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8 Attorneys for Plaintiff(s),
9 MARIA RIOS-ROMAN, and all others similarly situated
10 (Additional attorneys for Plaintiff(s) on following page)

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CRUZ**
13 **(UNLIMITED JURISDICTION)**

14 MARIA RIOS-ROMAN, on behalf of herself, all
15 others similarly situated, the general public, and
16 as an “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19
20 SEASONS MANAGEMENT, LLC, an Oregon
21 limited liability company; SM SANTA CRUZ
22 LIMITED PARTNERSHIP, an Oregon limited
23 partnership; SL - SUN OAK, LLC, an Oregon
limited liability company; and DOES 1–50,
inclusive,

24 *Defendant(s).*

Case No. 20CV00783

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF MARIA
RIOS-ROMAN’S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: October 19, 2022
Hearing Time: 8:30 a.m.
Hearing Dept.: 10, The Honorable Paul
M. Marigonda

Action filed: March 09, 2020
Trial Date: Not Set



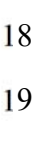
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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Maria Rios-Roman (“Plaintiff”) in her lawsuit against Defendants
6 Seasons Management, LLC, SM Santa Cruz Limited Partnership, and SL - Sun Oak, LLC
7 (collectively “Defendants”). Plaintiff and Defendants are collectively referred to as the “Parties.”

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

10 3. The Joint Stipulation of Class Action and PAGA Settlement and Release of
11 Claims (the “Settlement”) is attached hereto as **Exhibit 1**.

12 ***Factual and Procedural Background***

13 4. Defendants employed Plaintiff as a Caregiver from about October of 2018 until
14 April 17, 2019.

15 5. On January 02, 2020, Plaintiff notified Defendants and the California Labor and
16 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
17 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor
18 Code violations committed by Defendants. A true and correct copy of the letter to the LWDA
19 dated January 02, 2020 is attached hereto as **Exhibit 2**.

20 6. On March 09, 2020, Plaintiff filed a Complaint for Violations of the Labor Code
21 and Civil Penalties Under the Labor Code Private Attorneys General Act of 2004, Labor Code
22 §§ 2698, *et seq.* (“PAGA”) in the Santa Cruz County Superior Court, Case No. 20CV00783,
23 against Defendants on behalf of herself and others similarly situated against Defendants on behalf
24 of herself and others similarly situated. On April 29, 2020, Defendants filed an answer to
25 Plaintiff’s Complaint. Defendants deny all of Plaintiff’s allegations and strongly contend that
26 their wage and hour policies, practices and procedures are fully compliant with all applicable
27 laws. DS, ¶ 6. On June 14, 2022, Plaintiff filed her First Amended Complaint alleging causes of
28 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



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226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.) and added SM SANTA CRUZ LIMITED PARTNERSHIP and SL - SUN OAK, LLC as Defendants. A true and correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Defendants' Answer is attached hereto as **Exhibit 4**. A true and correct copy of Plaintiff's First Amended Complaint is attached hereto as **Exhibit 5**.

7. 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 Plaintiff's entire personnel file (including policies and agreements she 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 Plaintiff's counsel. Defendants also produced financial records to enable plaintiff and her expert forensic accountant to evaluate defendants financial condition.

8. On February 11, 2021, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Mark C. Peters, 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 her/their respective counsel, recognized the risk of an adverse result in the Action. Although the parties did not reach a settlement at mediation, they continue to negotiate with the help of the mediator and ultimately agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

9. At the mediation, it became clear that that Defendants had insufficient resources to cover the full extent of liability. As part of the settlement negotiations, each of the Defendants disclosed copies of its/his federal and state tax returns for the last two years. Plaintiff's Counsel has reviewed the financial records with the aid of a forensic economist. The information provided was sufficient to demonstrate the financial condition of the company and its owners. Based on such records, Plaintiff, on her own behalf and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth in the Settlement.

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Typicality

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

Adequacy

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

15. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiff contends that she is an adequate class representative. 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 Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated her 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 herself to the risk of attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative.

Background of Class Counsel

16. 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.



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17. 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.

18. 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.

19. 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).

20. 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

1 claims and wrongful termination claims against employer in a month-long jury trial. The jury
2 awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His
3 Job" by Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to
4 Fired Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's
5 Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

6 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
7 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
8 Plaintiff, who I represented pro bono sought the return of \$45,000.00 he paid to an attorney
9 escrow officer who subsequently absconded with the money. The jury awarded compensatory
10 damages. The Judgment with interest is now far in excess of that amount. Soon after this case
11 was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono
12 Legal Services.

13 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
14 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
15 Customs Agent, followed by an award of Attorneys' fees and costs.

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

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

21. 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*



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1 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
2 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
3 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
4 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.

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

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

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

12 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
13 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
14 court on behalf of nonexempt employees).

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

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

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

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



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1 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
2 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
3 action settlement on behalf of medical devices employees).

4 h. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
5 BC480808 (appointed Class Counsel and granted final approval of class action settlement on
6 behalf of hourly employees).

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

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

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

16 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
17 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
18 on behalf of dairy and agricultural laborers).

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

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

28 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).



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

24. 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*

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

The Settlement is Presumptively Fair

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

Exposure & Risk Analysis

18 26. At issue in this class and representative action is the alleged failure of adult
19 residential care facility operators to provide their hourly California employees with all off-duty,
20 unrestricted meal and rest periods. As a result of allegedly inadequate staffing levels, Plaintiff
21 alleges that Defendants frequently required Plaintiff and the putative class members (“PCMs”)
22 to work through their meal and rest periods without pay, and further required that they remain on
23 Defendants’ premises. In addition, Defendants allegedly required Plaintiff and the PCMs to clock
24 out at their scheduled shift end times but remain on duty, without pay, while waiting for
25 employees from the following shift to arrive for work. Finally, Defendants allegedly failed to
26 include non-discretionary signing bonuses issued to Plaintiff and the PCMs in their regular rates
27 of pay for purposes of calculating Plaintiff’s and the PCMs’ overtime pay rates. Plaintiff prepared
28 “damages” estimates in advance of the mediation. Ex.6. In advance of the mediation, Plaintiff
determined Defendants’ maximum exposure for restitution and penalties to be approximately



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1 \$3,741,524.07 (consisting of \$188,345.00 in unpaid wages, \$273,956.36 in missed meal period
2 premium wages, \$429,198.30 in missed rest break premium wages, \$224,600.00 for wage
3 statement penalties, \$313,230.16 for waiting time penalties, and \$2,310,000.00 for civil
4 penalties). True and correct copies of the spreadsheets I prepared for mediation of this Action are
5 collectively attached to this declaration as **Exhibit 6**. The estimates are in essence “home run”
6 projections that omit data points that will undoubtedly reduce the maximum possible damages
7 award and do not factor in any of the risks involved in litigating this Action. Plaintiff calculated
8 the damages based on the number of workweeks and pay periods provided by Defendants,
9 Plaintiff’s reports, and the sample data. *Id.* Plaintiff also considered the possibility that
10 Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from
11 the Class Members. Defendants also represented that they had interviewed Defendants’ current
12 employees regarding Plaintiff’s claims, all of whom would provide declarations, under penalty
13 of perjury, that were favorable to Defendants with respect to the relevant factual issues at issue
14 in Plaintiff’s action. Plaintiff’s Counsel applied discounts to the maximum exposure to account
15 for all other risks discussed below. While it is difficult to assign anything but crudely-determined
16 percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign
17 would preclude recovery for such employees is substantial and alone justifies a significant
18 discount because Defendants would likely by trial have gathered releases from the majority of
19 the Class Members. A settlement for approximately 9.35% of the potential recovery is a
20 proportion substantially in excess of recovery proportions sanctioned by existing case law.¹

21
22 27. My initial estimates do not realistically account for the risks outlined below or the
23 risk that a class will not be certified. Therefore, I believe a class settlement for \$350,000.00 is
24 fair and reasonable.
25

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27
28 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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28. **Risks Associated with Defendants' Financial Condition.** Defendants' financial condition was the key factor in reaching this Settlement. Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, her may never recover the damages due to the risk of insolvency. A very large class action judgment would almost certainly put the company out of business and/or would interfere with the Defendants' ability to carry out their contractual obligations.

29. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's 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 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.

30. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff 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, Plaintiff 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

1 is a significant risk that the Court would consider this evidentiary showing insufficient as a
2 classwide methodology.

3 31. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's
4 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
5 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
6 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
7 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is
8 performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
9 or prohibited the employee from taking a proper break, or otherwise failed to release the
10 employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the
11 reason that a particular employee may have failed to take a meal break." *Washington v. Joe's*
12 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

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

22 33. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff's rest
23 period claim. Employers are not required to record rest periods and such periods are paid.
24 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
25 accordance with California law. Further, Defendants' written policies on meal and rest periods
26 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
27 showing whether an employee clocked out or not, there is no such evidence to prove a missed
28 rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims
at trial has become exceedingly difficult. Plaintiff 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*



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1 *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common
2 questions exist to support class certification, it may be possible to manage individual issues
3 through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015)
4 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

5 34. **Risks Associated with the Statutory “Wage Statement” Penalty Claims.**

6 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA
7 penalties. Under Labor Code section 226, wage statements must include various information,
8 including the applicable rates of pay, corresponding hours worked, and gross pay. Here,
9 Plaintiff’s wage statement claim has the same underlying risks as the above claims, as it is
10 derivative of them. On their face, the wage statements issued by Defendants comply with the
11 requirements of Labor Code section 226.

12 35. **Risks Associated with The Waiting Time Penalties Claim.** Plaintiff’s claim for

13 untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor
14 Code sec. 226, Plaintiff must establish that the late payments were willful. The evidence of good
15 faith Defendants put forth will defeat this claim.

16 36. **Risks Associated With the PAGA Claim.** Regarding PAGA, a court has

17 discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman*
18 *v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA
19 award). As set forth above, Defendants have posed valid defenses to the Labor Code claims
20 underlying Plaintiff’s PAGA allegations. Thus, the PAGA claims likewise face significant
21 uncertainty. There is a risk that the Court would consider the maximum civil penalty available to
22 be confiscatory. Moreover, the current COVID-19 pandemic could motivate the Court to further
23 reduce the penalty award to avoid what it may consider a confiscatory taking.

24 37. This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and

25 required a significant discount for settlement purposes. For mediation purposes, Plaintiff’s
26 counsel estimated a maximum exposure of approximately \$2,310,000.00 in civil penalties. This
27 estimate did not take into account any of the risks discussed above and assumed a violation for
28 every single pay period. *Id.* Plaintiff’s 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
this fashion may be appropriate to determine the amount in controversy for purposes of removal



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jurisdiction, Plaintiff's 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.

38. 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

39. 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.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal

² 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.

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 7**. 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 8**, 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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1 affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the
2 defendant's meal period violations. A similar result could occur here.

3 40. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the
4 right to settle a putative class member's disputed wage claims individually, without the consent
5 or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796
6 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue
7 individual release agreements from the Class Members, thereby potentially narrowing the size of
8 the Settlement Class – 362 members - until it is no longer numerous enough for class certification.
9 *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a
10 significant reduction of claim value in settlement negotiations.

11 41. While the evidence gathered through Plaintiff's discovery supports the merits of
12 the claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation
13 presents significant risks that support a downward departure from Defendants' estimated liability
14 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
15 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
16 taking into account the likelihood of prevailing and other attendant risks. It also represents a fair,
17 adequate, and reasonable compromise amount for these claims and warrants preliminary
18 approval. *Id.*, *Torrison v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
19 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v.*
20 *J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning
21 defendant's financial stability "strongly supports the reasonableness of the settlement"); See
22 *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049,
23 * 3.

24 ***Allocation of the PAGA Payment***

25 42. The settlement of PAGA penalties in the sum of \$4,000.00, of which 75%
26 (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Class, is
27 reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount
28 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

43. I intend to request Class Counsel Attorneys' Fees of \$116,666.65 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$17,500.00 and will be no more than \$17,500.00 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); *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.



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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).

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

45. 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

46. The Settlement provides that Plaintiff may seek a Class Representative Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours

1 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
2 retaining experienced counsel, providing them with information about her work history with
3 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
4 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
5 being actively involved in the settlement process to ensure a fair result for the Settlement Class
6 as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
7 order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor
8 Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement
9 Class shows that the proposed Class Representative Payment is fair, adequate, and reasonable,
and thus warrant preliminary approval.

Settlement Share

10 47. The Settlement Share will be paid to each Class Member based on his or her
11 eligible Pay Periods compared to the total Pay Periods. Settlement § III,D.c.2. Because this
12 method compensates Class Members based on the extent of their potential injuries, in that Class
13 Members who worked for Defendants longer would have been subject to more alleged violations,
14 it is fair, adequate, and reasonable.

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

15 48. The Settlement requires distribution of the Notice by First Class U.S. mail only.
16 Settlement, § IV.B.2. Although there are current employee Class Members, it is uncertain
17 whether Defendants' records of their contact information include email addresses and Class
18 Members, who perform all of their work away from a desk, are not in a position to check their
19 emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet
20 (attached as Exhibits A, B, and C to the Settlement) provides Class Members with all pertinent
21 information that they need to fully evaluate their options and exercise their rights under the
22 Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the
23 Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid;
24 (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to
25 the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members
26 will be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual
27 Settlement Payment for each Class Member. Additionally, the Notice will include the number of
28 Eligible Workweeks a Class Member had during the Class Period. Accordingly, the Notice



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1 should be approved because it describes the Settlement with sufficient clarity and specificity to
2 explain to Class Members what this action is about, their rights under the Settlement, and how to
3 exercise those rights. As such, the parties' proposed Notice fully complies with California Rules
4 of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the
5 proposed settlement.

Settlement Administration Duties

6 49. The duties of the Settlement Administrator are spelled out in section III(C) of the
7 Settlement and in the bid provided by Phoenix Settlement Administrators a true and correct copy
8 of which is attached hereto as **Exhibit 9**.

Settlement Administration Costs

9 50. With regard to the settlement administration costs provision (Settlement
10 §IV.N.3.), it is reasonable. Before agreeing to Phoenix Settlement Administrators, the Parties
11 sought and reviewed bids from other reputable third-party administrators: (A) ILYM Group, Inc.
12 = \$20,600.00; (B) CPT Group, Inc. = \$15,000.00; and C) Phoenix. = \$8,000.00. A true and
13 correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 10**. A true and
14 correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 11**. The bid provided
15 by Phoenix was comparable. Thus, settlement administration costs provision should be given
16 preliminary approval.

Notice of Settlement to the LWDA

17 51. Pursuant to Labor Code § 2699(l)(2), Plaintiff submitted a copy of the Settlement
18 with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiff's
19 Motion is being filed with the Court. A true and correct copy of Plaintiff's submission with the
20 LWDA and a confirmation email is attached hereto as **Exhibit 12**.

21 I declare under the penalty of perjury of the laws of the State of California that the
22 foregoing is true and correct to the best of my knowledge.

23 Executed on Monday, September 26, 2022 at Los Angeles, California.



24 **DAVID SPIVAK,**
25 Declarant



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EXHIBIT 1

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7 Attorneys for Plaintiff(s),
8 MARIA RIOS-ROMAN, and all others similarly situated
9 (Additional attorneys for parties on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CRUZ**
12 **(UNLIMITED JURISDICTION)**

13 MARIA RIOS-ROMAN, on behalf of herself
14 and all others similarly situated, and as an
15 “aggrieved employee” on behalf of other
16 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 SEASONS MANAGEMENT, LLC, an Oregon
20 limited liability company; SM SANTA CRUZ
21 LIMITED PARTNERSHIP, an Oregon limited
22 partnership; and SL – Sun Oak, LLC, an Oregon
limited liability company; and DOES 1–50,
inclusive,

23 *Defendant(s).*
24
25
26
27

Case No. 20CV00783

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT
AND RELEASE OF CLAIMS**

Action filed: March 09, 2020
Dept.: 10, The Honorable Paul M.
Marigonda

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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Attorneys for Defendant(s),
Seasons Management, LLC, SM Santa Cruz Limited Partnership, and SL – Sun Oak, LLC

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Maria Rios-
3 Roman (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class
4 members, on the one hand, and Defendant Seasons Management, LLC, SM Santa Cruz Limited
5 Partnership, and SL – Sun Oak, LLC (collectively “Defendants”). Plaintiff and Defendants are
6 collectively referred to herein as the “Parties.”
7

8 **I. DEFINITIONS.**

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

11 **A. “Action”** shall mean: (1) the civil action commenced on March 09, 2020, by
12 Plaintiff against Defendants in the Superior Court of California, County of Santa Cruz, Case No.
13 20CV00783, entitled: “Maria Rios-Roman, on behalf of herself, and all others similarly situated,
14 and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code
15 Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Seasons Management, LLC, an Oregon
16 limited liability company, *et al.*; and DOES 1 through 50, inclusive, *Defendant(s)*.”
17

18 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons
19 Defendants employed in California as hourly, non-exempt employees during the Class Period.
20 Defendants estimate that, as of the preliminary approval order date, there were approximately
21 362 class members.
22

23 **C. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
24 David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law
25 Group.
26

27 **D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
28

1 **Payment**” shall mean the amounts awarded to Class Counsel by the Court to compensate them
2 for, respectively, their fees and expenses in connection with the Action, including their pre-filing
3 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
4 post-Settlement compliance procedures. Class Counsel will request attorneys’ fees not in excess
5 of one-third (1/3) of the Gross Settlement Amount, or One Hundred Sixteen Thousand Six
6 Hundred Sixty-Six Dollars and 66 cents (\$116,666.66). Class Counsel will also request Class
7 Counsel Litigation Expenses up to Seventeen Thousand Five Hundred Dollars (\$17,500.00)
8 subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for
9 fees and reimbursement of costs as set forth above. In the event that the Court reduces or does
10 not approve the requested Class Counsel Fees Payment and/or Class Counsel Litigation
11 Expenses, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.
12

13 E. **“Class Notice”** shall mean the Notice of Proposed Settlement attached as **Exhibit**
14 **A** and incorporated by reference into this Agreement.
15

16 F. **“Class Period”** shall mean the period of time from November 13, 2016 through
17 the preliminary approval order date.

18 G. **“Class Representative Payment”** shall mean the special payment made to
19 Plaintiff in her capacity as Class Representative to compensate her for initiating the Action,
20 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
21 and expenses in the event she was unsuccessful in the prosecution of the Action. In the event that
22 the Court reduces or does not approve the requested Class Representative Payment, Plaintiff shall
23 not have the right to revoke this Settlement, and it will remain binding.
24

25 H. **“Court”** shall mean the Superior Court for the County of Santa Cruz, Santa Cruz
26 Main Courthouse, 701 Ocean Street, Santa Cruz, CA 95060.
27

I. “Defense Counsel” shall mean the attorneys representing Defendants in the Action: Carolyn B. Hall of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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 Plaintiff, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters judgment granting 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 sum of Three Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00) payable by Defendants as provided by this Agreement, which shall cover all Settlement Share payments, the Class Representative Payment, the Class Counsel Fee Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment and the Settlement Administration Costs. 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. Defendants will pay the Gross Settlement Amount as outlined further below. In no event shall Defendant be liable

1 for more than the Gross Settlement Amount of \$350,000.00 as a result of this Settlement, with
2 the exception of its employer-side payroll taxes which it shall pay in addition to the Gross
3 Settlement Amount.

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

7
8 **N. “Net Settlement Amount”** shall mean the Gross Settlement Amount of
9 \$350,000.00 payable by Defendants pursuant to this Settlement, less:

- 10 **1.** the Class Representative Payment approved by the Court;
- 11 **2.** the Class Counsel Fees Payment (one-third or 33 and 1/3% of the Gross
12 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
13 \$17,500.00) approved by the Court;
- 14 **3.** the Settlement Administrator’s reasonable fees and expenses approved by
15 the Court (not to exceed \$10,000.00);
- 16 **4.** the amount of \$4,000.00 as PAGA Penalties for the PAGA claim, of which
17 \$1,000.00 will be paid to the PAGA Members and \$3,000.00 will be paid to the LWDA;
- 18 **5.** any other fees or expenses (other than attorneys’ fees and expenses)
19 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
20 the Court.

21
22 **O. “PAGA”** means the California Labor Code Private Attorneys General Act of
23 2004 (Lab. Code §§ 2698, *et seq.*).

24
25 **P. “PAGA Members”** means all individuals Defendants employed in California as
26 hourly, non-exempt employees during the PAGA Period.

1 **Q. “PAGA Payment”** means the portion of the Gross Settlement Amount that the
2 Parties have agreed to allocate to the settlement of claims for civil penalties under PAGA. The
3 Parties have agreed to allocate Four Thousand Dollars and Zero Cents (\$4,000.00), of which,
4 payment from the Gross Settlement Amount to the LWDA will be made in the amount of Three
5 Thousand Dollars and Zero Cents (\$3,000.00), which is 75% of the PAGA Payment. One
6 Thousand Dollars and Zero Cents (\$1,000.00), 25% of the PAGA Payment, will remain in the
7 Net Settlement Amount for distribution pro rata to PAGA Members as described in this
8 agreement. PAGA Members will receive payment from the employee portion of the PAGA
9 Payment regardless of whether they submit a request for exclusion if the PAGA Payment is
10 approved by the Court.
11

12 **R. “PAGA Period”** shall mean January 02, 2019 through the preliminary approval
13 order date.
14

15 **S. “Participating Class” or “Participating Class Members”** shall mean all
16 Settlement Class members who do not submit a valid and timely letter requesting to be excluded
17 from the Settlement, consistent with the terms set forth in this Settlement Agreement.
18

19 **T. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
20 approval of the Settlement without material change.
21

22 **U. “Released Claims”** shall mean all claims, rights, demands, liabilities and causes
23 of action that are alleged in the operative complaint, or reasonably could have been alleged based
24 on the facts and legal theories contained in the operative complaint and/or in the letter(s) sent by
25 Plaintiff to the LWDA concerning Defendants and the other Released Parties, whether sounding
26 in law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation,
27 including but not limited to the following claims: (1) failure to pay wages; including overtime
28

1 and regular wages and including failure to properly calculate the regular rate; (2) failure to
2 provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to issue proper
3 wage statements; (5) failure to timely pay wages; (6) unfair business practices that could have
4 been premised on the claims, causes of action or legal theories of relief described above or any
5 of the claims, causes of action or legal theories of relief pleaded in the Action; (7) all claims
6 under PAGA or for civil penalties that could have been premised on the claims, causes of action
7 or legal theories described above or any of the claims, causes of action or legal theories of relief
8 pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the
9 California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3,
10 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, and 2699, and any
11 and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or
12 attorneys' fees or costs resulting therefrom and other amounts recoverable under said causes of
13 action under California and federal law, to the extent permissible, including but not limited to the
14 California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the
15 facts alleged in the Action, and the California Unfair Competition Law (collectively, the
16 "Released Claims"). The period of the Release shall extend to the limits of the Class Period. The
17 res judicata effect of the Judgment will be the same as that of the Release. The definition of
18 Released Claims shall not be limited in any way by the possibility that Plaintiff or Participating
19 Class Members may discover new facts, legal theories, or legal arguments not alleged in the
20 operative complaint but which might serve as an alternative basis for pursuing the same claims,
21 causes of action, or legal theories of relief falling within the definition of Released Claims.
22 Released Claims shall not apply to claims for workers' compensation benefits, unemployment
23 insurance benefits, or any other claim or right that as a matter of law cannot be waived or released.
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1 The Parties acknowledge that Released Claims includes any claims for civil penalties by a PAGA
2 Member resulting from any LWDA investigation. The Parties will meet and confer in good faith
3 if the Court requires changes to the scope of the Released Claims.

4 **V. “Released Parties”** shall mean Defendants, and all their past, present and/or
5 future, direct and/or indirect, officers, directors, members, managers, employees, agents,
6 representatives, attorneys, insurers, partners, investors, shareholders, stockholders,
7 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
8 assigns, joint employers, consultants, subcontractors, servants, equity sponsors, related
9 corporations, divisions, joint venturers, service providers, employee benefit plans and fiduciaries
10 thereof, affiliated organizations, and all persons acting under, by, through or in concert with any
11 of them, and each of them.

12 **W. “Response Deadline”** shall mean the date sixty (60) days after the Settlement
13 Administrator mails the Class Notice to Class Members, which is the last date on which Class
14 Members may submit Exclusion Requests, written objections to the Settlement, or Workweek
15 disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline
16 will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline
17 for Exclusion Requests or Objections will be extended fifteen (15) calendar days for any Class
18 Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day
19 falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to
20 the next day on which the U.S. Postal Service is open.

21 **X. “Settlement”** shall mean the disposition of the Action and all related claims
22 effectuated by this Agreement.

23 **Y. “Settlement Account”** shall mean a fund within the meaning of Treasury

1 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
2 Administrator for the benefit of Participating Class Members and PAGA Members.

3 **Z.** “Settlement Administration Costs” shall mean the fees and expenses reasonably
4 incurred by the Settlement Administrator as a result of the procedures and processes expressly
5 required by this Agreement, not to exceed \$10,000.00.

6 **AA.** “**Settlement Administrator**” shall mean Phoenix Settlement Administrators or
7 another administrator proposed by the Parties and appointed by the Court to administer the
8 Settlement. The Parties represent that they do not have any financial interest in the Settlement
9 Administrator or otherwise have a relationship with the Settlement Administrator that could
10 create a conflict of interest.

11 **BB.** “**Settlement Share**” shall mean each Participating Class Member’s allocated
12 share of the Net Settlement Amount as provided by this Agreement and any payment a PAGA
13 Member is eligible to receive from the PAGA Payment per Section III.C.4.

14 **II. RECITALS**

15 **A.** On or about January 02, 2020, Plaintiff, through her attorneys, sent a letter to the
16 Labor Workforce Development Agency (“LWDA”) alleging the following against Defendant:
17 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
18 failure to issue proper wage statements, failure to timely pay wages, and related allegations (the
19 “PAGA letter”). Plaintiff asserted these representative claims on behalf of all Class Members
20 who are or were employed during the applicable statutory period.

21 **B.** On March 09, 2020, Plaintiff filed a representative action complaint in the Santa
22 Cruz Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA
23 letter. As a condition of settlement, on June 14, 2022, Plaintiff filed a first amended complaint

1 (“FAC”) in the Santa Cruz County Superior Court, to include claims on a class-wide basis.. The
2 first amended complaint is the “Operative Complaint” for purposes of settlement, Defendant will
3 not be required to file an answer or other responsive pleading to the FAC. If, for any reason, the
4 Court does not grant final approval of the Settlement, or if the Settlement does not become final
5 and effective for any reason, then the FAC will be withdrawn and the original March 9, 2020
6 complaint will again become the operative complaint without prejudice to Plaintiff’s right to seek
7 leave to file a first amended complaint pursuant to the Parties’ Agreement to Toll Statute of
8 Limitations. Defendant does not impliedly or expressly waive any arguments or defenses to the
9 FAC or such first amended complaint that Plaintiff may file in the event the Court does not grant
10 final approval of the Settlement.
11

12 **C.** On April 29, 2020, Defendant Season Management, LLC answered Plaintiff’s
13 Complaint and denied, and continues to deny, all of Plaintiff’s material allegations. Specifically,
14 Defendants deny the failure to pay wages, failure to provide meal periods, failure to authorize
15 and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, and
16 related allegations in the Action. Defendants contend that they have complied with the Labor
17 Code, the Business & Professions Code, and the applicable Wage Order at all times. Defendants
18 further allege that the Plaintiff’s claims are not amenable to class treatment because common
19 issues do not predominate. Defendants further contend that Plaintiff’s claims under PAGA are
20 not manageable.
21

22 **D.** The Parties thereafter engaged in an informal, voluntary exchange of information
23 in the context of privileged settlement discussions to facilitate an early mediation. The Parties
24 exchanged discovery requests, documents, information, and data.
25

26 **E.** On February 11, 2021, following much of the foregoing informal discovery and
27

1 exchange of information, the Parties participated in a full day mediation session presided over
2 by Mediator Mark C. Peters, an experienced class action mediator. During the mediation session
3 and subsequent negotiations, each side, represented by her/their respective counsel, recognized
4 the risk of an adverse result in the Action and agreed to settle the Action and all other matters
5 covered by this Agreement pursuant to the terms and conditions of this Agreement.
6

7 **F.** Based on their own thorough, independent investigation and evaluation of this
8 case, Class Counsel are of the opinion that the settlement with Defendant for the consideration
9 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
10 of the Settlement Class in light of all known facts and circumstances, including the risk of
11 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
12 Defendants, the risks of adverse determinations on the merits, and numerous potential appellate
13 issues. Although Defendants contend they have no liability in this case, Defendants' counsel
14 shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given
15 the respective risks associated with the case.
16

17 **G.** This Agreement represents a compromise and settlement of highly disputed
18 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants
19 that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the Class
20 on those claims or to the State, or as an admission by Plaintiff that Defendants' defenses raised
21 in the Action have merit. This Agreement is intended to fully, finally, and forever compromise,
22 release, resolve, discharge, and settle the released claims subject to the terms and conditions set
23 forth in this Agreement.
24

25 Based on the foregoing Recitals, the Parties agree as follows:
26
27

1 **III. SETTLEMENT TERMS AND CONDITIONS**

2 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
3 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
4 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
5 preliminarily and finally approved, the conditional certification of the Settlement Class will be
6 of no force or effect, does not constitute an admission by Defendants that class certification is
7 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
8 will litigate the issue of class certification.
9

10 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
11 Agreement, the Gross Settlement Amount of Three Hundred and Fifty Thousand Dollars and
12 Zero Cents (\$350,000.00), plus Defendants' employer share of employer-side payroll taxes, is
13 the maximum amount payable by Defendants. In no event will Defendants be required to pay
14 more than the Gross Settlement Amount for distribution to the Plaintiff, Class Counsel,
15 Participating Class Members, PAGA Members, LWDA, and Settlement Administrator. The
16 release provisions of this Settlement will not take effect until Defendants have paid in full the
17 First Installment Payment of the Gross Settlement Amount provided that Plaintiff retains the right
18 to seek to void such effect of the release in the event Defendants default on any subsequent
19 installment payment as such payments are set forth in this Settlement Agreement. In the event
20 Plaintiff establishes a payment default, this release will not take effect until Defendants have paid
21 the Gross Settlement Amount in full.
22

23
24 **C. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
25 conditions of this Agreement, the Settlement Administrator will make the following payments
26 out of the Gross Settlement Amount as follows:
27

1 **1. To Plaintiff.**

2 **(a) Class Representative Payment.** In addition to her Settlement
3 Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars
4 and Zero Cents (\$15,000.00) as her Class Representative Payment. Defendants will not oppose
5 a Class Representative Payment of not more than \$15,000.00. Plaintiff will receive no other
6 payment other than her Settlement Share, her employee portion of the PAGA Payment and Class
7 Representative Payment, and acknowledges that she is aware of no other facts or circumstances
8 related to her employment with Defendants that could give rise to any additional entitlement to
9 any further payments. The Settlement Administrator will pay the Class Representative Payment
10 approved by the Court out of the Gross Settlement Amount. Payroll taxes, withholdings, and
11 deductions will not be taken from the Class Representative Payment, and instead a Form 1099
12 will be issued to Plaintiff with respect to that payment. Plaintiff agrees to assume all
13 responsibility and liability for the payment of taxes due on the Class Representative Payment.
14 The Class Representative Payment is in exchange for the release of Released Claims against the
15 Released Parties, the general Release of Claims by Plaintiff, and for Plaintiff's time, effort and
16 risk in bringing and prosecuting the Action. Any adjustments made by the Court to the requested
17 Class Representative Payment shall not be deemed a material modification of this Settlement
18 Agreement. In the event that the Court reduces or does not approve the requested Class
19 Representative Payment, the Settlement Agreement remains in full force and effect, Plaintiff
20 shall not have the right to revoke the Settlement for that reason, it shall remain binding, and any
21 portion of the Class Representative Payment not awarded to Plaintiff will not revert to
22 Defendants, but instead shall be returned to the Net Settlement Amount.
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26 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
27
28

1 not more than One Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Five
2 Cents (\$116,666.65) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class
3 Counsel Fees Payment and an amount not more than Seventeen Thousand Five Hundred Dollars
4 and Zero Cents (\$17,500.00) as their Class Counsel Litigation Expenses Payment, and
5 Defendants will not oppose this request. The Settlement Administrator will pay the amount
6 approved by the Court (but not more than One Hundred Sixteen Thousand Six Hundred Sixty-
7 Six Dollars and Sixty-Five Cents (\$116,666.65) in fees and not more than Seventeen Thousand
8 Five Hundred Dollars and Zero Cents (\$17,500.00) in expenses) out of the Gross Settlement
9 Amount. Withholding and deductions will not be taken from the Class Counsel Fees and
10 Litigation Expenses Payment and one or more Forms 1099 will be issued to Class Counsel with
11 respect to those payments. In the event that the Court reduces or does not approve the requested
12 Class Counsel Fees Payment and/or Class Counsel Litigation Expenses, Plaintiff shall not have
13 the right to revoke this Settlement, and it will remain binding.
14

15
16 **3. To the Settlement Administrator.** The Settlement Administrator will be
17 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
18 Court in an amount currently estimated to not exceed Ten Thousand Dollars and Zero Cents
19 (\$10,000.00).
20

21 **4. To the LWDA.** Subject to Court approval, the Parties agree that the
22 amount of Four Thousand Dollars and Zero Cents (\$4,000.00) from the Gross Settlement Amount
23 will be designated for satisfaction of Plaintiff's and Class Members' PAGA claims. Pursuant to
24 PAGA, Seventy-Five Percent (75%), or Three Thousand Dollars and Zero Cents (\$3,000.00), of
25 this sum will be paid to the LWDA and Twenty-Five Percent (25%), or One Thousand Dollars
26 and Zero Cents (\$1,000.00), will become part of the Net Settlement Amount and will be
27

1 distributed to PAGA Members on a *pro rata* basis based on the total number of Individual Pay
2 Periods (full or partial) worked by each PAGA Member during the PAGA Period. Partial Pay
3 Periods shall be rounded up to the nearest whole integer. PAGA Members shall receive their
4 portion of the PAGA Payment regardless of their decision to submit a request for exclusion to
5 opt out of the Settlement.

6
7 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**

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

13 (a) **Participating Class Members' Settlement Shares.** The
14 settlement shares are allocated 20% to wages (for which employment taxes will be deducted and
15 W-2s issued) and 80% to penalties and interest (for which 1099s will be issued).

16 (b) **Class Portion of Settlement Ratio Calculation.** The Settlement
17 Administrator shall assign to each Class Member a "Class Settlement Ratio," which shall be a
18 fractional number comprised of (a) that Class Member's Individual Pay Periods as the numerator,
19 and (b) the aggregate total of all Class Members' Individual Pay Periods as the denominator. The
20 Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall
21 be calculated by multiplying that Class Member's Settlement Ratio by the amount allocated to
22 Class Members from the Net Settlement Amount.

23 (c) **PAGA Portion of Settlement Ratio Calculation.** The Settlement
24 Administrator shall assign to each Class Member a "PAGA Settlement Ratio," which shall be a
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fractional number comprised of (a) that PAGA Member's Individual Pay Periods during the PAGA Period as the numerator, and (b) the aggregate total of all PAGA Members' Individual Pay Periods 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 the amount allocated to PAGA Members from the Net Settlement Amount.

2. Settlement Share Worksheet. Upon calculation of the Class Members' and PAGA Members' Settlement Shares, 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 Pay Periods and Settlement Shares.

E. Taxes and Withholdings. Each Settlement Share is intended, in part, to settle the Class Members' claims for Defendants' alleged failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, 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

1 will issue to the PAGA Member an IRS Form-1099. Defendants will be responsible for the
2 normal employer's share of any payroll tax attributable to the wage portion of the Settlement
3 Share payments. Defendants' payment of the normal employer's share of payroll taxes
4 attributable to the wage portion of the Settlement Share payments will be in addition to the Gross
5 Settlement Amount.

6
7 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
8 appoint Phoenix Settlement Administrators, a qualified administrator, to serve as the Settlement
9 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
10 with respect to the performance of its duties and its compensation. The Settlement Administrator
11 shall have the sole and exclusive responsibility for: (1) calculating Pay Periods and/or
12 Workweeks; (2) preparing, printing, and mailing the Class Notice to all Class Members as
13 directed by the Court; (3) using reasonable measures to contact all Class Members, including
14 conducting a National Change of Address search on all Class Members before mailing the Class
15 Notice to each Class Member's address; (4) receiving and reporting the objections and requests
16 for exclusion; (5) calculating Settlement Shares; (6) deducting all legally required taxes from
17 Settlement Shares; (7) providing declarations as necessary in support of preliminary and/or final
18 approval of this Settlement; and (8) other tasks as the Parties mutually agree or the Court orders
19 the Settlement Administrator to perform. The Settlement Administrator's duties will also include
20 re-mailing the Class Notice to the Class Member's new address for those Class Members whose
21 address has changed; providing the Parties with weekly status reports about the delivery of Class
22 Notice; calculating Settlement Shares; issuing and distributing checks to effectuate the payments
23 due under the Settlement; reporting to the Court as required; and otherwise administering the
24 Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and
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1 expenses, including the cost of printing and mailing the Class Notice, will be paid out of the
2 Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of
3 the Settlement Administrator's fees and expenses that are not used or which are not awarded by
4 the Court will not revert to Defendants, but instead will be part of the Net Settlement Amount for
5 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
6 exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), such cost will be deducted from the
7 Net Settlement Amount. The Settlement Administrator shall keep the Parties timely apprised of
8 the performance of all Settlement Administrator responsibilities. Defendant and Defendant's
9 Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement
10 Administrator's work, and shall not be bound by any contract or agreement entered into between
11 the Settlement Administrator and Class Counsel, if any. Plaintiff, Class Counsel, Defendant and
12 Defendant's Counsel shall not bear any responsibility for errors and omissions in the calculation
13 or distribution of the Settlement Shares or any other distribution of monies contemplated by this
14 Agreement.

17 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

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

26 **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, or the Settlement does not become final for any other reason, then the Settlement, and any documents generated to bring it into effect, 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"). The Settlement Administrator shall be obligated to keep the Class Members' Data confidential and take reasonable and necessary precautions to maintain the confidentiality of the data. The Settlement Administrator shall not distribute the Class Members' Data to anyone, or use the Class Members' Data or any information contained therein for any purpose other than to administer this Settlement.

(b) Corresponding to each Class Member’s name, Defendants shall provide a figure indicating the total number of Pay Periods during the Class Period in which that Class Member was employed by Defendants as a Class Member and for which Pay Period Defendant issued the Class Member a wage statement. That number of Pay Periods shall be referred to as that Class Member’s “Individual Pay Periods.”

(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,

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

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

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

2. Request for Exclusion from Settlement. A Class Member may request to be excluded from the Settlement, 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 Settlement. 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 *Rios-Roman v. Seasons Management, LLC*. 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 returned to the Settlement Administrator at the specified address. 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 Settlement 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 Payment. Any Class Member who does not affirmatively opt

1 out of the Settlement by submitting a timely Request for Exclusion will be a Participating Class
2 Member and will be bound by all of the terms of the Settlement including those pertaining to the
3 Released Claims, as well as any Final Order that may be entered by the Court if it grants final
4 approval of the Settlement. A request for exclusion must be mailed to the Settlement
5 Administrator at the address provided on the Class Notice. The Settlement Administrator shall
6 transmit the request for exclusion to counsel for the Parties **Objections to Settlement.** The Class
7 Notice will provide that any Class Member who does not request exclusion from the Action and
8 who wishes to object to the Settlement should submit an objection in writing to the Settlement
9 Administrator. To be valid, an objection must be postmarked by the Response Deadline and
10 received by the Settlement Administrator at the address specified. The written objection to the
11 Settlement should set forth the grounds for the objection and the other information required by
12 this paragraph. The objection should be mailed to the Settlement Administrator at the address
13 provided on the Class Notice. The Settlement Administrator shall transmit the objections to
14 counsel for the Parties. Counsel will promptly file such objection with the Court.

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

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

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

8 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
9 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
10 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
11 If Class Members accounting for more than 5.00% of the Class submit valid requests to be
12 excluded from the Settlement, then Defendants shall have the unilateral right, but not the
13 obligation, to void this Settlement. Defendants may do so by giving notice to Class Counsel and
14 the Court of their election to void the Settlement not later than seven (7) days before the Final
15 Approval Hearing. No sums shall be payable by Defendants if this Agreement is voided as
16 provided for herein with one exception: Defendants agree to pay any fees owing to the Settlement
17 Administrator for services rendered in the event Defendants exercise their right to void the
18 Settlement.

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

2 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
3 response to any Class Member's objection to the Settlement and/or reply in support of their
4 motion for final approval of the Settlement, and payment of the Settlement Administrator's
5 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
6 and Class Counsel may file replies in support of their motions for the Class Representative
7 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
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9 If the Court ultimately does not grant final approval of the Settlement or grants final
10 approval conditioned on any material change to the Settlement, then either Party will have the
11 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
12 obligations under the Settlement, including any obligation by Defendants to pay the Gross
13 Settlement Amount or any amounts that otherwise would have been payable under this
14 Agreement, except that Defendants and Plaintiff will jointly and equally pay the Settlement
15 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
16 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
17 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
18 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
19 constitute a material modification to the Settlement within the meaning of this Paragraph and
20 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
21 appeal awards of attorneys' fees and costs less than requested. The Parties agree that any such
22 appeal constitutes a dispute between Plaintiff, Class Counsel and the Court, and that Defendant
23 and Defendant's Counsel will not be involved and will not be expected to appear, file papers,
24 argue any position, or participate in any manner. Defendant's obligation to fund the Settlement
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will be stayed until any such appeal is fully resolved.

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. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendants to review the Motions for Preliminary and Final Approval a reasonable time prior to filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to effect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

I. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of this Agreement, and that no Participating 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, Plaintiff, Participating Class Members, Defendants, Class Counsel, and Defendant's 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

1 proceeding, such as a motion to vacate judgment, a motion for new trial, any extraordinary writ,
2 and any appeal, and the Judgment therefore will become non-appealable at the time it is entered.
3 The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
4 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
5 consummation of the Settlement (including making any payments under the Settlement) will be
6 suspended until the appeal is fully and finally resolved and the Judgment, consistent with the
7 terms of this Agreement, becomes Final.
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9 **J. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
10 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
11 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
12 the Judgment such that there is a material modification to the Settlement (including, but not
13 limited to, the scope of release with respect to Participating Class Members), and that court's
14 decision is not completely reversed and the Judgment is not fully affirmed on review by a higher
15 court, then either Plaintiff or Defendants will have the unilateral right to void the Settlement,
16 which the Party must do by giving written notice to the other Parties, the reviewing court, and
17 the Court, not later than fourteen (14) days after the reviewing court's decision vacating,
18 reversing, or materially modifying the Judgment becomes final. The Party exercising her/their
19 right to unilaterally void the Settlement pursuant to this provision agrees to pay any fees owing
20 to the Settlement Administrator for services rendered. An order vacating, reversing or modifying
21 the Court's award of the Class Representative Payment, or the Class Counsel Fees Payment
22 and/or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or
23 material modification of the Judgment within the meaning of this paragraph, and shall not render
24 the Settlement voidable, provided that Defendant's obligation to make payments under this
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1 Settlement will remain limited by the Gross Settlement Amount.

2 **K. Establishment of Settlement Account and Installment Payments.** The
3 Settlement Administrator shall establish an interest-bearing Settlement Account for distributing
4 Settlement Shares and Payments identified in this Agreement. Defendants shall pay the Gross
5 Settlement Amount (exclusive of any interest that may accrue in the interest-bearing account, as
6 provided in this Section) pursuant to the following two-year payment plan: (1) a payment
7 installment in the amount of \$116,666.66 (“First Installment Payment”) within ten (10) calendar
8 days of the Effective Date; (2) monthly payments thereafter in the amount of at least \$10,144.93
9 payable on or before the first of each month for 23 months or until the full Gross Settlement
10 Amount (exclusive of any interest that shall accrue in the interest-bearing account) is met,
11 (“Monthly Installment Payments”). Defendants shall wire the Monthly Installments to an
12 interest-bearing account to be established and maintained by the Settlement Administrator. All
13 interest that shall accrue in said account on any portions of the Gross Settlement Amount shall
14 be paid out to Participating Class Members as part of any Net Settlement Amount. The Settlement
15 Administrator shall establish and maintain a Qualified Settlement Fund for the collection and
16 administration of settlement funds.

17 **L. Payment of Settlement Shares.** There will be multiple distributions of the Gross
18 Settlement Amount as follows:

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

3 **2. Second Distribution.** Within ten (10) calendar days of the date on which
4 Defendants have funded at least half of the Gross Settlement Amount in conformity with the two-
5 year payment plan set forth in Section IV.K., or twelve (12) months after the First Installment
6 Payment, whichever is earlier, the Settlement Administrator shall distribute, *pro rata*, the portion
7 of the Gross Settlement Amount Defendants paid since the first distribution (*i.e.*, additional *pro*
8 *rata* Settlement Shares), including *pro rata* portions of the PAGA payment, Class Representative
9 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
10 the Settlement Administrator's payment.

11 **3. Third Distribution.** Within ten (10) calendar days of the date on which
12 the last Monthly Installment Payment is due in conformity with the two-year payment plan set
13 forth in Section IV.K, the Settlement Administrator shall distribute, *pro rata*, the remaining
14 portion of the Gross Settlement Amount (*i.e.*, remaining *pro rata* Settlement Shares plus a *pro*
15 *rata* share of any interest that has accrued pursuant to Section IV.K.), remaining *pro rata* portions
16 of the PAGA payment, Class Representative Payment, the Class Counsel Fees Payment, the
17 Class Counsel Litigation Expenses Payment, and the Settlement Administrator's payment.

18 **M. Default on Payment.** In the event Defendants fail to pay any portion of the Gross
19 Settlement Amount, it shall be considered a default. In the event Defendants fail to make any
20 payment on the date it is due, the Settlement Administrator will provide notice to Class Counsel
21 and Defense Counsel within five (5) business days of the missed payment. Thereafter,
22 Defendants will have fifteen (15) days to cure the default and tender payment to the Settlement
23 Administrator. In the event Defendants fail to cure the default within the times set forth herein,
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Plaintiff 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 Plaintiff will be entitled to recover interest at ten percent (10%) per year from the due date for such payment and reasonable attorneys' fees and costs.

N. 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.

O. 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.

P. 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. Plaintiff 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

1 will not take effect until Defendants have paid in full the First Installment Payment of the Gross
2 Settlement Amount provided that Plaintiff retains the right to seek to void such effect of the
3 release in the event Defendants default on any subsequent installment payment as such payments
4 are set forth in this Settlement Agreement. In the event Plaintiff establishes a payment default,
5 this release will not take effect until Defendants have paid the Gross Settlement Amount in full.
6 All PAGA Members, regardless of whether they submit timely and valid requests for exclusion
7 from the Settlement, will release all Released Claims under PAGA against the Released Parties.
8 The State of California will also release all Released Claims under PAGA against the Released
9 Parties.
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11 **B. Release of Claims by Plaintiff.** Upon the Effective Date, in addition to the claims
12 being released by all Participating Class Members, Plaintiff will provide the following additional
13 general release (“General Release”): Plaintiff, on her own behalf and on behalf of her heirs,
14 spouses, executors, administrators, attorneys, agents and assigns, fully and finally releases the
15 Released Parties from all claims, demand, rights, liabilities and causes of action of every nature
16 and description whatsoever, known or unknown, asserted or that might have been asserted,
17 whether in tort, contract, or violation of any state or federal statute, rule or regulation arising out
18 of, relating to, or in connection with any act or omission by or on the part of any of the Released
19 Parties committed or omitted prior to the execution of this Agreement, including, but not limited
20 to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage
21 Orders of California’s Industrial Welfare Commission, other state wage and hour laws, the
22 Americans with Disabilities Act, the Employee Retirement Income Security Act, Title VII of the
23 Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California
24 Family Rights Act, the Family Medical Leave Act, California’s Whistleblower Protection Act,
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and California Business & Professions Code Section 17200 *et seq.* Plaintiff's General 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. Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, Plaintiff will be deemed to have expressly waived all her rights and benefits under Civil Code §1542. Plaintiff's release excludes any claim for worker's compensation against Defendants.

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 Plaintiff, 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. Plaintiff, 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 issued to them under the Settlement, as described herein, and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of such payments.

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

1 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
2 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
3 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
4 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
5 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
6 AGREEMENT.
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8 **F. Notice of Settlement to the LWDA.** Plaintiff hereby represents that Plaintiff will
9 provide notice of the Agreement and proposed settlement to the Labor and Workforce
10 Development Agency at the time the motion for preliminary approval is filed, as required by
11 Labor Code Section 2699(1)(2).
12

13 **VI. NON-PUBLICITY PROVISION**

14 Plaintiff and Plaintiff’s counsel agree not to disclose or publicize the Settlement,
15 including the fact of the Settlement, in any manner or form, directly or indirectly, to any person
16 or entity, except potential class members and as shall be contractually required to effectuate the
17 terms of the Settlement. For avoidance of doubt, this section means that Plaintiff and Plaintiff’s
18 counsel agree that they will not issue any press releases, initiate any contact with the press,
19 respond to any press inquiry, or have any communication with the press about the fact, amount,
20 or terms of the Settlement. In addition, Plaintiff and Plaintiff’s counsel agree that they will not
21 engage in any advertising or distribute any marketing materials relating to the Settlement of this
22 case in any manner that identifies the Defendants, including but not limited to any postings on
23 any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel will discuss the
24 terms or the fact of the Settlement with third parties other than (1) their immediate family
25 members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3) other
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1 Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or conditions
2 of this Settlement in any manner that identifies the Defendants. However, Class Counsel may
3 identify this Settlement in other matters to demonstrate their adequacy as counsel in such other
4 matters.

5 **VII. MISCELLANEOUS TERMS**

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

12 **B. No Admission of Liability.** Defendants deny that they have engaged in any
13 unlawful activity, have failed to comply with the law in any respect, or have any liability to
14 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
15 purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will
16 be construed as an admission of liability or wrongdoing by Defendants, or an admission by
17 Plaintiff that any of her claims was non-meritorious or any defense asserted by Defendants was
18 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
19 Action will have no bearing on, and will not be admissible in connection with, any litigation
20 (other than solely in connection with the Settlement).

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22 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
23 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
24 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
25 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
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1 Defendants or any other Released Parties, including, but not limited to, evidence of a
2 presumption, concession, indication or admission by any of the Released Parties of any liability,
3 fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in
4 evidence against any of the Released Parties, in any further proceeding in the Action, or any other
5 civil, criminal or administrative action or proceeding except for purposes of effectuating the
6 Settlement pursuant to this Agreement.
7

8 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
9 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
10 between the Parties relating to the Settlement, and it will then be deemed that no oral
11 representations, warranties, covenants, or inducements have been made to any Party concerning
12 this Agreement or its exhibits other than the representations, warranties, covenants, and
13 inducements expressly stated in this Agreement and its exhibits.
14

15 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
16 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
17 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
18 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
19 Plaintiff warrants and represents that she is authorized to sign this Agreement and that she has
20 not assigned any claim, or part of a claim, covered by this Settlement to a third party. The Parties
21 and their counsel will cooperate with each other and use their best efforts to effect the
22 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
23 form or content of any document needed to implement the Agreement, or on any supplemental
24 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
25 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
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1 and assistance of the court will be consistent with this Agreement.

2 **F. Use and Return of Documents and Data.** Upon written request from
3 Defendants, Class Counsel will return or destroy all originals, copies, and summaries of
4 documents and data provided to Class Counsel by Defendants in connection with the settlement
5 negotiations in this matter. Class Counsel will confirm in writing to Defendants the destruction
6 of all such documents and data within fourteen (14) days of such request. All originals, copies,
7 and summaries of documents and data provided to Class Counsel by Defendants and/or
8 Defendants' Counsel in connection with the mediation or other settlement negotiations in this
9 matter may be used only with respect to this Settlement, and for no other purpose, and may not
10 be used in any way that violates any existing contractual agreement, statute or rule.

12 **G. Modification of Agreement.** This Agreement, and all parts of it, may be
13 amended, modified, changed, or waived only by an express written instrument signed by all
14 Parties or their successors-in-interest, and as may be approved by the Court.

16 **H. Agreement Binding on Successors.** This Agreement will be binding upon, and
17 inure to the benefit of, the successors of each of the Parties hereto, as previously defined.

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

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

25 **K. Fair Settlement.** The Parties and their respective counsel believe and warrant that
26 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
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1 at this Agreement through arms-length negotiations and in the context of adversarial litigation,
2 considering all relevant factors, current and potential. The Parties further acknowledge that they
3 are each represented by competent counsel and that they have had an opportunity to consult with
4 their counsel regarding the fairness and reasonableness of this Settlement.

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

7 **M. Notice.** All notices, demands or other communications given under this
8 Agreement will be in writing and deemed to have been duly given as of the third calendar day
9 after mailing by United States mail, addressed as follows:
10

11 *To Class Counsel:*
12 David G. Spivak, Esq.
13 The Spivak Law Firm
14 8605 Santa Monica Bl
15 PMB 42554
16 West Hollywood, CA 90069

To Defense Counsel:
Carolyn B. Hall, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart,
P.C.
One Embarcadero Center
Suite 900
San Francisco, CA 94111

17 **N. Execution in Counterpart.** This Agreement may be executed in one or more
18 counterparts. All executed counterparts and each of them will be deemed to be one and the same
19 instrument provided that counsel for the Parties will exchange between themselves original
20 signed counterparts. Facsimile signatures will be presumptive evidence of execution of the
21 original, which shall be produced on reasonable request. Any executed counterpart will be
22 admissible to prove the existence and contents of this Agreement.

23 **O. Stay of Litigation.** The Parties agree that upon the signing of this Agreement by
24 the Parties hereto the continuing litigation of the Action shall be stayed.

25 The Parties indicate by signing below their approval of the form of this Settlement
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1 Agreement (and exhibits thereto).

2
3 IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement
4 is executed by the Parties and their duly authorized attorneys as of the day and year herein set
5 forth.

6 **IT IS SO AGREED:**

7 07 / 12 / 2022
8 Dated: June __, 2022

By: 
9 MARIA RIOS-ROMAN, Plaintiff

10
11 Dated: June __, 2022

By: _____
12 Seasons Management, LLC, SM Santa
13 Cruz Limited Partnership, and SL – Sun
14 Oak, LLC, Defendants

15 **APPROVED AS TO FORM:**

16 THE SPIVAK LAW FIRM

17 Dated: June __, 2022

By: _____
18 DAVID G. SPIVAK, Attorneys for
19 Plaintiff, MARIA RIOS-ROMAN, and
20 all others similarly situated

21 UNITED EMPLOYEES LAW GROUP

22
23 Dated: June __, 2022

By: _____
24 WALTER L. HAINES, Attorneys for
25 Plaintiff, MARIA RIOS-ROMAN, and
26 all others similarly situated

1 Agreement (and exhibits thereto).

2
3 IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement
4 is executed by the Parties and their duly authorized attorneys as of the day and year herein set
5 forth.

6 **IT IS SO AGREED:**

7
8 Dated: June __, 2022

By: _____
MARIA RIOS-ROMAN, Plaintiff

9
10
11 Dated: June __, 2022

By: _____
Seasons Management, LLC, SM Santa
Cruz Limited Partnership, and SL – Sun
Oak, LLC, Defendants

12
13
14 **APPROVED AS TO FORM:**

15 THE SPIVAK LAW FIRM

16
17 Dated: June 22, 2022

By:  _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, MARIA RIOS-ROMAN, and
all others similarly situated

18
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20
21 UNITED EMPLOYEES LAW GROUP

22
23 Dated: June __, 2022

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, MARIA RIOS-ROMAN, and
all others similarly situated

1 Agreement (and exhibits thereto).

2
3 IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement
4 is executed by the Parties and their duly authorized attorneys as of the day and year herein set
5 forth.

6 **IT IS SO AGREED:**

7
8 Dated: June __, 2022

By: _____
MARIA RIOS-ROMAN, Plaintiff

9
10
11 Dated: June __, 2022

By: _____
Seasons Management, LLC, SM Santa
Cruz Limited Partnership, and SL – Sun
Oak, LLC, Defendants

12
13
14 **APPROVED AS TO FORM:**

15 THE SPIVAK LAW FIRM

16
17 Dated: June __, 2022

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, MARIA RIOS-ROMAN, and
all others similarly situated

18
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21 UNITED EMPLOYEES LAW GROUP

22
23 Dated: June 21, 2022

By:  _____
WALTER L. HAINES, Attorneys for
Plaintiff, MARIA RIOS-ROMAN, and
all others similarly situated

1 Agreement (and exhibits thereto).

2
3 IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement
4 is executed by the Parties and their duly authorized attorneys as of the day and year herein set
5 forth.

6 **IT IS SO AGREED:**

7
8 Dated: June ___, 2022

By: _____
MARIA RIOS-ROMAN, Plaintiff

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10
11 Dated: July 18, 2022

By: 
Seasons Management, LLC, SM Santa
Cruz Limited Partnership, and SL – Sun
Oak, LLC, Defendants

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14 **APPROVED AS TO FORM:**

15 THE SPIVAK LAW FIRM

16
17 Dated: June ___, 2022

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, MARIA RIOS-ROMAN, and
all others similarly situated

18
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21 UNITED EMPLOYEES LAW GROUP

22
23 Dated: June ___, 2022

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, MARIA RIOS-ROMAN, and
all others similarly situated

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OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

Dated: July 18, 2022

By: 

CAROLYN B. HALL, Attorneys for
Defendants, SEASONS
MANAGEMENT, LLC, SM SANTA
CRUZ LIMITED PARTNERSHIP, and
SL – Sun Oak, LLC

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EXHIBIT A

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

3 *Maria Rios-Roman v. Seasons Management, LLC, et al., Case No. 20CV00783*

4 **As a current or former hourly, non-exempt employee of Seasons Management, LLC, SM**
5 **Santa Cruz Limited Partnership or SL – Sun Oak, LLC in California, you may be**
6 **entitled to receive money from a class action and representative action settlement.**

7 PHOENIX ID: <<PHOENIX ID>>

Please provide current address (if different) here:

8 <<Name>>

9 <<Address1>>

10 <<Address2>>

11 <<City>>, <<State>> <<Zip Code>>

12 *The Santa Cruz County Superior Court has authorized this Class Notice.*
13 *This is not a solicitation from a lawyer.*

14 You are not being sued. However, your legal rights are affected whether you act or not.

15 PLEASE READ THIS NOTICE.

16 YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION
17 SETTLEMENT IF YOU ARE A CURRENT OR FORMER HOURLY, NON-EXEMPT
18 EMPLOYEE OF SEASONS MANAGEMENT, LLC, SM SANTA CRUZ LIMITED
19 PARTNERSHIP OR SL – SUN OAK, LLC IN THE STATE OF CALIFORNIA BETWEEN
20 NOVEMBER 13, 2016 AND THE PRELIMINARY APPROVAL ORDER DATE.

- 21 • A proposed settlement of \$350,000.00 (the “Gross Settlement Amount”) will be used to pay
22 claims to: All persons Defendants Seasons Management, LLC, SM Santa Cruz Limited
23 Partnership and SL – Sun Oak, LLC employed in California as hourly, non-exempt
24 employees during the “Class Period” of November 13, 2016 to the preliminary approval order
25 date (the “Class Members”). The Gross Settlement Amount includes (a) expenses and fees of
26 the Settlement Administrator up to \$10,000.00; (b) an Class Representative Payment of
27 \$15,000.00 to the Plaintiff Maria Rios-Roman as the class representative; (c) attorneys’ fees
28 of up to \$116,666.65 and litigation expenses of up to \$17,500.00 to Class Counsel; and (d)
 \$4,000.00 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.
- The settlement resolves a lawsuit entitled *Maria Rios-Roman v. Seasons Management, LLC,*
 at al., Case No. 20CV00783 (the “Action”) for Defendants’ alleged failure to pay wages,
 failure to provide meal periods, failure to authorize and permit rest periods, failure to issue
 proper wage statements, failure to timely pay wages, and other legal consequences that would

1 follow from these failures, including claims under California's Business & Professions Code
2 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.

- 3 • The Court has not made a determination of the validity of the claims in the Action.
4 Defendants have denied, and continue to deny the factual and legal allegations raised in the
5 Action and believes they have no liability for any of Plaintiff's or the Class Members' claims
6 under any statute, wage order, common law, or equitable theory.. By agreeing to settle,
7 Defendants are not admitting liability on any of the factual allegations or claims in the Action
8 or that the Action can or should proceed as a class or representative action. Defendants have
agreed to settle the case as part of a compromise with Plaintiff. The Settlement is not an
admission of any wrongdoing by Defendants or an indication that Defendants violated the
law.
- 9 • The Parties reached a Settlement subject to Court approval as represented by the Joint
10 Stipulation of Class Action and PAGA Settlement (the "Settlement" or "Settlement
11 Agreement"). Class Counsel believes that the Settlement is fair, reasonable, and adequate,
12 and that it is in the best interests of Class Members. Likewise, Defendants have decided that
13 settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and
settlement immediately resolves, finally and completely, the pending and potential claims.
By settling this lawsuit, Defendants do not admit, concede, or imply that they have done
anything wrong or legally actionable.
- 14 • Class Members who do not opt out of the Settlement will receive a payment based on the
15 number of Pay Periods, rounded up to the nearest full Pay Period, during the Class Period.

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

18 **HOW MUCH WILL I GET?**

19 You have a total number of <<number of Pay Periods>> Pay Periods during the Class Period.

20 It is expected that you will receive approximately <<Individual Settlement Payment amount>>
from this Settlement.

21 **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

22 DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
23 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.
24 OBJECT TO THE 25 SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, 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 PAY PERIODS CALCULATION	If you feel that you worked a different amount of Pay Periods 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, Phoenix Settlement Administrators, 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 Defendants' records indicate that you work, or used to work, for Defendants in California as a non-exempt employee, and 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 Santa Cruz County Superior Court. The person who sued is called "Plaintiff" and the organizations she sued are called "Defendants."

2. What is the Action about?

In the Action, Maria Rios-Roman ("Plaintiff") alleged multiple violations of the California Labor Code, the California Business & Professions Code, and PAGA, including causes of action for: failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, unfair competition under California's Business & Professions Code, and claims for civil penalties for violations of the PAGA.

Defendants have denied, and continue to deny, the factual and legal allegations raised in the Action and believe they have no liability for any of Plaintiff's or Class Members' claims under any statute, wage order, common law, or equitable theory. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the Action can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiff. The Settlement is not an admission of any wrongdoing by Defendants or an indication that Defendants violated any law.

3. Why is there a settlement?

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

12 4. What is a class action settlement?

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

18 5. What should I do?

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

24 6. How much will my payment be?

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

The Settlement Administrator shall determine how many Pay Periods each such Class Member
has.

Your estimated payment is listed above, on page 2 of this document. If you do not dispute your
Pay Periods 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 Pay Periods credited to you, you must write to the Settlement
Administrator indicating what you believe is incorrect and return it on or before <<date>> [60

1 days after initial mailing] via U.S. Mail with proof of the submission date (such as a postmark
2 or delivery service date stamp). You may use the enclosed Pay Periods Dispute Form for this
3 purpose. If the Settlement Administrator re-mailed your Class Notice to a new address, you will
4 have additional 15 days from the date of the re-mailed Class Notice to write to the Settlement
5 Administrator to dispute your Pay Periods information. You must also send any documents or
6 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?

8 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
9 time>> .m to decide whether to approve the proposed settlement. If the Court approves the
10 settlement and anyone objects, there may be appeals. It is always uncertain when these objections
11 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.

12 Defendants will pay the Gross Settlement Amount in three (3) annual \$116,666.66 installments,
13 by way of monthly payments to an interest-bearing account to be set up by the Settlement
14 Administrator. There will be three (3) annual distributions of the Gross Settlement Amount. The
parties do not expect the final distribution to take place until [insert], so please be patient and, if
you change your address, advise the Settlement Administrator immediately.

15 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
16 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
17 all uncashed funds will be paid to the California State Controller's Office Unclaimed Property
18 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?

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

21 The Parties agree that it is their intent that the resolution set forth in this Settlement will
22 release and discharge the Released Claims by way of any further attempt, by lawsuit,
23 administrative claim or action, arbitration, demand, or other action of any kind by each
24 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 in full the First Installment Payment of the Gross
Settlement Amount provided that Plaintiff retains the right to seek to void such effect of
the release in the event Defendants default on any subsequent installment payment as
such payments are set forth in the Settlement Agreement. In the event Plaintiff establishes
a payment default, this release will not take effect until Defendants have paid the Gross
Settlement Amount in full. All PAGA Members, regardless of whether they submit timely

1 and valid requests for exclusion from the Settlement, will release all Released Claims
2 under PAGA against the Released Parties. The State of California will also release all
Released Claims under PAGA against the Released Parties.

3 **“Released Claims”** shall mean all claims, rights, demands, liabilities and causes of action
4 that are alleged in the operative complaint, or reasonably could have been alleged based
5 on the facts and legal theories contained in the operative complaint and/or in the letter(s)
6 sent by Plaintiff to the LWDA concerning Defendants and the other Released Parties,
7 whether sounding in law or equity, tort, contract, statute, or other applicable federal, state
8 or local law or regulation, including but not limited to the following claims: (1) failure to
9 pay wages, including overtime and regular wages and including failure to properly
10 calculate the regular rate; (2) failure to provide meal periods; (3) failure to authorize and
11 permit rest periods; (4) failure to issue proper wage statements, failure to timely pay
12 wages, unfair business practices that could have been premised on the claims, causes of
13 action or legal theories of relief described above or any of the claims, causes of action or
14 legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties
15 that could have been premised on the claims, causes of action or legal theories described
16 above or any of the claims, causes of action or legal theories of relief pleaded in the Action
17 or Plaintiff’s letter(s) to the LWDA, including but not limited to the California Code of
18 Regulations and to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
19 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, and 2699; and any and
20 all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest
21 or attorneys’ fees or costs resulting therefrom and other amounts recoverable under said
22 causes of action under California and federal law, to the extent permissible, including but
23 not limited to the California Labor Code as to the facts alleged in the Action, the
24 applicable Wage Orders as to the facts alleged in the Action, and the California Unfair
25 Competition Law (collectively, the “Released Claims”). The period of the Release shall
26 extend to the limits of the Class Period. The res judicata effect of the Judgment will be
27 the same as that of the Release. The definition of Released Claims shall not be limited in
28 any way by the possibility that Plaintiff or Participating Class Members may discover
new facts, legal theories, or legal arguments not alleged in the operative complaint but
which might serve as an alternative basis for pursuing the same claims, causes of action,
or legal theories of relief falling within the definition of Released Claims.. 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.

3 **“Released Parties”** shall mean Defendants, and all their past, present and/or future, direct
4 and/or indirect, officers, directors, members, managers, employees, agents,
5 representatives, attorneys, insurers, partners, investors, shareholders, stockholders,
6 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
7 successors, assigns, joint employers, consultants, subcontractors, servants, equity
8 sponsors, related corporations, divisions, joint venturers, service providers, 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 in full the First Installment Payment of the Gross Settlement Amount provided that Plaintiff retains the right to seek to void such effect of the release in the event Defendants default on any subsequent installment payment as such payments are set forth in this Settlement Agreement. In the event Plaintiff establishes a payment default, this release will not take effect until Defendants have paid the Gross Settlement Amount in full.

9. How can I opt out of this settlement?

If you wish to be excluded from participating in the 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 *Maria Rios-Roman v. Seasons Management, LLC*, Case No. 20CV00783." 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, Phoenix Settlement Administrators, <<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 out of the settlement. All PAGA Members will be deemed to have released Defendants of all PAGA Released Claims

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 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?

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 \$17,500.00 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?

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

5 You may object to the proposed settlement in writing or in person. You may also appear at the
6 Final Approval Hearing, either in person or through your own attorney. If you appear through
7 your own attorney, you are responsible for paying that attorney. All written objections and
8 supporting papers should (a) clearly identify the case name and number (*Maria Rios-Roman v.*
9 *Seasons Management, LLC*, Case No. 20CV00783), (b) be submitted to the Settlement
10 Administrator by mailing them to the Settlement Administrator, Phoenix Settlement
11 Administrators, <<settlement administrator mailing address>>, and (c) be filed or postmarked
12 on or before <<response deadline>>. If the Settlement Administrator re-mailed your Class
13 Notice to a new address, you will have additional 15 days from the date of the re-mailed Class
14 Notice to object. Class Members may appear at the final approval hearing to be heard on their
15 objections, even if they have not previously served a written objection.

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

17 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
18 hearing time>> .m in Department 10 at the Santa Cruz County Superior Court, Santa Cruz Main
19 Courthouse, 701 Ocean Street, Santa Cruz, CA 95060, (The Honorable Paul M. Marigonda
20 presiding). At this hearing, the Court will consider whether the settlement is fair, reasonable, and
21 adequate. If there are objections that were properly made, the Court will consider them. The
22 Court will listen to people who have asked to speak at the hearing. The Court may also decide
23 how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to
24 approve the settlement. We do not know how long this decision will take.

25 **14. Do I have to come to the hearing?**

26 No. Class Counsel will answer any questions that the Court may have. But, you are welcome to
27 come at your own expense. If you sent an objection, you do not have to come to Court to talk
28 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.

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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, Phoenix Settlement Administrators, located at <<settlement administrator mailing address>>.

You can also access the Santa Cruz County Superior Court’s Online Services at https://www._____, or by visiting the Clerk’s Office at the Santa Cruz County Superior Court, Santa Cruz Main Courthouse, 701 Ocean Street, Santa Cruz, CA 95060), 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.**

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EXHIBIT B

3 **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

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

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

10 *Rios-Roman v. Seasons Management, LLC* Class Action Settlement Administrator
11 c/o _____
12 _____
13 _____

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

17 _____
18 (Typed or Printed Name)

19 _____
20 (Address)

21 _____
22 (City, State, Zip Code)

23 _____
24 (Telephone Number, Including Area Code)

25 _____
26 (Last 4 Digits of Social Security number)

27 Dated: _____
28 _____ (Signature)

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EXHIBIT C

PAY PERIODS DISPUTE FORM

Superior Court of The State of California
For The County of Santa Cruz
Maria Rios-Roman v. Seasons Management, LLC, Case No. 20CV00783

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX – XX -

TO ALL HOURLY, NON-EXEMPT EMPLOYEES OF DEFENDANTS IN THE STATE OF CALIFORNIA AT ANY TIME BETWEEN NOVEMBER 13, 2016 AND THE PRELIMINARY APPROVAL ORDER DATE.

The amount of your estimated Settlement Award is based upon the number of Pay Periods you worked between November 13, 2016 and the preliminary approval order date and Pay Periods you worked between January 02, 2019 and the preliminary approval order date. “Individual Pay Periods” during the Class Period are defined as any Pay Period in which you worked at least one (1) day as an hourly, non-exempt employee of Seasons Management, LLC, SM Santa Cruz Limited Partnership or SL – Sun Oak, LLC (collectively “Defendants”) in California during the period of November 13, 2016 through the preliminary approval order date. “Individual Pay Periods” during the PAGA Period are defined as any Pay Period in which you worked at least one (1) day as an hourly, non-exempt employee of Defendants in California during the period of January 02, 2019 through the preliminary approval order date. The number of Pay Periods applicable to your estimated settlement share are set forth below.

YOUR PAY PERIODS

Defendants’ records indicate that you worked <<number of Pay Periods>> Pay Periods between November 13, 2016 and the preliminary approval order date and <<number of Pay Periods>> Pay Periods between January 02, 2019 through the preliminary approval order date.

YOUR ESTIMATED SETTLEMENT SHARE AND DISPUTE PROCEDURE

Under the terms of the proposed 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. You will also receive a Form 1099 as to your PAGA share and other non-wage aspects of your Settlement Share. 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 Pay Periods credited to you, 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 Pay Periods Dispute Form is presumed to be correct unless the documents you submit are company records from Defendants.

UNLESS YOU ARE FILING A DISPUTE REGARDING YOUR ESTIMATED NUMBER OF PAY PERIODS, YOU DO NOT NEED TO TAKE ANY ACTION

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 2, 2020

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

RE: *Maria Rios / Seasons Management, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Maria Rios-Roman (hereafter “Rios”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to caregivers, housekeepers, nurses, medication technicians, and workers employed in comparable positions (hereafter “Aggrieved Employees”) by Seasons Management, LLC (hereafter “Seasons”), an Oregon limited liability company and operator of residential care facilities for the elderly in California, of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, Seasons has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Rios and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

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SPIVAKLAW.COM

Statement of Facts

Seasons employed Rios as a caregiver from approximately October 2018 to approximately April 17, 2019 at its residential care facility for the elderly, Westwind Memory Care, in Santa Cruz, California. At all relevant times, Rios resided in California.

At all relevant times, Seasons employed Rios and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Seasons classified Rios 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, Seasons failed to consistently provide Rios and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Seasons regularly required Rios and the Aggrieved Employees to work through their meal periods without pay due to the absence of other employees to cover for them. Further, on the occasions that Seasons allowed Rios and the Aggrieved Employees to take timely meal periods, Seasons required Rios and the Aggrieved Employees to remain on the premises and to remain available in order to assist the residents of Seasons' facilities. Thus, even though clocked out, Rios and the Aggrieved Employees remained on-duty.

At all relevant times, Seasons failed to authorize and permit Rios and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Seasons failed to provide duty-free rest periods to Rios and the Aggrieved Employees because there were no employees to cover for them. Seasons has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement. Further, neither Rios nor the Aggrieved Employees entered into on duty meal period agreements with Seasons.

Seasons failed to pay premium wages for days on which it failed to provide Rios and the Aggrieved Employees with all timely meal and rest periods. Seasons further failed to compensate Rios and the Aggrieved Employees for all hours worked on days that Seasons failed to pay Rios and the Aggrieved Employees

for an off-the-clock 30-minute meal period and when Seasons required them to engage in work while off-the-clock before their scheduled shift and after. For instance, Seasons instructed Rios to clock out at 6:30 p.m. and warned her that if she did not do so, she would be written up. After Rios and the Aggrieved Employees had clocked out, Seasons directed them to continue to supervise patients until replacement caretakers arrived. At relevant times, Seasons required Rios and the Aggrieved Employees to work for fifteen or more minutes after clocking out before replacement caretakers arrived.

Seasons required Rios 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. Seasons failed to pay one and one half times ($1 \frac{1}{2} \times$) the hourly rates of pay of Rios and the Aggrieved Employees by failing to pay for off-the-clock work performed by Rios and the Aggrieved Employees during their meal periods and after clocking out at the end of their shifts. Further, Rios and the Aggrieved Employees earned non discretionary bonuses, including, but not limited to, signing bonuses. However, Seasons failed to include such non-discretionary bonuses in Rios' and the Aggrieved Employees' regular rates of pay for purposes of calculating their overtime pay rates.

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

- a) Seasons failed to provide Rios and the Aggrieved Employees with all meal periods as required by law;
- b) Seasons failed to provide Rios and the Aggrieved Employees with all rest periods as required by law;
- c) Seasons failed to compensate Rios and the Aggrieved Employees at one hour's pay on days when Seasons failed to provide them with one or more meal periods in a workday;

- d) Seasons failed to compensate Rios and the Aggrieved Employees at one hour's pay on days when Seasons failed to provide them with one or more rest periods in a workday;
- e) Seasons failed to pay Rios 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) Seasons failed to timely pay Rios and the Aggrieved Employees all earned and unpaid wages during employment; and
- g) Seasons failed to timely pay Rios and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Rios now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Season's violations of the California Labor Code.

The Wage Order

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

"any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following: ... Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care . . ."

§ 2(P).

At all relevant times during the applicable limitations period, Rios was employed by Seasons as a caregiver in an adult residential care facility. Accordingly, Rios and the Aggrieved Employees are entitled to the protections afforded by 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.

- (C) However, employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care and employees of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents. Another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents.

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.

- (E) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care, and employees of 24 hour residential care facilities for the elderly, blind or developmentally disabled individuals may be required to work on-duty meal periods without penalty when necessary to meet regulatory or approved program standards and one of the following two conditions is met

- (1)(a) The residential care employees eats with residents during residents' meals and the employer provides the same meal at no charge to the employee; or
 - (b) The employee is in sole charge of the resident(s) and, on the day shift, the employer provides a meal at no charge to the employee.

- (2) An employee, except for the night shift, may exercise the right to have an off-duty meal period upon 30 days' notice to the employer for each instance where an off-duty meal is desired, provided that, there shall be no more than one off-duty meal period every two weeks.

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.

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order §2(K).

The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not

limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, . . . in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). . . .

29 C.F.R. § 778.223

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U.S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680.

29 C.F.R. § 785.7

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinert*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19. "It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period." *Id.* Respiratory therapists required to wear pagers and respond to patient

emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect. Wage Order 5, § 11(D).

By not providing adequate staff to relieve its hourly employees of their duties, Seasons has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Rios and the Aggrieved Employees as required by law. In failing to do so, Seasons violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Rios seeks civil penalties on behalf of herself 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(K) 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 ($1\frac{1}{2}$) 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 ($1\frac{1}{2}$) 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 (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, Seasons knowingly failed to pay Rios 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 during interrupted meal periods and after clocking out at the end of their shifts. Season also failed to include all non-discretionary bonuses, including, but not limited to, signing bonuses, in Rios’ and the Aggrieved Employees’ regular rates of pay for purposes of calculating their overtime pay rates.

At all relevant times during the applicable limitations period, Seasons failed to compensate Rios and the Aggrieved Employees for their work during overtime hours at the correct rates of pay. Accordingly, Rios seeks civil penalties on behalf of herself 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 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, Seasons 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. Seasons failed to state in the wage statements it issued to Rios 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 off-the-clock.

Accordingly, Rios now seeks civil penalties for the labor Code violations that Seasons has committed against her 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 Seasons' failure to pay Rios 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, Seasons failed to timely pay all wages due during employment. Accordingly, Rios seeks civil penalties on behalf of herself 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 alleged herein, Seasons failed to provide Rios 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. As a result, Seasons failed to pay Rios and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Seasons has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Rios seeks civil penalties on behalf of herself 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)).

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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 Wage Order 5 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.

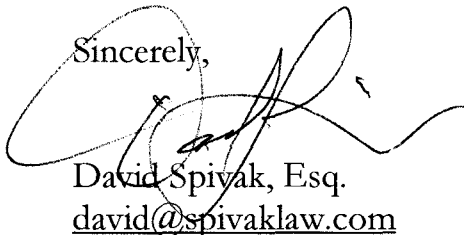
Seasons has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Rios and the Aggrieved Employees. Accordingly, Rios seeks civil penalties from Seasons on behalf of herself 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: Maria Rios
Walter Haines, Esq.

Seasons Management, LLC
c/o Agent for Service of Process
Paracorp, Incorporated
2804 Gateway Oaks Drive #100
Sacramento, CA 95833

EXHIBIT 3

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17 Attorneys for Plaintiff,

18 MARIA RIOS-ROMAN, and all others similarly situated

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **FOR THE COUNTY OF SANTA CRUZ**

21 **(UNLIMITED JURISDICTION)**

22 MARIA RIOS-ROMAN, on behalf of herself
23 and all others similarly situated,

24 *Plaintiff(s),*

25 vs.

26 SEASONS MANAGEMENT, LLC, an Oregon
27 limited liability company; and DOES 1-50,
28 inclusive,

Defendant(s).

Case No.: 20CV00783

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
3/9/2020 4:45 PM
Alex Calvo, Clerk
By: Florence Patten, Deputy

1 Plaintiff MARIA RIOS-ROMAN (hereafter "Plaintiff"), on behalf of herself, the State of
2 California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage
6 Order") and the Business and Professions Code against defendants SEASONS MANAGEMENT,
7 LLC, an Oregon limited liability company; and DOES 1 through 50, inclusive (collectively
8 "Defendants").

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and other similarly situated current and former employees who
11 worked in California as non-exempt employees, including, but not limited to caregivers,
12 housekeepers, nurses, medication technicians, and persons in similar positions, at any time during
13 the period beginning four years prior to the filing of this action to the present, for civil penalties
14 and other related relief. These claims are based on Defendants' alleged failures to (1) provide all
15 rest and meal periods, (2) compensate Plaintiff and the below-described Aggrieved Employees
16 for all hours worked at the correct rates of pay, (3) provide accurate written wage statements, (4)
17 timely pay wages upon termination of employment, and (5) fairly compete. Accordingly, Plaintiff
18 now seeks to recover civil penalties and related relief through this representative action.

19 **II. JURISDICTION AND VENUE**

20 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
21 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

22 4. There is no basis for federal question subject matter jurisdiction in this case.
23 Specifically, Plaintiff asserts claims on behalf of herself and the Aggrieved Employees that solely
24 arise under California law, rather than federal law.

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

III. THE PARTIES

6. Plaintiff MARIA RIOS-ROMAN is a resident of California.

7. Defendant SEASONS MANAGEMENT, LLC is a limited liability company



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1 organized and existing under the laws of Oregon based on Plaintiff's information and belief.

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

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

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

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

22 A. **THE AGGRIEVED EMPLOYEES**

23 12. The "Aggrieved Employees" are all persons Defendants employed in California
24 as non-exempt hourly employees, including but not limited to caregivers, housekeepers, nurses,
25 medication technicians, and workers employed in comparable positions, at any time during the
26 period beginning January 2, 2019, and ending on the date that final judgment is rendered in this
27 action (the "PAGA Period").

28 **STATEMENT OF FACTS**

13. In or about October of 2018, Defendants first employed Plaintiff to work as a
caregiver at their residential care facility for the elderly, Westwind Memory Care, in Santa Cruz,
California. Defendants continuously employed Plaintiff as a caregiver from that time until



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1 approximately April 17, 2019, when her employment ended. At all relevant times, the position
2 of caregiver was hourly and non-exempt.

3 14. Plaintiff and the Aggrieved Employees earned their wages at an hourly rate and
4 Defendants issued their paychecks on a bi-weekly basis. At relevant times, Plaintiff and the
5 Aggrieved Employees worked shifts in excess of eight hours, and worked over 40 hours in a
6 workweek.

7 15. At all relevant times within the applicable limitations period, Defendants failed to
8 consistently provide Plaintiff and the Aggrieved Employees with an off-duty, 30-minute meal
9 period before the end of the fifth hour worked. Defendants regularly required Plaintiff and the
10 Aggrieved Employees to work through their meal periods without pay due to the absence of other
11 employees to cover for them. On the occasions that Defendants allowed Plaintiff and the
12 Aggrieved Employees to take timely meal periods, Defendants required Plaintiff and the
13 Aggrieved Employees to remain on the premises and to remain available in order to assist the
14 residents of Defendants' facilities. Thus, even though clocked out, Plaintiff and the Aggrieved
15 Employees remained on-duty. Neither Plaintiff nor the Aggrieved Employees entered into on-
16 duty meal period agreements with Defendants.

17 16. At all relevant times within the applicable limitations period, Defendants also
18 failed to authorize and permit Plaintiff and the Aggrieved Employees to take a ten-minute, paid,
19 duty-free rest break every four hours or major portion thereof. Defendants failed to provide duty-
20 free rest periods to Plaintiff and the Aggrieved Employees because there were no employees to
21 cover for them. Defendants have not requested an exemption from California's rest period law
22 from the Division of Labor Standards Enforcement.

23 17. Defendants failed to pay premium wages for days on which they failed to provide
24 Plaintiff and the Aggrieved Employees with all timely, duty-free, uninterrupted meal and rest
25 periods. Defendants further failed to compensate Plaintiff and the Aggrieved Employees for all
26 hours worked on days that Defendants failed to pay Plaintiff and the Aggrieved Employees for
27 work performed off-the-clock during their 30-minute meal periods and when Defendants
28 required them to engage in work while off-the-clock before their scheduled shifts and after. For
instance, Defendants instructed Plaintiff to clock out at 6:30 p.m. and warned her that if she did
not do so, she would be written up. After Plaintiff and the Aggrieved Employees had clocked
out, Defendants directed them to continue to oversee patients until replacement caretakers



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1 arrived. At relevant times, Defendants required Plaintiff and the Aggrieved Employees to work
2 for fifteen or more minutes after clocking out before replacement caretakers arrived.

3 18. Defendants required Plaintiff and the Aggrieved Employees to work in excess of
4 eight hours in one workday and forty hours in one workweek without compensating them for
5 such time worked at the overtime rates required by California law. Defendants failed to pay one
6 and one half times (1 ½ x) the hourly rates of pay of Plaintiff and the Aggrieved Employees by
7 failing to pay for off-the-clock work performed by Plaintiff and the Aggrieved Employees during
8 their meal periods and after clocking out at the end of their shifts. Further, Plaintiff and the
9 Aggrieved Employees earned non-discretionary bonuses including, but not limited to, signing
10 bonuses. However, Defendants failed to include such non-discretionary bonuses in Plaintiffs'
11 and the Aggrieved Employees' regular rates of pay for purposes of calculating their overtime pay
12 rates.

13 **FIRST (AND ONLY) CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698, et seq.)**

16 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

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

18 20. At all relevant times during the applicable limitations period, Plaintiff and the
19 Aggrieved Employees have been non-exempt employees of Defendants and entitled to the
20 benefits and protections of the California Labor Code and the Wage Order.

21 **A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

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

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

28 22. 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



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1 employer and employee.

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

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

9 **Rest Periods**

10 (A) "Every employer shall authorize and permit all employees
11 to take rest periods, which insofar as practicable shall be in the
12 middle of each work period. The authorized rest period time shall
13 be based on the total hours worked daily at the rate of ten (10)
14 minutes net rest time per four (4) hours or major fraction thereof.
15 However, a rest period need not be authorized for employees
16 whose total daily work time is less than three and one-half (3 1/2)
17 hours. Authorized rest period time shall be counted as hours
18 worked for which there shall be no deduction from wages."

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

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

25 **Meal Periods**

26 (A) "No employer shall employ any person for a work period
27 of more than five (5) hours without a meal period of not less than
28 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 employer.
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



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1 in accordance with the applicable provisions of this Order, the
2 employer shall pay the employee one (1) hour of pay at the
3 employee's regular rate of compensation for each work day that
4 the meal period is not provided."

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

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

12 (c) If an employer fails to provide an employee a meal period
13 or rest period in accordance with a state law, including, but not
14 limited to, an applicable statute or applicable regulation, standard,
15 or order of the Industrial Welfare Commission, the Occupational
16 Safety and Health Standards Board, or the Division of
17 Occupational Safety and Health, the employer shall pay the
18 employee one additional hour of pay at the employee's regular rate
19 of compensation for each work day that the meal or rest period is
20 not provided.

21 26. Within the health care industry, the term "hours worked" means the time during
22 which an employee is suffered or permitted to work for the employer, whether or not required to
23 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA").
24 Wage Order §2(K).

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

29 28. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
30 to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
31 major fraction thereof.

32 29. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
33 with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with
34 the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times
35 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal
2 periods and rest breaks required by California law.

3 **B. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

4 30. Section 2 of the Wage Order defines “hours worked” as “the time during which
5 an employee is subject to the control of an employer, and includes all the time the employee is
6 suffered or permitted to work, whether or not required to do so, and in the case of an employee
7 who is required to reside on the employment premises, that time spent carrying out assigned
8 duties shall be counted as hours worked. Within the health care industry, the term "hours worked"
9 means the time during which an employee is suffered or permitted to work for the employer,
10 whether or not required to do so, as interpreted in accordance with the provisions of the Fair
Labor Standards Act.”

11 31. Section 3 of the Wage Order states:

12 (A) Daily Overtime - General Provisions

13 (1) The following overtime provisions are applicable to employees
14 18 years of age or over and to employees 16 or 17 years of age who
15 are not required by law to attend school and are not otherwise
16 prohibited by law from engaging in the subject work. Such
17 employees shall not be employed more than eight (8) hours in any
18 workday or more than 40 hours in any workweek unless the
19 employee receives one and one-half (1 ½) times such employee’s
20 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:

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

25 (b) Double the employee’s regular rate of pay for all hours worked
26 in excess of 12 hours in any workday and for all hours worked in
27 excess of eight (8) hours on the seventh (7th) consecutive day of
28 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



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the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

32. 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.

33. 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.

34. 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.

35. 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.

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

37. 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.)

38. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to her and the Aggrieved Employees with respect



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1 to working conditions and compensation arrangements.

2 39. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees at
3 an hourly rate on a weekly basis.

4 40. At all relevant times, Defendants failed to pay Plaintiff and the Aggrieved
5 Employees for all hours worked at the correct rates of pay, including, but not limited to, regular
6 and overtime wages for all regular and overtime hours they worked while clocked out, as well as
7 all wages for work they performed during off duty meal and rest periods. Further, Plaintiff and
8 the Aggrieved Employees earned non-discretionary bonuses including, but not limited to, signing
9 bonuses, the value of which Defendants failed to include in Plaintiff's and the Aggrieved
10 Employees' regular rates of pay for purposes of calculating their overtime pay rates.

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

15 **C. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

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

24 43. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
25 injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to
26 suffer injury if the employer fails to provide accurate and complete information as required by
27 California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from
28 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);



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

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

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

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

12 45. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
13 Employees all wages owed, including but not limited to, all regular and overtime wages owed at
14 the correct rates. As a result, Defendants have failed to properly and accurately itemize each
15 employee's gross wages earned, net wages earned, the total hours worked, the corresponding
16 number of hours worked by employees, and other requirements of California Labor Code § 226.
17 As a result, Defendants have violated California Labor Code § 226.

18 46. Defendants' failure to provide Plaintiff and the Aggrieved Employees with
19 accurate wage statements was knowing and intentional. Defendants had the ability to provide
20 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided
21 wage statements that Defendants knew were not accurate.

22 47. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiff and the Aggrieved Employees have suffered injury. Their legal rights to receive accurate
24 wage statements were violated and they were misled about the amount of wages they had actually
25 earned and were owed. In addition, the absence of accurate information on their wage statements
26 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
27 and mathematical computations to determine the amounts of wages owed, has caused difficulty
28 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 Aggrieved Employees were not able to ascertain from the wage statements
whether Defendants complied with their obligations under California Labor Code § 226(a).



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1 **D. UNTIMELY FINAL WAGES**

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

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

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

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

11 52. By failing to pay earned regular and overtime wages to Plaintiff and the Aggrieved
12 Employees at the correct rates, Defendants failed to timely pay them all earned and unpaid wages
13 in violation of California Labor Code § 201 or § 202.

14 53. Plaintiff is informed and believes that Defendants' failures to timely pay all final
15 wages to her and the Aggrieved Employees have been willful in that Defendants have the ability
16 to pay final wages in accordance with California Labor Code §§ 201 and 202 but have
intentionally adopted policies or practice that are incompatible with those requirements.

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

20 55. Plaintiff is informed and believes that Defendants' failures to timely pay her and
21 the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all
22 relevant times, Defendants have deliberately maintained policies and practices that violate the
23 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
24 had the ability to comply with those legal requirements.

25 **E. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

26 56. Labor Code § 1174 states:

27 Every person employing labor in this state shall:

28 ...

(c) Keep a record showing the names and addresses of all employees
employed and the ages of all minors.



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(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.

57. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) 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).

58. 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.

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

60. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium



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1 wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked
2 by Plaintiff and the Aggrieved Employees.

3 **F. UNTIMELY WAGES DURING EMPLOYMENT**

4 61. Labor Code § 204 states:

5 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
6 or 204.2, earned by any person in any employment are due and payable
7 twice during each calendar month, on days designated in advance by the
8 employer as the regular paydays. Labor performed between the 1st and
9 15th days, inclusive, of any calendar month shall be paid for between the
10 16th and the 26th day of the month during which the labor was performed,
11 and labor performed between the 16th and the last day, inclusive, of any
12 calendar month shall be paid for between the 1st and 10th day of the
13 following month. ...

14 (b) (1) Notwithstanding any other provision of this section, all wages
15 earned for labor in excess of the normal work period shall be paid no later
16 than the payday for the next regular payroll period.

17 (2) An employer is in compliance with the requirements of
18 subdivision (a) of Section 226 relating to total hours worked by the
19 employee, if hours worked in excess of the normal work period during the
20 current pay period are itemized as corrections on the paystub for the next
21 regular pay period. Any corrections set out in a subsequently issued
22 paystub shall state the inclusive dates of the pay period for which the
23 employer is correcting its initial report of hours worked.

24 (c) However, when employees are covered by a collective bargaining
25 agreement that provides different pay arrangements, those arrangements
26 shall apply to the covered employees

27 (d) The requirements of this section shall be deemed satisfied by the payment
28 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.

62. Because of Defendants' failure to pay Plaintiff and the Aggrieved Employees
regular and overtime 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, Defendants failed to
timely pay all wages due during employment to Plaintiff and the Aggrieved Employees.

G. CIVIL PENALTIES SOUGHT

63. During the applicable time period, Defendants violated California Labor Code §§
201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

64. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on



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1 behalf of themselves and other current or former employees, to bring a civil action to recover
2 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

3 65. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
4 Employees are entitled to recover civil penalties for each of Defendants' violations of California
5 Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the
6 applicable limitations period in the following amounts:

7 A. For violations of California Labor Code § 204, one hundred dollars
8 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
9 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
10 established by California Labor Code § 210).

11 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
12 (\$250.00) for each Aggrieved Employee for each initial violation and one thousand dollars
13 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
14 established by California Labor Code § 226.3).

15 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
16 (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars
17 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
18 established by California Labor Code § 558).

19 D. For violations of California Labor Code § 1174, five hundred dollars
20 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
21 California Labor Code § 1174.5).

22 E. For violations of California Labor Code § 1197, one hundred dollars
23 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
24 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
25 pay period (regardless of whether the initial violations were intentionally committed)(penalty
26 amounts established by California Labor Code § 1197.1).

27 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
28 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)).



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1 **H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

2 66. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letter dated January 2, 2020, Plaintiff gave written notice by certified
4 mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the
5 specific provisions of the California Labor Code alleged to have been violated, including the
6 facts and theories to support the alleged violations. A true and correct copy of Plaintiff's letter to
7 the LWDA dated January 2, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded
8 to Plaintiff's letter.

9 67. Pursuant to California labor Code § 2699(g), Plaintiff and the Aggrieved
10 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
11 connection with their claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for
14 relief and judgment against Defendants as follows:

- 15 A. Civil penalties;
16 B. Costs of suit;
17 C. Reasonable attorneys' fees; and
18 D. Such other relief as the Court deems just and proper.

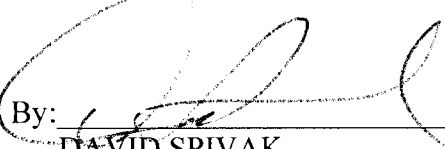
19 **DEMAND FOR JURY TRIAL**

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

22 Respectfully submitted,

23 THE SPIVAK LAW FIRM

24 Dated: March 9, 2020

25 By: 

26 DAVID SPIVAK

27 CARL KAPLAN

28 Attorneys for Plaintiff, MARIA RIOS-
ROMAN and all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 2, 2020

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

RE: *Maria Rios / Seasons Management, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Maria Rios-Roman (hereafter “Rios”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to caregivers, housekeepers, nurses, medication technicians, and workers employed in comparable positions (hereafter “Aggrieved Employees”) by Seasons Management, LLC (hereafter “Seasons”), an Oregon limited liability company and operator of residential care facilities for the elderly in California, of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, Seasons has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Rios and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

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Statement of Facts

Seasons employed Rios as a caregiver from approximately October 2018 to approximately April 17, 2019 at its residential care facility for the elderly, Westwind Memory Care, in Santa Cruz, California. At all relevant times, Rios resided in California.

At all relevant times, Seasons employed Rios and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Seasons classified Rios 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, Seasons failed to consistently provide Rios and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Seasons regularly required Rios and the Aggrieved Employees to work through their meal periods without pay due to the absence of other employees to cover for them. Further, on the occasions that Seasons allowed Rios and the Aggrieved Employees to take timely meal periods, Seasons required Rios and the Aggrieved Employees to remain on the premises and to remain available in order to assist the residents of Seasons' facilities. Thus, even though clocked out, Rios and the Aggrieved Employees remained on-duty.

At all relevant times, Seasons failed to authorize and permit Rios and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Seasons failed to provide duty-free rest periods to Rios and the Aggrieved Employees because there were no employees to cover for them. Seasons has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement. Further, neither Rios nor the Aggrieved Employees entered into on duty meal period agreements with Seasons.

Seasons failed to pay premium wages for days on which it failed to provide Rios and the Aggrieved Employees with all timely meal and rest periods. Seasons further failed to compensate Rios and the Aggrieved Employees for all hours worked on days that Seasons failed to pay Rios and the Aggrieved Employees

for an off-the-clock 30-minute meal period and when Seasons required them to engage in work while off-the-clock before their scheduled shift and after. For instance, Seasons instructed Rios to clock out at 6:30 p.m. and warned her that if she did not do so, she would be written up. After Rios and the Aggrieved Employees had clocked out, Seasons directed them to continue to supervise patients until replacement caretakers arrived. At relevant times, Seasons required Rios and the Aggrieved Employees to work for fifteen or more minutes after clocking out before replacement caretakers arrived.

Seasons required Rios 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. Seasons failed to pay one and one half times ($1 \frac{1}{2} \times$) the hourly rates of pay of Rios and the Aggrieved Employees by failing to pay for off-the-clock work performed by Rios and the Aggrieved Employees during their meal periods and after clocking out at the end of their shifts. Further, Rios and the Aggrieved Employees earned non discretionary bonuses, including, but not limited to, signing bonuses. However, Seasons failed to include such non-discretionary bonuses in Rios' and the Aggrieved Employees' regular rates of pay for purposes of calculating their overtime pay rates.

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

- a) Seasons failed to provide Rios and the Aggrieved Employees with all meal periods as required by law;
- b) Seasons failed to provide Rios and the Aggrieved Employees with all rest periods as required by law;
- c) Seasons failed to compensate Rios and the Aggrieved Employees at one hour's pay on days when Seasons failed to provide them with one or more meal periods in a workday;

- d) Seasons failed to compensate Rios and the Aggrieved Employees at one hour's pay on days when Seasons failed to provide them with one or more rest periods in a workday;
- e) Seasons failed to pay Rios 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) Seasons failed to timely pay Rios and the Aggrieved Employees all earned and unpaid wages during employment; and
- g) Seasons failed to timely pay Rios and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Rios now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Season's violations of the California Labor Code.

The Wage Order

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

"any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following: ... Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care . . ."

§ 2(P).

At all relevant times during the applicable limitations period, Rios was employed by Seasons as a caregiver in an adult residential care facility. Accordingly, Rios and the Aggrieved Employees are entitled to the protections afforded by 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.

- (C) However, employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care and employees of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents. Another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents.

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.

- (E) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care, and employees of 24 hour residential care facilities for the elderly, blind or developmentally disabled individuals may be required to work on-duty meal periods without penalty when necessary to meet regulatory or approved program standards and one of the following two conditions is met

- (1)(a) The residential care employees eats with residents during residents' meals and the employer provides the same meal at no charge to the employee; or
 - (b) The employee is in sole charge of the resident(s) and, on the day shift, the employer provides a meal at no charge to the employee.

- (2) An employee, except for the night shift, may exercise the right to have an off-duty meal period upon 30 days' notice to the employer for each instance where an off-duty meal is desired, provided that, there shall be no more than one off-duty meal period every two weeks.

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.

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order §2(K).

The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not

limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, . . . in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). . . .

29 C.F.R. § 778.223

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U.S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680.

29 C.F.R. § 785.7

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinert*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19. "It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period." *Id.* Respiratory therapists required to wear pagers and respond to patient

emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect. Wage Order 5, § 11(D).

By not providing adequate staff to relieve its hourly employees of their duties, Seasons has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Rios and the Aggrieved Employees as required by law. In failing to do so, Seasons violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Rios seeks civil penalties on behalf of herself 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(K) 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 ($1 \frac{1}{2}$) 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 ($1 \frac{1}{2}$) 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 (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, Seasons knowingly failed to pay Rios 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 during interrupted meal periods and after clocking out at the end of their shifts. Season also failed to include all non-discretionary bonuses, including, but not limited to, signing bonuses, in Rios’ and the Aggrieved Employees’ regular rates of pay for purposes of calculating their overtime pay rates.

At all relevant times during the applicable limitations period, Seasons failed to compensate Rios and the Aggrieved Employees for their work during overtime hours at the correct rates of pay. Accordingly, Rios seeks civil penalties on behalf of herself 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 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, Seasons 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. Seasons failed to state in the wage statements it issued to Rios 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 off-the-clock.

Accordingly, Rios now seeks civil penalties for the labor Code violations that Seasons has committed against her 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 Seasons' failure to pay Rios 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, Seasons failed to timely pay all wages due during employment. Accordingly, Rios seeks civil penalties on behalf of herself 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 alleged herein, Seasons failed to provide Rios 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. As a result, Seasons failed to pay Rios and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Seasons has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Rios seeks civil penalties on behalf of herself 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)).

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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 Wage Order 5 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.

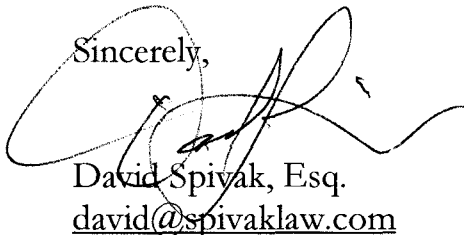
Seasons has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Rios and the Aggrieved Employees. Accordingly, Rios seeks civil penalties from Seasons on behalf of herself 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: Maria Rios
Walter Haines, Esq.

Seasons Management, LLC
c/o Agent for Service of Process
Paracorp, Incorporated
2804 Gateway Oaks Drive #100
Sacramento, CA 95833

EXHIBIT 4

1 CAROLYN B. HALL, CA Bar No. 212311
carolyn.hall@ogletree.com
2 OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
3 Steuart Tower, Suite 1300
One Market Plaza
4 San Francisco, CA 94105
Telephone: 415-442-4810
5 Facsimile: 415-442-4870

6 Attorneys for Defendant
SEASONS MANAGEMENT, LLC
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CRUZ**
10

11 MARIA RIOS-ROMAN, on behalf of herself
and all others similarly situated,

12 Plaintiff,

13 vs.
14

SEASONS MANAGEMENT, LLC, an Oregon
15 limited liability company; and DOES 1-50,
inclusive,

16 Defendant.
17

Case No. 20CV00783

**DEFENDANT SEASONS MANAGEMENT,
LLC'S ANSWER TO PLAINTIFF'S
COMPLAINT**

Action Filed:
Trial Date:

March 9, 2020
None Assigned

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Case No. 20CV00783

DEFENDANT SEASONS MANAGEMENT, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT

1 Defendant SEASONS MANAGEMENT, LLC ("Defendant") hereby responds to Plaintiff
2 MARIA RIOS-ROMAN's ("Plaintiff") unverified Complaint, as follows:

3 **GENERAL DENIAL**

4 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies each
5 and every allegation in the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 For purposes of these affirmative defenses, the term "Plaintiff" incorporates and includes
8 Plaintiff and all members of any putative class, representative group or any allegedly "aggrieved
9 employees" that Plaintiff purports to represent. Through its defenses, Defendant does not assume
10 the burden of proof for any defense beyond the burden of proof set forth by applicable law.
11 Without waiving any defenses, Defendant, as and for its affirmative defenses to the Complaint,
12 alleges as follows:

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(No Employment Relationship)**

15 1. Plaintiff's claims are barred because Defendant did not employ Plaintiff or the
16 allegedly aggrieved employees that she seeks to represent for civil penalty purposes.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Failure to State a Claim Upon Which Relief Can Be Granted)**

19 2. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that the
20 Complaint fails to state facts sufficient to constitute valid claims against Defendant upon which
21 relief can be granted; Defendant did not employ Plaintiff or any of the allegedly aggrieved
22 employees that she seeks to represent, during the relevant limitations period (or at all).

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(No Control by Answering Defendant)**

25 3. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that the
26 Complaint fails because Defendant did not control Plaintiff's wages, hours or working conditions.
27
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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Consent)**

3 4. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff
4 consented to and/or acquiesced in the alleged conduct by Defendant of which Plaintiff now
5 complains.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(No Suffer or Permit)**

8 5. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that the
9 Complaint, and each cause of action alleged therein, fails because this answering Defendant did not
10 suffer or permit Plaintiff to work.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(No Common Law Employment Relationship)**

13 6. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that the
14 Complaint, and each cause of action alleged therein, fails because Defendant did not "engage"
15 Plaintiff thereby creating a common law employment relationship.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **(Not Employer)**

18 7. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that the
19 Complaint fails because Defendant was not Plaintiff's employer for purposes of the California
20 Labor Code's wage-hour provisions, including the Private Attorney General Act ("PAGA").

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 **(Laches / Estoppel / Waiver)**

23 8. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff's
24 Complaint is barred, in whole or in part, by the doctrines of waiver, estoppel, and laches because
25 Plaintiff and/or the individuals she purports to represent are guilty of undue delay in filing and
26 prosecuting this suit and Defendant neither knew nor had reason to know of the alleged acts and
27 omissions complained of in this case. Furthermore, certain of the allegedly aggrieved employees
28

1 may be estopped from bringing claims for *Labor Code* violations because they voluntarily waived
2 meal periods or rest breaks.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Failure to Mitigate)**

5 9. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff
6 failed to take reasonable steps to reduce Plaintiff's claims, damages, losses, if any, and that said
7 failure to mitigate damages bars or reduces any claims, losses, or damages.

8 **TENTH AFFIRMATIVE DEFENSE**

9 **(Unclean Hands)**

10 10. As to Plaintiff's First (And Only) Cause of Action, Plaintiff's claims are barred by
11 the doctrine of unclean hands. Even assuming Plaintiff and the allegedly aggrieved employees
12 Plaintiff seeks to represent were employees (they were not), Plaintiff and/or the allegedly aggrieved
13 employees, through their actions and representations, led Defendant to believe they were properly
14 paid and received all wages to which they were legally entitled.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 **(PAGA / Standing)**

17 11. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff's
18 claims for civil penalties under The Labor Code Private Attorneys General Act (*Labor Code*
19 section 2699, *et. seq.*) are barred because Plaintiff lacks standing to pursue such a claim, either in
20 her respective individual or representative capacities, and in particular but without limitation, those
21 claims that require Plaintiff to be an employee of Defendant.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Good Faith Dispute)**

24 12. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff
25 is barred from recovering penalties from Defendant for its alleged failure to pay wages because
26 there is a good faith dispute about whether any amounts are owed, and if any amounts are owed,
27 what amounts are owed based on the applicable law or facts.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Setoff, Offset, and/or Recoupment)**

3 13. Some or all of the purported causes of action in Plaintiff's Complaint are subject to
4 setoff, offset, and/or recoupment.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 **(Statutes of Limitations)**

7 14. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff's
8 Complaint is barred by the applicable statutes of limitations, including, but not limited to, California
9 *Code of Civil Procedure* Sections 338, 340, and 343; California *Labor Code* Sections 203, 226 and
10 2699; and any other applicable state or federal laws.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 **(Damages Not Result of Actions or Omissions of Defendant)**

13 15. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff's
14 prayer for civil penalties is barred because such damages, if any, were not the result of acts,
15 representations or omissions of Defendant.

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

17 **(Improper Representative Action)**

18 16. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff
19 cannot satisfy the requirements for a representative action, including manageability.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 **(Res Judicata/Collateral Estoppel)**

22 17. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that the
23 Complaint is barred, in whole or in part, by the doctrine of res judicata and/or collateral estoppel
24 because Plaintiff is bound by prior determinations made by any person or authority with competent
25 jurisdiction.

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1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 **(Failure to Exhaust)**

3 18. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff's
4 claims are barred to the extent Plaintiff failed to satisfy the jurisdictional and/or statutory
5 prerequisites for the causes of action, and/or has failed to exhaust all administrative remedies
6 and/or failed to timely exhaust those remedies as required by law including, but not limited to,
7 those provided by California Labor Code section 2699.3.

8 **NINETEENTH AFFIRMATIVE DEFENSE**

9 **(Accord and Satisfaction)**

10 19. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff's
11 claims, if any, are barred by the doctrines of accord and satisfaction.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 **(No Injury from Wage Statements)**

14 20. As to Plaintiff's First (And Only) Cause of Action, Defendant alleges that Plaintiff's
15 claims pursuant to California Labor Code section 226 *et seq.* are barred to the extent that Plaintiff
16 or any allegedly aggrieved employee suffered no injury.

17 **WHEREFORE**, Defendant prays for judgment as follows:

- 18 1. That judgment be entered in favor of Defendant and against Plaintiff, on all causes of
19 action;
20 2. That the Complaint herein be dismissed in its entirety with prejudice;
21 3. That Defendant be awarded its costs of suit herein;
22 4. That Defendant be awarded reasonable attorneys' fees as determined by the Court
23 pursuant to the law; and

- 24 5. For such other and further relief as the Court deems just and proper.

25 DATED: April 29, 2020

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

26 By: 

27 Carolyn B. Hall

28 Attorneys for Defendant
SEASONS MANAGEMENT, LLC

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PROOF OF SERVICE

Maria Rios-Roman vs. Seasons Management, LLC
California Superior Court, County of Santa Clara
Case No. 20CV00783

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of San Francisco in the office of a member of the bar of this court at whose direction the service was made. My business address is Steuart Tower, Suite 1300, One Market Plaza, San Francisco, CA 94105.

On April 29, 2020, I served the following document(s):

**DEFENDANT SEASONS MANAGEMENT, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

by placing ☐ (the original) ☒ (a true copy thereof) in a sealed envelope addressed to:

David G. Spivak
Carl J. Kaplan
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 203
Encino, CA 91436
Tel: (818) 582-3086
Fax: (818) 582-2561
E-Mail: david@spivaklaw.com
carl@spivak.com

Attorneys for Plaintiff

Walter Haines
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave, Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006
E-Mail: whaines@uelglaw.com

Attorneys for Plaintiff

☒ **BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope

☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 29, 2020 at Oakland, CA.

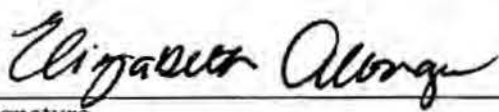

Signature

EXHIBIT 5

ELECTRONICALLY RECEIVED
6/9/2022 11:34 AM

Electronically Filed
Superior Court of California
County of Santa Cruz
June 14, 2022
Alex Calvo, Clerk
By Deputy, Gonzalez, Sandra

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WALTER HAINES (SBN 71075)
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UNITED EMPLOYEES LAW GROUP
4276 Katella Ave., Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff,
MARIA RIOS-ROMAN, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ
(UNLIMITED JURISDICTION)

MARIA RIOS-ROMAN, on behalf of herself
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.

SEASONS MANAGEMENT, LLC, an Oregon
limited liability company; SM SANTA CRUZ
LIMITED PARTNERSHIP, an Oregon limited
partnership; SL - Sun Oak, LLC, an Oregon
limited liability company; and DOES 1-50,
inclusive,

Defendant(s).

Case No.: 20CV00783

**[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 Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Wage Statement Penalties (Lab. Code § 226);
4. Failure to Timely Pay All Final Wages (Lab. Code §§ 201-203);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
6. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



Employee Rights Attorneys

SPIVAK LAW
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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

1 Plaintiff MARIA RIOS-ROMAN (hereafter “Plaintiff”), on behalf of herself and all others
2 similarly situated, the State of California, and other Aggrieved Employees, complains and alleges
3 as follows:

4 **I. INTRODUCTION**

5 1. Plaintiff brings this class and representative action based on alleged violations of
6 the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the
7 Wage Order”) and the Business and Professions Code against defendants SEASONS
8 MANAGEMENT, LLC, an Oregon limited liability company; SM SANTA CRUZ LIMITED
9 PARTNERSHIP, an Oregon limited partnership; SL - Sun Oak, LLC, an Oregon limited liability
10 company; and DOES 1 through 50, inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 her, the State of California, and other similarly situated current and former employees who
13 worked in California as non-exempt employees, including, but not limited to caregivers,
14 housekeepers, nurses, medication technicians, and persons in similar positions, at any time during
15 the period beginning four years prior to the filing of this action to the present, for unpaid wages,
16 unpaid meal and rest break premium wages, restitution, statutory penalties, civil penalties and
17 other related relief. These claims are based on Defendants’ alleged failures to (1) provide all rest
18 and meal periods, (2) compensate Plaintiff and the below-described Aggrieved Employees for all
19 hours worked at the correct rates of pay, (3) provide accurate written wage statements, (4) timely
20 pay wages upon termination of employment, and (5) fairly compete. Accordingly, Plaintiff now
21 seeks to recover unpaid wages, unpaid meal and rest break premium wages, restitution, statutory
22 penalties, civil penalties and related relief through this representative action.

23 **II. JURISDICTION AND VENUE**

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

26 4. There is no basis for federal question subject matter jurisdiction in this case.
27 Specifically, Plaintiff asserts claims on behalf of herself and the Aggrieved Employees that solely
28 arise under California law, rather than federal law.



Employee Rights Attorneys
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Ste 900
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5. Venue is proper in Santa Cruz County pursuant to California Code of Civil Procedure § 395(a) and § 395.5 in that liability arose in Santa Cruz 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.

III. THE PARTIES

6. Plaintiff MARIA RIOS-ROMAN is a resident of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

7. Defendant SEASONS MANAGEMENT, LLC is a limited liability company organized and existing under the laws of Oregon based on Plaintiff's information and belief.

8. Defendant SM SANTA CRUZ LIMITED PARTNERSHIP is a limited partnership organized and existing under the laws of Oregon based on Plaintiff's information and belief.

9. Defendant SL – SUN OAK, LLC is a limited liability company organized and existing under the laws of Oregon based on Plaintiff's information and belief.

10. 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.

11. 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.

12. 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



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1 of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved Employees in
2 accordance with applicable California labor laws as alleged herein.

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

8 **IV. CLASS ALLEGATIONS**

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

14 15. **Class Definition:** The Class is defined as follows: All persons Defendants
15 employed in California as non-exempt hourly employees, including but not limited to caregivers,
16 housekeepers, nurses, medication technicians, and workers employed in comparable positions,
17 at any time during the period beginning four years prior to the filing of this action and ending on
18 the date that final judgment is rendered in this action.

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

22 17. **Numerosity:** The Class is so numerous that the individual joinder of each class
23 member is impracticable. While Plaintiff does not currently know the exact number of class
24 members, Plaintiff is informed and believes that the actual number exceeds the minimum
25 required for numerosity under California laws.

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



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

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

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

8 D. Whether Defendants failed to pay all wages earned to the Class for all
9 hours worked at the correct rates of pay;

10 E. Whether Defendants knowingly and intentionally failed to provide the
11 Class Members with accurate wage statements;

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

14 G. Whether Defendants engaged in unfair competition within the meaning of
15 Business and Professions Code §§ 1700, *et seq.* with respect to the Class;

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

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

19 J. Are the Class Members entitled to attorneys' fees?

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

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

28 21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in



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1 order to assist the residents of Defendants' facilities. Thus, even though clocked out, Plaintiff
2 and the Class remained on-duty. Neither Plaintiff nor the Class entered into on-duty meal period
3 agreements with Defendants.

4 26. At all relevant times within the applicable limitations period, Defendants also
5 failed to authorize and permit Plaintiff and the Class to take a ten-minute, paid, duty-free rest
6 break every four hours or major portion thereof. Defendants failed to provide duty-free rest
7 periods to Plaintiff and the Class because there were no employees to cover for them. Defendants
8 have not requested an exemption from California's rest period law from the Division of Labor
9 Standards Enforcement.

10 27. Defendants failed to pay premium wages for days on which they failed to provide
11 Plaintiff and the Class with all timely, duty-free, uninterrupted meal and rest periods. Defendants
12 further failed to compensate Plaintiff and the Class for all hours worked on days that Defendants
13 failed to pay Plaintiff and the Class for work performed off-the-clock during their 30-minute
14 meal periods and when Defendants required them to engage in work while off-the-clock before
15 their scheduled shifts and after. For instance, Defendants instructed Plaintiff to clock out at 6:30
16 p.m. and warned her that if she did not do so, she would be written up. After Plaintiff and the
17 Class had clocked out, Defendants directed them to continue to oversee patients until replacement
18 caretakers arrived. At relevant times, Defendants required Plaintiff and the Class to work for
19 fifteen or more minutes after clocking out before replacement caretakers arrived.

20 28. Defendants required Plaintiff and the Class to work in excess of eight hours in one
21 workday and forty hours in one workweek without compensating them for such time worked at
22 the overtime rates required by California law. Defendants failed to pay one and one half times (1
23 ½ x) the hourly rates of pay of Plaintiff and the Class by failing to pay for off-the-clock work
24 performed by Plaintiff and the Class during their meal periods and after clocking out at the end
25 of their shifts. Further, Plaintiff and the Class earned non-discretionary bonuses including, but
26 not limited to, signing bonuses. However, Defendants failed to include such non-discretionary
27 bonuses in Plaintiffs' and the Class Members' regular rates of pay for purposes of calculating
28 their overtime pay rates.



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FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(Lab. Code §§ 226.7, 512, and 1198)
(By Plaintiff and the Class against all Defendants)

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

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

31. 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.

32. In relevant part, 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.

33. 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 work day that the rest period is not provided."

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



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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 employer. 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.”

35. 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.

36. 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.

37. 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.

38. Defendants intentionally failed to provide Plaintiff and the Class Members with



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1 all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the
2 Wage Order.

3 39. Plaintiff is informed and believes and thereon alleges that, at all relevant times
4 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
5 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
6 breaks required by California law.

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

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

14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**
16 **(Lab. Code §§ 510, 1194, 1197, and 1198)**
17 **(By Plaintiff and the Class against all Defendants)**

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

19 43. At all relevant times, Plaintiff and the Class Members have been non-exempt
20 employees of Defendants and entitled to the benefits and protections of California Labor Code §
21 § 510, 1194, 1197, 1198, and the Wage Order.

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

25 45. Section 3 of the Wage Order states:

26 (A) Daily Overtime - General Provisions

27 (1) The following overtime provisions are applicable to employees
28 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 (7th) 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. California Labor Code § 1198 makes it unlawful for an employer to employ an



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1 employee under conditions that violate the Wage Order.

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

7 52. At all relevant times, Defendants failed to pay Plaintiff and the Class for all hours
8 worked at the correct rates of pay, including, but not limited to, regular and overtime wages for
9 all regular and overtime hours they worked while clocked out, as well as all wages for work they
10 performed during off duty meal and rest periods. Further, Plaintiff and the Aggrieved Employees
11 earned non-discretionary bonuses including, but not limited to, signing bonuses, the value of
12 which Defendants failed to include in Plaintiff's and the Class Members' regular rates of pay for
13 purposes of calculating their overtime pay rates.

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

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

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

26 **THIRD CAUSE OF ACTION**
FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS
27 **Lab. Code §§ 226**
(By Plaintiff, on behalf of herself and the Class, against all Defendants)

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



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1 57. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
2 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement showing:

- 4 A. Gross wages earned;
- 5 B. Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 8 C. The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis;
- 10 D. All deductions, provided that all deductions made on written orders of the
11 Employee may be aggregated and shown as one item;
- 12 E. Net wages earned;
- 13 F. The inclusive dates of the period for which the employee is paid;
- 14 G. The name of the employee and his or her social security number, except
15 that by January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the itemized
17 statement;
- 18 H. The name and address of the legal entity that is the employer; and
- 19 I. All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 58. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
22 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
23 the employer fails to provide accurate and complete information as required by California Labor
24 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
25 alone one or more of the following:

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



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

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

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

8 E. The number of piece-rate units earned and the piece rate.

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

12 60. As alleged herein, at all relevant times during the applicable limitations period,
13 Defendants violated California Labor Code section 226 because they did not properly and
14 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
15 the corresponding number of hours worked at each rate by the employee and other requirements
16 of California Labor Code section 226. Defendants failed to state in the wage statements they
17 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
18 including, but not limited to, regular and overtime wages for work they performed off-the-clock
19 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
20 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
21 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
22 Members that state all their hours worked and wages earned, including, but not limited to, regular
23 and overtime wages for work they performed off-the-clock after clocking-out (as described
24 above).

25 61. Defendants' failure to provide Plaintiff and the other Class Members with accurate
26 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
27 the other Class Members with accurate wage statements but intentionally provided wage
28 statements that Defendants knew were not accurate.



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62. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members 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 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 other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

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

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

65. 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.

66. 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.

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

68. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to her 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



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1 adopted policies or practice that are incompatible with those requirements.

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

5 70. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
6 and the Class Members all of their earned and unpaid wages have been willful in that, at all
7 relevant times, Defendants have deliberately maintained policies and practices that violate the
8 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
9 had the ability to comply with those legal requirements.

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

13 **FIFTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION**
(Bus. & Prof. Code §§ 17200, *et seq.*)
(By Plaintiff and the Class against all Defendants)

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

16 73. At all relevant times, Plaintiff and the Class Members have been employees of
17 Defendants and entitled to the benefits and protections of the Business and Professions Code §§
18 17200, *et seq.*

19 74. The unlawful conduct of Defendants alleged herein amounts to and constitutes
20 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
21 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
22 gained a competitive advantage over other comparable companies doing business in California
23 that comply with their legal obligations to, among other things, pay their employees premium
24 wages for workdays in which they did not provide employees with one or more meal and rest
25 period, and pay them all wages earned for all hours worked at the correct rates of pay.

26 75. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
27 Class Members have suffered injuries in fact and have lost money or property. Defendants
28 deprived Plaintiff and the Class Members of regular wages, overtime wages, premium wages for



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1 all workdays one or more meal periods was not provided, and premium wages for all workdays
2 a rest period was not provided.

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

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

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

13 **SIXTH CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698, *et seq.*)**

16 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

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

18 80. The "Aggrieved Employees" are all persons Defendants employed in California
19 as non-exempt hourly employees, including but not limited to caregivers, housekeepers, nurses,
20 medication technicians, and workers employed in comparable positions, at any time during the
21 period beginning January 2, 2019, and ending on the date that final judgment is rendered in this
22 action (the "PAGA Period").

23 81. At all relevant times during the applicable limitations period, Plaintiff and the
24 Aggrieved Employees have been non-exempt employees of Defendants and entitled to the
25 benefits and protections of the California Labor Code and the Wage Order.

26 82. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
27 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
28 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



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1 of the Industrial Welfare Commission; 3) net wages earned; and 4) all applicable hourly rates in
2 effect during the pay period and the corresponding number of hours worked at each hourly rate
3 by the employee.

4 83. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
5 injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to
6 suffer injury if the employer fails to provide accurate and complete information as required by
7 California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from
8 the wage statement alone one or more of the following:

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

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

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

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

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

23 85. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
24 Employees all wages owed, including but not limited to, all regular and overtime wages owed at
25 the correct rates. As a result, Defendants have failed to properly and accurately itemize each
26 employee’s gross wages earned, net wages earned, the total hours worked, the corresponding
27 number of hours worked by employees, and other requirements of California Labor Code § 226.
28 As a result, Defendants have violated California Labor Code § 226.



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1 86. Defendants' failure to provide Plaintiff and the Aggrieved Employees with
2 accurate wage statements was knowing and intentional. Defendants had the ability to provide
3 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided
4 wage statements that Defendants knew were not accurate.

5 87. As a result of being provided with inaccurate wage statements by Defendants,
6 Plaintiff and the Aggrieved Employees have suffered injury. Their legal rights to receive accurate
7 wage statements were violated and they were misled about the amount of wages they had actually
8 earned and were owed. In addition, the absence of accurate information on their wage statements
9 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
10 and mathematical computations to determine the amounts of wages owed, has caused difficulty
11 and expense in attempting to reconstruct time and pay records and/or has led to the submission
12 of inaccurate information about wages to state and federal government agencies. Further,
13 Plaintiff and the Aggrieved Employees were not able to ascertain from the wage statements
14 whether Defendants complied with their obligations under California Labor Code § 226(a).

15 88. Labor Code § 1174 states:

16 Every person employing labor in this state shall:

17 ...
18 (c) Keep a record showing the names and addresses of all employees
19 employed and the ages of all minors.

20 (d) Keep, at a central location in the state or at the plants or
21 establishments at which employees are employed, payroll records
22 showing the hours worked daily by and the wages paid to, and the number
23 of piece-rate units earned by and any applicable piece rate paid to,
24 employees employed at the respective plants or establishments. These
25 records shall be kept in accordance with rules established for this purpose
26 by the commission, but in any case shall be kept on file for not less than
27 three years. An employer shall not prohibit an employee from maintaining
28 a personal record of hours worked, or, if paid on a piece-rate basis, piece-
 rate units earned.

23 89. Labor Code § 1174.5 states:

24 Any person employing labor who willfully fails to maintain the records
25 required by subdivision (c) of Section 1174, or to allow any member of
26 the commission or employees of the division to inspect records pursuant
27 to subdivision (b) of Section 1174, shall be subject to a civil penalty of
28 five hundred dollars (\$500).

27 90. Section 7 of the Wage Order states,

28 (a) Every employer shall keep accurate information with respect to
 each employee including the following:



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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.

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

92. On information and belief, Defendants have 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 Plaintiff and the Aggrieved Employees.

93. 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.



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1 (c) However, when employees are covered by a collective bargaining
2 agreement that provides different pay arrangements, those arrangements
3 shall apply to the covered employees

4 (d) The requirements of this section shall be deemed satisfied by the payment
5 of wages for weekly, biweekly, or semimonthly payroll if the wages are
6 paid not more than seven calendar days following the close of the payroll
7 period.

8 94. Because of Defendants' failure to pay Plaintiff and the Aggrieved Employees
9 regular and overtime wages for off-the-clock work and premium wages for unprovided rest and
10 meal periods within the time periods set by California Labor Code § 204, Defendants failed to
11 timely pay all wages due during employment to Plaintiff and the Aggrieved Employees.

12 95. During the applicable time period, Defendants violated California Labor Code §§
13 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

14 96. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
15 behalf of themselves and other current or former employees, to bring a civil action to recover
16 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

17 97. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
18 Employees are entitled to recover civil penalties for each of Defendants' violations of California
19 Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the
20 applicable limitations period in the following amounts:

21 A. For violations of California Labor Code § 204, one hundred dollars
22 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
23 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
24 established by California Labor Code § 210).

25 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
26 (\$250.00) for each Aggrieved Employee for each initial violation and one thousand dollars
27 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
28 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 each initial violation and one hundred dollars
(\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts



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1 established by California Labor Code § 558).

2 D. For violations of California Labor Code § 1174, five hundred dollars
3 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
4 California Labor Code § 1174.5).

5 E. For violations of California Labor Code § 1197, one hundred dollars
6 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
7 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
8 pay period (regardless of whether the initial violations were intentionally committed)(penalty
9 amounts established by California Labor Code § 1197.1).

10 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
11 and 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each
12 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
13 for each subsequent violation (penalty amounts established by California Labor Code §
14 2699(f)(2)).

15 98. Plaintiff has complied with the procedures for bringing suit specified in California
16 Labor Code § 2699.3. By letter dated January 2, 2020, Plaintiff gave written notice by certified
17 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the
18 specific provisions of the California Labor Code alleged to have been violated, including the
19 facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to
20 the LWDA dated January 2, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded
21 to Plaintiff’s letter.

22 99. Pursuant to California labor Code § 2699(g), Plaintiff and the Aggrieved
23 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
24 connection with their claims for civil penalties.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for
27 relief and judgment against Defendants as follows:
28



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- 1 A. An order that the action be certified as a class action;
2 B. An order that Plaintiff be appointed class representative;
3 C. An order that counsel for Plaintiff be appointed class counsel;
4 D. Unpaid wages;
5 E. Actual damages;
6 F. Statutory damages;
7 G. Liquidated damages;
8 H. Restitution;
9 I. Declaratory relief;
10 J. Equitable relief;
11 K. Statutory penalties;
12 L. Civil penalties;
13 M. Pre-judgment and post-judgment interest;
14 N. Costs of suit;
15 O. Interest;
16 P. Reasonable attorneys' fees; and
17 Q. Such other relief as the Court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

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

21 Respectfully submitted,

22
23 THE SPIVAK LAW FIRM

24
25 Dated: June 8, 2022

By: 

26 DAVID SPIVAK
27 Attorneys for Plaintiff, MARIA RIOS-
28 ROMAN and all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 2, 2020

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

RE: *Maria Rios / Seasons Management, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Maria Rios-Roman (hereafter “Rios”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to caregivers, housekeepers, nurses, medication technicians, and workers employed in comparable positions (hereafter “Aggrieved Employees”) by Seasons Management, LLC (hereafter “Seasons”), an Oregon limited liability company and operator of residential care facilities for the elderly in California, of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, Seasons has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Rios and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

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Statement of Facts

Seasons employed Rios as a caregiver from approximately October 2018 to approximately April 17, 2019 at its residential care facility for the elderly, Westwind Memory Care, in Santa Cruz, California. At all relevant times, Rios resided in California.

At all relevant times, Seasons employed Rios and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Seasons classified Rios 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, Seasons failed to consistently provide Rios and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Seasons regularly required Rios and the Aggrieved Employees to work through their meal periods without pay due to the absence of other employees to cover for them. Further, on the occasions that Seasons allowed Rios and the Aggrieved Employees to take timely meal periods, Seasons required Rios and the Aggrieved Employees to remain on the premises and to remain available in order to assist the residents of Seasons' facilities. Thus, even though clocked out, Rios and the Aggrieved Employees remained on-duty.

At all relevant times, Seasons failed to authorize and permit Rios and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Seasons failed to provide duty-free rest periods to Rios and the Aggrieved Employees because there were no employees to cover for them. Seasons has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement. Further, neither Rios nor the Aggrieved Employees entered into on duty meal period agreements with Seasons.

Seasons failed to pay premium wages for days on which it failed to provide Rios and the Aggrieved Employees with all timely meal and rest periods. Seasons further failed to compensate Rios and the Aggrieved Employees for all hours worked on days that Seasons failed to pay Rios and the Aggrieved Employees

for an off-the-clock 30-minute meal period and when Seasons required them to engage in work while off-the-clock before their scheduled shift and after. For instance, Seasons instructed Rios to clock out at 6:30 p.m. and warned her that if she did not do so, she would be written up. After Rios and the Aggrieved Employees had clocked out, Seasons directed them to continue to supervise patients until replacement caretakers arrived. At relevant times, Seasons required Rios and the Aggrieved Employees to work for fifteen or more minutes after clocking out before replacement caretakers arrived.

Seasons required Rios 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. Seasons failed to pay one and one half times ($1 \frac{1}{2} \times$) the hourly rates of pay of Rios and the Aggrieved Employees by failing to pay for off-the-clock work performed by Rios and the Aggrieved Employees during their meal periods and after clocking out at the end of their shifts. Further, Rios and the Aggrieved Employees earned non discretionary bonuses, including, but not limited to, signing bonuses. However, Seasons failed to include such non-discretionary bonuses in Rios' and the Aggrieved Employees' regular rates of pay for purposes of calculating their overtime pay rates.

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

- a) Seasons failed to provide Rios and the Aggrieved Employees with all meal periods as required by law;
- b) Seasons failed to provide Rios and the Aggrieved Employees with all rest periods as required by law;
- c) Seasons failed to compensate Rios and the Aggrieved Employees at one hour's pay on days when Seasons failed to provide them with one or more meal periods in a workday;

- d) Seasons failed to compensate Rios and the Aggrieved Employees at one hour's pay on days when Seasons failed to provide them with one or more rest periods in a workday;
- e) Seasons failed to pay Rios 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) Seasons failed to timely pay Rios and the Aggrieved Employees all earned and unpaid wages during employment; and
- g) Seasons failed to timely pay Rios and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Rios now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Season's violations of the California Labor Code.

The Wage Order

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

"any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following: ... Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care . . ."

§ 2(P).

At all relevant times during the applicable limitations period, Rios was employed by Seasons as a caregiver in an adult residential care facility. Accordingly, Rios and the Aggrieved Employees are entitled to the protections afforded by 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.

- (C) However, employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care and employees of 24 hour residential care facilities for elderly, blind or developmentally disabled individuals may, without penalty, require an employee to remain on the premises and maintain general supervision of residents during rest periods if the employee is in sole charge of residents. Another rest period shall be authorized and permitted by the employer when an employee is affirmatively required to interrupt his/her break to respond to the needs of residents.

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.

- (E) Employees with direct responsibility for children who are under 18 years of age or who are not emancipated from the foster care system and who, in either case, are receiving 24 hour residential care, and employees of 24 hour residential care facilities for the elderly, blind or developmentally disabled individuals may be required to work on-duty meal periods without penalty when necessary to meet regulatory or approved program standards and one of the following two conditions is met

- (1)(a) The residential care employees eats with residents during residents' meals and the employer provides the same meal at no charge to the employee; or

- (b) The employee is in sole charge of the resident(s) and, on the day shift, the employer provides a meal at no charge to the employee.

- (2) An employee, except for the night shift, may exercise the right to have an off-duty meal period upon 30 days' notice to the employer for each instance where an off-duty meal is desired, provided that, there shall be no more than one off-duty meal period every two weeks.

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.

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order §2(K).

The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not

limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). . . .

29 C.F.R. § 778.223

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U.S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680.

29 C.F.R. § 785.7

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinert*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19. "It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period." *Id.* Respiratory therapists required to wear pagers and respond to patient

emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect. Wage Order 5, § 11(D).

By not providing adequate staff to relieve its hourly employees of their duties, Seasons has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Rios and the Aggrieved Employees as required by law. In failing to do so, Seasons violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Rios seeks civil penalties on behalf of herself 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(K) 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 ($1 \frac{1}{2}$) 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 ($1 \frac{1}{2}$) 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 (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, Seasons knowingly failed to pay Rios 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 during interrupted meal periods and after clocking out at the end of their shifts. Season also failed to include all non-discretionary bonuses, including, but not limited to, signing bonuses, in Rios’ and the Aggrieved Employees’ regular rates of pay for purposes of calculating their overtime pay rates.

At all relevant times during the applicable limitations period, Seasons failed to compensate Rios and the Aggrieved Employees for their work during overtime hours at the correct rates of pay. Accordingly, Rios seeks civil penalties on behalf of herself 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 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, Seasons 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. Seasons failed to state in the wage statements it issued to Rios 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 off-the-clock.

Accordingly, Rios now seeks civil penalties for the labor Code violations that Seasons has committed against her 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 Seasons' failure to pay Rios 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, Seasons failed to timely pay all wages due during employment. Accordingly, Rios seeks civil penalties on behalf of herself 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 alleged herein, Seasons failed to provide Rios 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. As a result, Seasons failed to pay Rios and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Seasons has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Rios seeks civil penalties on behalf of herself 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)).

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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 Wage Order 5 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.

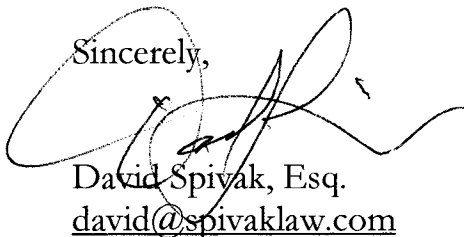
Seasons has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Rios and the Aggrieved Employees. Accordingly, Rios seeks civil penalties from Seasons on behalf of herself 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: Maria Rios

Walter Haines, Esq.

Seasons Management, LLC
c/o Agent for Service of Process
Paracorp, Incorporated
2804 Gateway Oaks Drive #100
Sacramento, CA 95833

State of California,
County of Los Angeles

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.

Carolyn Blecha Hall, Esq.
Brandilynn Thomas
Ogletree, Deakins, Nash, Smoak & Stewart
Steuart Tower, Suite 1300 One Market Plaza
San Francisco, CA 94105-1013
carolyn.hall@ogletreedekins.com
brandilynn.thomas@ogletree.com

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address nora@spivaklaw.com.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Archie

NORA GREER

EXHIBIT 6

Case name:	<i>Rios v. Seasons Management, LLC, et al.</i>	Formula
Case number:	20CV00783	From Defendant
Court:	Santa Cruz Superior Court	From sample
Judge:	Hon. John Gallagher	Extrapolation
Page subject:	Background	
Authority:	Various	

LWDA Notice:	2-Jan-20
65 Days after LWDA Notice	7-Mar-20
Complaint:	9-Mar-20
Mediation date:	11-Feb-21

Time Period	Begin	End	Calendar Days
UCL:	13-Nov-16	11-Feb-21	1,551
Lab.Code sec. 203:	13-Nov-17	11-Feb-21	1,186
PAGA:	2-Jan-19	11-Feb-21	771
Lab.Code sec. 226	9-Mar-19	11-Feb-21	705

D Sample:	28-Sep-17	5-Nov-20	1,134
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Sample Period/Class Period Ratio:	73.11%
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Subject:	Lab.Code sec. 226	PAGA	Lab.Code sec. 203	UCL
Defendant's Population Estimate:	128	128	81	146
Sample Population				144
Defendant's workdays estimate:				
Sample workdays:				26,106
Defendant's Workweeks Estimate:				7,740
Sample Workweeks:				5,315
Sample Ratio:				68.67%

Pay cycle:	Biweekly	Biweekly	Biweekly	Biweekly
Pay period per year:	26	26	26	26
Defendant's Paychecks Estimate:	2,310	2,310		3,567
Sample Paychecks:				2,702
Sample Ratio:				75.75%

Defendant's Days per Week estimate:				
Sample days per week:	4.98	4.98	4.98	4.98

Defendant's hours per week estimate:				
Sample hours per week:	36.28	36.28	36.28	36.28

Defendant's hours per day estimate:

Sample hours per day:

7.37	7.37	7.37	7.37
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Defendant's hourly rate estimate:

Sample hourly rate:

\$	17.49	\$	17.49	\$	17.49	\$	17.49
\$	17.06	\$	17.06	\$	17.06	\$	17.06

Case name:

Rios v. Seasons Management, LLC, et al.

Case number:

20CV00783

Court:

Santa Cruz Superior Court

Judge:

Hon. John Gallagher

Page subject:

Meal period premium wages

Authority:

Lab.Code secs. 226.7, 512, 1198

Hourly rate:

\$ 17.49

Violation Rate:

60%

Workdays:

26,106

Total:

\$ 273,956.36

Case name: Rios v. Seasons Management, LLC, et al.
Case number: 20CV00783
Court: Santa Cruz Superior Court
Judge: Hon. John Gallagher
Page subject: **Rest period premium wages**
Authority: Lab.Code secs. 226.7, 1198

Hourly rate:	\$	17.49
Violation Rate:		94%
Workdays:		26,106
Total:	\$	429,198.30

Case name: Rios v. Seasons Management, LLC, et al.
Case number: 20CV00783
Court: Santa Cruz Superior Court
Judge: Hon. John Gallagher
Page subject: **Unpaid Wages for Postliminary Activities**
Authority: Lab.Code secs. 510, 1194

Workdays:	26,106
Violation rate:	100%
Unpaid hours/day:	0.25
Hourly Rate:	\$ 17.49
Overtime premium factor:	1.50
Pre-Interest Unpaid Wages total:	\$ 171,222.73
Interest rate:	10%
Interest amount:	\$ 17,122.27
Total:	\$ 188,345.00

Case name: Rios v. Seasons Management, LLC, et al.
Case number: 20CV00783
Court: Santa Cruz Superior Court
Judge: Hon. John Gallagher
Page Subject: **Unpaid bonus overtime wages**
Authority: Lab.Code Sections 510, 1194

Regular hours (sample)	174,147.65
Overtime hours (sample)	12,916.49
Total hours (sample)	190,570.14
Total bonus payments (sample)	\$ 63,860.75
Paychecks with bonuses (sample)	262
Paychecks all (sample)	2,702
Bonus/paystub frequency (sample)	10%
Employees in sample	144
Hourly bonus rate	\$ 0.34
Hourly bonus OT premium rate	\$ 0.17
Max unpaid bonus OT	\$ 2,164.18
Average share unpaid per employee	\$ 15.03
Average share unpaid per paycheck	\$ 8.26
Total class size	146
Total:	\$ 2,194.24

Judge: Hon. John Gallagher
Page subject: **Waiting time penalties (untimely final wages)**
Authority: Lab.Code sec. 203

Total Hours per day:	7.37
Regular Hours:	7.37
Regular Rate:	\$ 17.49
Regular wages:	\$ 128.90
Overtime Hours:	0
Overtime Rate:	\$ 26.24
Overtime wages:	\$ -
Doubletime Hours:	0
Doubletime Rate:	\$ 34.98
Doubletime Wages:	\$ -
Daily Wages:	\$ 128.90
Waiting Time Days:	30
Affected former employees:	81
Total:	\$ 313,230.16

Case name: Rios v. Seasons Management, LLC, et al.
Case number: 20CV00783
Court: Santa Cruz Superior Court
Judge: Hon. John Gallagher
Page subject: **Statutory "pay stub" penalties**
Authority: Lab.Code sec. 226

Initial pay period penalty amount:	\$	50.00
Subsequent pay period penalty amount:	\$	100.00
Affected wage statements:		2,310
Affected employees:		128
Total:	\$	224,600.00

Case name: Rios v. Seasons Management, LLC, et al.
Case number: 20CV00783
Court: Santa Cruz Superior Court
Judge: Hon. John Gallagher
Page subject: **Civil Penalties (PAGA)**
Authority: Lab.Code secs. 2698, et seq.

Subject	Lab.Code secs.		Civil Penalty	Paychecks	Totals
Unpaid minimum wage violations civil penalties	1194/1197/1197.1	\$	100.00	2,310	\$ 231,000.00
Unpaid overtime wage violations civil penalties	510/558	\$	50.00	2,310	\$ 115,500.00
Unprovided meal period violations civil penalties	512/558	\$	50.00	2,310	\$ 115,500.00
Unprovided rest period violations civil penalties	1198/2699	\$	100.00	2,310	\$ 231,000.00
Unreimbursed expense violations civil penalties	1198/2802/2699	\$	100.00	2,310	\$ 231,000.00
Untimely wages violations civil penalties	201-204/210	\$	100.00	2,310	\$ 231,000.00
Failure to keep accurate records	1174/1174.5	\$	500.00	2,310	\$ 1,155,000.00
Faulty wage statement violations civil penalties	226/1198/2699	\$	100.00	2,310	\$ 231,000.00
Total Civil Penalties					\$ 2,541,000.00

Case name: Rios v. Seasons Management, LLC, et al.
Case number: 20CV00783
Court: Santa Cruz Superior Court
Judge: Hon. John Gallagher
Page subject: **Totals**
Authority: Various

Meal period premium wages	\$	273,956.36
Rest period premium wages	\$	429,198.30
Unpaid wages for off-the-clock work	\$	188,345.00
Unpaid bonus overtime wages	\$	2,194.24
Waiting time penalties (untimely final wages)	\$	313,230.16
Statutory "pay stub" penalties	\$	224,600.00
Unpaid minimum wage violations civil penalties	\$	231,000.00
Unpaid overtime wage violations civil penalties	\$	115,500.00
Unprovided meal period violations civil penalties	\$	115,500.00
Unprovided rest period violations civil penalties	\$	231,000.00
Untimely wages violations civil penalties	\$	231,000.00
Failure to keep accurate records civil penalties	\$	1,155,000.00
Faulty wage statement violations civil penalties	\$	231,000.00

Grand Total: \$ 3,741,524.07

EXHIBIT 7

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
4 Suite 303
5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
8 Email david@spivaklaw.com

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OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
10 (UNLIMITED JURISDICTION)

11 ALINA GHRDILYAN; EVGENIA
12 SULTANIAN; and all others similarly situated,

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

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

16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

26 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
27 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE
SPIVAK
LAW FIRM

1 “Defendants”) for violations of the California Labor Code, the applicable Industrial Welfare
2 Commission Order(s) (“Wage Order(s)”), and the California Business and Professions Code,
3 and as grounds therefore alleges:

4 **INTRODUCTION**

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 **PARTIES AND CONDUCT**

13 **A. Plaintiffs and Class Members**

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 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

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 CLASS ACTION ALLEGATIONS

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

30 **Meal Periods Class:** All persons employed by Defendants in California
31 who were not provided with uninterrupted thirty (30) minute meal periods
32 during each work period of five (5) or more hours during the period
33 beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 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

1 **Class**, and/or **Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class**, **Overtime Class**,
6 **Rest Periods Class**, **Meal Periods Class**, **Inaccurate Wage Statement**
7 **Class**, **Unauthorized Deduction Class**, **Former Employee Class**, and/or
8 **Indemnification Class**.

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 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

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 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

1 action cases.

2 19. A class action is vastly superior to other available means for fair and efficient
3 adjudication of the class members' claims and would be beneficial to the parties and the Court.
4 Class action treatment will allow a number of similarly situated persons to simultaneously and
5 efficiently prosecute their common claims in a single forum without the unnecessary duplication
6 of effort and expense that numerous individual actions would entail. In addition, the monetary
7 amounts due to many individual class members are likely to be relatively small and would thus
8 make it difficult, if not impossible, for individual class members to both seek and obtain relief.
9 Moreover, a class action will serve an important public interest by permitting class members to
10 effectively pursue the recovery of moneys owed to them. Further, a class action will prevent the
11 potential for inconsistent or contradictory judgments inherent in individual litigation.

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

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 §§

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 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

1 "Management Recognition Days," without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 FOURTH CLAIM FOR RELIEF

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 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

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 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

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 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

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days their earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 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

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 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

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 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

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24
25 ///

26
27 ///

1 M. Reasonable attorney's fees; and

2 N. Such other relief as the Court deems just and proper.

3
4 Respectfully submitted,

5 THE SPIVAK LAW FIRM

6
7
8 Date: February 23, 2010

By: 

DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 8

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLERED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 9



June 9, 2022

CASE ASSUMPTIONS

Class Members	362
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	361
Subtotal Admin Only	\$10,524.70

Not-to-Exceed Total \$8,000.00

For 362 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation & Mailing Included

Case: Rios-Roman v. Seasons Management, LLC, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: David G. Spivak
Firm: Spivak Law Firm
Contact Number: (213) 725-9094
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 **362** 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	45	\$90.00
NCOA (USPS)	\$60.00	1	\$60.00
Total			\$700.00

* 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	362	\$36.20
Notice Packet & Opt-Out Form	\$1.45	362	\$524.90
Estimated Postage (up to 2 oz.)*	\$0.73	362	\$264.26
Static Website	\$100.00	1	Included
Check Cashing Reminder Postcard	\$0.60	76	\$45.49
Postage Included			
Total			\$1,870.85

* 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	4		\$220.00
Skip Tracing Undeliverables	\$0.85	91		\$76.93
Remail Notice Packets	\$0.75	88		\$65.63
Estimated Postage	\$0.53	88		\$46.38
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$458.93

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	4		\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	7		\$70.00
Case Manager	\$85.00	3		\$255.00
Total				\$1,045.00

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	2		\$270.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	7		\$945.00
Mail Class Checks *	\$1.10	361		\$397.10
Estimated Postage	\$0.53	361		\$191.33
Total				\$2,438.43

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	4		\$460.00
Remail Checks & Tax Forms (Postage Included)	\$1.50	61		\$91.50
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	8		\$680.00
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
Uncashed Checks to the State of California Controllers Office Estimated <u>29</u> Total Class Members	\$300.00	1		\$300.00
Total				\$4,011.50

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$10,524.70



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 10

Case Name: Rios-Roman v. Seasons Management, LLC

Monday, April 4, 2022

Requesting Law Firm

Contact

E-Mail

ILYM Contact

E-Mail

Contact Number

The Spivak Law Firm

Avantika Ahuja

avantika@spivaklaw.com

Sean Hartranft

Sean@ilymgroupclassaction.com

949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	146
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
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CASE STARTUP

Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

*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 \$650.00

PROJECT MANAGEMENT

Project Manager (Case notification and maintenance)	Hourly	\$120.00	10	\$1,200.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	6	\$420.00
NCOA	Per Piece	\$150.00	1	\$150.00
Toll-Free Call Center	Flat Fee	\$440.20	1	\$440.20
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 \$4,420.20

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING

Fulfillment Notice, English & Spanish	Per Piece	\$2.00	146	\$292.00
USPS First Class Postage	Per Piece	\$0.55	146	\$80.30
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	29	\$73.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$745.30

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	10	\$1,500.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	10	\$1,250.00
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	\$2.00	146	\$292.00
USPS First Class Postage	Per Piece	\$0.55	146	\$80.30
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	\$2.00	146	\$292.00
USPS First Class Postage	Per Piece	\$0.55	146	\$80.30
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	\$2.00	146	\$292.00
USPS First Class Postage	Per Piece	\$0.55	146	\$80.30
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	44	\$87.60
Preparation of Taxes	Hourly	\$120.00	30	\$3,600.00
Annual Filing of Tax Return	Per Year	\$1,250.00	3	\$3,750.00

***Additional Bank fees may apply*

Subtotal \$11,304.50

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	9	\$900.00
Project Manager Final Reporting	Hourly	\$120.00	9	\$1,080.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	6	\$750.00

Subtotal \$3,480.00

Total Case Estimate: \$20,600.00

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 Client's 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 11

Case Name: Rios-Roman v Seasons Management, LLC

Date: **April 6, 2022**

All-In Settlement

Requesting Attorney: **Avantika Ahuja**

* Class Members: **146**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **The Spivak Law Firm**

Opt-Outs Received: **2**

Telephone: **(818) 582-3180**

Postage Total: **\$522.12**

Email: avantika@spivaklaw.com

Grand Total: **\$22,664.20**

***** DISCOUNTED FLAT FEE: \$15,000.00**

* 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 2 opt-out's filed. Any additional opt-out's filed above 2 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 / Spanish Translation / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	1	\$95.00
System Programming/Data Base Setup	\$150.00	1	\$150.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
		Total	\$2,245.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & 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	146	\$73.00
Mailing of Notice Pack	\$1.50	146	\$219.00
Estimated Postage (up to 2 oz.)*	\$0.78	146	\$113.88
		Total	\$745.88

*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	15	\$7.50
Skip Traces	\$1.25	13	\$16.25
Remail Packs	\$2.00	11	\$22.00
Estimated Postage (up to 2 oz.)	\$0.78	11	\$8.58
Clerical Staff	\$60.00	1	\$60.00
		Total	\$114.33

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	2	\$20.00
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	30	\$90.00
		Total	\$885.58

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	144	\$28.80
		Total	\$463.80

Disbursement - Phase 1

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2			
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	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.00	144	\$288.00
Estimated Postage (up to 1 oz.)	\$0.58	144	\$83.52
Reminder Postcard	\$0.35	94	\$32.76
Postage for Postcard	\$0.40	94	\$37.44
		Total	\$2,431.72

Post-Disbursement & Tax Reporting - Year 1

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Reporting			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	2	\$10.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.25	12	\$15.00
Remail Undeliverable Checks	\$2.50	12	\$30.00
Estimated Postage (up to 1 oz.)	\$0.58	14	\$8.12
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
CA Tax Preparation*	\$500.00	1	\$500.00
Annual Tax Reporting to IRS*	\$750.00	1	\$750.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
		Total	\$3,313.12

**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.*

Disbursement - Phase 2

Calculations / Data Management / Manage QSF / Print & Mail Checks, 1099/W-2			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	2	\$300.00
Project Manager-Correspond w/ Attorney	\$95.00	1	\$95.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.00	144	\$288.00
Estimated Postage (up to 1 oz.)	\$0.58	144	\$83.52
Reminder Postcard	\$0.35	94	\$32.76
Postage for Postcard	\$0.40	94	\$37.44
		Total	\$1,586.72

Post-Disbursement & Tax Reporting - Year 2

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Reporting			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	2	\$10.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.25	9	\$11.25
Remail Undeliverable Checks	\$2.50	9	\$22.50
Estimated Postage (up to 1 oz.)	\$0.58	11	\$6.38
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
CA Tax Preparation*	\$500.00	1	\$500.00
Annual Tax Reporting to IRS*	\$750.00	1	\$750.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
		Total	\$3,300.13

**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.*

Disbursement - Phase 3

Calculations / Data Management / Manage QSF / Print & Mail Checks, 1099/W-2			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	2	\$300.00
Project Manager-Correspond w/Attorney	\$95.00	1	\$95.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.00	144	\$288.00
Estimated Postage (up to 1 oz.)	\$0.58	144	\$83.52
Reminder Postcard	\$0.35	94	\$32.76
Postage for Postcard	\$0.40	94	\$37.44
		Total	\$1,586.72

Post-Disbursement & Tax Reporting - Year 3

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	1	\$5.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.25	4	\$5.00
Remail Undeliverable Checks	\$2.50	4	\$10.00
Estimated Postage (up to 1 oz.)	\$0.58	5	\$2.90
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*	\$500.00	1	\$500.00
Annual Tax Reporting to IRS*	\$750.00	1	\$750.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
		Total	\$3,872.90

**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	30	\$4.50
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	3	\$15.00
Estimated Postage (up to 1 oz.) for Reissue	\$0.58	3	\$1.74
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	\$2,118.30
		Grand Total:	\$22,664.20

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 12