Escalation Clause above, Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third) of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs of not more than $35,000.00 incurred in connection with the Action. The Court may choose to award less than the amount requested by Class Counsel.

12. How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing or in person. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through

your own attorney, you are responsible for paying that attorney. All written objections and supporting papers should (a) clearly identify the case name and number (*Charles Mikich, et al. v. Sayeh Petroleum, Inc.,* Case No. CGC-20-582385), (b) be submitted to the Settlement Administrator by mailing them to the Settlement Administrator, CPT Group, Inc., <<settlement administrator mailing address>>, and (c) be filed or postmarked on or before <<response deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to object. Class Members may appear at the final approval hearing to be heard on their objections, even if they have not previously served a written objection.

13. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval hearing time>> .m in Department 610 at the San Francisco County Superior Court, Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680, (The Honorable Garrett L. Wong presiding). At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections that were properly made, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

14. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you timely mailed your written objection, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

15. May I speak at the hearing?

Regardless of whether you properly objected to the settlement, you may speak at the fairness hearing.

16. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call <<settlement administrator phone number>> or write the Settlement Administrator, CPT Group, Inc., located at <<settlement administrator mailing address>>.

You can also access the San Francisco County Superior Court's Online Services at https://www._____, or by visiting the Clerk's Office at the San Francisco County Superior Court, Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680), between _:_0 a.m. and _:_0 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT B

Mikich, et al. v. Sayeh Petroleum, Inc., et al.
Superior Court of the State of California, County of San Francisco, Case No. CGC-20-582385

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR A SHARE OF THE SETTLEMENT PROCEEDS, DO NOT FILL OUT THIS FORM.

IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Mikich, et al. v. Sayeh Petroleum, Inc., et al. Class Action Settlement Administrator
c/o _____
_____
_____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds.

_____
(Typed or Printed Name)

_____
(Address)

_____
(City, State, Zip Code)

_____
(Telephone Number, Including Area Code)

_____
(Identification Number)

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

Dated: _____. _____
(Signature)

EXHIBIT C

WORK WEEK DISPUTE FORM

Superior Court of The State of California
For The County of San Francisco
Charles Mikich, et al. v. Sayeh Petroleum, Inc., et al., Case No. CGC-20-582385

Indicate Name/Address Changes, if any:

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX – XX - __ __ __ __

TO ALL PERSONS DEFENDANTS EMPLOYED AS HOURLY, NON-EXEMPT EMPLOYEE IN THE STATE OF CALIFORNIA AT ANY TIME BETWEEN JANUARY 16, 2016 AND PRELIMINARY COURT APPROVAL OF THIS SETTLEMENT, OR SEPTEMBER 3, 2022, WHICHEVER IS EARLIER.

The amount of your estimated Settlement Award is based upon the number of Eligible Work Weeks you worked between January 16, 2016 and preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier and Eligible Work Weeks you worked between January 16, 2019 and preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier. "Individual Class Work Weeks" are defined as any Work Week in which you worked at least one (1) day as an hourly, non-exempt employee of Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad, (also known as Ed Bozorghadad, Ed Ali Bozorghadad, and Ed Hadad) (collectively "Defendants") in California during the calendar week. "Individual PAGA Work Weeks" are defined as any Work Week in which you worked at least one (1) day as an hourly, non-exempt employee of Defendants in California during the calendar week during the period of January 16, 2019 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier. The number of Class and PAGA Work Weeks applicable to your claim are set forth below.

YOUR ELIGIBLE WORK WEEKS

Defendants' records indicate that you worked <<number of Work Weeks>> Work Weeks between January 16, 2016 and preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier and <<number of Work Weeks>> Work Weeks between January 16, 2019 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier.

YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE

Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate estimated amount of <<$Settlement Share Amount>>, minus all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This process may take six months or more. You will receive a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the payment could vary, up or down.

If you wish to dispute the number of January 16, 2016 credited to you, or anything else about your employment status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendants' records and any information you provide. Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless the documents you submit are company records from Defendants.

UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK WEEKS, RECEIPT OF A SETTLEMENT AWARD, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(*UNLIMITED JURISDICTION*)

CHARLES MIKICH, JONATHON GORDON, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE INC., a California corporation; HADAD PETROLEUM, INC., a California corporation BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS INC., and ALI BOZORGHADAD, (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 8–50 inclusive,

Defendant(s).

Case No. CGC-20-582385

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

Action filed: January 22, 2020
Dept: 610, The Honorable Garrett L. Wong

The Motion of Plaintiffs CHARLES MIKICH AND JONATHON GORDON (collectively "Plaintiffs" or "Class Representatives") for Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the Court, The Honorable Garrett L. Wong presiding. The Court having considered the Motion, the Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement" or "Settlement Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court has determined there is sufficient evidence to preliminarily determine that (a) the terms of the Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final hearing and final approval by this Court. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the "Final Approval Hearing") as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the "Settlement Class" means all persons Defendants employed as hourly, non-exempt employees in California (collectively "Class Members"), who worked anytime during the Class Period. The "Class Period" shall mean the period of time from January 16, 2016, through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier. Defendants estimated for purposes of mediation that there are 27,498 workweeks worked by the Class Members for the period of January 22, 2016 through May 6, 2022. For the avoidance of doubt, the term "workweeks"

shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of workweeks worked. The Settlement Administrator shall determine the total number of workweeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats in connection with the Parties' mediation efforts, and multiplying that figure by two. If the workweeks worked as of the date the Court approves the settlement exceed 28,960 workweeks worked by more than 10.00%, the Gross Settlement Amount will increase proportionally according to the number of additional workweeks worked. For example, if the number of workweeks as of the date the Court approves the settlement exceeds 28,960 by 11%, the Gross Settlement Amount shall increase by 1%. If the workweeks worked as of the date the Court approves the settlement exceeds 28,960 workweeks by more than 20.00%, Defendants shall have the option to (a) vacate the Parties' settlement and this Memorandum of Understanding shall be null and void or (b) to cap the Class Period as of the date that the number of workweeks reaches but does not exceed 31,856.

3. The "Effective Date" means as follows: If no objection to this Settlement or to any of the terms and or conditions of the Settlement are filed by any of the Plaintiffs, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this Settlement; however, if any objection to this Settlement or to any of the terms and or conditions of the Stipulation is

filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any funds into the Settlement Account.

4. This action is provisionally certified pursuant to section 382 of the California Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for purposes of settlement only with respect to the proposed Settlement Class.

5. The Court hereby preliminarily finds that the Settlement was the product of serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making this preliminary finding, the Court considered the nature of the claims set forth in the pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a compromise of the Parties' respective positions. The Court further preliminarily finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the Settlement was entered into in good faith.

6. The Court finds that the dates set forth in the Settlement for mailing and distribution of the Class Notice meet the requirements of due process and provide the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons entitled thereto, and directs the mailing of the Class Notice by first class mail to the

Settlement Class as set forth in the Settlement. Accordingly, the Court orders the following implementation schedule for further proceedings:

a. By _____, Defendants shall provide _____, the appointed Settlement Administrator, with: (a) An electronic database of all Class Members, last known mailing address, Social Security number and Defendants' employee identification number ("Class Members' Data"); and (b) Corresponding to each Class Member's name, Defendants shall provide a figure indicating the total number of Work Weeks during the Class Period and the PAGA Period in which Defendants employed the Class Member. That number of Work Weeks shall be referred to as that Class Member's "Individual Work Weeks;" (c) If any of the Class Members' Data are unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data prior to when it must be submitted to the Settlement Administrator. Class Members' Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court.

b. **Mailing of Class Notice.** By _____, approximately fourteen (14) days after receiving the Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the

mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

d. **Declaration of Settlement Administrator.** Not later than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide the Parties for filing with the Court a declaration

of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

e. **Requests for Exclusion from Settlement; and Objections to Settlement.** Class Members may submit requests to be excluded from the effect of the Settlement, or objections to the Settlement, pursuant to the following procedures:

i. **Request for Exclusion from Settlement.** A Class Member may request to be excluded from the effect of this Agreement, though not the PAGA Released Claims, and any payment of amounts under this Agreement, though not the PAGA Payment, by timely mailing a letter to the Settlement Administrator stating that the Class Member wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, and signature. To be valid and timely, the request to be excluded must be postmarked by the date specified in the Class Notice (_____, or 60 days from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any payment of any kind in connection with this Agreement or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no standing to object to

the Settlement. A request for exclusion must be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Scott G. Lawson, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

ii. **Objections to Settlement.** The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator by _____, or 60 days after the Settlement Administrator mails the Class Notice, a written objection to the Settlement which sets forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:	*To Defense Counsel*:
David G. Spivak, Esq. The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069	Scott G. Lawson, Esq. Lawson & Lawson, LLP One Sansome Street 35th Floor San Francisco, CA 94104

The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing. However, the objectors will be provided with the opportunity to speak at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition beforehand.

If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member may still be bound by the terms of this Agreement.

f. **Report.** Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

7. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement.

8. The Court approves, for settlement purposes only, David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

9. The Court approves, for settlement purposes only, Plaintiffs Charles Mikich and Jonathon Gordon as the Class Representatives.

10. The Court approves CPT Group, Inc. as the Settlement Administrator.

11. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

12. The Court preliminarily approves the estimated Settlement Administrator costs payable to the Settlement Administrator subject to final review by the Court.

13. The Court preliminarily approves Plaintiff's Class Representative Payment subject to final review by the Court.

14. A Final Approval Hearing shall be held on _____ at _____**.m.** in Department 610 of the Superior Court for the State of California, County of San Francisco, located at the Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs

shall be served and filed with this Court on or before _____.

15. If for any reason the Court does not execute and file a final approval order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the proposed Settlement that is the subject of this order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement.

16. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiffs shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

DATE	**THE HONORABLE GARRETT L. WONG** **SUPERIOR COURT JUDGE**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(*UNLIMITED JURISDICTION*)

CHARLES MIKICH, JONATHON GORDON, on behalf of themselves and all others similarly situated, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; GREEN PLANET GAS, INC., and ALI BOZORGHADAD, also known as ED BOZORGHADAD, also known as ED HADAD, an individual; and DOES 8–50, inclusive,

Defendant(s).

Case No. CGC-20-582385

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed:	January 22, 2020
Dept:	610, The Honorable Garrett L. Wong

This matter came on for hearing on _____ at _____.m. in Department 610 of the above-captioned court on the Motion of Plaintiffs Charles Mikich and Jonathon Gordon (collectively "Plaintiffs" or "Class Representatives") for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the "Settlement") filed herewith which provides for a Gross Settlement Amount ("GSA") of up to $1,600,000.00 in compromise of all disputed claims on behalf of all persons hourly, non-exempt employees in California at any time during the period of January 16, 2016 to preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier ("Settlement Class Period"). All capitalized terms used herein shall have the same meaning as defined in the Settlement.

In accordance with the Court's prior Order Granting Preliminary Approval of Class Action Settlement, Class Members have been given notice of the terms of the Settlement and the opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its terms. Having received and considered the Settlement, the supporting papers filed by the Parties, and the evidence and argument received by the Court in conjunction with the motions for preliminary and final approval of the Settlement, the Court grants final approval of the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING DETERMINATIONS[1]:

1. The Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent

[1] A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by reference. A true and correct copy of the Court's Minute Order dated _____ is attached hereto as **Exhibit B** and incorporated by reference.

to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of the terms of the Settlement, their right to receive their proportional share of the Settlement, their right to request exclusion, their right to comment upon or object to the Settlement, and their right to appear in person or by counsel at the final approval hearing and be heard regarding final approval of the Settlement. Adequate periods of time were provided by each of these procedures. No member of the Settlement Class presented written objections to the proposed Settlement as part of this notice process, stated an intention to appear, or actually appeared at the final approval hearing.

2. For purposes of this Final Order and Judgment, the Class Members are all persons Defendants employed as hourly, non-exempt employees in California during the Class Period. at any time during the period of January 16, 2016 to preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier ("Settlement Class Period").

3. The Court finds and determines that the notice procedure afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding final approval of the Settlement based on the responses of Class Members. The Court finds and determines that the notice provided in this case was the best notice practicable, which satisfied the requirements of law and due process as to all persons entitled to such notice.

Release by Plaintiffs and Class Members. The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released

Parties. This release will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid requests for exclusion from the Settlement, will release all Released Claims under PAGA against the Released Parties. The State of California will also release all Released Claims under PAGA against the Released Parties. "**Released Claims**" shall mean all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims during the period of January 16, 2016 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiffs to the LWDA concerning Defendants and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and 2699; and any and all damages, restitution, disgorgement, civil penalties, statutory

penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. The Parties acknowledge that Released Claims includes any claims for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet and confer in good faith if the Court requires changes to the scope of the Released Claims. **"Released Parties"** shall mean Defendants, and any of their former and present agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert with any of them, and each of them.

2. The Court further finds and determines that the terms of the Settlement are fair, reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and provisions of the Settlement, including the release of claims contained therein, should be and hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement according to its terms. As of the Effective Date of Settlement, and for the duration of the Settlement Class Period, all Class Members are hereby deemed to have waived and released all Released Claims and are forever barred and enjoined from prosecuting the Released Claims against the Released Parties as fully set forth in the Settlement. No objections were received by the Parties or the Court through the date of this Final Order and Judgment. The Court finds _____ Class Member(s)—_____—submitted a request for exclusion from the Settlement as determined by the Settlement Administrator and therefore is/are not in the

Settlement Class.

3. The Court finds and determines that (a) the Settlement Shares to be paid to Participating Class Members and (b) the LWDA payment as civil penalties under the California Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants final approval to, and orders the payment of, those amounts be made to the Participating Class Members and to the California Labor & Workforce Development Agency ("LWDA"), in accordance with the terms of the Settlement.

4. The Court further grants final approval to and orders that the following payments be made in accordance with the terms of the Settlement:

a. Class Counsel fees & costs of $533,333.00 in attorneys' fees and $35,000.00 in litigation costs to Class Counsel;

b. $25,000.00 as a Class Representative Payment award payable to each Plaintiff for his service as a Class Representative;

c. $32,000.00 in costs of the Settlement Administrator payable to CPT Group, Inc. for its services as the Settlement Administrator; and

d. Payment of $37,500.00 (75% of the ($50,000.00 PAGA penalty) to the LWDA.

7. The settlement shall proceed as directed in the Settlement, and no payments pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to

California Rule of Court 3.769(h).

8. Within ten (10) calendar days of the Effective Date of Settlement and pursuant to the Settlement's installment payment plan, Defendants shall begin to deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.

9. Defendants' payment of such sums shall be the sole financial obligation of Defendants under the Settlement, and shall be in full satisfaction of all claims released herein, including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and expenses.

10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement Share check. After the expiration of the 180-day period, on Defendants' behalf, the Settlement Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of the initial judgement to the California Unclaimed Property Fund.

11. The Parties shall file a final accounting report by _____. A non-appearance case review re submission of a final report is scheduled for _____ **at** _____**.m. in Department 610**. The Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for

the class and defense counsel in accord with the proposed Amended Final Order and Judgment. If there are objections by any party or non-party, class counsel shall immediately notify the Court and the matter will be set for further hearing. A non-appearance hearing for the lodging of the stipulation and proposed order and separate amended judgment is scheduled for **_____ at _____.m. in Department 610**.

12. Nothing in this Final Order and Judgment shall preclude any action to enforce the Parties' obligations under the Settlement or hereunder, including the requirement that Defendants deposit funds for distribution by the Settlement Administrator to Participating Class Members in accordance with the Settlement.

13. The Court hereby enters final judgment in this case in accordance with the terms of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final Order and Judgment.

14. The Parties are hereby ordered to comply with the terms of the Settlement.

15. The Parties shall bear their own costs and attorneys' fees except as otherwise provided by the Settlement and this Final Order and Judgment.

16. The Settlement is not an admission by Defendants nor is this Final Order and Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order and Judgment, the Settlement, any document referred to herein, any exhibit to any document referred to herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an admission or concession with regard to, the denials or defenses of Defendants, and shall not

be offered in evidence in any proceeding against the Parties hereto in any Court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto, and any other papers and records on file in the Action may be filed in this Court or in any other litigation as evidence of the settlement by Defendants to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.

17. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE	**THE HONORABLE GARRETT L. WONG** **SUPERIOR COURT JUDGE**

EXHIBIT 10

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ELECTRONICALLY
FILED
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Clerk of the Court
BY: RONNIE OTERO
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(*UNLIMITED JURISDICTION*)

CHARLES MIKICH and JONATHON GORDON, on behalf of themselves, all others similarly situated, the general public, and as "aggrieved employees" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC., a California corporation; ALI BOZORGHADAD, a natural person; GREEN PLANET GAS, INC., a California corporation; and DOES 1–50, inclusive,

Case No. CGC-20-582385 to be consolidated with CGC-21-594289

PLAINTIFFS CHARLES MIKICH AND JONATHON GORDON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Date: October 20, 2022
Hearing Time: 8:30 a.m.
Hearing Dept.: 302

Action filed: January 22, 2020
Trial Date: Not Set

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Defendant(s).

JONATHON GORDON on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorney General Act of 2004, *Plaintiff(s)*, vs. SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 1-50, inclusive, *Defendant(s).*	Case No.: CGC-21-594289 Action Filed: 08/04/2021 Dept: 610, Hon. Garrett L. Wong



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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiffs Charles Mikich, Jonathon Gordon, and all others similarly situated (collectively "Plaintiffs") submit this memorandum of points and authorities in support of their unopposed motion for preliminary approval of the Joint Stipulation of Class Action Settlement and Release of Claims (the "Settlement")[2], which provides for a Gross Settlement Amount ("GSA") of $1,600,000.00 in compromise of all disputed claims on behalf of all persons hourly, non-exempt in California of Defendants Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Ali Bozorghadad, and Green Planet Gas, Inc. (collectively "Defendants") in California at any time between January 22, 2016 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier. Through this Motion, Plaintiffs respectfully request for this Court to (1) provisionally certify the below-defined Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiffs as Class Representatives; (4) appoint David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel; (5) approve the proposed notice procedures and related forms; (6) direct that notice be mailed to the proposed Settlement Class; and (7) schedule a final approval hearing.

This Court should grant Plaintiffs' motion because: (1) for settlement purposes, the Settlement Class meets the requirements for class certification under Code of Civil Procedure § 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and adequacy; (3) for settlement purposes, Plaintiffs are adequate to serve as Class Representatives; (4) Plaintiffs' attorneys are adequate to serve as Class Counsel; (5) the proposed notice procedures, and related forms, fully comport with due process and adequately apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement Class members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiffs' Motion in its entirety and preliminarily approve the Settlement.

/ / /

[2] The Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.

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II. BACKGROUND

Defendants collectively operate more than twenty gas stations, some of which have associated convenience stores. DS, ¶ 4. Defendants employed Plaintiffs as gas station attendants, clerks, cashiers, and food preparers. *Id*.

A. The Claims and Procedural History

On January 16, 2020, Plaintiff Mikich notified Defendants and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations committed by Defendants. DS, ¶ 5, Ex. 2.

On January 22, 2020, Plaintiff Mikich filed a Class Action Complaint in the San Francisco County Superior Court, Case No. CGC-20-582385, against Defendants on behalf of himself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.). DS, ¶ 6, Ex. 3.

On May 11, 2020, Plaintiff Mikich filed his First Amended Complaint adding a claim under PAGA. DS, ¶ 6, Ex. 4. On November 4, 2021, Defendants filed an answer to Plaintiff Mikich's First Amended Complaint. DS, ¶ 6, Ex. 5. Defendants deny all of Plaintiffs' allegations and strongly contend that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. DS, ¶ 6.

On February 11, 2021, Plaintiff Gordon notified Defendants and the LWDA, pursuant to PAGA, of alleged Labor Code violations committed by Defendants. DS, ¶ 7, Ex. 6.

On August 4, 2021, Plaintiff Gordon filed a Class and Representative Action in the San Francisco County Superior Court, Case No. CGC-21-594289, against Defendants on behalf of himself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time

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Penalties (Lab. Code §§ 201-203); (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and (8) Civil Penalties under PAGA. DS, ¶ 8, Ex. 7.

B. Mediation

The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced each Plaintiff's entire personnel file (including policies and agreements he signed and acknowledged), copies of their relevant company written policies, time-keeping records, email messages, and paycheck data and records for the putative class, and more detailed time and payroll data for a random sample of putative class members specifically selected by Plaintiffs' counsel. DS, ¶ 9.

On January 31, 2022, the parties engaged Michael Loeb, Esq., an experienced class action mediator, to mediate the dispute. DS, ¶ 10. While the Parties mediated with Mr. Loeb's assistance for a full day, they were unable to reach a settlement. *Id.* The Parties agreed to engage a third-party expert to analyze Defendants' time and payroll records and provide figures (such as average work day length and the number of workdays for which Defendants' records reflected a facially-compliant meal period) on which the Parties could build damages models. *Id.* The Parties agreed to continue their mediation with Mr. Loeb on a second day. *Id.*

The Parties engaged EmployStats to conduct this analysis. DS, ¶ 11. The Parties asked EmployStats to derive 98 categories of data from Defendants' records. *Id.* These categories included the total number of workdays, average hours worked per day, average workweek length, number of workdays of sufficient length to require a meal period, and number of workdays for which a facially-compliant meal period was recorded, among many others. *Id.* EmployStats provided its analysis to the Parties on April 19, 2022. *Id.*

On May 6, 2022, the Parties participated in a second day of mediation with Mr. Loeb. During this second day of mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement. During the mediation sessions, each side, represented by his/their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. DS, ¶ 12.

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C. Consolidation

On May 6, 2021, Plaintiff Mikich, through a fictitious name amendment after having discovered the true names of the Doe Defendants, added the remaining Defendants to his lawsuit in place of the first seven Doe Defendants (HEDIA PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD). Whereas both the Mikich and Gordon matters are assigned to the same judge (Honorable Judge Ganet L. Wong in Department 610 of the above-entitled Court) and allege the same violations against the same Defendants, the parties requested for the Court to consolidate the matters for settlement purposes. On July 28, 2022, the Court ordered the consolidation of the Mikich and Gordon matters for settlement purposes. DS, ¶ 13, Ex. 8.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class Definition

The Settlement defines the Class as all persons Defendants employed in California as hourly, non-exempt employees during the Class Period, which is the period of time from January 22, 2016 through preliminary Court approval of this Settlement or September 3, 2022, whichever is earlier.

B. Monetary Terms

Subject to the terms and conditions of this Agreement, the Gross Settlement Amount of One Million Six Hundred Thousand Dollars and Zero Cents ($1,600,000.00), plus Defendants' employer share of employer-side payroll taxes, is the maximum amount payable by Defendants, subject to the provisions of this Paragraph III.B. Defendants estimated for purposes of mediation that there are 27,498 workweeks worked by the Class Members for the period of January 22, 2016 through May 6, 2022. For the avoidance of doubt, the term "workweeks" shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of workweeks worked. The Settlement Administrator shall determine the total number of workweeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats in connection with the Parties' mediation efforts, and

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multiplying that figure by two. If the workweeks worked as of the date the Court approves the settlement exceed 28,960 workweeks worked by more than 10.00%, the Gross Settlement Amount will increase proportionally according to the number of additional workweeks worked. For example, if the number of workweeks as of the date the Court approves the settlement exceeds 28,960 by 11%, the Gross Settlement Amount shall increase by 1%. If the workweeks worked as of the date the Court approves the settlement exceeds 28,960 workweeks by more than 20.00%, Defendants shall have the option to (a) vacate the Parties' settlement and this Memorandum of Understanding shall be null and void or (b) to cap the Class Period as of the date that the number of workweeks reaches but does not exceed 31,856.

The Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

In addition to their Settlement Shares, each Plaintiff will apply to the Court for an award of not more than Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) as a Class Representative Payment. Defendants will not oppose a Class Representative Payment of not more than $25,000.00. The Plaintiffs will receive no other payment other than their Settlement Share and Class Representative Payment, and acknowledge that they are aware of no other facts or circumstances related to their employment with Defendants that could give rise to any additional entitlement to any further payments. The Settlement Administrator will pay the Class Representative Payment approved by the Court out of the Gross Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class Representative Payment, and instead a Form 1099 will be issued to Plaintiffs with respect to that payment. Each Plaintiff agrees to assume all responsibility and liability for the payment of taxes due on the Class Representative Payment. The Class Representative Payment is in exchange for the release of Released Claims against the Released Parties, the general Release of Claims by Plaintiffs, and for the Plaintiffs' time, effort and risk in bringing and prosecuting the Action. Any adjustments made by the Court to the requested Class Representative Payment shall not be deemed a material modification of this Settlement Agreement. In the event that the Court reduces or does not approve the requested Class Representative Payment, the Settlement Agreement remains in full force and effect, shall not have the right to revoke the Settlement for that reason, it shall remain binding, and any portion of the Class Representative Payment not awarded to Plaintiffs will not revert to Defendants, but instead shall be returned to the Net Settlement Amount.

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Class Counsel will apply to the Court for an award of not more than Five Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Zero Cents ($533,333.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel Fees Payment and an amount not more than Thirty Five Thousand Dollars and Zero Cents ($35,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not oppose this request. The Settlement Administrator will pay the amount approved by the Court (but not more than Five Hundred Thirty Three Thousand Three Hundred Thirty Three Dollars and Zero Cents ($533,333.00) in fees and not more than Thirty Five Thousand Dollars and Zero Cents ($35,000.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more Forms 1099 will be issued to Class Counsel with respect to those payments.

The Settlement Administrator will be paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the Court in an amount currently estimated to not exceed Thirty-Two Thousand Dollars and Zero Cents ($32,000.00). Of the Gross Settlement Amount, Fifty Thousand Dollars and Zero Cents ($50,000.00) has been allocated to the Settlement of claims under the Private Attorneys General Act ("PAGA"), California Labor Code section 2698, et seq. Of this amount, the Settlement Administrator shall distribute Thirty Seven Thousand Five Hundred Dollars and Zero Cents ($37,500.00), which is 75% of the PAGA settlement, to the Labor & Workforce Development Agency. Twelve Thousand Five Hundred Dollars and Zero Cents ($12,500.00), 25% of the PAGA settlement, will remain in the Net Settlement Amount for distribution and will be distributed to PAGA Members on a pro rata basis based on the total number of Individual Work Weeks (full or partial) worked by each PAGA Member during the PAGA Period. Partial Work Weeks shall be rounded up to the nearest whole integer. PAGA Members shall receive their portion of the PAGA Penalties regardless of their decision to submit a request for exclusion to opt out of the Settlement.

C. Timing of Payments

Defendants will pay the Gross Settlement Amount to the Settlement Administrator for the PAGA settlement and for Class Members who do not opt-out. Any amount attributed to the share of class members who opt-out shall be redistributed to participating class members on a pro-rata basis, and the Settlement Administrator will then be responsible for making appropriate deductions, reporting obligations, and issuing the individual settlement awards. Defendants shall

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deposit one half of the Gross Settlement Amount with the Settlement Administrator within 30 days of the Court's granting preliminary approval of the Settlement. Defendants shall deposit the remaining half of the Gross Settlement Amount with the Settlement Administrator within 365 days of their having deposited the first half of the Gross Settlement Amount.

There will be two distributions of the Gross Settlement Amount as follows:

Within fourteen (14) calendar days of the Effective Date[3], or within ten (10) calendar days of the deadline for the Defendants' first installment payment (whichever is later), the Settlement Administrator shall distribute, pro rata, the portion of the Gross Settlement Amount Defendants paid by that date, including pro rata portions of the Settlement Share, PAGA payment, Class Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administrator's payment.

Within ten (10) calendar days of the Defendants' second installment payment, the Settlement Administrator shall distribute, pro rata, the portion of the Gross Settlement Amount Defendants paid since the first distribution, including pro rata portions of the PAGA payment, Class Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administrator's payment.

D. Calculation of Settlement Shares

The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the aggregate total of all Class Members' Individual Work Weeks as the denominator. The Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount. The Settlement

[3] The "Effective Date" means as follows: If no objection to this Settlement or to any of the terms and or conditions of the Settlement are filed by Plaintiffs, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this Settlement; however, if any objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any funds into the Settlement Account.

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Administrator shall assign to each Class Member a "PAGA Settlement Ratio," which shall be a fractional number comprised of (a) that PAGA Member's Individual Work Weeks during the PAGA Period as the numerator, and (b) the aggregate total of all PAGA Members' Individual Work Weeks during the PAGA Period as the denominator. The Settlement Administrator shall assign to each PAGA Member the "PAGA Settlement Share" which shall be calculated by multiplying that PAGA Member's Settlement Ratio by amount allocated to PAGA Members from the Net Settlement Amount.

E. Apportionment of Settlement Shares

The settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted and W-2s issued) and 66.66% to penalties and interest (for which 1099s will be issued).

F. The Releases

The Parties agree that it is their intent that the resolution set forth in this Settlement will release and discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class Members (including participation to any extent in any representative or collective action) against the Released Parties. This release will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid requests for exclusion from the Settlement, will release all Released Claims under PAGA against the Released Parties. The State of California will also release all Released Claims under PAGA against the Released Parties.

Upon the Effective Date, and only after Defendants pay the entirety of the Gross Settlement Amount, each Plaintiff will be deemed to have released the Released Parties of and from all of the Released Claims during the Class Period. These claims include all claims alleged or which could have been alleged based on the facts, circumstances, and/or primary rights at issue in the Complaint and any amendments thereto. They include without limitation: (1) all claims for failure to pay wages earned, including minimum wages, and overtime wages; (2) all claims for failure to provide rest periods and claims for rest period premium pay; (3) all claims for failure to provide meal periods and claims for meal period premium pay; (4) all claims for failure to provide accurate wage statements and related penalties; (5) all claims for failure to timely pay wages during employment and at termination; (6) all claims for violation of California Business and Professions Code §§ 17200, et seq., to the extent such claims are predicated on the other claims

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released herein; and (7) all claims for violation of PAGA and all related claims for penalties, to the extent such claims are predicated on the other claims released herein. Each Plaintiff's release set forth herein shall include a waiver of all rights under California Civil Code §1542, which includes a release of all known and unknown claims against the Released Parties during the Class Period. Civil Code section 1542 provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, each Plaintiff will be deemed to have waived his rights under Civil Code §1542 during the Class Period, as set forth above. Each Plaintiff's release excludes any claim for worker's compensation. It also includes his claims, if any, for harassment, discrimination, wrongful termination, negligent infliction of emotional distress and intentional infliction of emotional distress and related prayers for compensatory and punitive damages, interest, attorney fees and costs.

G. Notice and Claims Process and Procedures

After the Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with a "Class Notice."

Within fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendants shall provide to the Settlement Administrator: (a) An electronic database of all Class Members, last known mailing address, and Social Security number (if available); (b) corresponding to each Class Member's name, Defendants shall provide a figure indicating the total number of Work Weeks during the Class Period in which that Class Member was employed by Defendants as a Class Member and during which they actually performed work for Defendants. That number of Work Weeks shall be referred to as that Class Member's "Individual Work Weeks;" (c) if any of the Class Members' Data are unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data prior to when it must be submitted to the Settlement Administrator.

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Class Members' Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court.

Within fourteen (14) days after receiving the Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

1. Class Member Disputes

If a Class Member disputes his/her estimated Settlement Share, the Class Member may produce evidence to the Settlement Administrator for the Class Period. In order for the dispute to be considered, he/she must follow the directions on the Class Notice. To be valid and timely, all disputes and supporting documents must be postmarked by the Response Deadline. A Class Member may use the Work Weeks Dispute form (Exhibit C to the Settlement), though a Class Member is not obligated to do so, to dispute information in the Class Notice. Absent evidence rebutting Defendants' records, Defendants' records will be presumed determinative. However, if a Class Member produces evidence contrary to Defendants' records by the Response Deadline, the Settlement Administrator shall notify Class Counsel and Defense Counsel to discuss and

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resolve the dispute, including providing all available relevant information to all counsel. The Parties will resolve all disputes jointly, and such resolution shall be final and binding on any Class Member disputes, and shall thereafter instruct the Settlement Administrator how to proceed in processing the dispute. If the Parties cannot reach an agreement, the dispute shall be submitted to the Court for final determination. All such disputes are to be resolved or submitted to the Court not later than fourteen (14) calendar days after the Response Deadline.

2. Opting Out

Class Members may submit requests to be excluded from the effect of the Settlement, or objections to the Settlement, pursuant to the following procedures:

A Class Member may request to be excluded from the effect of the Settlement Agreement, and any payment of amounts under this Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class Member wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, signature, and a clear statement requesting to be excluded from the settlement of the class claims, as set forth on the Request for Exclusion form or similar to the following: "I wish to exclude myself from the class settlement reached in the matter of Mikich, et al. v. Sayeh Petroleum, Inc. I understand that by excluding myself, I will not receive money from the settlement of my individual claims." To be valid and timely, the request to be excluded must be postmarked by the Response Deadline and received by the Settlement Administrator. A Class Member may use the Exclusion Request form (Exhibit B to this Settlement), though a Class Member is not obligated to do so to request exclusion from the Settlement. A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any payment of any kind in connection with this Agreement or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no standing to object to the Settlement, except that the request for exclusion shall not be effective as to the release of claims arising under PAGA and shall not preclude the Class Member from receiving their share of the PAGA Penalties. A request for exclusion must be mailed to the Settlement Administrator at the address provided on the Class Notice.

3. Objecting

The Class Notice provides that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator. To be valid, an objection must be postmarked by the Response Deadline and received by the Settlement Administrator. The written objection to the Settlement

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should set forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing. Regardless of whether an objecting Class Member complies with the objection procedure encouraged above, the Court will provide a Class Member with the opportunity to speak at the final approval hearing regardless of whether he or she has filed an appearance or submitted a written opposition beforehand. If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement.

H. Uncashed Checks

Any check issued by the Settlement Administrator to Class Members who do not timely and validly opt out shall be negotiable for one hundred and eighty (180) calendar days. Those funds represented by checks returned as undeliverable and those checks remaining un-cashed for more than 180 days after issuance (collectively, "Voided Settlement Checks"), plus any interest that has accrued on those funds, will be paid to the California Unclaimed Property Fund.

IV. CERTIFICATION OF THE CLASS IS APPROPRIATE

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. *See*, *e.g.*, *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover, in the settlement context, the Court can use a lesser standard to determine the appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

A. The Settlement Class Is Objectively Ascertainable

A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932

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(citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs maintain that the above-defined Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. DS, ¶ 14; Settlement, § I.B., III.D.2., IV.B.1 Therefore, the Settlement Class is ascertainable.

B. The Membership of the Settlement Class Is Sufficiently Numerous

The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 1,002 Class Members. DS, ¶ 15. Plaintiffs maintain that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations, the Settlement Class' membership is sufficiently numerous. DS, ¶ 15. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

C. Class Members Share a Well-Defined Community of Interest

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It "does not mandate that class members have uniform or identical claims." *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

To justify certification, the class proponent "'must show ... that questions of law or fact common to the class predominate over the questions affecting the individual members ....'" *See, Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (*citing Washington Mut. Bank, FA v. Superior Court*, 248 Cal. 4th 906, 913 (2001)). In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources. DS, ¶ 15.

In this case, Plaintiffs assert all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from

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Defendants' alleged policy-driven failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related labor law violations, all of which Plaintiffs claim constitute unfair business practices and give rise to PAGA penalties. Plaintiffs assert that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq*., with respect to the class. DS, ¶ 16. Therefore, common questions predominate.

D. <u>Each Plaintiff is Typical of the Settlement Class</u>

The class representative must be similarly situated to the rest of the purported class. *See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating "it has never been the law in California that the class representative must have identical interests with the class members. The only requirements are ... that the class representative be *similarly* situated") (emphasis in original); *See also* Newberg, § 3:29 (typicality "focuses on whether there exists a relationship between the Plaintiffs' claims and the claims alleged on behalf of the class"). Plaintiffs contend that their claims are typical for the purposes of certifying the Settlement Class. Plaintiffs asserts that they, like absent Class Members was subject to the same relevant policies and procedures governing their compensation, hours of work and meal and rest periods. Because Plaintiffs contend that they were subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiffs will determine Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiffs' claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiffs' claims are typical of the Class. DS, ¶ 17.

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E. Each Plaintiff Will Adequately Represent the Settlement Class

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 18.

First, Class Counsel have supplied the Court with declarations to show that they are adequate to represent the Settlement Class and that they have significant experience in employment litigation generally, and wage and hour and employment-related class action litigation specifically. *See* DS, ¶¶ 20-27; Declaration of Walter L. Haines ("Haines Decl.") ¶ 3. Thus, Plaintiffs' counsel are adequate to serve as Class Counsel.

Second, each Plaintiff contends that he is an adequate class representative. Each Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendants during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between any Plaintiff and the Class Members. DS, ¶ 19. Moreover, each Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. DS, ¶ 64. Thus, each Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should find that Plaintiffs and their counsel are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

F. Class Action Treatment Is the Superior Means For Resolving The Claims Of The Class Members

Plaintiffs further contend that a class action is also superior to other means adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly

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superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only. DS, ¶ 28.

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

A. Legal Standard

A class action settlement requires court approval. California Rules of Court ("CRC"), Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval hearing where class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision to approve or reject a class settlement is committed to the Court's broad discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement may be reversed only upon a showing of "clear abuse of discretion." *Id.*

B. The Settlement Is Presumptively Fair

In assessing preliminary approval, a court evaluates if the settlement process has certain indicia of fairness. A "presumption of fairness exists where (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th at 1794.

The class settlement here satisfies all of these factors. DS, ¶ 29. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants' estimated exposure. *Id*. Moreover, the Parties engaged a neutral third-party expert, EmployStats, to analyze Defendants' time and payroll records relating to the Settlement Class, to derive figures relevant to damages calculation from the underlying records. *Id.*

Plaintiffs prepared "damages" estimates in advance of the mediation. DS, ¶ 30, Ex. 9. In advance of the mediation, Plaintiffs determined Defendants' maximum exposure for restitution and penalties to be approximately $10,731,169.55 (consisting of $146,975.94 in unpaid wages, $910,175.92 in missed meal period premium wages, $1,475,394.34 in missed rest break premium

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wages, $722,000.00 for wage statement penalties, $2,615,796.86 for waiting time penalties, and $4,026,000.00 for civil penalties). Plaintiffs calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiffs' reports, the sample data, and EmployStats' analysis. *Id*. Plaintiffs also considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Plaintiffs' Counsel applied discounts to the maximum exposure to account for all other risks discussed below. The Gross Settlement Amount, $1.6 million, is approximately 15% of Plaintiffs' calculation of Defendants' maximum potential exposure. A settlement for approximately 15.00% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.[4] *Id*.

Plaintiffs are aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.[5] DS, ¶ 56. PAGA penalty awards are often

[4] *See, e.g., In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

[5] In *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded civil penalties under the PAGA of approximately $25 million, representing a 25% reduction from plaintiff's claim for approximately $33 million. *Bernstein* represents a unique set of circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein* suffered a particularly sizeable injury – the court found that the defendant's policies caused damages to the plaintiffs in excess of $45 million. *Id.* at 20. Additionally, the defendants in *Bernstein*, who the court noted had received "millions of dollars from the state of California" to train their flight attendants, engaged in glaring violations of the labor code, such as failing to compensate its flight attendants for work performed outside of "block time" (time during which the aircraft is moving), including time spent participating in pre-flight briefings, boarding passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049, 1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253.

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately $102 million in damages, primarily based on the defendants' failures to comply with the requirements of California Labor Code section 226. However, the Ninth Circuit

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small even for egregious, intentional violations of the Labor Code.[6] *Id*. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only $50.00. *Shields v. Security Paving Company*, Inc., LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only $5 per pay period for the defendant's meal period violations. A similar result could occur here. *Id*. Notably, Defendants have not previously been found to have violated the California Labor Code and there is significant evidence of Defendants' good faith efforts to comply with their obligations under the Labor Code, both of which may result in the court's exercising its discretion to limit penalties in this case well below their maximum potential value.

Plaintiffs' initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. *Id*. Therefore, Plaintiffs believe a class settlement for $1,600,000.00 is fair and reasonable. *Id.*

C. The Settlement Satisfies the *Kullar* Factors for Approval

The *Kullar* case sets forth several factors a court should consider in determining whether to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these factors.

1. Evaluation of Plaintiffs' Case

a. Risks Associated with the Unpaid Wages Claim

There is a risk that Plaintiffs' recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited

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reversed *Magadia* on substantive and standing grounds. *Magadia v. Wal-Mart Assocs.* (9th Cir. 2021) 999 F.3d 668.

[6] In 2012, Plaintiffs' Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA.

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off-the-clock work. DS, ¶ 32. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. DS, ¶ 32. Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Lastly, Defendants rounded hours worked by Class members to the nearest quarter-hour. EmployStats' analysis showed that Defendants' rounding policy added nearly one hundred more hours worked to Class members' time records than it deducted. *Id.* Accordingly, a large award of penalties seems unlikely with respect to this claim. *Id.*

The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiffs may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a classwide methodology. DS, ¶ 33.

b. Risks Associated with the Meal Period Claims

There are risks to Plaintiffs' meal period claim. DS, ¶ 34. According to Defendants, Plaintiffs' description of Defendants' scheduling practices accurately describes only a tiny fraction of Putative Class members: those who worked for stations that were staffed by a single

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employee ("Single- Employee Stations") during morning and afternoon shifts. Further, every employee who worked these shifts, including both named Plaintiffs, signed enforceable on-duty meal period agreements. Defendants contend that every other Putative Class Member either worked in a station with coworkers ("Multi-Employee Stations"), where employees were permitted and encouraged to take their meal breaks, or worked at a Single-Employee Station during the graveyard shift, when the policy requiring the station to remain open did not apply. Time records show Defendants instructed Putative Class Members to take meal and rest breaks and provided them the opportunity to do so. In other words, other than limited potential damages associated with unpaid premiums for rest breaks not taken by Putative Class Members working at Single-Employee Stations during the afternoon and graveyard shifts, Defendants contend they face no liability whatsoever with regard to Plaintiffs' first cause of action.

Defendants contend that even for this group, however, there is no evidence that employees, whose job responsibilities were limited in light of the automation implemented at gas stations, were unable to take off-duty rest breaks. While it is true that Defendants required Putative Class Members to remain on premises throughout operating hours, this fact does not necessarily result in liability for Defendants. See, e.g. *Schmidtberger v. W. Refining Retail, LLC*, 2021 WL 5024714, at *19 (C.D. Cal. Sept. 28, 2021) ("The Court . . . rejects Plaintiff's contention that a policy of requiring employees stay on the premises is invalid facially") (citing *Augustus v. ABM Sec. Servs., Inc*., 2 Cal. 5th 257, 270 (2016)). Rather, whether Defendants exercised such control over Putative Class Members throughout their shifts such that they failed to provide off-duty rest breaks is a matter for determination by individualized inquiry, and cannot be resolved on a class-wide basis. Id. at *25 ("the evidence [including the policy requiring station attendants to remain on premises at all times] does not show [that Putative Class Members] remainder under Defendant's control during breaks pursuant to a uniform policy"). Id.

The law governing Plaintiffs' first cause of action is well-settled, and the dispute regarding the provision of meal periods and rest breaks is not likely to turn on questions of law, except with regard to the enforceability of the on-duty meal period agreements. As noted above, all Putative Class Members, including both named Plaintiffs, executed on-duty meal period agreements at the outset of their employment with Defendants. These agreements foreclose Plaintiffs' theory of liability regarding unpaid meal period premiums.

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On-duty meal period agreements are enforceable when the "nature of the work prevents an employee from being relieved of all duty" during their meal period. Industrial Welfare Commission Wage Order No. 7, 11(c). Like most gas stations, Defendants' stations are franchises of larger entities, such as Chevron, AMPM, Arco, 76, and Valero. Franchisors exert significant control over the operations of franchisee stations: they dictate branding practices (including employee uniforms), hours of operation, the types of services offered by the stations, and other matters. In general, these requirements are set forth in the franchise agreement, though they are sometimes set forth in branding agreements that mimic franchise agreements. For each of the Single-Employee Stations, the relevant agreement requires Defendants to keep the station open during daytime operating hours (i.e., whenever the station is open, other than during the "graveyard" shift). Since it would not make financial sense to staff these stations with multiple employees during these times, Defendants require employees to sign on-duty meal period agreements to account for the fact that they must eat their lunches while working.

The nature of the work performed by Putative Class Members working daytime shifts at Single-Employee Stations meets the criteria for enforceability of on-duty meal period agreements. While there does not appear to be any precedent directly addressing employees working alone as gas stations, two DLSE opinion letters, the Wage Order's plain language, the Ninth Circuit's opinion in *Abdullah v. U.S. Sec. Associates, Inc.*, and the Department of Industrial Relations' informational publications regarding meal periods all support the enforceability of Defendants' on-duty meal period agreements. In the first opinion letter, issued in 1994, the DLSE opined that on-duty meal period agreements are enforceable "where the employee is the only person employed in the establishment and closing the business would work an undue hardship on the employer." DLSE Opinion Letter 1994.09.28, at 2. This language clearly applies to the Putative Class Members working in Single-Employee Stations during daytime shifts, when allowing employees to close the station to take an off-duty meal period would have violated Defendants' franchise agreements, leading to potentially disastrous consequences for Defendants.

Similarly, the DLSE opined in 2003 that on-duty meal period agreements are enforceable with regard to employees working at isolated gas stations in which only a single employee is present. DLSE Opinion Letter, 2003.11.03, at 3. The 9th Circuit cited this opinion letter approvingly in 2013 in *Abdullah v. U.S. Sec. Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 960 ("DLSE has . . . found that the 'nature of the work' exception would apply to an 'isolated' gas

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station 'in which only a single employee is present'"). In *Abdullah*, the Ninth Circuit explained that "we can characterize the instances in which DLSE has found that the 'nature of the work' exception applies into two categories: (1) where the work has some particular, external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer." *Id.* at 959. Rather than focusing solely on whether a station is "isolated," then, the standard for determining enforceability of on-duty meal period agreements takes into consideration all the circumstances relating to the employee's working environment. Further, as the Ninth Circuit itself noted, "the DLSE opinion letters do not provide a definite metric for deciding in what circumstances a lone employee may be permitted to take an on- duty meal break – for example, it is not clear if an employee must be (1) the sole employee on duty at a particular time, (2) the sole employee staffed at a particular location, or (3) the sole employee working for the employer in order to qualify for the 'nature of the work exception.'" *Id.* at 964, n. 18. However, as the DIR's FAQs regarding the exception imply, it appears that the DLSE interprets the exception to apply in all three of *Abdullah*'s scenarios, as evidenced by the FAQs' offering the following examples of when the exception does apply: "a sole worker in a coffee kiosk, a sole worker in an all-night convenience store, and a security guard stationed alone at a remote site." See Dep't of Indus. Relations, Meal Periods FAQs, https://www.dir.ca.gov/dlse/faq_mealperiods.htm (last accessed January 25, 2022).

According to Defendants, Putative Class Members working daytime shifts at Single-Employee Stations clearly meet this standard because the need to keep those stations open throughout daytime operating hours is a contractual requirement imposed on the Entity Defendants by their franchise and branding partners (who have considerably greater bargaining power than Defendants). Further, as the DIR's FAQs make clear, economic realities requiring employers to single-staff convenience stores and other service sector operations create conditions under which the nature of the work exception applies, rendering the on-duty meal period agreements enforceable.

By contrast, the DLSE also found that these agreements are not enforceable with regard to a night-shift manager at a fast-food restaurant because other employees are on duty and could cover for the manager. DLSE Opinion Letter 2002.09.04, at 2-3. The negative implication of this finding is that the absence of other employees would render the agreements enforceable. Taken

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together, these authorities may establish the enforceability of the on-duty meal period agreements signed by all Putative Class Members who worked at Single-Employee Stations.

Accordingly, Defendants argue, the only potential liability Defendants face in connection with Plaintiffs' first cause of action is for rest breaks missed by dayshift employees working at Single-Employee Stations. However, Defendants opine, this claim is likely incapable of class-wide resolution. As such, while Defendants did not pay rest break premiums to these employees, Defendants believe that the settlement value of these unpaid premiums is significantly lower than the potential maximum exposure.

Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id*. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendants contend they did not impede or discourage Plaintiffs, or any other employees, from taking their meal or rest periods. DS, ¶ 43. Defendants' policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. *Id*. The time records that comprise the random sample Defendants produced to Plaintiffs for purposes of mediation show that meal periods were taken the vast majority of the time. *Id*. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant risk that the value of Plaintiffs' meal period claim would be substantially reduced at trial. *Id*.

c. Risks Associated with the Rest Break Claims

There are risks to Plaintiffs' rest period claim. DS, ¶ 44. Plaintiffs face many of the same risks to their rest period claim that they do to their meal period claims. Defendants produced evidence that many of the shifts are staffed with at least two employees so one can cover for the other to take a ten-minute duty-free rest period. The time records may show that Defendants

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instructed Putative Class Members to take rest breaks and provided them the opportunity to do so. Defendants also provide evidence that the shifts the employees worked are largely duty free with employees sitting and waiting for customers most of the time. Employers are not required to record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id*. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiffs will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *Id*., *See Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

d. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiffs' claims as to Defendants' alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. DS, ¶ 45. In their third cause of action, Plaintiffs allege that Defendants failed to reimburse two business-related expenses they allege Putative Class Members incurred in connection with their work for Defendants: deductions from employee pay made by Defendants as deposits for the return of uniforms and cell phone-related expenses incurred by Putative Class Members.

With regard to deductions taken as deposits for the return of Defendant-provided uniforms, Defendants argue Plaintiffs cannot recover any damages on this theory. Payroll records show uniform deposit returns upon termination. They also show that some employees did not have uniform deductions in the first place.

Regarding the cell phone reimbursement claim, defendants argue neither the nature of their work nor the nature of Defendants' operations appears to have involved any use of their cell phones. As such, Defendants do not believe they face any liability on Plaintiffs' third cause of

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action. Plaintiffs allege that Defendants required Plaintiffs and the Class Members to use their personal items including cellular phones, computers and other electronic devices, vehicles, and tools, and failed to indemnify them for these business expenses. *Id*. Defendants presented evidence that they have supplied their employees with tools, equipment, and other supplies. As such, there is a risk that the Court may consider Plaintiffs' claims to be individual in nature and unfit for class wide resolution. *Id*.

e. Risks Associated with the Statutory "Wage Statement" Penalty Claims

Plaintiffs also assert claims for wage statement violations, untimely wage violations, and PAGA penalties. Plaintiffs' fourth cause of action alleges that, as a result of Defendants' other alleged Labor Code violations (i.e., the unpaid meal and break premiums, unpaid wages, and unreimbursed expenses), Defendants issued Putative Class Members deficient wage statements. Plaintiffs do not allege that the wage statements Defendants issued were deficient because they failed to include one of the enumerated categories of information required by the California Labor Code, only that the information included was rendered inaccurate because of the alleged underlying violations. This claim fails for multiple reasons.

First Defendants argue, derivative wage statement claims such as Plaintiffs are legally deficient as "California Labor Code § 226 requires employers to show employees what they were in fact paid, not what employee allege they should have been (but were not) paid." *Madeira v. Converse, Inc.* (C.D. Cal. Jan. 11, 2022) 2022 WL 109365, at *11 (citing *Maldonado v. Epsilon Plastics, Inc*., 22 Cal. App. 5th 1308, 1337 (2018)); see also *Sagastume v. Psychemedic Corp.* (C.D. Cal. Nov. 30, 2020) 2020 WL 8175597, at *5, *Hines v. Constellis Integrated Risk Mgmt. Servs.*, (C.D. Cal. Sept. 25, 2020) 2020 WL 5764400, at *6 (dismissing wage statement claims because 'Plaintiff appears to allege only that the amount he was paid was incorrect, not that the wage statements inaccurately reflected the wages he was paid"), and *Sherman v. Schneider Nat'l Carriers, Inc.* (C.D. Cal. Mar. 6, 2019) 2019 WL 32200585, at *5 (same). This principle could impair Plaintiffs' recovery on their wage statement cause of action.

Next Defendants argue, even if Plaintiffs' theory of wage statement liability were legally sound, whether the wage statements issued by Defendants to Putative Class Members working daylight shifts at Single-Employee Stations were rendered deficient by Defendants' failure to pay premiums for miss rest breaks cannot be resolved on a class-wide basis. It is well established that "inaccurate wage statements alone do not justify penalties; the plaintiffs must establish injury

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flowing from the inaccuracy." *Maldonado*, 22 Cal. App. 5th at 1334. However, "[u]nder Maldonado, any failure of wage statements to reflect premium pay that should have been paid, but was not paid, implicates only the requirements to show wages earned, which do not support a statutory presumption of injury." *Kazi v. PNC Bank* (N.D. Cal. Mar. 15, 2021) *N.A.,* 2021 WL 965372, at *21. Because these injuries are not subject to the presumption of injury, they may be inappropriate for resolution on a class basis because resolving the claim "would require individualized showings of actual harm to each [Putative Class Member], in a manner unsuitable for class resolution." *Id.*

Additionally, Defendants argue, they did not fail to pay Putative Class Members for all hours worked and, thus, the wage statements they issued were entirely accurate with regard to the number of hours worked. They also paid overtime as appropriate and accurately represented these overtime payments on the wage statements issued to Putative Class Members. To the degree any Putative Class Members worked off-the-clock, they did so without Defendants' knowledge, precluding any recovery premised on the theory that the wage statements Defendants issued failed to account for this time. See *Arroyo v. Int'l Paper Co.*, (N.D. Cal. Feb. 24, 2020) 2020 WL 887771, at *10-12 ("[l]iability arises under § 226(e) only where an employee suffers 'injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)' . . . an employer's good faith belief that it is in compliance with § 226 precludes liability under the statute") (emphasis in original) (citing Cal. Lab. Code § 226(e)(1)).

Defendants do not believe they face any liability in connection with Plaintiffs' claim for inaccurate wage statements. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. DS, ¶ 52.

Here, Defendants contend, Plaintiffs' wage statement claim has the same underlying risks as the above claims, as it is derivative of them. *Id*. On their face, the wage statements issued by Defendants may comply with the requirements of Labor Code § 226.

f. <u>Risks Associated with The Waiting Time Penalties Claim</u>

Plaintiffs' claim for untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor Code sec. 226, Plaintiffs must establish that the late payments were willful. The evidence of good faith Defendants put forth may defeat this claim. Like their wage statement cause of action, Defendants argue, Plaintiffs' claim for waiting time penalties is derivative of

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Plaintiffs' other allegations of Labor Code violations and it, too, is meritless. While Defendants admit Plaintiff Mikich's final paycheck was untimely, they state this was the result of an administrative issue related to his sudden, unexpected termination for disciplinary issues. They further argue that Plaintiffs do not identify any policy or practice that caused Defendants' alleged failure to timely pay final wages, except by virtue of alleging that the other alleged Labor Code violations automatically give rise to waiting time penalties. Thus, Defendants' potential maximum exposure on the waiting time penalties claim must be heavily discounted for settlement purposes.

g. Risks Associated with the PAGA Claim

Defendants contend that neither the alter ego doctrine nor the single-enterprise rule applies to Defendants. As such, Plaintiffs can assert PAGA claims only against those entities for whom the named Plaintiffs worked, Sayeh Petroleum and Green Planet Gas. *Magadia*, supra, 999 F.3d at 678 (PAGA claim dismissed because plaintiff lacked Article III standing because "he himself did not suffer injury"). Further, PAGA's statute of limitations is only one year, rendering the relevant claims period from January 16, 2019 onwards. Accordingly, in light of the weaknesses in Plaintiffs' theories of liability discussed above, PAGA's per pay-period method of calculating damages results in a maximum exposure of $173,600.00.

However, Defendants believe that the value of Plaintiffs' PAGA claim is less than $173,600. PAGA explicitly gives courts have nearly unlimited discretion to limit PAGA penalties, or even eliminate them entirely. Cal. Lab. Code § 2699(e)(2) (providing that "a court may award a lesser amount than the maximum civil penalty . . . if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). This is especially relevant here, as both the United States Department of Labor and the California Department of Labor Standards Enforcement ("DLSE") initiated investigations into Defendants' operations and, after collecting various documents and communicating with management, both dropped their investigations without reaching findings. Further, Defendants have never previously been the subject of either an agency finding or a successful class, or even individual, wage & hour action. Finally, given that 75% of any PAGA recovery must be provided to the DLSE, Defendants argue it would be illogical to award that agency the maximum penalties allowed under the statute when that very agency investigated the same claims at issue in the Action and decided against pursuing them. Regarding

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PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiffs' PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. DS, ¶ 54. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. This is particularly the case considering Defendants' financial condition. *Id*. Moreover, the current COVID-19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may consider a confiscatory taking. *Id.*

This uncertainty increases Plaintiffs' risk of pursuing the PAGA claims and required a significant discount for settlement purposes. DS, ¶ 55. For mediation purposes, Plaintiffs' counsel estimated a maximum exposure of approximately $4,026,000.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. *Id.* Plaintiffs' counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiffs' counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

h. Risks Associated With A Pick-Up Stix Campaign

An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. DS, ¶ 58. (See *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class. *Id.* This could lead to a significant reduction of claim value in settlement negotiations. *Id.*

While the evidence gathered through Plaintiffs' discovery supports the merits of the claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. DS, ¶ 59. In view of the risks, the Settlement reflects Plaintiffs' estimate of the total

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amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

1. Allocation of the PAGA Payment

The settlement of PAGA penalties in the sum of $50,000.00, of which 75% ($37,500.00) will be paid to the LWDA and 25% ($12,500.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. DS, ¶ 60. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or $1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim). Courts have also

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approved settlements for $20,000 or less. See, e.g., *Hicks v. Toys 'R' Us–Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of $10,000 as part of $2.5 million settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving PAGA payment of $10,000 as part of $3.7 million common-fund settlement). *Id.*

2. Presence of Governmental Participant

As required under Labor Code section 2699(l)(2), Plaintiffs will provide notice of this settlement to the LWDA. DS, ¶ 69, Ex. 15.

3. Reaction of Class Members to Proposed Settlement

If the settlement is preliminarily approved, Class Members will be provided with the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval (attached as Exhibits A and C to the Settlement) and an opportunity to object. DS, ¶ 66. The parties' proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement. *Id.*

VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS

The Individual Settlement Payments will be paid to each Class Member based on his or her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 65, Settlement § III.B. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *Id.*

VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS' FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE

The Settlement states Class Counsel may seek attorneys' fees of $533,333.00 (one-third of the GSA) and up to $35,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Settlement § III.C.2. These amounts are reasonable, given the facts and circumstances of the case. DS, ¶¶ 61-63.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced

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trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Ca1. 5th 480, 503 (citing *Lealao, supra,* 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3) of the common fund. *Laffitte, supra*, 1 Ca1. 5th 480. Many courts have similarly approved fee awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. DS, ¶ 62. Class Counsel interviewed and obtained information from putative class members, met and conferred with Defendants' counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendants and obtained through other sources, researched applicable law, and provided estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. DS, ¶ 63. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.* Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

VIII. THE CLASS REPRESENTATIVE PAYMENT TO EACH PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECASUSE IT IS FAIR, ADEQUATE, AND REASONABLE

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g.*, *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving $50,000.00

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enhancement award). The Settlement provides that each Plaintiff may seek a Class Representative Payment of $25,000.00. This amount is entirely reasonable given Plaintiffs' efforts in this action and the risks they undertook on behalf of Class Members. DS, ¶ 64. Each Plaintiff has devoted many hours advancing the interests of the Settlement Class. Each Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, each Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that each Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 64.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE

With regard to the settlement administration costs provision, it is reasonable. Before agreeing to CPT Group, Inc. and its bid of $32,000.00, the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. DS, ¶ 67-68, Exs. 12, 13, and 14. Thus, the settlement administration costs provision should be given preliminary approval.

X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR RIGHTS

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. DS, ¶ 66, Settlement, § IV.B.2. Although there are current employee Class Members, it is uncertain whether Defendants' records of their contact information include email addresses and Class Members, who perform all of their work away

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from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. DS, ¶ 66.

With respect to its content, "[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn*. (1975) 48 Cal.App.3d 134, 151-152. The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class Member's estimated payment. Additionally, the Class Notice will include the number of Work Weeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. DS, ¶ 66.

XI. CONCLUSION

For the reasons stated above, this Court should grant Plaintiffs' Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: September 22, 2022

By: David Spivak

DAVID G. SPIVAK, Attorneys for Plaintiff(s), CHARLES MIKICH, JONATHON GORDON, and all others similarly situated

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EXHIBIT 11

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Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(UNLIMITED JURISDICTION)

CHARLES MIKICH, on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD, also known as ED HADAD), an individual; and DOES 8-50, inclusive,

Case No. CGC-20-582385 to be consolidated with CGC-21-594289

~~[PROPOSED]~~ ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

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Defendant(s).

JONATHON GORDON on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorney General Act of 2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 1-50, inclusive,

Defendant(s).

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The Motion of Plaintiffs Charles Mikich, Jonathon Gordon, and all others similarly situated (collectively "Plaintiffs") for Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the Court, The Honorable Garrett L. Wong presiding. The Court having considered the Motion, the Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement" or "Settlement Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court has determined there is sufficient evidence to preliminarily determine that (a) the terms of the Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final hearing and final approval by this Court. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the "Final Approval Hearing") as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the "Settlement Class" means all persons Defendants employed in California as hourly, non-exempt employees during the Class Period, which is the period of time from January 22, 2016 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier. Defendants estimate that as of preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier, there were 1,002 potential Settlement Class Members. The "Effective Date" means as follows: If no

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objection to this Settlement or to any of the terms and or conditions of the Settlement are filed by Plaintiffs, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this Settlement; however, if any objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any funds into the Settlement Account.

3. This action is provisionally certified pursuant to section 382 of the California Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for purposes of settlement only with respect to the proposed Settlement Class.

4. The Court hereby preliminarily finds that the Settlement was the product of serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making this preliminary finding, the Court considered the nature of the claims set forth in the pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a compromise of the Parties' respective positions. The Court further preliminarily finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the Settlement was entered into in good faith.

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5. The Court finds that the dates set forth in the Settlement for mailing and distribution of the Class Notice meet the requirements of due process and provide the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as set forth in the Settlement. Accordingly, the Court orders the following implementation schedule for further proceedings:

a. Defendants shall provide CPT Group, Inc, the appointed Settlement Administrator, with: (a) An electronic database of all Class Members, last known mailing address and Social Security number; and (b) Corresponding to each Class Member's name, Defendants shall provide a figure indicating the total number of Work Weeks during the Class Period in which Defendants employed the Class Member. That number of Work Weeks shall be referred to as that Class Member's "Individual Work Weeks;" (c) If any of the Class Members' Data are unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data prior to when it must be submitted to the Settlement Administrator. Class Members' Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court.

b. **Mailing of Class Notice.** Approximately fourteen (14) days after receiving the Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via

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first-class U.S. mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

d. **Declaration of Settlement Administrator.** Not later than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement Administrator

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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

e. **Requests for Exclusion from Settlement; and Objections to Settlement.** Class Members may submit requests to be excluded from the effect of the Settlement, or objections to the Settlement, pursuant to the following procedures:

i. **Request for Exclusion from Settlement.** A Class Member may request to be excluded from the effect of this Agreement, and any payment of amounts under this Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class Member wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, and signature. To be valid and timely, the request to be excluded must be postmarked by the date specified in the Class Notice 60 days from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any payment of any kind in connection with this Agreement or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no standing to object to the Settlement. A request for exclusion must be mailed to the Settlement

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Office:
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Ste 900
Sherman Oaks, CA 91403

Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the Parties as follows:

To Class Counsel:	*To Defense Counsel*:
David G. Spivak. The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069	Lisa G. Lawson Lawson & Lawson, LLP One Sansome Street 35th Floor San Francisco, CA 94104

ii. **Objections to Settlement.** The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator or 60 days after the Settlement Administrator mails the Class Notice, a written objection to the Settlement which sets forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:	*To Defense Counsel*:
David G. Spivak. The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069	Lisa G. Lawson Lawson & Lawson, LLP One Sansome Street 35th Floor San Francisco, CA 94104

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The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing. However, the objectors will be provided with the opportunity to speak at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition beforehand. If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member may still be bound by the terms of this Agreement.

f. **Report.** Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

6. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement.

7. The Court approves, for settlement purposes only, David Spivak of The Spivak

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Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8. The Court approves, for settlement purposes only, Charles Mikich and Jonathon Gordon as the Class Representatives.

9. The Court approves CPT Group, Inc. as the Settlement Administrator.

10. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

11. The Court preliminarily approves the estimated Settlement Administrator costs payable to the Settlement Administrator subject to final review by the Court.

12. The Court preliminarily approves Plaintiffs' Class Representative Payment subject to final review by the Court.

13. A Final Approval Hearing shall be held on 3/22/23 at 9:30 **.m.** in the Superior Court for the State of California, County of San Francisco, located at Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Payment to the Class Representative. ~~The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before~~ _____.

14. If for any reason the Court does not execute and file a final approval order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the proposed Settlement that is the subject of this order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the

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litigation, as more specifically set forth in the Settlement.

15. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiffs shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

DATED: 10/27/22

Uh (ulmer)
JUDGE OF THE SUPERIOR COURT
RICHARD ULMER

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EXHIBIT 12

Nora Greer <nora@spivaklaw.com>

RE: Mikich, et al. v. Sayeh Petroleum, Inc., et al. (Opt-Out) - Data Compilation Follow-Up

1 message

Abel Morales <abel@cptgroup.com> Sat, May 27, 2023 at 11:12 PM
To: Lisa Lawson <lisalawson@lawson2.com>, Tarus Dancy <tarus@cptgroup.com>, David Spivak <david@spivaklaw.com>
Cc: Ian Forgie <ianforgie@lawson2.com>, Nora Greer <nora@spivaklaw.com>, Christina Prejean <christina@spivaklaw.com>, Breck Oyama <boyama@spivaklaw.com>, Maya Cheaitani <maya@spivaklaw.com>, Scott Lawson <scottlawson@lawson2.com>, Walter Haines <walter@uelglaw.com>, Jennifer Forst <Jennifer@cptgroup.com>, Andy Roberts <andy@cptgroup.com>, William Argueta <william@cptgroup.com>, Jackie Hitomi <jackie@cptgroup.com>, CPT Case Management <cptcasemgmt@cptgroup.com>

Dear Counsel,

Please find attached a Summary breakdown of the Class workweeks.

Unfortunately, we are unable to provide a date on which 31,856 workweeks would be reached as we were not provided with employment dates. However, we were able to calculate the number of workweeks per year. As you can see from the attached, all the workweeks from 2021 and 2022 would need to be eliminated, plus approximately 60% of the 2020 workweeks to get close to the targeted 31,856 workweeks.

Please let us know if you have any questions.

Thank you for your time.

Best Regards,

Abel

Abel E. Morales

Director of Operations

50 Corporate Park, Irvine CA 92606

T: (949) 428-1040 O: (800) 542-0900

abel@cptgroup.com

Website | LinkedIn | Twitter

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IMPORTANT: *Do not send class data or wire instructions through email. Instead, CPT will send you a secure link.*

Mikich v. Sayeh Petroleum, Inc.
5/27/2023

Summary

GSA	**$1,600,000.00**
Est Class Counsel Fees	$533,333.00
Est Class Counsel Costs	$35,000.00
CR: Charles Mikich	$25,000.00
CR: Jonathon Gordon	$25,000.00
LWDA (75% of PAGA)	$37,500.00
PAGA Payment	$12,500.00
Amt. Allocated to Admin Costs	$32,000.00
NSA	**$899,667.00**

Class Period: 1/22/2016-9/3/2022

Total Class Count	981
Total Class Workweeks	46,844

Class Weeks per year

2016 Class Workweeks	7,346
2017 Class Workweeks	7,343
2018 Class Workweeks	7,163
2019 Class Workweeks	7,330
2020 Class Workweeks	6,555
2021 Class Workweeks	5,993
2022 Class Workweeks	5,114
Total	46,844

Escalator Clause	
Max Workweeks as of Court approval of settlement	28,960
Total Class Workweeks	46,844
% Difference	61.75%
GSA	$1,600,000.00
% GSA increase	51.75%
Amount of increase	$828,066.30
New GSA	**$2,428,066.30**

Escalator Clause
Defendants estimated for purposes of mediation that there are 27,498 workweeks worked by the Class Members for the period of January 22, 2016 through May 6, 2022. For the avoidance of doubt, the term "workweeks" shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of workweeks worked. The Settlement Administrator shall determine the total number of workweeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants' payroll records, a sampling of which was provided to EmployStats in connection with the Parties' mediation efforts, and multiplying that figure by two.

If the workweeks worked as of the date the Court approves the settlement exceed 28,960 workweeks worked by more than 10.00%, the Gross Settlement Amount will increase proportionally according to the number of additional workweeks worked. For example, if the number of workweeks as of the date the Court approves the settlement exceeds 28,960 by 11%, the Gross Settlement Amount shall increase by 1%.

If Workweeks Exceeds 28,960 Workweeks By Over 20%
If the workweeks worked as of the date the Court approves the settlement exceeds 28,960 workweeks by more than 20.00%, Defendants shall have the option to
(a) vacate the Parties' settlement and this Memorandum of Understanding shall be null and void or
(b) to cap the Class Period as of the date that the number of workweeks reaches but does not exceed 31,856.
Pgs. 13-14 of SA

EXHIBIT 13

SPIVAK LAW

Nora Greer <nora@spivaklaw.com>

RE: Mikich, et al. v. Sayeh Petroleum, Inc., et al. (Opt-Out) - Data Compilation Follow-Up

1 message

Abel Morales <abel@cptgroup.com> Sun, May 28, 2023 at 10:41 AM
To: Lisa Lawson <lisalawson@lawson2.com>
Cc: Tarus Dancy <tarus@cptgroup.com>, David Spivak <david@spivaklaw.com>, Ian Forgie <ianforgie@lawson2.com>, Nora Greer <nora@spivaklaw.com>, Christina Prejean <christina@spivaklaw.com>, Breck Oyama <boyama@spivaklaw.com>, Maya Cheaitani <maya@spivaklaw.com>, Scott Lawson <scottlawson@lawson2.com>, Walter Haines <walter@uelglaw.com>, Jennifer Forst <Jennifer@cptgroup.com>, Andy Roberts <andy@cptgroup.com>, William Argueta <william@cptgroup.com>, Jackie Hitomi <jackie@cptgroup.com>, CPT Case Management <cptcasemgmt@cptgroup.com>

Good morning Lisa,

As listed on the Summary spreadsheet, see below:

Total Class Count	981
Total Class Workweeks	46,844

Please let me know if you have additional questions.

Thank you for your time.

Best Regards,

Abel

CPT Group
Class Action Administrators

TOP WORK PLACES 2021 REGISTER

Abel E. Morales

Director of Operations

50 Corporate Park, Irvine CA 92606

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abel@cptgroup.com

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EXHIBIT 14

Declaration of Ed Hadad

1. I am an individual and a party to the above-entitled action. I make this declaration in support of Plaintiffs' Amended Motion for Preliminary Approval. I am the owner of Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc. and Green Planet Gas, Inc., the corporate defendants in this case (referred to herein as the "Companies"). Each of the Companies is a separate corporation with separate locations, but I am the primary owner of each. I have personal knowledge of the facts set forth herein, and if called upon to testify thereto, I could and would competently do so under oath.

2. On January 22, 2020, former employee Charles Mikich filed a lawsuit on behalf of himself and all others similarly situated against myself and the Companies alleging claims for: (1) failure to provide meal and rest periods, (2) failure to pay all wages for all hours worked at the correct rates of pay, (3) failure to indemnify, (4) failure to provide accurate written wage statements, (5) waiting time penalties, and (6) unfair competition, putative class members.

3. On August 4, 2021, former employee Jonathon Gordon filed a lawsuit on behalf of himself and all others similarly situated and on behalf of other "aggrieved employees" against myself and the Companies alleging claims for (1) failure to provide meal and rest periods, (2) failure to pay all wages for all hours worked at the correct rates of pay, (3) failure to indemnify, (4) failure to provide accurate written wage statements, (5) waiting time penalties, (6) unfair competition, and (7) civil penalties pursuant to the California Private Attorneys General Act ("PAGA").

4. I was present for the two mediation sessions that took place in this case on January 31, 2022 and May 6, 2022. Prior to the second mediation, the attorneys for both parties engaged a neutral, third-party analyst, to run an analysis of the Companies' time and payroll records to estimate the size of the potential class, the number of applicable workweeks and various other

data points to which the parties agreed. This analysis was shared with The Spivak Law Firm, counsel for both Mr. Gordon and Mr. Mikich.

5. The analysis by the third-party neutral was based on a sampling of records from the Companies compiled by several of my employees. Based on this analysis, it was my understanding in advance of mediation that the potential class in this case involved approximately 27,498 workweeks during the period of January 22, 2016 through the second mediation date of May 6, 2022 and no more than 1,200 employees. The workweeks were calculated by using the number of biweekly paychecks issued during the relevant time period for a sample group and extrapolating across the Companies.

6. Given the number of workweeks calculated, I agreed to resolve all of the claims alleged against the Companies and myself for a total of $1,600,000, plus any employer-side payroll taxes associated with the settlement (the "Gross Settlement Amount") that would cover a release period of January 22, 2016 through preliminary approval of the settlement or September 3, 2022, whichever date was earlier.

7. As part of the settlement, an escalator provision was included in the Settlement Agreement. The escalator provision provided that if the settlement administrator (CPT Group) found the number of workweeks exceeded 28,960 by more than 10% as of the date the court approved the settlement, then the Gross Settlement Amount would increase proportionally for all workweeks above 10%. For example, if the number of workweeks as of the date the Court approved the settlement exceeded 28,960 by 11%, the Gross Settlement Amount would increase by 1%. If the workweeks worked as of the date the Court approved the settlement exceeds 28,960 workweeks by more than 20.00%, I would have the option to (a) vacate the settlement and the settlement agreement would be null and void or (b) cap the Class Period as of the date that the number of workweeks reached but did not exceed 31,856.

8. After the Court granted preliminary approval in this case, I had to provide further data to the settlement administrator, CPT Group, Inc. It was only when CPT Group, Inc. ran its own analysis that I learned for the first time that the estimated workweeks had grown by over

69%, but the total number of employees in the class were actually less than originally calculated by the third-party neutral for a total of 981 employees. This significant and alarming jump in workweeks, pursuant to the terms of the Settlement Agreement, meant that the Gross Settlement Amount would nearly double to over $2.7 million dollars. The only alternatives available to me under the Settlement Agreement were to render the entire settlement null and void or cap the workweek count and reduce the release to such a degree that it would provide very limited protection to the Companies or myself in the event of further claims. This substantial change in the workweeks, the settlement value and limited release was not anticipated or understood as even a possibility when I entered into the Settlement Agreement. Based on my and the Companies' current finances, paying a sum of $2.7 million dollars would impact my business operations to such an extent that it would require downsizing of at least 30% of my workforce across the Companies. A few of the Companies are operating at a loss and in the aggregate, liquid assets of the remaining Companies are limited at this time. I currently have a significant loan balance of REDACTED through a line of credit with REDACTED in order to maintain the Companies, paying over REDACTED per month in interest alone. Through my counsel and under the "Settlement Communications Privilege," I provided The Spivak Law Firm with copies of the relevant bank statement and account workbook confirming such loan balance. Based on the current cash flow of the Companies, I can pay no more than a total of $2 million dollars without the need for reducing the workforce in any way. There was clearly no meeting of the minds at the time the parties negotiated the initial deal as I could have never anticipated and continue to not understand how the workweeks could have increased by 69% or have been so grossly undercalculated for mediation.

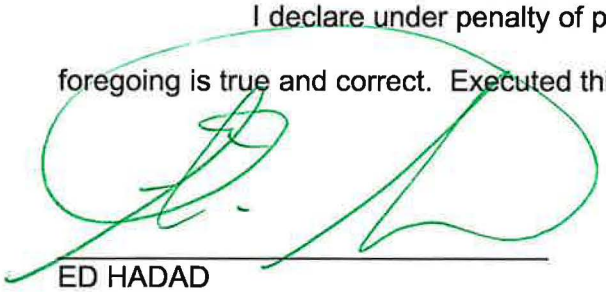
9. From a personal asset standpoint, when I agreed to settle this case, I had just paid over REDACTED

REDACTED Also, while this lawsuit was being negotiated, I had to pay

REDACTED

10. In the months following mediation, I implemented sweeping changes of the Companies' policies and practices with regards to timekeeping, meal and rest period compliance, and other wage and hour topics. Specifically, by February 2022, the Companies implemented updated meal and rest period policies, including meal period waiver forms, a uniform policy, additional timeclocks were installed by all of the Companies, and updated timekeeping forms to address situations such as missed punches (payroll flagging of discrepancies or violations). In order to ensure that these new policies are followed, the Companies conducted management training regarding enforcement of its policies including making sure that employees are taking California compliant meal and rest breaks. In addition, disciplinary action has been taken against those managers not following the new processes and procedures. The Companies also implemented arbitration agreements which include provisions which explicitly prohibit claims from proceeding on a class or collective basis. These steps were taken to address and correct any perceived deficiencies in the Companies' policies and practices identified in this litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of November, 2023, at Sunnyvale California



ED HADAD

EXHIBIT 15

WELLS FARGO ADVISORS

PRIORITY CREDIT LINE
REDACTED

Loan Balance
REDACTED

Available Credit
REDACTED

Balance Details

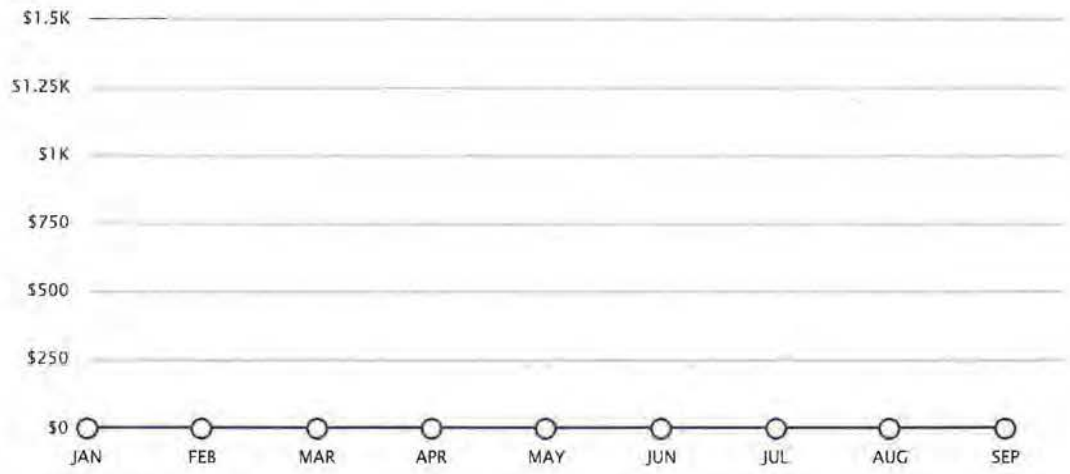
Total Cash & Securities Value	REDACTED

⊕ Loan Account Balance

Move money between accounts

Add Funds > Withdraw Funds >

Balance History



Balances Disclosures and Definitions

Investment and Insurance Products are:
- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate**
- **Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested**

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Insurance products are offered through our affiliated non-bank insurance agencies.

CONFIDENTIAL SETTLEMENT COMMUNICATIONS - ATTORNEY'S EYES ONLY

EXHIBIT 16

CONFIDENTIAL SETTLEMENT COMMUNICATIONS - ATTORNEY'S EYES ONLY

ACCOUNT WORKBOOK
Account Number: [redacted]

Open Tax Lots - Full - Net Rows Only

Print may not display all columns in grid

Account Information

[redacted] KA3H
ED BOZORGHADAD TR
ED BOZORGHADAD TTEE
PRIORITY CREDIT LINE
[redacted]
[redacted]

Details

Registration:	Q - Personal Trust
Product Type:	PRIORITY CREDIT LINE
CSI:	4C - Street Name-Hold/Hold All Funds
Cash Sweep:	BD7 - EXPANDED BANK DEPOSIT SWEEP
Investment Objective:	M - Not Applicable
Online Client:	O - Online Access

***BORD* Record**

Balances

Current Total Account Value:	[redacted]
Previous Total Account Value:	[redacted]
Today's Change:	[redacted]
Securities Market Value:	
Funds Available:	
Available Credit:	[redacted]
Total Cash without Borrowing:	
Cash Balance:	
Margin Balance:	
Total Cash Sweep Balance:	
Free Credit/ Miscellaneous Debit:	
Federal Call:	

Contact Information

Home Phone: [redacted] Business Phone: [redacted] Cell Phone 2: [redacted]

OPEN TAX LOTS FULL
No Data Available.

Investment and Insurance Products are:
- Not Insured by the FDIC or Any Federal Government Agency
- Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate
- Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested

CONFIDENTIAL SETTLEMENT COMMUNICATIONS - ATTORNEY'S EYES ONLY

Print may not display all columns in grid

Indicators:
Y-Covered Tax lot - Cost information for this tax lot is covered by IRS reporting requirements.
N-Noncovered Tax Lot - Cost information for this tax lot is not covered by IRS reporting requirements.
M-Mixed - Net Row is a mix of Covered and Noncovered tax lot details.
W-Open date reflects Wash Sale Date - The cost for this tax lot has been adjusted due to wash sale activity as defined by IRS regulations.
Filter - "All Tax Years" represents the current and the previous two tax years.
CSI - Cash Standing Instructions indicates the disposition of stock and money on cash accounts.
BORD Record indicates there is an account-level restriction for the account.
MMF Code - The MMF Code in the report header indicates how money market account balances are treated.
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CAR 0123-03763

EXHIBIT 17

Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	The Honorable Garrett L. Wong, Dept. 610
Page subject:	**Class and PAGA Settlement Division: Original Settlement v. First Amended Settlement**

	Original Settlement		First Amended Settlement	
Gross Settlement Amount (GSA)	$ 1,600,000.00	Percentage of GSA	$ 2,000,000.00	Percentage of GSA
Class Counsel Fees Payment	$ 533,333.33	33.33%	$ 666,666.67	33.33%
Class Counsel Litigation Expenses Payment	$ 35,000.00	2.19%	$ 35,000.00	1.75%
Administration Expenses Payment	$ 32,000.00	2.00%	$ 32,000.00	1.60%
Class Representative Service Payments	$ 50,000.00	3.13%	$ 50,000.00	2.50%
PAGA Penalties	$ 50,000.00	3.13%	$ 50,000.00	2.50%
>> LWDA PAGA Payment Percentage	75%		75%	
>> LWDA PAGA Payment	$ 37,500.00	2.34%	$ 37,500.00	1.88%
>> Individual PAGA Payments Percentage	25%		25%	
>> Individual PAGA Payments	$ 12,500.00	0.78%	$ 12,500.00	0.63%
Net Settlement Amount	$ 899,666.67	56.23%	$ 1,166,333.33	58.32%
Floor	100%		100%	
Minimum Payout	$ 1,600,000.00	100.00%	$ 2,000,000.00	100.00%

Class Members	1,200	981
Average Individual Class Payment	$ 749.72	$ 1,188.92
workweeks	31,856	46,844
workweek value	$ 28.24	$ 24.90
Class Period Begin Date	Friday, January 22, 2016	Friday, January 22, 2016
Class Period End Date	Saturday, September 3, 2022	Monday, October 31, 2022
workweeks per year	52	52
Maximum workweeks in Class Period	344.20	352.46
Maximum Individual Class Payment (high)	$ 9,720.71	$ 8,775.64
Minimum Individual Class Payment (low)	$ 28.24	$ 24.90

Aggrieved Employees	612	633
Average Individual PAGA Payment	$ 20.42	$ 19.75
Aggrieved Employee Paychecks	20,025	20,063
Aggrieved Employee Paycheck value	$ 0.62	$ 0.62
PAGA Period Begin Date	Wednesday, January 16, 2019	Wednesday, January 16, 2019
PAGA Period End Date	Saturday, September 3, 2022	Monday, October 31, 2022
Paychecks per year	26	26
Maximum Aggrieved Employee Paychecks in PAGA Period	94.45	98.59
Maximum Individual PAGA Payment (high)	58.96	61.42
Minimum Individual PAGA Payment (low)	$ 0.62	$ 0.62

EXHIBIT 18

Confidential Settlement Communication
By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Data from Sample	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	Data from Defendant	CGC-20-582385
Court:	Data from Extrapolation	San Francisco
Judge:	Adjusted	Garrett L. Wong, Dept. 610
Page subject:		**Data**

Important Dates	
Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Saturday, January 23, 2016
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, January 22, 2017
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, January 16, 2019
Lab.Code § 226 (pay stub penalties) period begins:	Tuesday, January 22, 2019
LWDA Notice:	Thursday, January 16, 2020
Lawsuit:	Wednesday, January 22, 2020
Sample begin:	Friday, February 12, 2016
Sample end:	Sunday, October 25, 2020
Sample calendar days:	1,717
Mediation:	Friday, May 6, 2022
Anticipated Settlement Period end date:	Saturday, September 3, 2022
Settlement Period to Sample Period:	140.65%

Classes / Groups sizes	
UCL Class Members:	1,002
UCL Workweeks:	28,960
UCL Wage Statements:	14,480
UCL Workdays:	117,507
UCL Calendar days:	2,295
UCL Months:	13,471.56
Waiting Time Penalties Class Members:	823
PAGA Aggrieved Employees:	100
PAGA Wage Statements:	8,947
Wage Statement Class Members:	100
Wage Statement Class Wage Statements:	8,947

Averages		
Average Hourly Rate:	$	14.24
Average Overtime Rate:	$	21.36
Average Doubletime Rate:	$	28.48

Average Work Hours Per Day:	7.44
Average Work Hours Per Week:	30.02
Average Workdays Per Week:	4.06
Workdays to Calendar Days (%):	58.00%
Paycycle:	Biweekly
Paychecks Per Year:	26

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Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Unpaid wages**
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	$	14.24
Unpaid hours per pay week:		0.36
Actionable workweeks:		28,960
Interest:		10%

Unpaid wages:	$	163,306.60
Liquidated damages:	$	163,306.60

Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Unprovided Meal Periods**
Authority:	Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	$	14.24
Actionable workdays:		117,507
>>Percentage qualifying for meal periods:		93.95%
Violation rate (%)		64.33%

Meal period premium wages:	$	1,011,309.45

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Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Unprovided Rest Periods**
Authority:	Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	$	14.24
Actionable workdays:		117,507
>>Percentage qualifying for rest periods:		97.97%
Violation rate (%)		100.00%
Rest period premium wages:	$	1,639,331.70

Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Unreimbursed expenses**
Authority:	Lab.Code § 2802

Mileage

IRS Mileage Rate:	$	0.560
Miles Per Workweek:		5.00
UCL Workweeks:		28,960
Interest rate:		10%
Unreimbursed mileage	$	89,196.80

Telecom

Plaintiff's Telecom provider:		Metro PCS
UCL Months:		13,472
Average Monthly Telecom bill:	$	60.00
Percentage attributable to work:		75%
Interest rate:		10%
Unreimbursed Telecom costs:	$	607,573.43

Unreimbursed expenses:	$	696,770.23

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Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Itemized Wage Statements**
Authority:	Lab.Code § 226

Wage Statement Class Members:		200
Wage Statement Class Wage Statements:		8,947
Initial penalty:	$	50.00
Subsequent penalty:	$	100.00
Statutory wage statement penalties:	$	884,700.00

Case title:		Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:		CGC-20-582385
Court:		San Francisco
Judge:		Garrett L. Wong, Dept. 610
Page subject:		**Waiting Time / Final Wages**
Authority:		Lab.Code § 203
Waiting Time Penalties Class Members:		823
Days waiting:		30
Average Hourly Rate:	$	14.24
Average Overtime Rate:	$	21.36
Average Doubletime Rate:	$	28.48
Average Work Hours Per Day:		7.44
Regular Hours Per Day:		7.44
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting time penalties:	$	2,615,796.86

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Case title: Charles Mikich v. Sayeh Petroleum, Inc.
Case no.: CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Subsequent penalty	Pay periods	Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	$ 100.00	$ 100.00	8,947	$ 894,700.00
Meal periods Lab.Code § 512):	Lab.Code § 558	$ 50.00	$ 50.00	8,947	$ 447,350.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	$ 50.00	$ 50.00	8,947	$ 447,350.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	$ 100.00	$ 100.00	8,947	$ 894,700.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	$ 100.00	$ 100.00	8,947	$ 894,700.00
Untimely wages (Lab.Code §§ 201-204)	Lab.Code § 2699	$ 100.00	$ 100.00	8,947	$ 894,700.00
Total:					**$ 4,473,500.00**

Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Totals**
Authority:	Various

Restitution			Reduction to		Demand
Unpaid wages:	$	163,306.60	75%	$	122,479.95
Liquidated damages:	$	163,306.60	75%	$	122,479.95
Meal period premium wages:	$	1,011,309.45	95%	$	960,743.97
Rest period premium wages:	$	1,639,331.70	95%	$	1,557,365.11
Unreimbursed expenses:	$	696,770.23	40%	$	278,708.09
Restitution subtotal:	$	3,674,024.57		$	3,041,777.08
Penalties					
Statutory wage statement penalties:	$	884,700.00	75%	$	663,525.00
Waiting time penalties:	$	2,615,796.86	75%	$	1,961,847.65
Minimum wages (Lab.Code § 1197):civil penalties:	$	894,700.00	40%	$	357,880.00
Meal periods Lab.Code § 512):civil penalties:	$	447,350.00	40%	$	178,940.00
Rest periods (Lab.Code § 1198):civil penalties:	$	447,350.00	40%	$	178,940.00
Business expenses (Lab.Code § 2802):civil penalties:	$	894,700.00	30%	$	268,410.00
Improper pay stubs (Lab.Code § 226):civil penalties:	$	894,700.00	75%	$	671,025.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	$	894,700.00	75%	$	671,025.00
Penalties subtotal:	$	7,973,996.86		$	4,951,592.65
Grand total:	**$**	**11,648,021.43**		**$**	**7,993,369.72**

EXHIBIT 19

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Case title:	Data from Sample	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	Data from Defendant	CGC-20-582385
Court:	Data from Extrapolation By Plaintiffs	San Francisco
Judge:	Data from Extrapolation by Defendants	Garrett L. Wong, Dept. 610
Page subject:		**Data**

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Saturday, January 23, 2016
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, January 22, 2017
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, January 16, 2019
Lab.Code § 226 (pay stub penalties) period begins:	Tuesday, January 22, 2019
LWDA Notice:	Thursday, January 16, 2020
Lawsuit:	Wednesday, January 22, 2020
Sample begin:	Friday, February 12, 2016
Sample end:	Sunday, October 25, 2020
Sample calendar days:	1,717
Mediation:	Friday, May 6, 2022
Settlement Period end date:	Monday, October 31, 2022
Settlement Period to Sample Period:	144.03%
	81.30

Classes / Groups sizes

UCL Class Members:	981
UCL Workweeks:	46,844
UCL Wage Statements:	23,422
UCL Workdays:	190,187
UCL Calendar days:	2,295
UCL Months:	10,810.15
Waiting Time Penalties Class Members:	823
PAGA Aggrieved Employees:	612
PAGA Wage Statements:	20,025
Wage Statement Class Members:	612
Wage Statement Class Wage Statements:	20,025

Averages

Average Hourly Rate:	$	14.24
Average Overtime Rate:	$	21.36
Average Doubletime Rate:	$	28.48
Average Work Hours Per Day:		7.44
Average Work Hours Per Week:		30.02
Average Workdays Per Week:		4.06
Workdays to Calendar Days (%):		58.00%
Paycycle:		Biweekly
Paychecks Per Year:		26

Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Unpaid wages**
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	$	14.24
Unpaid hours per pay week:		0.36
Actionable workweeks:		46,844
Interest:		10%
Unpaid wages:	$	264,155.19
Liquidated damages:	$	264,155.19

Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco

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Judge:		Garrett L. Wong, Dept. 610
Page subject:		**Unprovided Meal Periods**
Authority:		Lab.Code §§ 226.7, 512, and 1198
Average Hourly Rate:	$	14.24
Actionable workdays:		190,187
>>Percentage qualifying for meal periods:		93.95%
Violation rate (%)		64.33%
Meal period premium wages:	$	1,636,817.77

Case title:		Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:		CGC-20-582385
Court:		San Francisco
Judge:		Garrett L. Wong, Dept. 610
Page subject:		**Unprovided Rest Periods**
Authority:		Lab.Code §§ 226.7 and 1198
Average Hourly Rate:	$	14.24
Actionable workdays:		190,187
>>Percentage qualifying for rest periods:		97.97%
Violation rate (%)		100.00%
Rest period premium wages:	$	2,653,280.12

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Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Unreimbursed expenses**
Authority:	Lab.Code § 2802

Mileage

IRS Mileage Rate:	$	0.560
Miles Per Workweek:		5.00
UCL Workweeks:		46,844
Interest rate:		10%
Unreimbursed mileage	$	144,279.52

Telecom

Plaintiff's Telecom provider:		Metro PCS
UCL Months:		10,810
Average Monthly Telecom bill:	$	60.00
Percentage attributable to work:		75%
Interest rate:		10%
Unreimbursed Telecom costs:	$	487,544.01

Unreimbursed expenses:	$	631,823.53

Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Itemized Wage Statements**
Authority:	Lab.Code § 226

Wage Statement Class Members:		200
Wage Statement Class Wage Statements:		20,025
Initial penalty:	$	50.00
Subsequent penalty:	$	100.00
Statutory wage statement penalties:	$	1,992,500.00

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Case title:		Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:		CGC-20-582385
Court:		San Francisco
Judge:		Garrett L. Wong, Dept. 610
Page subject:		**Waiting Time / Final Wages**
Authority:		Lab.Code § 203
Waiting Time Penalties Class Members:		823
Days waiting:		30
Average Hourly Rate:	$	14.24
Average Overtime Rate:	$	21.36
Average Doubletime Rate:	$	28.48
Average Work Hours Per Day:		7.44
Regular Hours Per Day:		7.44
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting time penalties:	$	2,615,796.86

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Case title: Charles Mikich v. Sayeh Petroleum, Inc.
Case no.: CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil	Initial penalty	Subsequent	Pay periods	Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	$ 100.00	$ 250.00	20,025	$ 2,002,500.00
Meal periods Lab.Code § 512):	Lab.Code § 558	$ 50.00	$ 100.00	20,025	$ 1,001,250.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	$ 100.00	$ 200.00	20,025	$ 2,002,500.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	$ 100.00	$ 200.00	20,025	$ 2,002,500.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 2699	$ 100.00	$ 200.00	20,025	$ 2,002,500.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	$ 100.00	$ 200.00	20,025	$ 2,002,500.00
Total:					**$ 11,013,750.00**

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Case title:	Charles Mikich v. Sayeh Petroleum, Inc.
Case no.:	CGC-20-582385
Court:	San Francisco
Judge:	Garrett L. Wong, Dept. 610
Page subject:	**Totals**
Authority:	Various

Restitution			GSA	
Unpaid wages:	$	264,155.19		
Liquidated damages:	$	264,155.19		
Meal period premium wages:	$	1,636,817.77		
Rest period premium wages:	$	2,653,280.12		
Unreimbursed expenses:	$	631,823.53		
Restitution subtotal:	$	5,450,231.80		
Penalties				
Statutory wage statement penalties:	$	1,992,500.00		
Waiting time penalties:	$	2,615,796.86		
Minimum wages (Lab.Code § 1197):civil penalties:	$	2,002,500.00		
Meal periods Lab.Code § 512):civil penalties:	$	1,001,250.00		
Rest periods (Lab.Code § 1198):civil penalties:	$	2,002,500.00		
Business expenses (Lab.Code § 2802):civil penalties:	$	2,002,500.00		
Improper pay stubs (Lab.Code § 226):civil penalties:	$	2,002,500.00		
Untimely wages (Lab.Code §§ 201-204):civil penalties:	$	2,002,500.00		
Penalties subtotal:	$	15,622,046.86		
Grand total:	**$**	**21,072,278.67**	$2,000,000.00	9.49%

EXHIBIT 20

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OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010
John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

Attorney for Plaintiffs,
ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
(UNLIMITED JURISDICTION)

ALINA GHRDILYAN; EVGENIA SULTANIAN; and all others similarly situated,

Plaintiffs,

vs.

RJ FINANCIAL, INC., a California corporation; RAMIL ABALKHAD, an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No.: BC430633

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

Action filed:	01/28/2010
CMC:	05/10/2010, 8:30 a.m.
FSC:	Not set
Trial:	Not set
Dept:	36, Hon. Gregory Alarcon

On behalf of both himself and all other persons similarly situated, plaintiff ALINA GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE SPIVAK LAW FIRM

"Defendants") for violations of the California Labor Code, the applicable Industrial Welfare Commission Order(s) ("Wage Order(s)"), and the California Business and Professions Code, and as grounds therefore alleges:

INTRODUCTION

1. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this class and collective action, Plaintiffs seek to represent the below-defined classes and subclasses of persons who Defendants have allegedly committed labor law violations against including, but not limited to, wage underpayments. As a result of the allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and other similarly situated persons.

PARTIES AND CONDUCT

A. Plaintiffs and Class Members

2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an individual, was employed in a position that she alleges Defendants have classified as non-exempt from the overtime requirements of the California Labor Code and the applicable wage order(s).

3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an individual, was employed in a position that she alleges Defendants have classified as non-exempt from the overtime requirements of the California Labor Code and the applicable wage order(s).

4. At relevant times during the applicable limitations periods, Plaintiffs allege that Defendants have failed to compensate them and Defendants' other California employees for all of the hours that they have worked, failed to compensate them for all of the overtime hours that they have worked at overtime rates, failed to provide them with all required rest and meal periods, failed to pay them additional required wages for rest and meal periods, improperly denied earned wages that Defendants without authorization deducted from paychecks or required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to provide them with accurate written wage statements.

B. Defendants

5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of California. It was at all relevant times a "person" under Labor Code § 18.

6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an individual residing in the County of Los Angeles, State of California, was at all relevant times the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times, ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.'s accounting and bookkeeping and all administrative functions, including payroll. The company maintained books and records by staff members under his direction. At all relevant times, ABALKHAD was a "person acting on behalf of an employer" (RJ FINANCIAL, INC. and the Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours and days of work in orders of the Industrial Welfare Commission as described below under Labor Code § 558. Also, he was at all relevant times a "person" under Labor Code § 18.

7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but are informed and believe and thereon allege that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sue these defendants by such fictitious names. Plaintiffs will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

8. Plaintiffs are informed and believe and thereon allege that, at all relevant times herein, all defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other defendants.

9. At all relevant times, in perpetrating the acts and omissions alleged herein, defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

not paying Plaintiffs and other members of the below-described classes in accordance with applicable California labor laws as alleged herein.

10. Plaintiffs are informed and believe and thereon allege that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

CLASS ACTION ALLEGATIONS

11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully alleged herein.

12. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to represent the following classes and subclasses of current, future, and/or former employees of Defendants defined below:

> **Wages Class:** All persons employed by Defendants in California who have not been paid for all hours worked during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.
>
> **Overtime Class:** All persons employed by Defendants in California who have not been paid at the legally required overtime rates for all hours worked in excess of eight (8) hours in one (1) day and/or forty (40) hours in one (1) week during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.
>
> **Rest Periods Class:** All persons employed by Defendants in California who were not provided with a net rest period of at least ten (10) minutes per each four (4) hour work period, or major portion thereof, during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.
>
> **Meal Periods Class:** All persons employed by Defendants in California who were not provided with uninterrupted thirty (30) minute meal periods during each work period of five (5) or more hours during the period beginning four (4) years prior to the filing of this action and ending on the

THE SPIVAK LAW FIRM

date that final judgment is entered in this action.

Vacation Pay Class: All persons employed by Defendants in California who earned vested paid vacation days without receiving compensation for each vested paid vacation day during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.

Unauthorized Deduction Class: All persons employed by Defendants in California whose wages were deducted by Defendants without statutory authority or written consent during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.

Inaccurate Wage Statement Class: All persons employed by Defendants in California, including but not limited to members of the **Wages Class, Overtime Class, Rest Period Class, Meal Period Class,** and/or **Unauthorized Deduction Class** during the period beginning four (4) years prior to the filing of this action and ending on the date that judgment is entered in this action.

Former Employee Class: All persons employed by Defendants in California, including, but not limited to, members of the **Wages Class, Overtime Class, Rest Period Class, Meal Period Class, Unauthorized Deduction Class,** and/or **Inaccurate Wage Statement Class** whose employment with Defendants ended during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action, who either: a) were discharged and not paid all wages owed on or before the day of termination; or b) resigned without notice and were not paid all wages owed within 72 hours of resignation; or c) resigned with 72 hours notice and were not paid all wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in California, including, but not limited to, members of the **Wages Class, Overtime Class, Rest Period Class, Meal Period Class, Unauthorized Deduction Class**, and/or **Inaccurate Wage Statement Class,** who Defendants failed to indemnify for all necessary expenditures incurred by such employees in direct consequence of the discharge of their duties during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest Period Class, Meal Period Class, Overtime Class, Inaccurate Wage Statement Class, Former Employee Class, Unauthorized Deduction**

Class, and/or **Indemnification Class,** who have been employed by Defendants in California at any time during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.

All-Inclusive Class: All members of the **Wages Class, Overtime Class, Rest Periods Class, Meal Periods Class, Inaccurate Wage Statement Class, Unauthorized Deduction Class, Former Employee Class,** and/or **Indemnification Class.**

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise readily ascertainable class.

14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this case as a class action.

15. The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiffs do not currently know the exact number of class members, Plaintiffs are informed and believe and thereon allege that the actual number of class members exceeds the minimum number required for numerosity purposes under California law.

16. Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These questions include, but are not limited to:

A. Do Defendants maintain policies or practices that systematically cause the **Wages Class** not to be paid for all hours worked?

B. Have members of the **Overtime Class** been paid at the legally required overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

C. Do Defendants maintain policies or practices that systematically cause the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

D. Did Defendants fail to provide members of the **Rest Period Class** with all legally required rest periods in violation of California law?

E. Did Defendants fail to provide members of the **Meal Period Class** with all legally required meal periods in violation of California law?

F. Did Defendants fail to pay members of the **Rest Period Class** the

additional wages required for rest periods that were not provided?

G. Did Defendants fail to pay members of the **Meal Period Class** the additional wages required for meal periods that were not provided?

H. Did Defendants deduct wages from the paychecks of members of the **Unauthorized Deduction Class** without written consent?

I. Did Defendants intentionally fail to provide members of the **Inaccurate Wage Statement Class** with accurate written wage statements?

J. Did Defendants intentionally fail to indemnify members of the **Indemnification Class** for all necessary expenditures incurred by the members of the class in direct consequence of the discharge of their duties?

K. Are the vacation days received by members of the **Vacation Pay Class** subject to forfeiture?

L. Did Defendants fail to timely pay **Former Employee Class** all final wages owed following termination or discharge?

M. Are Defendants liable to members of the **Former Employee Class** for continuation wages under California Labor Code § 203?

N. Did Defendants engage in unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL Class?**

O. Are class members entitled to prejudgment interest?

P. Are class members entitled to attorneys' fees?

17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are informed and believe and thereon allege that Defendants have a policy or practice of failing to comply with the California Labor Code and the California Business and Professions Code as alleged herein.

18. Plaintiffs will fairly and adequately represent and protect the interests of the other class members. Plaintiffs have no interests adverse to the interests of the other class members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

action cases.

19. A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of moneys owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

FIRST CLAIM FOR RELIEF

FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE CALIFORNIA LABOR CODE

(By Plaintiffs, the Wages Class, and the Overtime Class)

20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully alleged herein.

21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and the **Overtime Class** have been entitled to the protections of the California Labor Code, including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections include the rights to be timely paid all wages earned at the legally required rates for all hours worked.

22. California Labor Code § 510(a) requires employers to compensate employees at one and one-half times their regular rates of pay for:

A. All hours worked in excess of eight hours in one workday;

B. All hours worked in excess of forty hours in one workweek; and,

C. The first eight hours worked on a seventh consecutive workday during a workweek.

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23. California Labor Code § 510(a) also requires employers to compensate employees at two times their regular rates of pay for:

A. All hours worked in excess of twelve hours in one day; and,

B. All hours worked in excess of eight hours on a seventh consecutive workday during a workweek.

24. During the applicable limitations period, Plaintiffs have worked more than eight hours in one workday, more than forty hours in one workweek, and eight or more hours on a seventh consecutive workday without being paid for all of those hours at the rates required under California Labor Code § 510(a).

25. Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating him and the other members of the **Wages Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating the other members of the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code § 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked hours in excess of eight hours on a seventh consecutive workday.

26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable attorney's fees pursuant to California Labor Code § 1194(a).

SECOND CLAIM FOR RELIEF

FAILURE TO PROVIDE REST AND MEAL PERIODS

(By Plaintiffs, the Rest Period Class, and the Meal Period Class)

27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully alleged herein.

28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and **Meal Period Class** have been employees of Defendants covered by California Labor Code §§

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226.7 and 512, and Wage order 11.

29. Pursuant to the applicable wage order(s), Defendants are required to provide Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten (10) minutes for each four (4) hour work period, or major portion thereof, during any given workday.

30. Pursuant to California Labor Code § 226.7, Defendants are required to pay Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for each rest period not provided in accordance with the applicable wage order(s).

31. During the applicable limitations period, Defendants failed to provide Plaintiffs with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major portion thereof, and failed to pay them the required additional wages for rest periods not provided to her.

32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a policy or practice of failing to provide other members of the **Rest Period Class** with net rest periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them the required additional wages for rest periods not provided to them.

33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work period during any given workday.

34. Pursuant to California Labor Code § 226.7, Defendants are required to pay Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for each meal period not provided in accordance with Wage order 11.

35. During the applicable limitations period, Defendants failed to provide Plaintiff with an uninterrupted thirty (30) minute meal period for each five (5) hour work period, including a second uninterrupted thirty (30) minute meal period on days he worked more than ten (10) hours, and failed to pay him the required additional wages for rest periods not provided to her.

36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a policy or practice of failing to provide other members of the **Meal Period Class** with uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10) hours, and failed to pay him the required additional wages for meal periods not provided to her.

37. Plaintiffs on behalf of themselves and the other members of the **Rest Period Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

THIRD CLAIM FOR RELIEF

FORFEITURE OF VACATION PAY

(By Plaintiffs and the Vacation Pay Class)

38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully alleged herein.

39. Under California Labor Code § 227.3 and applicable case law, vested paid vacation benefits and other similar forms of paid time off that earned based on labor performed are considered wages and cannot be subject to forfeiture without providing compensation for forfeited days at the applicable rates required by law.

40. Pursuant to written company policies, members of the **California Vacation Pay Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays" and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture pursuant to written company policies if they are not used within specified time periods.

41. During the applicable limitations period, Plaintiff has earned vested paid vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition Days," without being compensated by Defendants for each vested paid vacation day.

42. Plaintiff is informed and believes and thereon alleges that Defendants have maintained policies or practices of causing members of the **California Vacation Pay Class** to forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

"Management Recognition Days," without compensating them for each vested paid vacation day.

43. As a result of the above, Plaintiff seeks declaratory and injunctive relief, damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

FOURTH CLAIM FOR RELIEF

FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS

(By Plaintiffs and the All-Inclusive Class)

44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully alleged herein.

45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class** have been employees of Defendants entitled to the benefits and protections of California Labor Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

46. Defendants failed to provide Plaintiffs accurate itemized statements in accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not, among other things, accurately reflect all of the hours that they actually worked, the descriptions for all of the hours they actually worked, and the corresponding rates of pay for all of the hours they actually worked.

47. Plaintiffs are informed and believe and thereon allege that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing the other members of the **All-Inclusive Class** wage statements did not, among other things, accurately reflect all of the hours that they actually worked, the descriptions for all of the hours they actually worked, and the corresponding rates of pay for all of the hours they actually

worked.

48. Defendants' failure to provide Plaintiffs and the other members of the **All-Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and the other class members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

49. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies.

50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty dollars ($50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000) per class member, and are also entitled to an award of costs and reasonable attorney's fees.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL FINAL WAGES

(Cal. Lab. Code §§ 201-203)

(By Plaintiffs and the Former Employee Class)

51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully alleged herein.

52. At all relevant times, Plaintiffs and the members of the **Former Employee Class** were employees of Defendants covered by California Labor Code § 201 or California Labor

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Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs and the members of the **Former Employee Class** were entitled to payment of all wages earned and unpaid prior to the termination of their employment. Members of the **Former Employee Class** who are discharged employees were entitled to payment of their earned and unpaid wages no later than the day on which their employment was terminated. Members of the **Former Employee Class** who resigned were entitled to payment of their earned and unpaid wages within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous notice, no later than the day their employment terminated.

53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior to the termination of his employment with Defendants, including, but not limited to, additional earned wages for rest and meal periods not provided to them, and earned wages in the forms of vested paid vacation time and unlawfully deducted wages, in accordance with California Labor Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Former Employee Class** with a final paycheck encompassing all wages owed upon termination or discharge of employment, including, but not limited to, additional earned wages for rest and meal periods not provided to them, and/or earned wages in the forms of vested paid vacation time and/or unlawfully deducted wages, in accordance with California Labor Code § 201 or California Labor Code § 202.

54. Defendants' failure to pay Plaintiffs and members of the **Former Employee Class** all wages earned prior to termination in accordance with California Labor Code § 201 or California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege that Defendants had the ability to pay all wages earned by members of the **Former Employee Class** prior to termination in accordance with California Labor Code § 201 or California Labor Code § 202, but intentionally adopted policies or practices incompatible with the requirements of California Labor Code § 201 or California Labor Code § 202.

55. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

prior to the termination of their employment that Defendants did not pay them as well as continuations of their wages, from the days their earned and unpaid wages were due upon the termination of their employment until paid, up to a maximum of thirty (30) days, in amounts subject to proof.

56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are entitled to recover the full amount of their unpaid wages and interest thereon pursuant to California Labor Code § 218.6, continuation wages under California Labor Code § 203, reasonable attorney's fees, and costs of suit.

SIXTH CLAIM FOR RELIEF

UNAUTHORIZED DEDUCTIONS

(By Plaintiffs and the Unauthorized Deductions Class)

57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully alleged herein.

58. California Labor Code §§ 221 and 224 prohibit an employer from taking deductions from an employee's wages without the employee's express written consent or other legal authority for doing so.

59. At relevant times during the applicable limitations period, Defendants deducted wages from Plaintiffs' paychecks without their express written consent or other legal authority for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during the applicable limitations period, Defendants deducted wages from the paychecks of members of the **Unauthorized Deduction Class** without their express written consent or other legal authority for doing so.

60. By reason of the above, Plaintiffs and the members of the **Unauthorized Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class,** seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

Procedure § 1021.5.

SEVENTH CLAIM FOR RELIEF

FAILURE TO INDEMNIFY

(By Plaintiffs and the Indemnification Class)

61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully alleged herein.

62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties." California Labor Code § 452 of the Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form, and make of uniforms required to be worn by their employees. However, the Wage Orders impose an obligation on an employer that requires uniforms to be worn by its nonexempt employees as a condition of employment to provide and maintain such uniforms, regardless of the amount of the employees' compensation. The applicable wage order states, "When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color." If the employer does not choose to maintain employees' uniforms itself where it is required to do so, the Division of Labor Standards Enforcement takes the position that the employer may pay each affected employee a weekly maintenance allowance of an hour's pay at the state minimum wage rate ($7.50 as of January 1, 2007, and $8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

63. At relevant times during the applicable limitations period, Defendants required Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on behalf of themselves and the members of the **Indemnification Class,** seeks interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

EIGHTH CLAIM FOR RELIEF

UNFAIR COMPETITION

(By Plaintiffs and the California All-Inclusive Class)

65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully alleged herein.

66. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq*. California Business & Professions Code §§ 17200, *et seq*., protects against unfair competition and allows a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on her own behalf and on behalf of other similarly situated persons in a class action proceeding.

67. As a result of Defendants' violations of the California Labor Code as during the applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost money or property as a result of not being paid for hours worked, not being paid at legal overtime rates for all overtime hours worked, not being paid additional required wages for rest and meal periods not provided to them, being provided with inaccurate written wage statements that have had the effect of concealing other wage underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants' failure to timely pay all wages due or owed upon termination or resignation.

68. Plaintiffs are informed and believe that other similarly situated persons have been subject to the same unlawful policies or practices of Defendants, including not being paid for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

paid additional required wages for rest and meal periods not provided to them, being provided with inaccurate written wage statements that have had the effect of concealing other wage underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon termination or resignation.

69. Due to its unfair and unlawful business practices in violation of the California Labor Code as alleged herein, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their legal obligations to compensate employees for all earned wages and to provide them with reasonable means of verifying that they have been paid all earned wages with accurate written wage statements.

70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

NINTH CLAIM FOR RELIEF

CIVIL PENALTIES

(By Plaintiffs and the All-Inclusive Class)

72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully alleged herein.

73. During the applicable time period, Defendants violated California Labor Code §§ 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil

penalties pursuant to the procedures specified in California Labor Code § 2699.3.

75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other aggrieved employees of Defendants are entitled to recover civil penalties for Defendants' violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510, 512, 1194 and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code §§ 200, 201, 202, 203, 224, 226.7, 1194, and 2802, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2));

B. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210);

C. For violations of California Labor Code § 226(a), two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3); and,

D. For violations of California Labor Code §§ 510 and 512, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code § 558).

76. Plaintiffs have complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs gave written notice by certified mail to the Labor and Workforce Development Agency

("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiffs anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend to investigate the violations of the California Labor Code alleged herein.

77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of the **All-Inclusive Class** are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiffs' claims for violations of California law;

B. An order that Plaintiffs be appointed class representatives;

C. An order that counsel for Plaintiffs be appointed class counsel;

D. Declaratory relief;

E. Injunctive relief;

F. Actual damages;

G. Liquidated damages;

H. Restitution;

I. Civil penalties;

J. Statutory penalties;

K. Pre-judgment interest;

L. Costs of suit;

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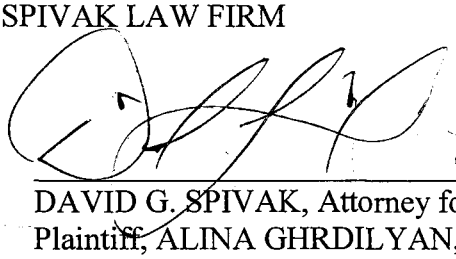
M. Reasonable attorney's fees; and

N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By: 

DAVID G. SPIVAK, Attorney for Plaintiff, ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

THE SPIVAK LAW FIRM

EXHIBIT 21

CASE NUMBER: BC430633
CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
RJ FINANCIAL, ET AL.,
LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
APPEARANCES: (SEE TITLE PAGE.)
REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
TIME: A.M. SESSION

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS. JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT. I WILL DO SOME MORE WORK WITH YOU.

(A PAUSE IN THE PROCEEDINGS.)

THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO HERE AND I GUESS I WILL START THIS WAY.

I SAID I AM GOING TO BRING OUT TWO THINGS. I BROUGHT OUT ONLY ONE.

(A PAUSE IN THE PROCEEDINGS.)

THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

UNDER CALIFORNIA CONSTITUTION ARTICLE VI, SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL GUARANTEES.

I WILL CITE YOU THREE CASES WHERE THAT POINT IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C., (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES, (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS COURT EXPRESSED THIS VIEW.

RULES OF COURT HAVE THE FORCE OF POSITIVE LAW. THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR CONSTITUTIONAL GUARANTEES.

SO THE HIERARCHY THEN WOULD BE CONSTITUTION, STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

I SAY THAT BECAUSE THE CASE OF WHITTINGTON

VERSUS MCKINNEY -- WHITTINGTON IS SPELLED W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 -- CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION, GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY WAS, AS I SAY, DECIDED IN 1991.

IN 2010, EFFECTIVE JANUARY 1, 2010, THE CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION AND STATEMENT DECISION AND JUDGMENT.

THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO THE (C) SUBSECTION.

IT READS NOW, (READING:)

THE COURT IN ITS TENTATIVE DECISION MAY:

STATE THAT IT IS THE COURT'S PROPOSED STATEMENT OF DECISION, SUBJECT TO A PARTY'S OBJECTION UNDER SUBSECTION (G);

(2) INDICATE THAT THE COURT WILL PREPARE A STATEMENT OF DECISION;

(3) ORDER A PARTY TO PREPARE A STATEMENT OF DECISION; OR

(4) DIRECT THAT THE TENTATIVE DECISION

WILL BECOME THE STATEMENT OF DECISION UNLESS, WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE TENTATIVE DECISION, A PARTY SPECIFIES THOSE PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

NOW, I WILL NOT USE METHOD TWO. THAT'S THE COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

I WOULD LIKE TO HEAR FROM BOTH SIDES NOW CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE PARTIES OR TEN DAYS.

THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1), (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

THE COURT: STATE THAT THIS IS THE COURT'S STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER (G)?

MR. SABZEVAR: YES, YOUR HONOR.

THE COURT: PLAINTIFF?

MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

THE COURT: ALL RIGHT.

MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE PREVAILING PARTY.

THE COURT: UH-HUH. I'M GOING TO USE -- I APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S 3.1590(C)(4).

SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL STATEMENT OF DECISION.

THIS CASE CAME BEFORE ME PRESIDING IN THIS DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

THE CASE WAS SUBMITTED FOR DECISION TODAY, THE 23RD OF APRIL, 2012.

IN THIS CASE, TWO PLAINTIFFS CLAIM THAT DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH IS AT LABOR CODE 2698, AND FOLLOWING.

IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS; NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

THE DEFENDANT'S ANSWER TO THE FIRST AMENDED COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

INSOFAR AS IT'S PERTINENT TO THIS PORTION OF MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

> SUBSECTION (A), NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY PROVISION OF THIS CODE THAT PROVIDES FOR A CIVIL PENALTY TO BE ASSESSED AND COLLECTED BY THE LABOR AND WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS, AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS CODE MAY, AS AN ALTERNATIVE, BE RECOVERED THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO THE PROCEDURES SPECIFIED IN SECTION 2699.3.

THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO DEFENDANT ABALKHAD.

THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11 PROCEEDING, WHICH IS STILL PENDING.

PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL. ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE CORPORATION.

THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA -- BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

I'M GOING TO REFER TO THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER -- I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE. THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

46 CALIFORNIA 4TH, 969, 981 TO 982.

WE WILL GO INTO RECESS NOW. COME BACK AT 1:30, PLEASE.

(AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS, A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH 365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES -- THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558. AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS COMMITTED. THAT'S LABOR CODE 2699(G)(1).

THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED TO WHAT THEY HAVE CALLED THE BRINKER CASE.

NOW, WHAT THEY ARE REFERRING TO IS THE CASE ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN, MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A). THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE CODE 780(J).

MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E) AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT PAGES 283 TO 284.

ASPECTS OF THE TESTIMONY OF THESE WITNESSES, THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(B).

FURTHERMORE, EVIDENCE CODE SECTION 412 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST. THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES, TAKEN THIS INTO CONSIDERATION.

BUT ALL THAT HAVING BEEN SAID, THE COURT DOES NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION 107, FOURTH PARAGRAPH.

THE DATES INVOLVED IN THIS CASE -- AND THE DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM UNDER THOSE THEORIES.

THE THEORIES I'M REFERRING TO ARE LABOR CODE 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER ARE ASSOCIATED THEORIES OF LIABILITY.

IN OTHER WORDS, I AM FINDING THAT UNDER 558 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

I'M GOING TO MAKE A FINDING ON THAT, AS YOU WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S POSITION.

NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO THE PLAINTIFFS'S POSITION.

NOW -- PARDON ME. I WILL SAY THIS.

AS YOU CAN TELL, I AM AT SOME PAINS TO GO

THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS, ARE NOT BEYOND REASONABLE ARGUMENT.

MY DECISION IS, AS I HAVE EXPRESSED IT, AND I BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

I HAVE COMPARED THE EMPLOYEE HANDBOOKS, EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS THE ONLY PERTINENT EMPLOYEE HANDBOOK.

I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY, 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY; SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010, SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

AS I HAVE SAID, THIS SUIT WAS FILED ON THE 28TH OF JANUARY, 2010.

ONE OF THE COMPLICATING FACTORS IN THIS CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY HAVE DONE SO SUCCESSFULLY.

THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE OVERTIME ITEMS.

IT IS ALSO TRUE -- BY THE WAY, THIS IS PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT CLAIM THAT THEY DO.

FOR THE REASONS THAT I HAVE MENTIONED EARLIER ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

THE TERM "WILLFUL" UNDER THE LABOR CODE -- THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA APPELLATE 3D 1 AT PAGES 7 AND 8.

OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE WORD "WILLFUL."

I WILL MAKE A COUPLE OF OTHER POINTS.

I RECOGNIZE THE INTENSITY WITH WHICH THE DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS TYPE.

I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA -- 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

I CITE THOSE TWO CASES NOT FOR THE PROPOSITION THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR FEES.

IN THE PREMISES OF THIS CASE, THOUGH, FOR REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID, PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE 75 PERCENT.

SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE, AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL MINISTERIAL ACTS.

PARDON ME.

WITH RESPECT TO THE -- TO THE REMEDIES, IT SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

I THINK THAT THE EVIDENCE ESTABLISHES

VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE CLEAR.

WITH RESPECT TO THE GHRDILYAN 558-510-512 LABOR CODE RECOVERY, I AM GOING TO AWARD $7,654.60 -- THAT'S EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

WITH RESPECT TO THE 1197.1 THEORY, WITH 1198 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE $14,218 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

WITH RESPECT TO SULTANIAN, MY DETERMINATION IS THAT REGARDING THE LABOR CODE 558-510-512 THEORY, MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF $5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST MR. ABALKHAD $13,936.50. TOTAL IS $19,200.69, AND THAT'S THE AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT AGAINST MR. ABALKHAD.

THIS NOW BRINGS US TO THE AWARD IN FAVOR OF THE SO-CALLED AGGRIEVED EMPLOYEES.

MY DETERMINATION IS THAT THE AGGRIEVED EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

THE TWO PLAINTIFFS IN OUR CASE.

I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

WITH RESPECT TO THE LABOR CODE 558, 510, AND 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE $2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER $125,000.

WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD WILL BE REQUIRED TO PAY IS NOT $3,269,490, WHICH WAS THE AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT RATHER $200,000.

NOW, THAT COMES OUT TO A TOTAL THEN OF $325,000.

NOW, IN DOING THIS, I HAVE EXERCISED MY DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW. MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS BUSINESSES.

BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS A REDUCTION OR SOFTENING OF THE PENALTIES.

NOW, I WILL ALSO SAY THE FOLLOWING. IF ON APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I HAVE MADE REFERENCE TO.

HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN ADDITIONAL $200,000 AS TO THE AGGRIEVED EMPLOYEES.

NOW, I WILL SAY THAT THESE AMOUNTS ARE, I RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD. IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE LAWYERS.

FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

MR. SPIVAK: WAS THERE SOME FINDING AS TO THE ADDITIONAL $200,000 WITH RESPECT TO THE INDIVIDUAL PLAINTIFFS, YOUR HONOR?

YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR CALCULATION.

THE COURT: YEAH.

MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

THE COURT: SHOW ME -- JUST A SECOND. COULD YOU, PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET ME DO THAT NOW.

THE PLAINTIFFS CONTEND THAT THERE WERE THESE WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226, UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR -- OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO BE.

EACH OF THOSE CONTENTIONS -- EACH OF THOSE THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD AWARD EACH OF THE PLAINTIFFS AS PENALTIES $60,000 EACH; 60 PLUS 60 IS 120.

NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A NUMBER THAT I THINK IS APPROPRIATE.

NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS, AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE CORPORATION.

WHAT I AM SAYING CONCERNING THESE OTHER PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN WHOLE.

I WANT TO PUT THESE PEOPLE IN A POSITION SO THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT FORECLOSED IT.

I AM EXTREMELY CONCERNED TO STATE THIS IN THAT WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION PROCESS AS MUCH AS THIS COURT CAN.

NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY, 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE -- FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT, REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY, 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT -- THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE THE DEFAULT SET ASIDE.

NOW IS THERE ANYTHING THAT I AM SUPPOSED TO SAY?

MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

MR. SABZEVAR: NO, YOUR HONOR.

THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO THEN.

I'M GOING TO SET A HEARING OUT IN THE FUTURE. FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS. I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN CONFORMITY WITH THE FOREGOING.

I AM GOING TO ORDER ALSO THAT THE PARTIES AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE JUDGMENT.

NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012, I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

MY IDEA WOULD BE THE JUDGMENT SHOULD BE SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE SCHEDULED.

MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN I SHOULD SCHEDULE IT?

MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

THE COURT: FORTY-FIVE DAYS.

MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE DATES?

MR. SPIVAK: YES, YOUR HONOR.

THE COURT: ARE YOU GOING TO BE ABLE TO DO THE THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE JUDGMENT?

MR. SPIVAK: YES, YOUR HONOR.

MR. SABZEVAR: THAT'S FINE.

THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU WHEN WE NEXT HAVE TO WORK ON THE CASE.

NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

FOUR WEEKS. HERE'S OUR SITUATION.

AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE COURT.

MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK. PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T KNOW WHAT'S GOING TO HAPPEN.

WHAT I WANT TO DO IS TO FINISH UP YOUR CASE AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW. BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR YOU.

ALL RIGHT. THANK YOU ALL VERY MUCH.

MR. SPIVAK: THANK YOU, YOUR HONOR.

MR. SABZEVAR: THANK YOU, YOUR HONOR.

THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON THE CASE.

(PROCEEDINGS CONCLUDED.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

ALINA GHRDILYAN, ET AL., PLAINTIFF, VS. RJ FINANCIAL, ET AL., DEFENDANTS,	CASE NO. BC430633 REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, ANGELA Z. PARADELA, CSR NO. 9659, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 29 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD ON APRIL 23, 2012, IN THE ABOVE-ENTITLED MATTER.

APRIL 27, 2012

_____, CSR NO. 9659

ANGELA Z. PARADELA, OFFICIAL REPORTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

ALINA GHRDILYAN, ET AL., PLAINTIFFS, VS. RJ FINANCIAL, ET AL., DEFENDANTS,	CASE NO. BC430633 **CERTIFIED COPY**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, APRIL 23, 2012

APPEARANCES:

FOR THE PLAINTIFFS: DAVID SPIVAK, ATTORNEY AT LAW

LOUIS BENOWITZ, ATTORNEY AT LAW

FOR THE DEFENDANTS: MICHAEL SABZEVAR, ATTORNEY AT LAW

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 22

www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.
Randi Martz
Corporate Headquarters
50 Corporate Park, Irvine CA 92606
Tim@cptgroup.com
Main Number: (800) 542-0900
Direct Number: (818) 415-2703
Fax Number: (949) 428-1074

Case Name: Mikich v Sayeh Petroleum, Inc

Date: **May 13, 2022**

Requesting Attorney: **David Spivak**
Plaintiff or Defense: **Plaintiff**
Firm Name: **The Spivak Law Firm**
Telephone: **(818) 582-3086**
Email: david@spivaklaw.com

All-In Settlement

* Class Members: **1,200**
** Opt-Out Rate: **1.5%**
Opt-Outs Received: **18**
Postage Total: **$2,097.84**
Grand Total: **$23,424.44**
*** **DISCOUNTED FLAT FEE: $16,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.
** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.
*** This price is valid for administration of a maximum of 18 opt-out's filed. Any additional opt-out's filed above 18 will be billed at the rate of $8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Static Website / Spanish Translation

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	$95.00	7	$665.00
System Programming/Data Base Setup	$150.00	7	$1,050.00
Toll-Free Number Establish/Setup*	$150.00	2	$300.00
Static Website	$500.00	1	$500.00
Spanish Translation	$1,200.00	1	$1,200.00
		Total	**$3,715.00**

** Up to 120 days after disbursement*

Notification Procedures

National Change of Address (NCOA) / Notice, Dispute Form & Opt-Out Form in English & Spanish / Postage (up to 2 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	$150.00	1	$150.00
Project Manager-Opt-Out/Notice Format	$95.00	2	$190.00
Merged Data	$0.50	1,200	$600.00
Mailing of Notice Pack	$1.50	1,200	$1,800.00
Estimated Postage (up to 2 oz.)*	$0.78	1,200	$936.00
		Total	**$3,676.00**

**Additional charges will apply if the postage exceeds 2 oz. The final rate will be determined at the time of mailing.*

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	$0.50	120	$60.00
Skip Traces	$1.25	103	$128.75
Remail Packs	$2.00	90	$180.00
Estimated Postage (up to 2 oz.)	$0.78	90	$70.20
Clerical Staff	$60.00	2	$120.00
		Total	**$558.95**

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support			
Administrative Tasks:	**Unit Price**	**Pieces/Hours**	**Cost Estimate**
Programming of Opt-Out Data Base	$150.00	4	$600.00
Opt-Out Processing	$10.00	18	$180.00
Clerical Staff	$60.00	1	$60.00
Deficiency/Dispute Letters	$20.00	1	$20.00
Estimated Postage (up to 1 oz.)	$0.58	1	$0.58
Project Manager	$95.00	1	$95.00
Call Center Support	$3.00	240	$720.00
		Total	**$1,675.58**

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings			
Administrative Tasks:	**Unit Price**	**Pieces/Hours**	**Cost Estimate**
Programming for SSN Selection	$150.00	1	$150.00
Project Manager	$95.00	3	$285.00
SSN Verification	$0.20	1,182	$236.40
		Total	**$671.40**

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2 / Check Reminder Postcard			
Administrative Tasks:	**Unit Price**	**Pieces/Hours**	**Cost Estimate**
Programming Database-Calculate Totals	$150.00	3	$450.00
Project Supervisor Review of Distribution	$150.00	3	$450.00
Project Manager-Correspond w/Attorney	$95.00	2	$190.00
Obtain EIN, Setup QSF/Bank Account	$150.00	3	$450.00
Programming/Setup & Printing of Checks	$150.00	4	$600.00
Print Mail Checks, W-2/1099 (8x10 sheet)	$2.50	1,182	$2,955.00
Estimated Postage (up to 1 oz.)	$0.58	1,182	$685.56
Check Reminder Postcard	$0.30	780	$234.00
Postage for Reminder Postcard	$0.40	780	$312.00
		Total	**$6,326.56**

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration			
Administrative Tasks:	**Unit Price**	**Pieces/Hours**	**Cost Estimate**
Re-Issue Checks as Required	$5.00	12	$60.00
Project Supervisor -Account Recons	$150.00	6	$900.00
Skip Trace	$1.25	95	$118.75
Remail Undeliverable Checks	$2.50	95	$237.50
Estimated Postage (up to 1 oz.)	$0.58	107	$62.06
Project Supervisor-Reconcile Uncashed Chk	$150.00	1	$150.00
Programming- Final Reports	$150.00	2	$300.00
Project Manager - Acnt Files Sent to Atty	$150.00	2	$300.00
Project Supervisor - Final Declaration	$150.00	2	$300.00
CA Tax Preparation*	$600.00	1	$600.00
Annual Tax Reporting to IRS*	$1,000.00	1	$1,000.00
QSF Annual Tax Reporting	$500.00	1	$500.00
		Total	**$4,528.31**

**CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.*

Escheat Processing

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
Administrative Tasks:	**Unit Price**	**Pieces/Hours**	**Cost Estimate**
UPEnterprise Reporting Services	$0.15	248	$37.20
Project Manager - Fall Reporting	$95.00	2	$190.00
Project Supervisor-Fall Reporting	$150.00	1	$150.00
Certified Mail Report to SCO	$8.53	1	$8.53
Check Reissues - Winter/Spring QTR	$5.00	25	$124.00
Estimated Postage (up to 1 oz.) for Reissue	$0.58	25	$14.38
Project Manager - June Remittance	$95.00	2	$190.00
Project Supervisor- June Remittance	$150.00	1	$150.00
Certified Mail Report to SCO	$8.53	1	$8.53
Add'l Account Recons	$150.00	6	$900.00
Add'l QSF Annual Tax Reporting	$500.00	1	$500.00
		Total	**$2,272.64**
		Grand Total:	**$23,424.44**

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("**CPT**").

1. Definitions.

a) "**Affiliate**" means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.

b) "**Approved Bank**" means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding $1 billion.

c) "**Case**" means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.

d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.

e) "**Client**" means collectively Plaintiff Counsel and Defense Counsel.

f) "**Client Content**" means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.

g) "**Client Data**" means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.

h) "**Class Member**" means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.

i) "**Confidential Information**" means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.

j) "**Court Order**" means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.

k) "**Defendant**" means the named party and/or parties in the Case against whom action is brought.

l) "**Defense Counsel**" means the attorney of record for the defendant(s) in the Case.

m) "**Intellectual Property Right**" means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.

n) "**Order**" means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.

o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.

p) "**Plaintiff**" means the named party and/or parties in the Case who are bringing the action.

q) "**Plaintiff Counsel**" means the attorney of record for plaintiff Class Members in the Case.

r) "**Products**" means any and all CPT Services, and work product resulting from Services.

s) "**Qualified Settlement Fund**" means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

t) "**Service**" means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.

u) "**Software**" means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.

v) "**Settlement**" means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.

w) "**Settlement Agreement**" means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.

x) "**Term**" means the term of the Agreement, as set forth in the Order.

y) "**Transmission Methods**" means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.

z) "**Wire Information**" means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disenabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.

4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.

5. Mutual Obligations.

a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.

6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.

7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.

8. Term and Termination.

a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.

b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.

c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.

d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.

e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.

11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

13. Liability.

a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.

c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.

d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.

e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.

f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.

g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.

h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.

j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.

k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.

l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.

m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.

n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.

o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.

p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 23

ILYM GROUP, Inc.
SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Mikich v. Sayeh Petroleum, Inc.

Monday, May 9, 2022

Requesting Law Firm	The Spivak Law Firm
Contact	David Spivak
E-Mail	david@spivaklaw.com
ILYM Contact	Sean Hartranft
E-Mail	Sean@ilymgroupclassaction.com
Contact Number	949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	**1,200**
Estimated Percentage of Undeliverable Mail	**20%**
NCOA	**Yes**
One-Page Notice Posted to ILYM Group Website	**Yes**
Certified Spanish Translations	**Yes**

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	$150.00	4	$600.00
Programming of Class Database	Hourly	$175.00	4	$700.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ $150.00 per hour.*

Subtotal **$1,300.00**

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	$120.00	12	$1,440.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	$70.00	3	$210.00
Staff Hours for Processing Returned Mailed	Hourly	$70.00	1	$70.00
Report Processing	Hourly	$70.00	7	$490.00
NCOA	Per Piece	$250.00	1	$250.00
Toll-Free Call Center	Flat Fee	$450.00	1	$450.00
ILYM Group Static Website, Includes Hosting	Flat Fee	$750.00	1	$750.00
Certified Spanish Translation	Flat Fee	$1,250.00	1	$1,250.00
Weekly Reports	Flat Fee	$500.00	1	Waived

Subtotal **$4,910.00**

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
NOTIFICATION/MAIILING				
Fulfillment Notice, English & Spanish	Per Piece	$1.50	1,200	$1,800.00
USPS First Class Postage	Per Piece	$0.55	1,200	$660.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	$2.00	240	$480.00
Storage, Photocopies, Deliveries	Flat Fee	$300.00	1	$300.00
			Subtotal	**$3,240.00**
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	$150.00	12	$1,800.00
Account Reconciliation & Distribution Reporting	Hourly	$125.00	12	$1,500.00
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	$1.25	1,200	$1,500.00
USPS First Class Postage	Per Piece	$0.55	1,200	$660.00
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	$1.25	1,200	$1,500.00
USPS First Class Postage	Per Piece	$0.55	1,200	$660.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	$2.00	240	$480.00
Reminder Postcard, Includes Postage	Per Piece	$1.00	360	$360.00
Preparation of Taxes	Hourly	$120.00	24	$2,880.00
Annual Filing of Tax Return	Per Year	$1,250.00	2	$2,500.00
			Subtotal	**$13,840.00**
CASE CONCLUSION				
Data Manager Final Reporting	Hourly	$100.00	10	$1,000.00
Project Manager Final Reporting	Hourly	$120.00	10	$1,200.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	$750.00	1	$750.00
Declaration	Hourly	$125.00	6	$750.00
			Subtotal	**$3,700.00**

***Additional Bank fees may apply*

Total Case Estimate: **$26,990.00**

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Clients instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 24

PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

May 9, 2022

CASE ASSUMPTIONS	
Class Members	1,200
Opt Out Rate	1%
Opt Outs Received	12
Total Class Claimants	1,188
Subtotal Admin Only	**$18,121.03**

Not-to-Exceed Total $15,000.00

For 1,200 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Two Disbursements & Two Check Runs

Case: Mikich v. Sayeh Petroleum, Inc., Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: David Spivak
Firm: The Spivak Law Firm
Contact Number: (310) 499-4730
Email: david@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **1,200** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of $150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Manager	$100.00	2	$200.00
Programming Database & Setup	$100.00	2	$200.00
Toll Free Setup*	$150.00	1	$150.00
Call Center & Long Distance	$2.00	208	$416.00
NCOA (USPS)	$300.00	1	$300.00
		Total	**$1,266.00**

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting			
Project Action	**Rate**	**Hours/Units**	**Line Item Estimate**
Notice Packet Formatting	$100.00	2	$200.00
Spanish Translation	$800.00	1	$800.00
Data Merge & Duplication Scrub	$0.10	1,200	$120.00
Notice Packet & Opt-Out Form	$1.30	1,200	$1,560.00
Estimated Postage (up to 2 oz.)*	$0.73	1,200	$876.00
Static Website	$100.00	1	Included
Check Cashing Reminder Postcard Postage Included	$0.60	249	$149.69
		Total	**$3,705.69**

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.

PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Case Associate	$55.00	6	$330.00
Skip Tracing Undeliverables	$0.85	300	$255.00
Remail Notice Packets	$0.75	297	$222.75
Estimated Postage	$0.73	297	$216.81
Programming Undeliverables	$50.00	1	$50.00
		Total	**$1,074.56**

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Claims Database	$150.00	2	$300.00
Non Opt-Out Processing	$200.00	1	$200.00
Case Associate	$55.00	5	$275.00
Opt-Outs/Deficiency/Dispute Letters	$10.00	18	$180.00
Case Manager	$85.00	4	$340.00
		Total	**$1,295.00**

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Calculations	$135.00	2	$270.00
Disbursement Review	$135.00	1	$135.00
Programming Manager	$95.00	2	$190.00
QSF Bank Account & EIN	$135.00	1	$135.00
Check Run Setup & Printing	$135.00	8	$1,080.00
Mail Class Checks * (x 2)	$1.00	2,376	$2,376.00
Estimated Postage (x 2)	$0.53	2,376	$1,259.28
		Total	**$5,445.28**

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing

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Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Case Supervisor	$115.00	6	$690.00
Remail Checks & Tax Forms (Postage Included)	$1.50	603	$904.50
Case Associate	$55.00	6	$330.00
Reconcile Uncashed Checks	$85.00	10	$850.00
Conclusion Reports	$115.00	4	$460.00
Case Manager Conclusion	$85.00	4	$340.00
Final Reporting & Declarations	$115.00	4	$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	$1,000.00	1	$1,000.00
Check to Cy-Pres	$150.00	1	Included
Uncahsed Checks to the State of California Controllers Office Estimated 9 Total Class Members	$300.00	1	$300.00
		Total	**$5,334.50**

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibilty.

Estimate Total: $18,121.03

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TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are $10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.

2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.

3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.

4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.

5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 25