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TINA CALDERON, and all others similarly situated

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

13
14 TINA CALDERON, on behalf of herself and as
an “aggrieved employee” on behalf of other
15 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

16 *Plaintiff,*

17
18 vs.

19 DAVIS GUEST HOME, INC., a California
corporation; LONNY GENE DAVIS; and DOES
20 1–50, inclusive,

21 *Defendants.*

Case No. CV-20-001500

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF TINA
CALDERON’S FIRST AMENDED
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Hearing Date: October 20, 2022
Hearing Time: 8:30 a.m.
Hearing Dept.: 21, The Honorable John
R. Mayne

Action filed: March 05, 2020
Trial Date: Not Set



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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF FIRST AMENDED**
2 **MOTION FOR APPROVAL OF PAGA 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
5 an attorney of record for Plaintiff Tina Calderon (“Plaintiff” or “Calderon”) in this action against
6 Defendant Davis Guest Home, Inc. (“Davis Guest Home, Inc.” or “Defendant”). I am a member
7 in good standing of the State Bar of California. Except as otherwise indicated, I have personal
8 knowledge of all matters set forth herein and, if called as a witness, could and would
9 competently testify thereto under oath.

10 2. A true and correct copy of the PAGA Settlement Agreement (the “Agreement”
11 or “PAGA Settlement” or “Settlement”) is attached hereto as **Exhibit 1**. A true and correct copy
12 of the parties agreed upon notice to the Aggrieved Employees (the “PAGA Notice”) is attached
13 hereto as **Exhibit 2**.

14 ***Factual and Procedural Background***

15 3. Defendants own and operate residential care facility. Defendants employed
16 Plaintiff as a direct care provider from about August 16, 2018 until December 19, 2019.

17 4. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
18 under PAGA. By letter dated February 27, 2020, Plaintiff, on behalf of herself and other
19 aggrieved hourly employees gave written notice by certified mail to the Labor and Workforce
20 Development Agency (“LWDA”) and Defendants of the specific provisions of the California
21 Labor Code alleged to have been violated, including the facts and theories to support the alleged
22 violations. A true and correct copy of Plaintiff’s letter to the LWDA is attached as **Exhibit 3**.

23 5. Plaintiff and the PAGA Members are subject to arbitration agreements with
24 Defendants. Plaintiff filed her lawsuit in Stanislaus County Superior Court on March 05, 2020.
25 A true and correct copy of Plaintiff’s Complaint is attached as **Exhibit 4**. On May 13, 2020,
26 Plaintiff filed a First Amended Complaint (“1AC”). A true and correct copy of Plaintiff’s First
27 Amended Complaint is attached as **Exhibit 5**. Plaintiff’s operative complaint presents one cause
28 of action for civil penalties under PAGA. Shortly after Plaintiff served her first set of discovery
requests, the Parties agreed to stay formal discovery and participate in mediation. On June 12,
2020, Defendants filed an answer to Plaintiff’s First Amended Complaint. A true and correct
copy of Defendants’ Answer to Plaintiff’s First Amended Complaint is attached as **Exhibit 6**.



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1 Defendants deny all of Plaintiff's allegations and strongly contend that their wage and hour
2 policies, practices and procedures are fully compliant with all applicable laws.

3 6. On February 19, 2021, the Parties participated in mediation with mediator
4 Tripper Ortman in an attempt to resolve the PAGA claim. The Parties engaged in arm's-length
5 negotiations and ultimately reached a resolution of the PAGA claims asserted in the Action. The
6 PAGA Settlement was reached after exchanges of data, information and documents, and is a
7 result of extensive arms-length negotiations. The Parties conducted informal discovery for
8 purposes of potential resolution through which they ascertained the size of the aggrieved
9 employee group and the number of pay periods worked by them during the PAGA Period to
10 ascertain the total value of Plaintiff's PAGA claim. Now that the parties have finalized the
11 PAGA Settlement, Plaintiff submits it to this Court for approval. The Court denied Plaintiff's
12 initial motion for approval of the Settlement due to the requested amount of the General Release
13 Payment and certain inconsistencies between the supporting documents. With this amended
14 motion, Plaintiff has corrected the supporting documents and is requesting only \$5,000 as
15 General Release Payment.

16 7. Notice is being given to the LWDA concurrently with the filing of this amended
17 motion. Here, notice is being given to the LWDA concurrently with the filing of this motion. A
18 true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is
19 attached as **Exhibit 7**.

20 8. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(1)(2).
21 The Court necessarily has broad discretion in making the decision to approve or reject a
22 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
23 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
24 of penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-
25 (2). Although the PAGA does not set forth the particular standards against which a PAGA
26 settlement should be evaluated, the LWDA has provided guidance for approval that mirrors the
27 standards for evaluating class action settlements.

28 9. The PAGA Settlement warrants a presumption of fairness for several reasons:
(1) The Parties reached the Settlement through arm's-length bargaining with the aid of a
respected mediator; (2) The Parties conducted sufficient investigation and discovery to allow
Counsel and the Court to act intelligently. Plaintiff requested and Defendants provided the



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1 number PAGA Members, the number of total pay periods during the PAGA Period, and all
2 policies in effect during the relevant time period; and (3) Counsel for the Parties are experienced
3 with PAGA cases.

4 10. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
5 with the absent Aggrieved Employees. Plaintiff contends that she is an adequate PAGA
6 representative. Plaintiff and the Aggrieved Employees have strong and co-extensive interests in
7 this litigation because they all worked for Defendant Davis Guest Home, Inc. during the relevant
8 time period under the same written and unwritten policies, allegedly suffered the same alleged
9 injuries from the same alleged course of conduct, and there is no evidence of any conflict of
10 interest between Plaintiff and the Aggrieved Employees. As this is a PAGA-only claim, there is
11 no issue of ascertainability. However, Plaintiff maintains that the number of Aggrieved
12 Employees is ascertainable because they may be identified by reference to Defendants' records
13 and Defendants have agreed to share the relevant information from their records to facilitate the
14 process. Therefore, the number of Aggrieved Employees and their whereabouts are
15 ascertainable.

16 ***Background of Counsel***

17 11. I am experienced in handling employment law matters and specifically wage and
18 hour cases. I have been practicing law since 1995. My experience has been almost exclusively
19 in the area of employment law representing employees with claims of wrongful termination,
20 harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical
21 leave violations. I have tried many cases before California and federal courts, government
22 agencies and neutral arbitrators. I am a member of the California Employment Lawyers
23 Association (CELA).

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

26 A. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
27 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
28 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*



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1 *Union-Tribune*, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced
2 Bias And Retaliation" by Valerie Alvord, *San Diego Union-Tribune*, May 16, 1998.

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

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

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

25 E. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
26 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
27 Customs Agent, followed by an award of Attorneys' fees and costs.

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



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1 resolved shortly thereafter by means of a confidential settlement.

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

10 13. I have been involved in the prosecution of numerous wage and hour class and
11 representative actions at various stages of litigation. A small sampling of the representative wage
and hour cases in which I have been counsel of record is as follows:

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

15 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-
16 2010-000382146 (appointed Class Counsel and granted final approval of class action settlement
by the court on behalf of nonexempt employees).

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

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

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

26 F. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058
27 (appointed Class Counsel and granted final approval by this Court of class action settlement on
28



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1 behalf of personal trainer employees).

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

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

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

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

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

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

20 M. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
21 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
22 settlement on behalf of call concert rigging employees).

23 N. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior
24 Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class
25 action settlement by the court on behalf of hourly employees).

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

P. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
BC511072 (appointed Class Counsel and granted final approval of class action settlement on



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1 behalf of bobtail truck drivers).

2 Q. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
3 BC431249 (granted class certification through contested motion and appointed Class Counsel
4 in case on behalf of former pharmacy employees based on late final wage payments in violation
5 of Labor Code §§ 201–203).

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

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

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

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

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

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

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

Exposure & Risk Analysis

14. I considered various sources of information in the lead-up to, during and after the
mediation that enabled Plaintiff to achieve the PAGA Settlement at issue. Among other things,



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1 I considered the following:

- 2 • Defendants produced and Plaintiff reviewed her personnel file.
- 3 • Defendants produced and Plaintiff reviewed and analyzed time and
- 4 payroll records for over 64 PAGA Members.
- 5 • Plaintiff requested that Defendants produce any and all relevant policies
- 6 regarding Plaintiff's claims and Defendants produced those policies in effect during the relevant
- 7 time period.
- 8 • Plaintiff interviewed other employees about the claims at issue.
- 9 • Plaintiff analyzed the state of caselaw on PAGA claims, claims for unpaid
- 10 wages, unprovided meal periods, unauthorized rest breaks, and related claims.
- 11 • Plaintiff surveyed the outcomes of PAGA cases that went to trial or
- 12 otherwise concluded before trial.

13 15. Defendants have posed valid defenses to the Labor Code claims underlying
14 Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty.
15 There is a risk that the Court would consider the maximum civil penalty available to be
16 confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
17 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
18 counsel estimated a maximum exposure of approximately \$6,300,000.00 in civil penalties. This
19 estimate did not take into account any of the risks discussed above and assumed a violation for
20 every single pay period. Plaintiff's counsel also assessed multiple penalties for the same pay
21 period for the same alleged violations of different Labor Code provisions and derivative
22 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
23 this fashion may be appropriate to determine the amount in controversy for purposes of removal
24 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
25 multiple PAGA penalties for the same violation for the same pay period under different Labor
26 Code provisions. This may be because the PAGA does not provide for what many employers
27 characterize as claim splitting and not merely stacking.

28 16. In preparation for mediation and during the settlement negotiations that followed,
Defendants disclosed that there were approximately 400 potentially aggrieved employees and
14,000 pay periods. The maximum possible civil penalties under the PAGA is the total number
of pay periods with one or more violations multiplied by the maximum possible civil penalty



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1 amount per pay period. Unfortunately for the employees concerned, the potential for recovery
2 of the maximum possible civil penalties depends on circumstances that are extremely unlikely
3 independently and in combination. It would depend on the Court stacking the maximum
4 recoverable civil penalties for unpaid overtime wages/unprovided meal periods, unprovided rest
5 breaks, unpaid minimum wages, inaccurate wage statements and untimely wages per pay period
6 for all 14,000 pay periods for all 400 potentially aggrieved employees during the PAGA Period.
7 Plaintiff's counsel is not aware of any California State court decision awarding a plaintiff and
8 the other aggrieved employees she represents multiple civil penalties for the same pay period
9 under different Labor Code provisions. Plaintiff's counsel had to substantially discount the value
10 of these claims in the settlement negotiations for this and a variety of other reasons (outlined
11 below).

12 17. **Risks Associated with Plaintiff's Claim That Defendants Failed To Pay All**
13 **Earned Wages at the Correct Rates of Pay.** There is a risk that Plaintiff's claim that
14 Defendants did not pay all wages at the correct rates of pay would be extremely limited at best,
15 largely because Defendants' written policies throughout the relevant time period prohibited off-
16 the-clock work. In their written employment policies, Defendants mandate that employees must
17 record all time worked accurately on their time records and strictly prohibit employees from
18 performing any work off-the-clock. Moreover, while Defendants dispute that off-the-clock work
19 occurred, they contend that any time spent off the clock was *de minimis*. Defendants contend
20 that the *de minimis* doctrine may apply here because the time spent off the clock were minute
21 and insignificant.

22 18. The difficulty inherent in proving that off-the-clock work occurred poses a
23 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
24 this claim. Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work
25 claim, especially given the lack of records indicating when such off-the-clock work may have
26 taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day,
27 to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis.
28 Accordingly, there is a significant risk that the Court would consider this evidentiary showing
insufficient as a methodology for all aggrieved employees.

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1 19. **Risks Associated with Plaintiff's Claim That Defendants Failed To Provide**
2 **All Meal Periods.** There are risks to Plaintiff's claims that Defendants failed to provide all meal
3 periods. Very few shifts were understaffed and consequently there were very few shifts in with
4 the meal period violation resulting for unavailable cover occurred. Also, Defendants contend that,
5 to establish a violation of the meal period law, a plaintiff must do more than show that a meal
6 break was not taken. Defendants contend they did not impede or discourage Plaintiff, or any other
7 employees, from taking their meal periods. Defendants' policies mandate that employees take at
8 least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their
9 meal breaks each day on their time records. The time records that comprise the random sample
10 Defendants produced to Plaintiff for purposes of mediation show that meal periods were taken
11 the vast majority of the time. Of the time records that show a late, short or no lunch, individualized
12 evidence may be necessary to determine whether they occurred due to conduct of the Defendants
13 or each of the employees concerned.

14 20. **Risks Associated with Plaintiff's Claim That Defendants Failed To Authorize**
15 **or Permit Rest Breaks.** There are risks to Plaintiff's claims that Defendants failed to authorize
16 or permit rest breaks. Very few shifts were understaffed and consequently there were very few
17 shifts in with the rest period violation resulting for unavailable cover occurred. Also, employers
18 are not required to record rest periods and such periods are paid. Defendants contend they
19 provided non-exempt employees the opportunity to take rest periods in accordance with
20 California law. Further, Defendants' written policies on meal and rest periods are consistent with
21 the Wage Order. Thus, unlike meal periods, where there are often records showing whether an
22 employee clocked out or not, there is no such evidence to prove a missed rest period or that the
23 employer refused to authorize and permit one. Managing such claims at trial has become
24 exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the
25 claims. While a victory with such evidence is certainly possible, relevant caselaw makes such
26 claims risky from a trial management and due process perspective.

27 21. **Risks Associated with Plaintiff's Claim That Defendants Failed To Issue**
28 **Accurate and Complete Wage Statements.** Plaintiff also asserts a claim for wage statement
violations. Under Labor Code section 226, wage statements must include various information,
including the applicable rates of pay, corresponding hours worked, and gross pay. Plaintiff's wage
statement claim has the same underlying risks as the above claims, as it is derivative of them. On



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1 their face, the wage statements issued by Defendants comply with the requirements of Labor Code
2 § 226. Further, to the extent that Plaintiff claims Defendants' wage statements were inaccurate
3 because they did not include premium payments for missed meal and rest breaks that Plaintiff
4 contends Defendants should have paid, Plaintiff's claims are subject to additional risks, as case
5 law suggests that such premium payments are not to be considered wages, and therefore do not
6 give rise to claims for statutory penalties. Moreover, the Court of Appeal's decision in *Naranjo*
7 *v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, holding that a defendant's failure
8 to pay meal premiums does not give rise to violations of Labor Code sections 226 or 203, was
9 pending before the California Supreme Court when the Parties negotiated the Settlement. *Naranjo*
10 *v. Spectrum Security Services, Inc.* 2020 Cal. LEXIS 167.

11 22. **Risks Associated with Plaintiff's Claim That Defendants Failed To Timely**
12 **Pay All Wages.** Plaintiff's claim that Defendants did not timely pay wages is predicated on Labor
13 Code §§ 201, 202, and 203. Defendants can argue based on the *Jones* and *Nguyen* decisions,
14 *supra*, that meal or rest premium pay is not a "wage" for purposes of Labor Code section 203
15 penalties. Further, in the recent decision *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40
16 Cal.App. 5th 1239, the Court of Appeal held that unlawful meal and rest periods under section
17 226.7 cannot serve as a basis for recovery of penalties under section 203. *Id.* at 1252 ("We
18 conclude that the administrative and legislative history of the statute indicates that . . . the
19 Legislature intended section 226.7 first and foremost to *compensate* employeesSection
20 226.7's additional hour of pay is a premium wage . . .not a penalty.") (internal citations and
21 quotation marks omitted). Under the *Loews* decision, it is highly unlikely that the Court will
22 permit untimely wage penalties for Defendants' alleged failure to provide meal and rest period
23 penalties.

24 23. **The Absence of Large Civil Penalty Awards under PAGA.** The sole source
25 of money recoverable for the PAGA Members and the State is civil penalties available under
26 PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so
27 long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above,
28 Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every
paycheck that Defendants issued to employees during the PAGA Period represents a pay period
in which every PAGA Member suffered a minimum wage violation; (2) Every paycheck that
Defendants issued to employees during the PAGA Period represents a pay period in which every



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1 PAGA Member suffered an overtime wage violation; (3) Every paycheck that Defendants issued
2 to employees during the PAGA Period represents a pay period in which every PAGA Member
3 suffered a meal period violation; (4) Every paycheck that Defendants issued to employees during
4 the PAGA Period represents a pay period in which every PAGA Member suffered a rest period
5 violation; and (5) Every paycheck that Defendants issued to employees during the PAGA Period
6 represents a pay period in which every PAGA Member suffered an unreimbursed expense
7 violation. There are no California state court decisions under the PAGA to date with substantial
8 awards of civil penalties. Plaintiff's counsel is aware of only two significant awards under the
9 PAGA in a contested proceeding, both issued by federal district courts, one of which was
10 overturned on May 28, 2021.¹

11 24. Additionally, PAGA states a court has discretion to award a lesser amount than
12 the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management,*
13 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that
14 the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by
15 Plaintiff's evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30
16 *Cal.App.5th* 504 ("Carrington") illustrates this. In that case, the Court of Appeal affirmed a trial

17 ¹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
18 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
19 the plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
20 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
21 suffered a particularly sizeable injury – the court found that the defendant's policies caused
22 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
23 *Bernstein*, who the court noted had received "millions of dollars from the state of California" to
24 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
25 compensate its flight attendants for work performed outside of "block time" (time during which
26 the aircraft is moving), including time spent participating in pre-flight briefings, boarding
27 passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
28 1055-1058. Indeed, defendant's liability was so clear in *Bernstein* that the case was resolved on
the plaintiffs' motion for summary judgment. *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
awarded approximately \$102 million in damages, primarily based on the Defendant's failures to
comply with the requirements of California Labor Code section 226. On May 28, 2021, the
United States Court of appeals for the Ninth Circuit overturned the decision finding that there is
no technical wage statement violation for a failure to list the rates and hours of pay associated
with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App.
LEXIS 16070 (9th Cir. May 28, 2021).



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1 court's heavily discounted award of only \$5 per violation because it was within the Court's
2 discretion to significantly reduce PAGA penalties even when there is a finding that a violation
3 of the California Labor Code occurred. Under *Carrington*, assuming one (1) violation for each
4 pay period for all PAGA Members, will result in a recovery of \$70,000.00 (14,000 pay periods
x 1 violation x \$5 = \$70,000.00).

5 25. Moreover, judges have awarded extremely small sums to PAGA claimants in the
6 past. In *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court, case number BC430633
7 in which I represented the Plaintiffs, the employer underpaid commission overtime wages. The
8 plaintiffs sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial,
9 the Honorable Judge Ronald M. Sohigian awarded \$325,000.00 in civil penalties under the
10 PAGA. A true and correct copy of the amended judgment in *Ghrdilyan* is attached as **Exhibit**
11 **8**. A true and correct copy of the complaint in *Ghrdilyan* is attached as **Exhibit 9**. A true and
12 correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 10**, 19:8-20:19. In a
13 similar PAGA case before the Los Angeles Superior Court, *Shields v. Security Paving Company,*
14 *Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court awarded the
15 prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result could occur here.
A true and correct copy of the judgment in *Shields* is attached as **Exhibit 11**.

16 26. Defendants could also convince the Court to dismiss the claims due to
17 unmanageability because determining whether each Aggrieved Employee worked off the clock
18 or why each employee missed a meal or rest period would require separate mini-trials. *Id. See,*
19 *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*,
20 the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4
(N.D. Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case
21 would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*,
22 and dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals
23 whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL
24 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D.
25 Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal.
26 2014) (bifurcating trial of plaintiff's claim from representative claims: “in light of the number
27 of potential aggrieved employees, judicial economy favors deferring the representative portion
of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May



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1 13, 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision
2 in *Wesson v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh'g
3 denied (Sept. 27, 2021) holding that trial courts have authority to ensure that claims under
4 PAGA are manageable, and that courts may limit or strike unmanageable PAGA claims.

5 27. While the evidence gathered through Plaintiff's discovery supports the merits of
6 the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the
7 risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the
8 cost of pretrial and trial proceedings, the Court's discretion to lower the amount of penalties
9 ultimately awarded, and the secured benefit to the PAGA Members and the LWDA promoting
10 compliance with the Labor Code.

11 28. At the time the Parties settled the case, the United States Supreme Court had
12 announced that, in the near future, it would hear the matter of *Viking River Cruises, Inc. v.*
13 *Moriana*, No. 20-1573, and decide whether or not to overrule the California Supreme Court's
14 decision in *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348 that a private arbitration
15 agreement cannot deprive an employee of his right to sue under PAGA in a court of law. The
16 Supreme Court in *Moriana* ultimately held that the employer could enforce the arbitration
17 agreement as to the employee's individual PAGA claim and that the employee lacked standing
18 to maintain her representative PAGA claims. *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct.
19 1906 (2022), reh'g denied, No. 20-1573, 2022 WL 3580311 (U.S. Aug. 22, 2022).²

20 29. Each PAGA Member will receive a portion of the civil penalties on a pro-rata
21 basis depending on the number of pay periods Defendant Davis Guest Home, Inc. employed
22 them for during the PAGA Period. Agreement, ¶ 6. With a total of approximately 400 PAGA
23 Members, the average estimated individual Settlement Payment for each PAGA Member is
24 approximately \$25.46 (\$10,184.41/400) PAGA Members). Attached as **Exhibit 17** to this
25 declaration is a spreadsheet that I prepared explaining how I calculated the average estimated
26 individual Settlement Payment. Although an average payment of \$25.46 per Aggrieved
27 Employee is not an enormous sum of money, it is an excellent result given the uncertainties this

28 ² The California Supreme Court recently granted review and ordered briefing in *Adolph v. Uber Technologies, Inc.* (Cal. Sup. Ct. Case No. S274671) on the question whether a plaintiff continues to have standing to pursue the remedies available to the LWDA even if compelled to arbitrate his individual PAGA claim.



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lawsuit entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA is not a restitution statute with a traditional damages provision designed to restore victims to the position they would have been in had the Labor Code violations not taken place. Rather, it is at best a punishment statute designed to reduce future Labor Code violations. It provides for civil penalties only.

30. Further, PAGA obligates the prevailing plaintiff to disburse 75% of the civil penalties collected to the State. Within the framework she is bound by, Plaintiff, considering the evidence she faced, achieved a phenomenal result for the employees concerned. What's more, the Settlement Plaintiff achieved permits the employees concerned who are dissatisfied with the amount they received in civil penalties to pursue any unpaid restitution, wages, interest, statutory penalties, and attorney fees and costs they believe they are owed in arbitration pursuant to their agreements with the Defendants. The Settlement does not require them to opt out to do so. As such, there is no basis for objection even if the PAGA permitted it.

Attorneys' Fees and Costs

31. My co-counsel and I intend to request attorneys' fees of \$33,000.00 (1/3 of the Gross Settlement Amount) and up to \$11,772.37 in litigation expenses. The written retainer agreement I entered into with Plaintiff provides that I may elect to recover either (a) statutorily awarded attorney fees or (b) up to 40% of any recovery.

32. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's Counsel's fee request of \$33,000.00 (one-third of the Gross Settlement Amount) is fair and reasonable based on their lodestar as cross-checked against the percentage of the recovery. In this case, Plaintiff's Counsel have a total lodestar of approximately \$116,369.15 without the use of any multiplier, which results in a negative multiplier of 0.284 when compared against the \$33,000.00 fee request. A true and correct summary of the time records of my firm is attached as **Exhibit 12** to this declaration. I will make the detailed copies of such records available to the Court for in camera inspection upon its request. I will have waited for a lengthy period to be awarded attorneys' fees for work performed since Plaintiff first contacted my office, compared to Defendants' counsel who have been paid as they performed work during this case. Moreover, my co-counsel and I have expended time, effort, and money that we could have expended on less risky cases instead.



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1 33. My firm's current litigation costs total approximately \$11,761.27. A true and
2 correct summary of my firm's costs and expense is attached as **Exhibit 13** to this declaration.
3 Including the out-of-pocket expenses incurred by my co-counsel³, Plaintiff's Counsel request a
4 total of \$11,772.37 in reasonable litigation costs.⁴

5 34. In addition, based on my experience in wage and hour class action and PAGA
6 matters, fee awards of approximately one-third of the settlement fund are routinely approved as
7 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund
8 in several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin
9 County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*,
10 San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund);
11 *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-
12 third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court,
13 Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San
14 Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The*
15 *Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of
16 fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-
17 00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*,
18 Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*,
19 Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services*
20 *Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v.*
21 *HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of
22 fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case No. BC431249
23 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
24 Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*,
25 Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los

24 ³ My co-counsel's current out of pocket expenses total approximately \$11.10. See Haines Decl.
25 ¶ 10.

26 ⁴ My co-counsel and I do not seek reimbursement for photocopy costs, Westlaw or LexisNexis
27 costs, or any future costs that we anticipate spending for the filing of this motion or notice of
28 entry of order. We also do not seek reimbursement for the wages we paid to the attorneys,
paralegals, and legal assistants to aid in the representation of the Class. We bore these expenses
over the time since this lawsuit began without expectation of reimbursement.



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1 Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los
2 Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct.,
3 Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct.,
4 Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct.,
5 Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court,
6 Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v.*
7 *National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of
8 fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado,
9 Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/*
10 *Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California,
11 Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard*
12 *Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris*
13 *v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038
14 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808
15 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
16 1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino
17 Superior Court, Case No. CIVDS1500146 (one-third of fund).

18 35. My previous experience in litigating wage and hour class and representative
19 actions supports the reasonableness of the fee request, as does the caliber of opposing counsel.
20 My previous experience in similar matters was integral in evaluating the strengths and
21 weaknesses of the case against Defendants and the reasonableness of the Settlement. Practice in
22 the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly
23 evolving substantive law, state and federal, as well as the procedural law of class action
24 litigation. Because it is reasonable to compensate me commensurate with my skill, reputation,
25 and experience, attorneys' fees of approximately one-third of the Gross Settlement Amount is
26 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
27 litigation support the fairness and reasonableness of the requested fee award.

Plaintiff's General Release Payment

28 36. Plaintiff's requested General Release Payment in the amount of \$5,000.00 is
being paid to Plaintiff as PAGA Representative for her general release and service to the State
of California and the PAGA Members in prosecuting the Action.



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1 37. There is authority for the General Release Payment to Plaintiff. While the
2 statutory language of the PAGA is silent on the issue of incentive awards to named Plaintiff, it
3 nonetheless provides implicit support for incentive payments to named Plaintiff. Moreover,
4 language from the Ninth Circuit Court of Appeals and recent California district court caselaw
5 indicates that such awards are permitted.

6 38. The language of PAGA provides implicit support for the provision of incentive
7 awards to PAGA representatives. Labor Code § 2699(i) directs that civil penalties recovered
8 under PAGA are to be distributed “75 percent to the Labor and Workforce Development Agency
9 ... and 25 percent to the aggrieved employees.” Nothing in Labor Code § 2699(i) indicates that
10 the distribution of the 25% payable to the aggrieved employees must be made on a strictly pro
11 rata basis – the statute simply directs the overall portion that must be paid out to “aggrieved
12 employees.” To be clear, Plaintiff is not suggesting that he alone of the Aggrieved Employees
13 is entitled to recovery. However, a modest incentive award to Plaintiff over and above that
14 provided to the other Aggrieved Employees is merited given the additional time, effort, and
15 reputational risk undertaken by Plaintiff in this case and is permissible under the language of
16 PAGA above.

17 39. Further, Labor Code § 2699(g)(1), which sets forth permissible forms of recovery
18 by an aggrieved employee (such as filing fees, reasonable attorney’s fees and costs), states that
19 “[n]othing in this part shall operate to limit an employee’s right to pursue or recover other
20 remedies available under state or federal law, either separately or concurrently with the action
21 taken under this part.” Insofar as the incentive award here at issue may be considered an “other
22 remedy” sought by Plaintiff concurrent with the action taken under PAGA, the award should be
23 upheld pursuant to Labor Code § 2699(g)(1).

24 40. Finally, under Labor Code § 2699.3(C)(4), “the superior court shall review and
25 approve any proposed settlement of alleged violations ... to ensure that the settlement provisions
26 are at least as effective as the protections or remedies provided by state and federal law or
27 regulation for the alleged violation.” The incentive award sought is in part an effective means
28 of ensuring that an employer adheres to the Labor Code. This section also states that “[t]his
requirement shall be construed to authorize and permit the division to comment on those
settlement provisions, and the court shall grant the division’s commentary the appropriate
weight.” The Parties have notified the LWDA of the instant settlement and dismissal, and the



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1 LWDA has not opposed the inclusion of a General Release Payment for Plaintiff. Given that the
2 LWDA has not opposed the General Release Payment, there is no reason for the Court to do so,
3 either. Indeed, to the extent that the LWDA's silence may be construed as a tacit approval of the
4 settlement agreement, that approval is entitled to the "appropriate weight" upon review by this
5 Court.

6 41. California federal district court decisions recognize that incentive awards may be
7 awarded in PAGA-only representative actions. In *Mancini v. W.&S. Life Ins. Co.*, the court noted
8 that the plaintiff had "asserted no non-PAGA claims." *Mancini v. W.&S. Life Ins. Co.* (S.D. Cal.
9 2018) U.S. Dist. LEXIS 160320 at *7. The settlement agreement under consideration provided
10 for \$5,000 as "an incentive award to Plaintiff for his status as the PAGA representative." *Id.* at
11 *7. The district court took no issue with the fact that the case involved claims solely under
12 PAGA, instead holding that the terms of the settlement agreement – including "the provision[]
13 for incentive awards" – were "reasonable." *Id.* at *5.

14 42. Further, in *Bruce v. Del Monte Foods, Inc.*, the district court granted an incentive
15 award to the named plaintiff out of a settlement sum "treated exclusively as a civil penalty under
16 PAGA." *Bruce v. Del Monte Foods, Inc.* (N.D. Cal. 2018) U.S. Dist. LEXIS 53800 at *1.
17 Although the court ultimately reduced the named plaintiff's requested incentive award,
18 cautioning that "enhancement or incentive awards are to be treated with skepticism[,] the court
19 nonetheless granted an additional award to the named plaintiff, noting that the named plaintiff
20 had made representations about "possible injury and expense above and beyond" that sustained
21 by other Plaintiff. *Id.* at *7.

22 43. Moreover, language from the Ninth Circuit Court of Appeals and recent
23 California district court caselaw indicates that such awards are permitted. The Ninth Circuit
24 Court of Appeals has stated that enhancement payments provided to named plaintiffs can serve,
25 among other functions, to "recognize [a representative's] willingness to act as a private attorney
26 general." *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958. Although made in
27 the context of a class action settlement, the Ninth Circuit's observation should extend to suits
28 asserting claims solely PAGA; *see also Hamilton v. Juul Labs, Inc.*, No. 20-CV-03710-EMC,
2021 WL 5331451, at *14 (N.D. Cal. Nov. 16, 2021) (approving a \$10,000 service award and
explaining that "Service payments to plaintiffs are appropriate in representative litigation,
including class cases, derivative cases (where an individual sues on behalf of a legal entity), and



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PAGA cases (where an individual sues on behalf of the State)” and that “Courts may grant service awards beyond the presumptively reasonable amount of \$5,000 if the circumstances so warrant.”); *Parker v. Cherne Contracting Corp.*, No. 18-CV-01912-HSG, 2021 WL 5834227, at *9 (N.D. Cal. Dec. 9, 2021)(approving \$20,000 “General Release Payments” that were awarded to plaintiffs in addition to service awards of \$5,000 to each plaintiff). The efforts and risks that Plaintiff undertook on behalf of the PAGA Members show that the proposed General Release Payment to Plaintiff is fair, adequate, and reasonable, and thus warrants approval.

44. Plaintiff’s General Release Payment of \$5,000.00 is entirely reasonable given Plaintiff’s efforts in the Lawsuit and the risks she undertook on behalf of the PAGA Members. *See generally* Calderon Decl. Plaintiff devoted many hours advancing the interests of the PAGA Members. *Id.* Plaintiff has done this, by, among other things, retaining experienced counsel, providing them with information about her work history with Defendants, assisting in contacting absent PAGA Members to gather information, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the PAGA Members as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants’ attorneys’ fees and costs if this action had been unsuccessful and in bad faith (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the PAGA Members show that the proposed General Release Payment to Plaintiff is fair, adequate, and reasonable, and thus warrants approval. *See generally* Calderon Decl.

Settlement Administration Duties

45. The duties of the Settlement Administrator are spelled out in the in the bid by ILYM Group, Inc. (“ILYM Group, Inc.”), a true and correct copy of which is attached as **Exhibit 14.**

46. With regard to the Third-Party Settlement Administration Fees provision, it is reasonable. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids:

- A. CPT Group, Inc. = \$8000.00; and
- B. CACAI, Inc. = \$16591.00.

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1 A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 15**. A true
2 and correct copy of the bid from CACAI, Inc. is attached hereto as **Exhibit 16**. Thus, settlement
3 administration costs provision should be given approval.

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

6 Executed on Friday, September 09, 2022 at Los Angeles, California.

7 

8 DAVID SPIVAK,
9 Declarant



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8 Attorneys for Plaintiff(s),
9 TINA CALDERON, and all others similarly situated
(Additional attorneys for parties on following page)

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

14 TINA CALDERON, as an "aggrieved employee"
15 on behalf of herself and other "aggrieved
employees" under the Labor Code Private
16 Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 DAVIS GUEST HOME, INC., a California
20 corporation; LONNY GENE DAVIS, and
individual; and DOES 1-50, inclusive,

21 *Defendant(s).*
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Case No. CV-20-001500

PAGA SETTLEMENT AGREEMENT

Action 3/5/2020

filed:

Dept: 21 The Honorable John R.
Mayne

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
 walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
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ATTORNEYS FOR DEFENDANT(S)

SAT SANG KHALSA (SBN 256130)
 skhalsa@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
275 Battery St, Ste 2000

San Francisco, CA 94111-3367
Telephone: (213) 270-7841
Facsimile: Fax: (213) 680-4470

Attorneys for Defendant(s),
DAVIS GUEST HOME, INC. and LONNY GENE DAVIS

1 Subject to Court approval by the Superior Court for the State of California, County of
2 Stanislaus ("Court"), Plaintiff Tina Calderon ("Plaintiff") and Defendants Davis Guest Home,
3 Inc. and Lonny Gene Davis (collectively "Defendants") (collectively, Plaintiff and Defendants
4 are the "Parties") hereby agree to the following binding settlement ("Settlement" or "Settlement
5 Agreement" or "Agreement") of the PAGA claims in the action entitled *Tina Calderon v. Davis
6 Guest Home, Inc.*, Stanislaus County Superior Court, case no. CV-20-001500 (the "Action").

7
8 **PAGA MEMBERS BY THE SETTLEMENT**

9 1. **PAGA Members:** All current or former non-exempt employees who worked for
10 Defendant Davis Guest Home, Inc. in the State of California from February 27, 2019 to January
11 31, 2022.

12 2. **PAGA Period:** February 27, 2019 through January 31, 2022 (the "PAGA
13 Period").

14 3. **Effective Date:** The effective date ("Effective Date") of this Agreement shall be
15 the last to occur of the following that apply: (a) if no objections to the Settlement are filed, the
16 date the Court approves the Settlement; (b) if there are objections filed, but no appeal is taken on
17 the Court's order approving the Settlement, sixty-five (65) calendar days after the date of entry
18 of an order and judgment approving this Settlement; (c) if there are intervenors to the Action,
19 and if an appeal, review or writ is not sought from the order granting approval of the settlement,
20 then upon the expiration date of the time for the filing or noticing of any appeal from, or other
21 challenge to, the judgment; or (d) if an appeal, review or writ is sought from the judgment, thirty
22 (30) calendar days after the judgment is affirmed or the appeal, review or writ is dismissed or
23 denied, and the judgment is no longer subject to further judicial review. Prior to the Effective
24 Date of the Settlement, Defendants will not be required to fund the Settlement, in whole or in
25 part, through the Settlement Administrator or any third party. If PAGA Counsel were to appeal
26 a ruling with respect to fees or costs, such appeal shall not affect the Effective Date and the
27 Settlement Administrator shall reserve such funds sufficient to cover the dispute. Any subsequent
28 distribution shall be at PAGA Counsel's expense. If the Effective Date falls on a holiday or
weekend, the Effective Date shall be the next calendar day.

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1 Agreement based on such representations. In the event it is determined that the actual number of
2 pay periods exceeds 14,000 by more than 10 percent and at Plaintiff's option, the Parties shall
3 agree to engage in a good faith effort to renegotiate the Gross Settlement Amount. If the
4 renegotiation is unsuccessful, Plaintiff has the right to declare the settlement null and void.

5 6. **Distribution of the Net Settlement Amount.** The Net Settlement Amount shall
6 be designated as PAGA penalties in full satisfaction of all claims for PAGA civil penalties under
7 the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to
8 have been violated in or reasonably related to the operative Complaint with respect to PAGA
9 Members, allocated between the LWDA and the PAGA Members pursuant to Labor Code
10 Section 2699(i) with 75.0% paid to the LWDA and 25.0% paid to the PAGA Members on a pro-
11 rata basis ("PAGA Penalties Fund"). The 25.0% of the Net Settlement Amount will be paid to
12 all PAGA Members according to the following formula: Settlement Payment to each PAGA
13 Member = \$[25.0% of Net Settlement Amount] × [Pay Periods Worked by Individual PAGA
14 Member During PAGA Period ÷ Total Pay Periods Worked by All PAGA Members during
15 PAGA Period].

16 7. **Settlement Administration.** Settlement Administrator ILYM Group, Inc., or as
17 otherwise agreed to by the Parties and approved by the Court, will administer this Settlement and
18 will be responsible for issuing payments and appropriate tax forms to PAGA Members, the
19 LWDA, Plaintiff, and PAGA Counsel. The estimate of costs of administration for the
20 disbursement of the PAGA Penalties Fund is no more than \$10,000.00. If less than \$10,000.00
21 is spent on the Settlement Administrator, the unused funds will be re-allocated to the Net
22 Settlement Amount.

23 8. **Court Approval of the Settlement and Distribution of Settlement Payments.**
24 The Parties will present this Settlement Agreement to the Court and will request that the Court
25 issue a Court Approval Order and Judgment approving and incorporating by reference the terms
26 and conditions of the Settlement Agreement (the "Court Approval Order and Judgment"),
27 dismissing the Action with prejudice, and entering judgment. The Parties shall submit this
28 Settlement Agreement for the Court's approval by a motion which Plaintiff will undertake that
responsibility.

1 9. **Notice to LWDA.** Pursuant to California Labor Code § 2699(l)(1), Plaintiff shall
2 submit to the LWDA a copy of this Settlement Agreement and all supporting approval documents
3 at the same time that Plaintiff submits it to the Court for approval.

4 10. **Funding of the Settlement.** Within thirty (30) calendar days after the Effective
5 Date and notice by the Court or Plaintiff that the Action has been dismissed with prejudice,
6 Defendants shall deposit the Gross Settlement Amount with the Settlement Administrator, who
7 shall issue payment to PAGA Counsel and Plaintiff within twenty (20) calendar days of receipt
8 of the Gross Settlement Amount. Within ten (10) calendar days after the Effective Date,
9 Defendants shall provide the Settlement Administrator with a list of all PAGA Members with
10 each listed employee's full name, hiring, and, if applicable, termination dates in connection with
11 the employee's employment with Defendants during the PAGA Period, last known mailing
12 address, and social security number. Within twenty (20) calendar days of receipt of the list of all
13 PAGA Members, the Settlement Administrator shall run all the addresses of PAGA Members
14 through the United States Postal Service NCOA database to obtain current address information,
15 and issue payments to (a) PAGA Members; (b) the LWDA; and (c) itself. The Settlement
16 Administrator will skip-trace return mail and re-mail within five (5) calendar days. The
17 Settlement Administrator will issue the appropriate tax forms for all payments issued under this
18 Settlement. If the Effective Date falls on a holiday or weekend, the Effective Date shall be the
19 next calendar day.

20 11. **Settlement Payments to PAGA Members:** The Settlement Administrator will
21 issue each PAGA Member a check for his or her share of the Net Settlement Amount along with
22 an explanatory letter in the form attached as Exhibit A. Checks will remain negotiable for one
23 hundred eighty (180) days. Any checks returned as non-deliverable on or before the check
24 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
25 affixed thereto. Funds represented by settlement checks returned as undeliverable and those
26 settlement checks remaining un-cashed for more than 180 days after issuance shall be paid to the
27 California State Controller's Office Unclaimed Property Fund with an identification of the
28 amount of unclaimed funds attributable to each PAGA Member. The Parties do not bear any
liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of
checks. Unless responsible by its own acts of omission or commission, the same is true for the

1 Settlement Administrator. All settlement payments to PAGA Members will be treated as
2 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement
3 Administrator if required by law.

4 12. **Release of Plaintiff's Individual Claims**: Plaintiff acknowledges the existence
5 of and, with respect to the release given in Paragraph 12 herein, expressly waives and relinquishes
6 any and all rights and benefits Plaintiff has or may have under California Civil Code, Section
7 1542, which provides:

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

13 Plaintiff acknowledges that she may hereafter discover facts different from or in addition to those
14 which she or her attorneys now know or believe to be true with respect to the matters released in
15 this settlement, and agrees that the release so given in Paragraph 12, shall be and remain in effect
16 as a full and complete release of all claims, notwithstanding any such different or additional facts.

17 13. **Settled and Released PAGA Claims**. As of and subject to the occurrence of the
18 Effective Date, and in consideration for the Gross Settlement Amount, the claims settled, fully
19 released and forever discharged by the LWDA and the PAGA Members, including Plaintiff,
20 constitute any and all claims for civil penalties Plaintiff, the PAGA Members, and the State of
21 California may have against the Released Parties under the California Labor Code, Wage Orders,
22 regulations, and/or any other provisions of state and federal law arising from allegations that the
23 PAGA Members suffered Labor Code violations based on , and any other Labor Code violations
24 that were alleged in the Action, or that could have been alleged in the Action based on the facts
25 alleged in the Action, which includes, but is not limited to, alleged violations of Labor Code
26 sections , and 2698 *et seq.* ("PAGA Released Claims"). The "Released Parties" are Lonny Gene
27 Davis and Davis Guest Home, Inc. and their present and former parent companies, subsidiaries,
28 divisions, concepts, related or affiliated companies, and their shareholders, officers, directors,
employees, agents, attorneys, insurers, successors and assigns, and all persons acting by or
through or in concert with any of them, and each of them (hereinafter "Released Parties").

1 14. **No Credit Toward Benefit Plans.** Payments to PAGA Members as referenced
2 herein will not be utilized to calculate any additional benefits under any benefit plans to which
3 any PAGA Member may be eligible, including, but not limited to profit-sharing plans, bonus
4 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
5 other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
6 affect any rights, contributions, or amounts to which any PAGA Member may be entitled under
7 any benefit plans.

8 15. **No Prior Assignments.** The Parties and their counsel represent, covenant, and
9 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
10 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
11 demand, action, cause of action or right herein released and discharged.

12 16. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not
13 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
14 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,
15 will be null and void, and the Parties will be returned to their original respective positions.

16 17. **Continued Jurisdiction.** After entry of the Court Approval Order and Judgment,
17 the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6
18 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the
19 Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval matters as
20 may be appropriate under court rules or as set forth in this Settlement.

21 18. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the
22 Parties' settlement terms regarding the Action. No other prior or contemporaneous written or oral
23 agreements may be deemed binding on the Parties.

24 19. **Amendment or Modification.** This Settlement Agreement may be amended or
25 modified only by a written instrument, signed by either all the Parties or their successors-in-
26 interest or counsel for all Parties.

27 20. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
28 warrant and represent they are expressly authorized by the Parties whom they represent to

1 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
2 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
3 execute any other documents required to effectuate the terms of this Settlement Agreement. The
4 Parties and their counsel will cooperate with each other and use their best efforts to effect the
5 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
6 content of any document needed to implement the Settlement, or on any supplemental provisions
7 that may become necessary to effectuate the terms of this Settlement, the Parties may seek the
8 assistance of the Court to resolve such disagreement.

9 21. **Binding on Successors and Assigns.** This Settlement Agreement will be binding
10 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
11 defined.

12 22. **California Law Governs.** All terms of this Settlement Agreement and Exhibit(s)
13 hereto will be governed by and interpreted according to the laws of the State of California.

14 23. **Execution and Counterparts.** This Settlement Agreement is subject only to the
15 execution of all Parties. However, the Settlement Agreement may be executed in one or more
16 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
17 of the signature page, will be deemed to be one and the same instrument.

18 24. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties
19 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
20 and have arrived at this Settlement after arm's-length negotiations by experienced counsel before
21 Francis J. "Tripper" Ortman, an experienced and well-respected mediator who focuses on
22 mediation of employment matters involving alleged wage and hour violations. The Parties further
23 acknowledge that they are each represented by competent counsel and that they have had an
24 opportunity to consult with their counsel regarding the fairness and reasonableness of this
25 Settlement.

26 25. **Denial of Liability.** The Parties expressly recognize that the making of this
27 Settlement Agreement does not in any way constitute an admission or concession of wrongdoing
28 on the part of Defendants, the Released Parties, or Plaintiff. Nothing in this Settlement, nor any

1 action taken in implementation thereof, nor any statements, discussions or communications, nor
2 any materials prepared, exchanged, issued or used during the course of this Action, is intended
3 by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible
4 in any way in any other judicial, arbitral, administrative, investigative or other forum or
5 proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance,
6 regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding
7 the foregoing, this Settlement Agreement may be used in any proceeding in the Court that has as
8 its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or
9 judgments of the Court entered into in connection therewith.

10 26. **Invalidity of Any Provision**. Before declaring any provision of this Settlement
11 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
12 extent possible consistent with applicable precedents so as to define all provisions of this
13 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement or
14 the application thereof is held invalid, the invalidity shall not affect other provisions or
15 applications of this Settlement Agreement which can be given effect without the invalid
16 provisions or application and, to this end, the provisions of this Settlement Agreement are
17 declared to be severable. Notwithstanding the foregoing, no portion of any release contained
18 herein may be deemed severed or deleted from this Agreement, except upon waiver in writing
19 by the applicable party.

20 27. **Captions**. The captions and section numbers in this Settlement Agreement are
21 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
22 or intent of the provisions of this Settlement Agreement.

23 28. **Waiver**. No waiver of any condition or covenant contained in this Settlement
24 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
25 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
26 right or remedy.

27 29. **Enforcement Action**. In the event that one or more of the Parties institutes any
28 legal action or other proceeding against any other Party or Parties to enforce the provisions of
this Settlement or to declare rights and/or obligations under this Settlement, the successful Party

1 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
2 fees and costs, including expert witness fees incurred in connection with any enforcement
3 actions.

4 30. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the
5 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will
6 not be construed more strictly against one party than another merely by virtue of the fact that it
7 may have been prepared by counsel for one of the Parties, it being recognized that, because of
8 the arms-length negotiations between the Parties, all Parties have contributed to the preparation
9 of this Settlement Agreement.

10 31. **Representation By Counsel.** The Parties acknowledge that they have been
11 represented by counsel throughout all negotiations that preceded the execution of this Settlement
12 Agreement, and that this Settlement Agreement has been executed with the consent and advice
13 of counsel, and reviewed in full.

14 32. **Cooperation and Execution of Necessary Documents.** All Parties will
15 cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate
16 the terms of this Settlement Agreement.

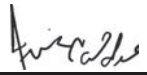
17 33. **Binding Agreement.** The Parties warrant that they understand and have full
18 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
19 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
20 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
21 provisions that otherwise might apply under federal or state law.

22 34. **Confidentiality.** The Parties and their counsel agree that they will not issue any
23 press releases, initiate any contact with the press, respond to any press inquiry or have any
24 communication with the press about the fact, amount or terms of the Settlement. PAGA Counsel
25 may respond to press inquiries by stating the matter has been resolved and refer the press to court
26 filings. In addition, PAGA Counsel agree that they will not engage in any advertising or distribute
27 any marketing materials specifying any material terms specifically relating to the Settlement of
28 this case, including but not limited to any postings on any websites maintained by PAGA

Counsel. Any communication about the Settlement to PAGA Members will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming notice letter in the form attached hereto as Exhibit A. Plaintiff is prohibited from discussing the terms or the fact of this PAGA Settlement with third parties other than (1) her immediate family members, and (2) her respective accountants or lawyers as necessary for tax purposes. Nothing herein shall restrict PAGA Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience.

04 / 11 / 2022

DATE


Tina Calderon, Plaintiff

DATE

Lonny Gene Davis for himself and
Defendant Davis Guest Home, Inc.

APPROVED AS TO FORM

THE SPIVAK LAW FIRM

DATE

David Spivak for Plaintiff(s) Tina Calderon

UNITED EMPLOYEES LAW GROUP

DATE

Walter L. Haines for Plaintiff Tina Calderon

**GORDON REES SCULLY
MANSUKHANI, LLP**

DATE

Sat Sang Khalsa for Defendants Davis Guest
Home, Inc. and Lonny Gene Davis

Counsel. Any communication about the Settlement to PAGA Members will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming notice letter in the form attached hereto as Exhibit A. Plaintiff is prohibited from discussing the terms or the fact of this PAGA Settlement with third parties other than (1) her immediate family members, and (2) her respective accountants or lawyers as necessary for tax purposes. Nothing herein shall restrict PAGA Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience.

DATE

Tina Calderon, Plaintiff

DATE

Lonny Gene Davis for himself and
Defendant Davis Guest Home, Inc.

APPROVED AS TO FORM

THE SPIVAK LAW FIRM

04 / 12 / 2022



DATE

David Spivak for Plaintiff(s) Tina Calderon

UNITED EMPLOYEES LAW GROUP

DATE

Walter L. Haines for Plaintiff Tina Calderon

**GORDON REES SCULLY
MANSUKHANI, LLP**

DATE

Sat Sang Khalsa for Defendants Davis Guest
Home, Inc. and Lonny Gene Davis

Counsel. Any communication about the Settlement to PAGA Members will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming notice letter in the form attached hereto as Exhibit A. Plaintiff is prohibited from discussing the terms or the fact of this PAGA Settlement with third parties other than (1) her immediate family members, and (2) her respective accountants or lawyers as necessary for tax purposes. Nothing herein shall restrict PAGA Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience.

DATE

Tina Calderon, Plaintiff

DATE

Lonny Gene Davis for himself and
Defendant Davis Guest Home, Inc.

APPROVED AS TO FORM

THE SPIVAK LAW FIRM

DATE

David Spivak for Plaintiff(s) Tina Calderon

UNITED EMPLOYEES LAW GROUP

April 12, 2022

DATE


Walter L. Haines for Plaintiff Tina Calderon

**GORDON REES SCULLY
MANSUKHANI, LLP**

DATE

Sat Sang Khalsa for Defendants Davis Guest
Home, Inc. and Lonny Gene Davis

Counsel. Any communication about the Settlement to PAGA Members will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming notice letter in the form attached hereto as Exhibit A. Plaintiff is prohibited from discussing the terms or the fact of this PAGA Settlement with third parties other than (1) her immediate family members, and (2) her respective accountants or lawyers as necessary for tax purposes. Nothing herein shall restrict PAGA Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience.

DATE

Tina Calderon, Plaintiff

DATE

Lonny Gene Davis for himself and
Defendant Davis Guest Home, Inc.

APPROVED AS TO FORM

THE SPIVAK LAW FIRM

DATE

David Spivak for Plaintiff(s) Tina Calderon

UNITED EMPLOYEES LAW GROUP

DATE

Walter L. Haines for Plaintiff Tina Calderon

**GORDON REES SCULLY
MANSUKHANI, LLP**

DATE

Sat Sang Khalsa for Defendants Davis Guest
Home, Inc. and Lonny Gene Davis

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EXHIBIT A

EXHIBIT 2

1 **NOTICE OF PAGA SETTLEMENT**

2 *Tina Calderon v. Davis Guest Home, Inc.*
3 *(Superior Court of California, Stanislaus County)*
4 *Case No. CV-20-001500*

5 <<ILYM Group, Inc.>>

6 []

7 []

8 Telephone: []

9 «Barcode» «BarcodeString»

10 SIMID «SIMID»

11 «FirstName»

12 «LastName»

13 «Address1» «Address2»

14 «City» «State» «Zip»

15 You are receiving this notice as a result of a lawsuit brought on a representative basis
16 under the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA") ("the Action").
17 The plaintiff in the Action is Tina Calderon ("Plaintiff") and the defendants are Davis Guest
18 Home, Inc. and Lonny Gene Davis ("Defendants"). The Action seek civil penalties for purported
19 violations of the California Labor Code on behalf of all Defendants' current and former
20 California non-exempt employees ("PAGA Members") who Defendants employed during the
21 PAGA Period of February 27, 2019 through January 31, 2022. Defendants deny all claims and
22 allegations in the Action, deny that they owe any penalties, and assert that they have fully
23 complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time
24 in defending the Action, Defendants have settled the case and the Court has approved the
25 settlement and release of claims. By settling the Action, Defendants are not admitting that they
26 have done anything wrong. As of and subject to the occurrence of the Effective Date of the
27 Settlement, the Settlement resolves, and in consideration for the Gross Settlement Amount, the
28 claims settled, fully released and forever discharged by the LWDA and the PAGA Members,
including Plaintiff, constitute any and all claims for civil penalties Plaintiff, the PAGA Members,
and the State of California may have against the Released Parties under the California Labor
Code, Wage Orders, regulations, and/or any other provisions of state and federal law arising from
allegations that the PAGA Members suffered Labor Code violations based on , and any other
Labor Code violations that were alleged in the Action, or that could have been alleged in the
Action based on the facts alleged in the Action, which includes, but is not limited to, alleged
violations of Labor Code sections , and 2698 et seq. ("PAGA Released Claims"). The "Released
Parties" are Davis Guest Home, Inc. and Lonny Gene Davis and their present and former parent
companies, subsidiaries, divisions, concepts, related or affiliated companies, and their
shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns,
and all persons acting by or through or in concert with any of them, and each of them (hereinafter
"Released Parties").

By Order dated <<court approval order date>>, the Superior Court of the State of
California, Stanislaus County approved the Settlement of the PAGA claims.

1 According to the Defendants' records, you are an PAGA Member and therefore entitled
2 to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice
3 is your check for your share. The settlement check shall remain valid for 180 days. Thereafter,
4 all uncashed checks shall be distributed to California State Controller's Office Unclaimed
Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA
Member.

5 Please Note: One hundred percent (100%) of your individual PAGA payment under this
6 Settlement will be considered penalties and may be subject to local, state, or federal tax
7 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
8 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff
9 nor Defendants have made any representations or warranties regarding the taxation of your
individual PAGA payment. Nothing within this notice or any other communication shall
constitute or be construed or relied upon as tax advice within the meaning of United States
Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
tax forms pertaining to your payment.

10 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
11 or to ask questions about the claims process. If you have any questions, you may call or write to
12 ILYM Group, Inc. (the Settlement Administrator) using the contact information at the top of this
correspondence.

EXHIBIT 3



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

February 27, 2020

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

RE: *Tina Calderon/Davis Guest Home, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Tina Calderon (hereafter “Calderon”) provides notice on behalf of herself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to direct care providers and persons in similar positions (hereafter referred to as “Aggrieved Employees”), by Davis Guest Home, Inc., a California corporation, and Lonny Gene Davis, CEO, CFO, secretary and sole owner of Davis Guest Home, Inc. (together referred to below as “Davis Guest Home”), for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174, 1174.5, 1194, 1197, 1197.1 and 1198.

At all relevant times, Davis Guest Home has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Calderon and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c). At all relevant times, Lonny Davis participated in interviewing potential employees, setting the expectations of the duties the Aggrieved Employees would perform, hiring

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

employees, determining employees' hourly rates, raises, and bonuses, and notifying employees of their termination at the end of their employment.

Statement of Facts

Davis Guest Home operates residential care facilities for people who face mental health challenges in Stanislaus County, California. On or about August 16, 2018, Davis Guest Home first employed Calderon to work in California as a direct care provider at its residential care facility on Hatch Street, Modesto, California. Throughout her employment, Calderon worked for Davis Guest Home at all of its residential care facilities. Davis Guest Home continuously employed Calderon from her hire date until December 19, 2019.

At all relevant times, Calderon and the other Aggrieved Employees earned their wages at an hourly rate and Davis Guest Home provided Calderon and the Aggrieved Employees with their paychecks on a semi-monthly basis.

At all relevant time, Davis Guest Home failed to pay Calderon and the other Aggrieved Employees premium wages for time they worked during their meal periods and rest breaks. Davis Guest Home required Calderon and the Aggrieved Employees to perform work during their off-the-clock meal and on-the-clock rest periods, including helping the residents, cleaning the facilities, and preparing meals for the day. Davis Guest Home prohibited Calderon and the Aggrieved Employees from taking duty-free meal periods and rest breaks unless another employee could cover their responsibilities during the meal period or rest break. However, Davis Guest Home did not have sufficient staffing to allow Calderon and the Aggrieved Employees to obtain cover and take meal or rest periods free of duty. For example, Davis Guest Home employs only one staff member to care for its 38 residents at its Ohio Ave (Modesto, California) residential care facility at night. During the day, Davis Guest Home employs only three staff members and a supervisor for such residents. At all relevant times, Davis Guest Home employs only one staff member for eight to nine residents at its smaller residential care facilities, such as those on Central Ave., Mauna Loa, and Nadine in the cities of Modesto and Ceres. Although Calderon and the Aggrieved Employees did not receive 30-minute duty-free meal periods, Davis Guest Home

required Calderon and the Aggrieved Employees to clock-out for 30-minute periods during their work shifts. Davis Guest Home sent an email bulletin to Calderon and the Aggrieved Employees directing them to clock-out for meal periods. Additionally, Misty (last name unknown), an administrator at Davis Guest Home, Cassandra Profeta, a supervisor at Davis Guest Home, and Rachel Brown, a supervisor at Davis Guest Home, told Calderon that she needed to clock-out for meal periods regardless of whether she took duty-free 30 minute meal periods.

At all relevant time, Davis Guest Home did not pay Calderon and the Aggrieved Employees 1.5 times their regular rate of pay for all hours over eight in a day or forty in a week. Davis Guest Home did not pay employees overtime premium wages for all hours over eight in a day and forty in a week because it did not pay them for those daily 30-minute time periods that it directed Calderon and the Aggrieved Employees to arbitrarily clock out for. Had Davis Guest Home counted such unpaid 30-minute periods as hours worked, it would have credited Calderon and the Aggrieved Employees with some or all of the 30-minute periods as overtime hours.

At all relevant times, Davis Guest Home knowingly and intentionally failed to maintain accurate employee records pertaining to Calderon and the Aggrieved Employees, including accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226. Due to its failure to state on the itemized wage statements of Calderon and the Aggrieved Employees the overtime and minimum wages they earned for unpaid work during clocked-out periods, Davis Guest Home failed to provide Calderon and the Aggrieved Employees with accurate wage statements.

At all relevant times, upon resignation or termination, Davis Guest Home failed to pay final wages in a timely manner because it did not pay employees for all off-the-clock work as described above. Davis Guest Home willfully failed and refused to pay timely compensation and wages, for among other things, regular time and overtime.

For the reasons stated herein, Calderon alleges the following violations of the California Labor Code and the Wage Order 5 on behalf of herself and the Aggrieved Employees:

- a) Davis Guest Home failed to provide Calderon and the Aggrieved Employees with all rest breaks and meal periods;
- b) Davis Guest Home failed to pay Calderon and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) Davis Guest Home failed to pay Calderon and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Davis Guest Home failed to pay Calderon and the Aggrieved Employees minimum wages for all hours worked;
- e) Davis Guest Home failed to pay Calderon and the Aggrieved Employees overtime wages for all overtime hours worked;
- f) Davis Guest Home failed to provide Calderon and the Aggrieved Employees with accurate wage statements;
- g) Davis Guest Home failed to timely pay Calderon and the Aggrieved Employees all earned and unpaid wages during their employment with Davis Guest Home;
- h) Davis Guest Home failed to timely pay Calderon and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with Davis Guest Home; and

- i) Davis Guest Home willfully failed to maintain accurate employment records regarding Calderon and the Aggrieved Employees.

Accordingly, Calderon now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Davis Guest Home's alleged violations of the California Labor Code and Wage Order 5.

Wage Order 5

Wage Order 5 applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. "Public Housekeeping Industry" means 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:

- (2) Hospitals, sanitariums, rest homes, child nurseries, childcare 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)(4). Also see §2(J) which defines "Healthcare Industry" to include: "....home health agencies..."

At all relevant times during the applicable limitations period, Davis Guest Home employed Calderon and the Aggrieved Employees as direct patient providers who performed all of their duties in a home-health agency setting. Accordingly, Calderon and the Aggrieved Employees are entitled to the protections provided under Wage Order 5.

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Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, 558.1, and 1198)

In relevant part, California Labor Code § 1198 states:

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

In relevant part, 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 Wage Order 5 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. 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 workday that the meal period is not provided.

...

- (D) 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.

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 5, § 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 the 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. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.

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. Greinetz*, 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

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had 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).

In relevant part, Section 12 of Wage Order 5 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 often (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.

California Labor Code § 226.7 states in relevant part:

- (b) An employer shall not require an employee to work during a meal or rest or recovery 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 or rest or recovery 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 workday that the meal or rest or recovery period is not provided.

By requiring Calderon and the Aggrieved Employees to work during what should have been duty-free rest breaks and meal periods, Davis Guest Home has intentionally and improperly failed to provide Calderon and the Aggrieved Employees all rest breaks and/or meal periods free from any duties as required by law. In failing to provide such breaks, Davis Guest Home has violated the provisions of California Labor Code §§ 226.7, 512 and 1198.

Davis Guest Home failed to provide timely meal and rest periods to Calderon and the Aggrieved Employees, including by requiring them to work in excess of five hours with no duty-free, 30-minute meal breaks. Davis Guest Home did not pay premium wages to Calderon and the Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by law.

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Davis owned and operated Davis Guest Home and employed Calderon and the Aggrieved Employees. Davis was the “owner,” “managing agent,” and “officer” of Davis Guest Home. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Calderon and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

Davis intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Calderon and the Aggrieved Employees as required by law. Additionally, Davis required Calderon and the Aggrieved Employees to work through their off-the-clock meal periods. As a result, Davis violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Calderon 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 § 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 (penalties set by 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)).

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Failure to Pay Minimum, Regular, Overtime, and Doubletime Wages
(Lab. Code §§ 510, 1194, 1197, 1197.1 and 1198)

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, § 3 of Wage Order 5 ("Hours and Days of Work") states:

(A) Daily Overtime - General Provisions

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

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

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (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.

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

Under 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."

Davis Guest Home did not pay Calderon and the other Aggrieved Employees for off-the-clock work, including, but not limited to, all worked performed during off-the-clock meal periods. In so doing, Davis Guest Home violated Labor Code §§ 1197 and 1198.

Section 4 of Wage Order 5, pertaining to "Minimum Wages" states in pertinent part:

(A) Every employer shall pay to each employee wages not less than the following:

- (1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following:
 - a. Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2017; and
 - b. Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018.
 - (2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following:
 - a. Ten dollars (\$10.00) per hour for all hours worked, effective January 1, 2016 through December 31, 2017; and
 - b. Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2018.
- ...
- (B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

Employers must compensate nonexempt employees for all work whether or not it is scheduled or recorded if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000). Davis Guest Home failed to pay Calderon and the other Aggrieved Employees for all hours worked. Davis Guest Home supervisors knowingly and intentionally required Calderon and the other Aggrieved Employees to work during their clocked-out meal periods. Davis Guest Home and its managers thus acted in violation of the Labor Code. As a result, Davis Guest Home often required Calderon and the other Aggrieved Employees to work in excess of 8

hours per day and 40 hours per week without being paid for the time over 8 hours and 40 hours, respectively.

Because Davis Guest Home failed to pay Calderon and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, Calderon seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2));
3. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226 and 558.1)

California Labor Code § 226 require 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 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 all relevant times during the applicable limitations period, Davis Guest Home violated California Labor Code § 226 in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. Davis Guest Home failed to state in the wage statements it issued to Calderon and other Aggrieved Employees all the hours worked and wages earned, including minimum and overtime wages, as described above.

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating

minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Davis owned and operated Davis Guest Home and employed Calderon and the Aggrieved Employees. Davis was the “owner,” “managing agent,” and “officer” of Davis Guest Home. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Calderon and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

Davis intentionally failed to provide accurate wage statements to Calderon and the Aggrieved Employees as required by law. Davis failed to provide accurate wage statements to Calderon and the Aggrieved Employees because the wage statements failed to properly and accurately itemize each employee’s gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee, and other requirements of California Labor Code § 226. Due to the violations above, Davis failed to provide Calderon and the Aggrieved Employees with accurate wage statements because Davis did not state on the wage statements all hours Calderon and the Aggrieved Employees worked and all wages they earned, including, but not limited to minimum, regular, and overtime wages. As a result, Davis violated California Labor Code §§ 226.

Accordingly, Calderon seeks civil penalties on behalf of herself and 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).

Failures 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 Davis Guest Home's failure to pay Calderon and the Aggrieved Employees wages for off-the-clock work, including, but not limited to, off-the-clock meal periods and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Davis Guest Home failed to timely pay all wages due during employment. Accordingly, Calderon seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203, and 558.1)

Under 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 § 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 72 hours thereafter, unless the employee has given 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 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 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 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. Davis Guest Home failed to pay final wages in a timely manner to Calderon and the Aggrieved Employees because it did not pay employees for all off-the-clock work as described above. Davis Guest Home willfully failed and refused to pay timely compensation and wages, for among other things, minimum, regular time, and overtime.

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Davis owned and operated Davis Guest Home and employed Calderon and the Aggrieved Employees. Davis was the “owner,” “managing agent,” and “officer” of Davis Guest Home. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Calderon and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

Davis intentionally failed to pay Calderon and the Aggrieved Employees timely wages upon termination of employment as required by law. By willfully failing to pay wages to Calderon and other Aggrieved Employees as set forth above, at the time of termination of employment, Davis violated California Labor Code § 203.

By willfully failing to pay wages to Calderon and other Aggrieved Employees as set forth above, at the time of termination of employment, Davis Guest Home is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Calderon seeks civil penalties from Davis Guest Home as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in

which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f) (2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

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

Every person employing labor in this state shall:

...

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

(d) Keep, at a central residential care facility 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.

Davis Guest Home 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, overtime records, records pertaining to unpaid hours worked and hours of shifts that should not have been off the clock.

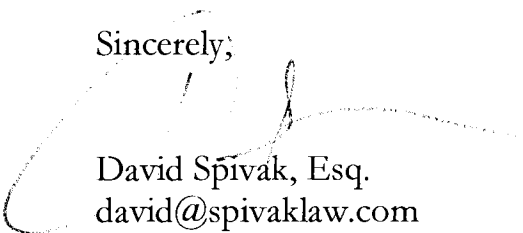
Accordingly, Calderon seeks civil penalties from Davis Guest Home on behalf of herself and other Aggrieved Employees as follows:

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 section 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 section 1021.5 to resolve this matter before litigation.

Sincerely;



David Spivak, Esq.
david@spivaklaw.com

cc: Tina Calderon
Walter Haines, Esq.

Davis Guest Home, Inc.
c/o Lonny Gene Davis,
Agent for Service of Process
1008 Chardonnay Ave
Modesto, CA 95351

///

Lonny Gene Davis
1878 E. Hatch Road
Modesto, CA 95351

Lonny Gene Davis
1008 Chardonnay Ave
Modesto, CA 95351

EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)
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2 CAROLINE TAHMASSIAN (SBN 285680)
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3 THE SPIVAK LAW FIRM
4 16530 Ventura Blvd., Ste 203
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5 Telephone: (818) 582-3086
Facsimile: (818) 582-2561
6

7 Attorneys for Plaintiff,
8 TINA CALDERON, and all others similarly situated
(Additional Attorney listed on next page)
9

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

13 TINA CALDERON, on behalf of herself, and
14 all others similarly situated

15 *Plaintiff(s),*

16 vs.

17 DAVIS GUEST HOME, INC., a California
18 corporation; LONNY GENE DAVIS, an
19 individual; and DOES 1-50, inclusive,

20 *Defendant(s).*
21
22
23
24
25

Electronically Filed
3/5/2020 6:00 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Mouang Saechao, Deputy

\$435 PAID

\$1000 NOT PAID

Case No.: CV-20-001500

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal Periods and Rest Breaks (Lab. Code §§ 226.7, 512, 558.1, and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 558.1, 1194, 1197, 1197.1, and 1198);
3. Wage Statement Penalties (Lab. Code §§ 226 and 558.1);
4. Failure to Timely Pay All Final Wages (Lab. Code §§ 201-203, and 558.1); and
5. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*).

JURY TRIAL DEMANDED

This case has been assigned to Judge Silveira, Marie Sovey,
Dept. 21
Department _____, for all purposes including Trial.



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff TINA CALDERON (hereafter "Plaintiff"), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order") and the
6 Business and Professions Code against defendants DAVIS GUEST HOME, INC., a California
7 corporation; LONNY GENE DAVIS, an individual; and DOES 1 through 50, inclusive
(collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
9 and other similarly situated current and former employees in California for unpaid wages and
10 other related relief. These claims are based on Defendants' alleged failures to (1) provide all rest
11 and meal periods, (2) pay all wages for all hours worked, (3), fairly compete, (4) timely pay final
12 wages upon termination of employment, and (5) provide accurate written wage statements.
13 Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this class
14 action.

15 **JURISDICTION AND VENUE**

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

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

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

21 6. Venue is proper in Stanislaus County pursuant to California Code of Civil
22 Procedure § 395(a) and § 395.5 in that liability arose in Stanislaus County because at least some
23 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.

24 **PARTIES**

25 7. Plaintiff is an individual and a resident of Stanislaus County, State of California.

26 8. Defendant DAVIS GUEST HOME, INC. is a corporation organized under the
27 laws of California and also a citizen of California based on Plaintiff's information and belief.

28 9. Defendant LONNY GENE DAVIS is an individual and a resident of Stanislaus



County, State of California 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 of a practice which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable California labor laws as alleged herein.

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

CLASS ACTION ALLEGATIONS

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

15. **Class Definition:** The class is defined as follows: All persons Defendants employed in California as non-exempt, hourly employees, including but not limited to direct care providers and persons in other similar positions ("Class Members"), at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment



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1 is entered in this action.

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

5 17. **Numerosity:** The Class Members are so numerous that the individual joinder of
6 each individual Class Member is impractical. While Plaintiff does not currently know the exact
7 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
8 minimum required for numerosity under California law.

9 18. **Commonality and Predominance:** Common questions of law and fact exist as to
10 all Class Members and predominate over any questions which affect only individual Class
11 Members. These questions include, but are not limited to:

12 A. Whether Defendants failed to provide the Class Members with all rest
13 periods as required by section 12 of the Wage Order;

14 B. Whether Defendants failed to provide the Class Members with all meal
15 periods as required by section 11 of the Wage Order;

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

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

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

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

25 G. Whether Defendants willfully failed to provide the Class Members with
26 timely final wages;

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

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

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



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

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

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

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

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

STATEMENT OF FACTS

23. Defendants operate residential care facilities for people who face mental health challenges in Stanislaus County, California.

24. On or about August 16, 2018, Defendants first employed Plaintiff to work in California as a direct care provider at their residential care facility on Hatch Street in Modesto, California. Throughout her employment, Plaintiff worked for Defendants at all of their residential care facilities. Defendants continuously employed Plaintiff from her hire date until December 19,



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2019.

25. At all relevant times, Plaintiff and the Class earned their wages at an hourly rate and Defendants provided Plaintiff and the Class with their paychecks on a semi-monthly basis.

26. At all relevant time, Defendants failed to pay Plaintiff and the Class premium wages for time they worked during their meal periods and rest breaks. Defendants required Plaintiff and the Class to perform work during their off-the-clock meal and on-the-clock rest periods, including helping the residents, cleaning the facilities, and preparing meals for the day. Defendants prohibited Plaintiff and the Class from taking duty-free meal periods and rest breaks unless another employee could cover their responsibilities during the meal period or rest break. However, Defendants did not have sufficient staffing to allow Plaintiff and the Class to obtain cover and take meal or rest periods free of duty.

27. Defendants employ only one staff member to care for its 38 residents at its Ohio Ave (Modesto, California) residential care facility at night. During the day, Defendants employ only three staff members and a supervisor for such residents. At all relevant times, Defendants employ only one staff member for eight to nine residents at its smaller residential care facilities, such as those on Central Ave., Mauna Loa, and Nadine in the cities of Modesto and Ceres.

28. Although Plaintiff and the Class did not receive 30-minute duty-free meal periods, Defendants required Plaintiff and the Class to clock-out for 30-minute periods during their work shifts. Defendants sent an email bulletin to Plaintiff and the Class directing them to clock-out for meal periods. Additionally, Misty (last name unknown), an administrator for Defendant Davis Guest Home, Cassandra Profeta, a supervisor for Defendant Davis Guest Home, and Rachel Brown, a supervisor for Defendant Davis Guest Home, told Plaintiff that she needed to clock-out for meal periods regardless of whether she took duty-free 30 minute meal periods.

29. At all relevant time, Defendants did not pay Plaintiff and the Class 1.5 times their regular rate of pay for all hours over eight in a day or forty in a week. Defendants did not pay employees overtime premium wages for all hours over eight in a day and forty in a week because they did not pay them for those daily 30-minute time periods that they directed Plaintiff and the Class to arbitrarily clock out for. Had Defendants counted such unpaid 30-minute periods as hours worked, they would have credited Plaintiff and the Class with some or all of the 30-minute periods as overtime hours.

30. At all relevant times, Defendants knowingly and intentionally failed to maintain



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1 accurate employee records pertaining to Plaintiff and the Class, including accurate wage
2 statements itemizing each Class Members' gross wages earned, net wages earned, total hours
3 worked, corresponding number of hours worked at each rate by the Aggrieved Employee and
4 other requirements of California Labor Code Section 226. Due to its failure to state on the
5 itemized wage statements of Plaintiff and the Class the overtime and minimum wages they earned
6 for unpaid work during clocked-out periods, Defendants failed to provide Plaintiff and the Class
7 with accurate wage statements.

8 31. At all relevant times, upon resignation or termination, Defendants failed to pay
9 final wages in a timely manner because they did not pay employees for all off-the-clock work as
10 described above. Defendants willfully failed and refused to pay timely compensation and wages,
11 for among other things, regular time and overtime.

12 32. At all relevant times herein, Defendants owned and operated Davis Guest Home.
13 Lonny Gene Davis owned or otherwise controlled the employer-Defendant entities, pursuant to
14 Lab. Code §558.1 (b). As such, he employed Plaintiff and the Class Members, and at all relevant
15 times functioned as "owner," "managing agent," and "officer" of Davis Guest Home, Inc. Davis
16 directly or indirectly, employed and exercised control over the wages, hours, or working
17 conditions of Plaintiff and the Class Members and caused the Labor Code and Wage Order
18 violations described above.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS AND REST BREAKS**

21 **(Lab. Code §§ 226.7, 512, 558.1 and 1198)**

22 **(By Plaintiff and the Class Members against all Defendants)**

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

24 34. At all relevant times during the applicable limitations period, Plaintiff and the
25 Class Members have been employees of Defendants and entitled to the benefits and protections
26 of California Labor Code §§ 226.7, 512, 558.1, 1198, and the Wage Order.

27 35. Labor Code § 1198 states,

28 "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."



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1 36. In relevant part, Labor Code Section 512 states:

2 “An employer may not employ an employee for a work period of more
3 than five hours per day without providing the employee with a meal period
4 of not less than 30 minutes, except that if the total work period per day of
5 the employee is no more than six hours, the meal period may be waived by
6 mutual consent of both the employer and employee. An employer may not
7 employ an employee for a work period of more than 10 hours per day
8 without providing the employee with a second meal period of not less than
9 30 minutes, except that if the total hours worked is no more than 12 hours,
10 the second meal period may be waived by mutual consent of the employer
11 and the employee only if the first meal period was not waived.”

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

13 Meal Periods:

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

27 (B) If an employer fails to provide an employee a meal period
28 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.

...

(D) 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



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waiver is in effect.

38. 9 C.F.R. § 785.7 states:

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. Greinetz*, 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))

39. 29 C.F.R. § 785.18 states:

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))

40. 29 C.F.R. § 785.19 states:

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had 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*



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1 v. *Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec.
2 21, 1988) (Police officers stated a claim under the Fair Labor Standards
3 Act where they alleged that they were not paid for meal periods but were
4 required to remain within a certain area, respond to emergencies and
5 citizen requests, and remain accessible).

6
7
8
9
10
11 41. Wage Order 5, § 11(D) states:

12
13 Notwithstanding any other provision of this order, employees in the health
14 care industry who work shifts in excess of eight (8) total hours in a workday
15 may voluntarily waive their right to one of their two meal periods. In order
16 to be valid, any such waiver must be documented in a written agreement
17 that is voluntarily signed by both the employee and the employer. The
18 employee may revoke the waiver at any time by providing the employer at
19 least one day's written notice. The employee shall be fully compensated
20 for all working time, including any on-the-job meal period, while such a
21 waiver is in effect.

22
23 42. In relevant part, Section 12 of the Wage Order states:

24 Rest Periods:

25 (A) Every employer shall authorize and permit all employees to
26 take rest periods, which insofar as practicable shall be in the middle
27 of each work period. The authorized rest period time shall be based
28 on the total hours worked daily at the rate often (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.

43. "[I]n the context of an eight-hour shift, '[a]s a general matter,' one rest break
should fall on either side of the meal break. (*Ibid.*)" *Brinker Rest. Corp. v. Superior Court* (2012)
53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

44. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal
or rest or recovery 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



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Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery 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 workday that the meal or rest or recovery period is not provided.

45. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours

46. 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.

47. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with all rest breaks required by California law.

48. Due to their workload, Defendants often did not provide Plaintiff and Class Members with all their duty-free rest breaks. Defendants required Plaintiff and the Class to perform work during their off-the-clock meal and on-the-clock rest periods, including helping the residents, cleaning the facilities, and preparing meals for the day. Defendants prohibited Plaintiff and the Class from taking duty-free meal periods and rest breaks unless another employee could cover their responsibilities during the meal period or rest break. However, Defendants did not have sufficient staffing to allow Plaintiff and the Class to obtain cover and take meal or rest periods free of duty.

49. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with additional wages for all rest breaks not provided to them as required by



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California Labor Code § 226.7.

50. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all rest breaks not provided to them.

51. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

52. At all relevant times herein, Davis owned and operated Davis Guest Home and employed Plaintiff and the Class. Davis was the "owner," "managing agent," and "officer" of Davis Guest Home. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class and caused the violations to the Labor Code and Wage Order described above.

53. Defendant Davis intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Plaintiff and the Class as required by law. Additionally, Davis required Plaintiff and the Class to work through their off-the-clock meal periods. As a result, Davis violated California Labor Code §§ 226.7, 512 and 1198.

54. As stated above, Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks and meal periods not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with additional wages for all rest breaks and meal periods not provided to them as required by California Labor Code § 226.7.

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SECOND CAUSE OF ACTION

FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED

(Lab. Code §§ 510, 558.1, 1194, 1197, 1197.1, and 1198)

(By Plaintiff and the Class Members against all Defendants)

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

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

57. Section 3 of the applicable 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 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 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; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

58. 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



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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.

59. 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 5, § 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). ...

60. 29 C.F.R. § 778.223 states:

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 the 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*



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1 *Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change
2 the rule except to provide an exception for preliminary and postliminary
activities. See Section 785.34.

3 61. Labor Code section 1197 makes it unlawful for an employer to pay an employee
4 less than the minimum wage required under the applicable Wage Order for all hours worked
5 during a payroll period.

6 62. California Labor Code § 1194 invalidates any agreement between an employer
7 and an employee to work for less than the minimum or overtime wage required under the
8 applicable Wage Order.

9 63. Labor Code section 1198 makes it unlawful for an employer to employ an
10 employee under conditions that violate the Wage Order.

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

14 65. With respect to overtime wages, the regular rate of pay under California law must
15 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
16 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary
17 bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893,
18 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole
19 source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate.
20 29 C.F.R. §§778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

23 67. Defendants compensated Plaintiff and the Class Members with an hourly rate of
24 pay on a semi-monthly basis.

25 68. Defendants further deducted at least 30 minutes from Plaintiff and the Class
26 Members’ hours worked in a workday even if they could not take their duty-free meal periods.
27 Defendants also failed to compensate Plaintiff and the Class Members for all hours worked at the
28 correct rates of pay. Defendants failed to pay Plaintiff and the Class for all hours worked.



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1 Defendants supervisors knowingly and intentionally required Plaintiff and the Class to work
2 during their clocked-out meal periods. Defendants and its managers thus acted in violation of the
3 Labor Code. As a result, Defendants often required Plaintiff and the Class to work in excess of 8
4 hours per day and 40 hours per week without being paid for the time over 8 hours and 40 hours,
5 respectively. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
7 failure to compensate the Class Members for all hours worked as required by California law,
8 including, but not limited to overtime wages for all overtime hours they worked.

9 69. In relevant part, California Labor Code § 558.1 states:

10 (a) Any employer or other person acting on behalf of an employer, who violates,
11 or causes to be violated, any provision regulating minimum wages or hours and
12 days of work in any order of the Industrial Welfare Commission, or violates, or
13 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
14 as the employer for such violation.

15 (b) For purposes of this section, the term "other person acting on behalf of an
16 employer" is limited to a natural person who is an owner, director, officer, or
17 managing agent of the employer, and the term "managing agent" has the same
18 meaning as in subdivision (b) of § 3294 of the Civil Code.

19 70. At all relevant times herein, Davis owned and operated Davis Guest Home and
20 employed Plaintiff and the Class. Davis was the "owner," "managing agent," and "officer" of
21 Davis Guest Home. Davis directly or indirectly, or through an agent or other person, employed
22 and exercised control over the wages, hours, or working conditions of Plaintiff and the Class and
23 caused the violations to the Labor Code and Wage Order described above.

24 71. Defendant Davis intentionally failed to pay Plaintiff and the Class for all hours
25 work at the correct rates of pay as required by law. Additionally, Davis required Plaintiff and the
26 Class to work though their off-the-clock meal periods without pay. As a result, Davis violated
27 California Labor Code §§ 510, 1194, 1197, 1197.1, and 1198 .

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

73. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class
Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of



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1 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
2 subject to proof.

3 74. Additionally, with respect to this cause of action, on behalf of herself and the Class
4 Members, Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest
5 thereon, as permitted by law, all in amounts subject to proof.

6 **THIRD CAUSE OF ACTION**

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

8 **(Lab. Code §§ 226 and 558.1)**

9 **(By Plaintiff and the Class Members against all Defendants)**

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

11 76. At all relevant times during the applicable limitations period, Plaintiff and the
12 Class Members have been employees of Defendants and entitled to the benefits and protections
13 of California Labor Code § 226.

14 77. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
15 entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized
16 statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in
17 effect during the pay period; and d) the corresponding number of hours worked at each hourly
18 rate by the employee.

19 78. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
20 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
21 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
22 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
23 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
24 is entitled to an award of costs and reasonable attorney's fees.

25 79. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
26 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
27 injury if the employer fails to provide accurate and complete information as required by California
28 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during
the pay period or any of the other information required to be provided on the itemized wage



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1 statement pursuant to California Labor Code § 226(a);

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

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

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

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

13 81. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
14 all wages owed, including but not limited to, minimum and overtime. As a result, Defendants
15 have failed to properly and accurately itemize each employee’s gross wages earned, net wages
16 earned, the total hours worked, the corresponding number of hours worked by employees and
17 other requirements of California Labor Code § 226. As a result, Defendants have violated
18 California Labor Code § 226.

19 82. Defendants’ failure to provide Plaintiff and the Class Members with accurate wage
20 statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the
21 Class Members with accurate wage statements but intentionally provided wage statements that
22 Defendants knew were not accurate.

23 83. As a result of being provided with inaccurate wage statements by Defendants,
24 Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate wage
25 statements were violated and they were misled about the amount of wages they had actually
26 earned and were owed. In addition, the absence of accurate information on their wage statements
27 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
28 and mathematical computations to determine the amounts of wages owed, has caused difficulty
and expense in attempting to reconstruct time and pay records and/or has led to the submission of
inaccurate information about wages to state and federal government agencies. Further, Plaintiff
and the Class Members were not able to ascertain from the wage statements whether Defendants



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1 complied with their obligations under California Labor Code § 226(a).

2 84. In relevant part, California Labor Code § 558.1 states:

3 (a) Any employer or other person acting on behalf of an employer, who violates,
4 or causes to be violated, any provision regulating minimum wages or hours and
5 days of work in any order of the Industrial Welfare Commission, or violates, or
6 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
7 as the employer for such violation.

8 (b) For purposes of this section, the term “other person acting on behalf of an
9 employer” is limited to a natural person who is an owner, director, officer, or
10 managing agent of the employer, and the term “managing agent” has the same
11 meaning as in subdivision (b) of § 3294 of the Civil Code.

12 85. At all relevant times herein, Defendant Davis owned and operated Defendants and
13 employed Plaintiff and the Class. Davis was the “owner,” “managing agent,” and “officer” of
14 Defendants. Davis directly or indirectly, or through an agent or other person, employed and
15 exercised control over the wages, hours, or working conditions of Plaintiff and the Class and
16 caused the violations to the Labor Code and Wage Order described above.

17 86. Davis intentionally failed to provide accurate wage statements to Plaintiff and the
18 Class as required by law. Davis failed to provide accurate wage statements to Plaintiff and the
19 Class because the wage statements failed to properly and accurately itemize each employee’s
20 gross wages earned, net wages earned, the corresponding number of hours worked at each rate by
21 the employee, and other requirements of California Labor Code § 226. Due to the violations
22 above, Davis failed to provide Plaintiff and the Class with accurate wage statements because
23 Davis did not state on the wage statements all hours Plaintiff and the Class worked and all wages
24 they earned, including, but not limited to minimum, regular, and overtime wages. As a result,
25 Davis violated California Labor Code §§ 226.

26 87. Pursuant to California Labor Code § 226(e), Plaintiff and the Class Members are
27 entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial
28 pay period in which a violation of California Labor Code § 226(a) occurred and one hundred
dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to
exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also
entitled to an award of costs and reasonable attorneys’ fees.

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1 **FOURTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(Lab. Code §§ 201-203 and 558.1)**

4 **(By Plaintiff and the Class against all Defendants)**

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

6 89. At all relevant times during the applicable limitations period, Plaintiff and the
7 class have been non-exempt employees of Defendants and entitled to the benefits and
8 protections of California Labor Code sections 201-203, and the Wage Order.

9 90. Labor Code section 201 provides that all earned and unpaid wages of an
10 employee who is discharged are due and payable immediately at the time of discharge.

11 91. Labor Code section 202 provides that all earned and unpaid wages of an
12 employee who quits after providing at least 72-hours notice before quitting are due and payable
13 at the time of quitting and that all earned and unpaid wages of an employee who quits without
14 providing at least 72-hours notice before quitting are due and payable within 72 hours.

15 92. By failing to pay all earned regular, overtime, and premium wages to Plaintiff
16 and the class as described above, Defendants failed to timely pay them all earned and unpaid
17 wages in violation of Labor Code section 201 or 202.

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

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

26 95. In relevant part, California Labor Code § 558.1 states:

27 (a) Any employer or other person acting on behalf of an employer, who violates,
28 or causes to be violated, any provision regulating minimum wages or hours and
days of work in any order of the Industrial Welfare Commission, or violates, or
causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
as the employer for such violation.



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(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

96. At all relevant times herein, Defendant Davis owned and operated Defendants and employed Plaintiff and the Class. Davis was the “owner,” “managing agent,” and “officer” of Defendants. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class and caused the violations to the Labor Code and Wage Order described above.

97. Davis intentionally failed to pay Plaintiff and the Class timely wages upon termination of employment as required by law. By willfully failing to pay wages to Plaintiff and the Class as set forth above, at the time of termination of employment, Davis violated California Labor Code § 203.

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

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(By Plaintiff and the Class Members against all Defendants)

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

100. 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 the Business and Professions Code §§ 17200, *et seq.*

101. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

102. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class



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Members were deprived of wages for all hours worked and for all rest and meal periods not provided to them and for unpaid wages.

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

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

PRAYER FOR RELIEF

105. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

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

D. Unpaid wages, including overtime and double-time wages;

E. Premium wages;

F. Statutory penalties;

G. Declaratory relief;

H. Actual damages;

I. Restitution;

J. Pre-judgment interest;

K. Costs of suit;

L. Reasonable attorneys' fees; and

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

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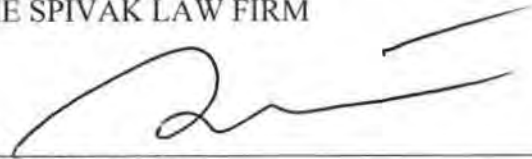
DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 5, 2020

By 

DAVID SPIVAK

CAROLINE TAHMASSIAN

Attorneys for Plaintiff, TINA CALDERON and
all others similarly situated



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EXHIBIT 5

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6

7 Attorneys for Plaintiff,
TINA CALDERON
8 (Additional Attorney listed on next page)
9

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

13 TINA CALDERON, on behalf of herself, and
14 as an "aggrieved employee" on behalf of other
"aggrieved employees" under the Labor Code
15 Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 DAVIS GUEST HOME, INC., a California
19 corporation; LONNY GENE DAVIS, an
20 individual; and DOES 1-50, inclusive,

21 *Defendant(s).*
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Case No.: CV-20-001500

**FIRST AMENDED 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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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Sonia Krohn, Deputy

ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff TINA CALDERON (hereafter “Plaintiff”), on behalf of herself and all others
2 Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”) against defendants DAVIS GUEST HOME, INC., a California corporation;
7 LONNY GENE DAVIS (“Davis”), an individual; 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 her
10 and other aggrieved current and former employees in California for civil penalties and other
11 related relief. These claims are based on Defendants’ alleged failures to (1) provide all rest and
12 meal periods, (2) pay all wages for all hours worked, (3), fairly compete, (4) timely pay final
13 wages upon termination of employment, and (5) provide accurate written wage statements.
14 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
15 representative action.

16 **JURISDICTION AND VENUE**

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

19 4. There is no basis for federal question subject matter jurisdiction in this case.
20 Specifically, Plaintiff asserts claims on behalf of herself and the Aggrieved Employees (as defined
21 below) that solely arise under California law, rather than federal law.

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

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

27 **PARTIES**

28 7. Plaintiff is an individual and a resident of Stanislaus County, State of California.
29 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section
30 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

8. The “Aggrieved Employees” are all individuals Defendants employed in



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1 California as non-exempt, hourly employees, including but not limited to direct care providers
2 and persons in other similar positions, at any time during the period beginning February 27, 2019
3 and ending on the date that final judgment is entered in this action

4 9. Defendant DAVIS GUEST HOME, INC. is a corporation organized under the
5 laws of California and also a citizen of California based on Plaintiff's information and belief.

6 10. Defendant LONNY GENE DAVIS is an individual and a resident of Stanislaus
7 County, State of California based on Plaintiff's information and belief.

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

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

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

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

28 **STATEMENT OF FACTS**

15. Defendants operate residential care facilities for people who face mental health
challenges in Stanislaus County, California.

16. On or about August 16, 2018, Defendants first employed Plaintiff to work in



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1 California as a direct care provider at their residential care facility on Hatch Street in Modesto,
2 California. Throughout her employment, Plaintiff worked for Defendants at all of their residential
3 care facilities. Defendants continuously employed Plaintiff from her hire date until December 19,
4 2019.

5 17. At all relevant times, Plaintiff and the Aggrieved Employees earned their wages at
6 an hourly rate and Defendants provided Plaintiff and the Aggrieved Employees with their
7 paychecks on a semi-monthly basis.

8 18. At all relevant time, Defendants failed to pay Plaintiff and the Aggrieved
9 Employees premium wages for time they worked during their meal periods and rest breaks.
10 Defendants required Plaintiff and the Aggrieved Employees to perform work during their off-the-
11 clock meal and on-the-clock rest periods, including helping the residents, cleaning the facilities,
12 and preparing meals for the day. Defendants prohibited Plaintiff and the Aggrieved Employees
13 from taking duty-free meal periods and rest breaks unless another employee could cover their
14 responsibilities during the meal period or rest break. However, Defendants did not have sufficient
15 staffing to allow Plaintiff and the Aggrieved Employees to obtain cover and take meal or rest
16 periods free of duty.

17 19. Defendants employ only one staff member to care for their 38 residents at their
18 Ohio Ave (Modesto, California) residential care facility at night. During the day, Defendants
19 employ only three staff members and a supervisor for such residents. At all relevant times,
20 Defendants employ only one staff member for eight to nine residents at their smaller residential
21 care facilities, such as those on Central Ave., Mauna Loa, and Nadine in the cities of Modesto
22 and Ceres.

23 20. Although Plaintiff and the Aggrieved Employees did not receive 30-minute duty-
24 free meal periods, Defendants required Plaintiff and the Aggrieved Employees to clock-out for
25 30-minute periods during their work shifts. Defendants sent an email bulletin to Plaintiff and the
26 Aggrieved Employees directing them to clock-out for meal periods. Additionally, Misty (last
27 name unknown), an administrator for Defendants, Cassandra Profeta, a supervisor for Defendants,
28 and Rachel Brown, a supervisor for Defendants, told Plaintiff that she needed to clock-out for
meal periods regardless of whether she took duty-free 30 minute meal periods.

21 21. At all relevant time, Defendants did not pay Plaintiff and the Aggrieved
22 Employees 1.5 times their regular rate of pay for all hours over eight in a day or forty in a week.



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Defendants did not pay employees overtime premium wages for all hours over eight in a day and forty in a week because they did not pay them for those daily 30-minute time periods that they directed Plaintiff and the Aggrieved Employees to arbitrarily clock out for. Had Defendants counted such unpaid 30-minute periods as hours worked, they would have credited Plaintiff and the Aggrieved Employees with some or all of the 30-minute periods as overtime hours.

22. At all relevant times, Defendants knowingly and intentionally failed to maintain accurate employee records pertaining to Plaintiff and the Aggrieved Employees, including accurate wage statements itemizing each Aggrieved Employees' gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226. Due to their failure to state on the itemized wage statements of Plaintiff and the Aggrieved Employees the overtime and minimum wages they earned for unpaid work during clocked-out periods, Defendants failed to provide Plaintiff and the Aggrieved Employees with accurate wage statements.

23. At all relevant times, upon resignation or termination, Defendants failed to pay final wages in a timely manner because they did not pay employees for all off-the-clock work as described above. Defendants willfully failed and refused to pay timely compensation and wages, for among other things, regular time and overtime.

24. At all relevant times herein, Defendants owned and operated Davis Guest Home, Inc. Lonny Gene Davis owned or otherwise controlled the employer-Defendant entities, pursuant to Lab. Code §558.1 (b). As such, he employed Plaintiff and the Aggrieved Employees, and at all relevant times functioned as "owner," "managing agent," and "officer" of Davis Guest Home, Inc. Lonny Gene Davis directly or indirectly, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees and caused the Labor Code and Wage Order violations described above.

FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, et seq.)

**(By Plaintiff, on behalf of herself and the other Aggrieved Employees,
against all Defendants)**

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

26. At all relevant times during the applicable limitations period, Plaintiff and the



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Aggrieved Employees have been employees of Defendants and entitled to the benefits and protections of California Labor Code and the Wage Order.

A. FAILURE TO PROVIDE MEAL AND REST PERIODS

27. 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.”

28. In relevant part, Labor Code Section 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.”

29. 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. 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



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

...

(D) 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.

30. 9 C.F.R. § 785.7 states:

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. Greinetz*, 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))

31. 29 C.F.R. § 785.18 states:

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))



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1 32. 29 C.F.R. § 785.19 states:

2
3 Healthcare employees who were required to wear pagers and respond to
4 patient emergencies during meal breaks were held entitled to payment from
5 their employer for meal breaks because their employer had not fully
6 relieved them of their responsibilities during those times. *Hoffman v. St.*
7 *Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998);
8 see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims
9 LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour
10 meal break given that they had to stay at the facility and be available to
11 respond to requests to return or check out weapons and equipment); *Wahl*
12 *v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec.
13 21, 1988) (Police officers stated a claim under the Fair Labor Standards
14 Act where they alleged that they were not paid for meal periods but were
15 required to remain within a certain area, respond to emergencies and
16 citizen requests, and remain accessible).

17 33. Wage Order 5, § 11(D) states:

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

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

28 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 often (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.

35. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break. (*Ibid.*)” *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

36. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery 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 or rest or recovery 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 workday that the meal or rest or recovery period is not provided.

37. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours

38. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees 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.

39. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all rest breaks required by California law.

40. Due to their workload, Defendants often did not provide Plaintiff and Aggrieved Employees with all their duty-free rest breaks. Defendants required Plaintiff and the Aggrieved Employees to perform work during their off-the-clock meal and on-the-clock rest periods, including helping the residents, cleaning the facilities, and preparing meals for the day. Defendants prohibited Plaintiff and the Aggrieved Employees from taking duty-free meal periods



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1 and rest breaks unless another employee could cover their responsibilities during the meal period
2 or rest break. However, Defendants did not have sufficient staffing to allow Plaintiff and the
3 Aggrieved Employees to obtain cover and take meal or rest periods free of duty.

4 41. Defendants failed to pay Plaintiff the additional wages required by California
5 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
6 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
7 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
8 Aggrieved Employees with additional wages for all rest breaks not provided to them as required
9 by California Labor Code § 226.7.

10 42. In relevant part, California Labor Code § 558.1 states:

11 (a) Any employer or other person acting on behalf of an employer, who violates,
12 or causes to be violated, any provision regulating minimum wages or hours and
13 days of work in any order of the Industrial Welfare Commission, or violates, or
14 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
15 as the employer for such violation.

16 (b) For purposes of this section, the term “other person acting on behalf of an
17 employer” is limited to a natural person who is an owner, director, officer, or
18 managing agent of the employer, and the term “managing agent” has the same
19 meaning as in subdivision (b) of § 3294 of the Civil Code.

20 43. At all relevant times herein, Davis owned and operated Davis Guest Home, Inc.
21 and employed Plaintiff and the Aggrieved Employees. Davis was the “owner,” “managing agent,”
22 and “officer” of Davis Guest Home, Inc. Davis directly or indirectly, or through an agent or other
23 person, employed and exercised control over the wages, hours, or working conditions of Plaintiff
24 and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order
25 described above.

26 44. Defendant Davis intentionally failed to provide all rest breaks and/or meal periods
27 free from any work duties to Plaintiff and the Aggrieved Employees as required by law.
28 Additionally, Davis required Plaintiff and the Aggrieved Employees to work through their off-the-
clock meal periods. As a result, Davis violated California Labor Code §§ 226.7, 512 and 1198.

45. As stated above, Defendants failed to pay Plaintiff the additional wages required
by California Labor Code § 226.7 for all rest breaks and meal periods not provided to her. Plaintiff
is informed and believes and thereon alleges that, at relevant times within the applicable



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1 limitations period, Defendants have maintained a policy, practice, or a lack of a policy which
2 resulted in Defendants not providing the Aggrieved Employees with additional wages for all rest
3 breaks and meal periods not provided to them as required by California Labor Code § 226.7.

4 **B. FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED**

5 46. Section 3 of the applicable Wage Order states:

6 (A) Daily Overtime - General Provisions

7 (1) The following overtime provisions are applicable to employees 18
8 years of age or over and to employees 16 or 17 years of age who are not
9 required by law to attend school and are not otherwise prohibited by law
10 from engaging in the subject work. Such employees shall not be employed
11 more than eight (8) hours in any workday or more than 40 hours in any
12 workweek unless the employee receives one and one-half (1 1/2) times
13 such employee's regular rate of pay for all hours worked over 40 hours in
14 the workweek. Eight (8) hours of labor constitutes a day's work.
15 Employment beyond eight (8) hours in any workday or more than six (6)
16 days in any workweek is permissible provided the employee is
17 compensated for such overtime at not less than:

18 (a) One and one-half (1 1/2) times the employee's regular rate of pay
19 for all hours worked in excess of eight (8) hours up to and including 12
20 hours in any workday, and for the first eight (8) hours worked on the
21 seventh (7th) consecutive day of work in a workweek; and

22 (b) Double the employee's regular rate of pay for all hours worked in
23 excess of 12 hours in any workday and for all hours worked in excess of
24 eight (8) hours on the seventh (7th) consecutive day of work in a
25 workweek.

26 47. Labor Code section 510 states:

27 Eight hours of labor constitutes a day's work. Any work in excess of eight
28 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. Within the health care industry, the term "hours worked" means the time during



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1 which an employee is suffered or permitted to work for the employer, whether or not required to
2 do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”).
3 Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is
4 defined by federal regulations:

5 ...As a general rule the term “hours worked” will include: (a) All time
6 during which an employee is required to be on duty or to be on the
7 employer’s premises or at a prescribed workplace and (b) all time during
8 which an employee is suffered or permitted to work whether or not he is
9 required to do so. Thus, working time is not limited to the hours spent in
10 active productive labor, but includes time given by the employee to the
11 employer even though part of the time may be spent in idleness. Some of
12 the hours spent by employees, under certain circumstances... in meal
13 periods and rest periods are regarded as working time and some are not.
14 The governing principles are discussed in part 785 of this chapter
15 (interpretative bulletin on “hours worked”) and part 790 of this chapter
16 (statement of effect of Portal-to-Portal Act of 1947). ...

17 49. 29 C.F.R. § 778.223 states:

18 The United States Supreme Court originally stated that employees subject
19 to the act must be paid for all time spent in “physical or mental exertion
20 (whether burdensome or not) controlled or required by the employer and
21 pursued necessarily and primarily for the benefit of the employer and his
22 business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No.*
23 *123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need
24 be no exertion at all and that all hours are hours worked which the
25 employee is required to give his employer, that “an employer, if he
26 chooses, may hire a man to do nothing, or to do nothing but wait for
27 something to happen. Refraining from other activity often is a factor of
28 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 the 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. The Portal-to-Portal Act did not change
the rule except to provide an exception for preliminary and postliminary
activities. See Section 785.34.

50. Labor Code section 1197 makes it unlawful for an employer to pay an employee



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1 less than the minimum wage required under the applicable Wage Order for all hours worked
2 during a payroll period.

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

6 52. Labor Code section 1198 makes it unlawful for an employer to employ an
7 employee under conditions that violate the Wage Order.

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

12 54. With respect to overtime wages, the regular rate of pay under California law must
13 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary
15 bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893,
16 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole
17 source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate.
18 29 C.F.R. §§778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

19 55. Plaintiff is informed and believes that, at all relevant times, Defendants have
20 applied centrally devised policies and practices to her and the Aggrieved Employees with respect
21 to working conditions and compensation arrangements.

22 56. Defendants compensated Plaintiff and the Aggrieved Employees with an hourly
23 rate of pay on a semi-monthly basis.

24 57. Defendants further deducted at least 30 minutes from Plaintiff and the Aggrieved
25 Employees’ hours worked in a workday even if they could not take their duty-free meal periods.
26 Defendants also failed to compensate Plaintiff and the Aggrieved Employees for all hours worked
27 at the correct rates of pay. Defendants failed to pay Plaintiff and the Aggrieved Employees for all
28 hours worked. Defendants supervisors knowingly and intentionally required Plaintiff and the
Aggrieved Employees to work during their clocked-out meal periods. Defendants and their
managers thus acted in violation of the Labor Code. As a result, Defendants often required
Plaintiff and the Aggrieved Employees to work in excess of 8 hours per day and 40 hours per



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1 week without being paid for the time over 8 hours and 40 hours, respectively. Plaintiff is informed
2 and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy,
3 practice, or a lack of a policy which resulted in Defendants' failure to compensate the Aggrieved
4 Employees for all hours worked as required by California law, including, but not limited to
overtime wages for all overtime hours they worked.

5 58. In relevant part, California Labor Code § 558.1 states:

6
7 (a) Any employer or other person acting on behalf of an employer, who violates,
8 or causes to be violated, any provision regulating minimum wages or hours and
9 days of work in any order of the Industrial Welfare Commission, or violates, or
causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
as the employer for such violation.

10
11 (b) For purposes of this section, the term "other person acting on behalf of an
12 employer" is limited to a natural person who is an owner, director, officer, or
managing agent of the employer, and the term "managing agent" has the same
meaning as in subdivision (b) of § 3294 of the Civil Code.

13
14 59. At all relevant times herein, Davis owned and operated Davis Guest Home, Inc.
15 and employed Plaintiff and the Aggrieved Employees. Davis was the "owner," "managing agent,"
16 and "officer" of Davis Guest Home, Inc. Davis directly or indirectly, or through an agent or other
17 person, employed and exercised control over the wages, hours, or working conditions of Plaintiff
18 and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order
described above.

19 60. Defendant Davis intentionally failed to pay Plaintiff and the Aggrieved Employees
20 for all hours work at the correct rates of pay as required by law. Additionally, Davis required
21 Plaintiff and the Aggrieved Employees to work though their off-the-clock meal periods without
22 pay. As a result, Davis violated California Labor Code §§ 510, 1194, 1197, 1197.1, and 1198 .

23 **C. FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

24 61. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
25 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
26 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
27 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
each hourly rate by the employee.

28 62. Pursuant to California Labor Code § 226(e), an employee suffering injury as a



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1 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
2 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
3 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
4 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
5 is entitled to an award of costs and reasonable attorney's fees.

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

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

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

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

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

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

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

66. Defendants' failure to provide Plaintiff and the Aggrieved Employees with



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

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

14 68. In relevant part, California Labor Code § 558.1 states:

15 (a) Any employer or other person acting on behalf of an employer, who violates,
16 or causes to be violated, any provision regulating minimum wages or hours and
17 days of work in any order of the Industrial Welfare Commission, or violates, or
18 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
19 as the employer for such violation.

20 (b) For purposes of this section, the term "other person acting on behalf of an
21 employer" is limited to a natural person who is an owner, director, officer, or
22 managing agent of the employer, and the term "managing agent" has the same
23 meaning as in subdivision (b) of § 3294 of the Civil Code.

24 69. At all relevant times herein, Defendant Davis owned and operated Davis Guest
25 home, Inc. and employed Plaintiff and the Aggrieved Employees. Davis was the "owner,"
26 "managing agent," and "officer" of Davis Guest home, Inc. Davis directly or indirectly, or through
27 an agent or other person, employed and exercised control over the wages, hours, or working
28 conditions of Plaintiff and the Aggrieved Employees and caused the violations to the Labor Code
and Wage Order described above.

70. Davis intentionally failed to provide accurate wage statements to Plaintiff and the
Aggrieved Employees as required by law. Davis failed to provide accurate wage statements to
Plaintiff and the Aggrieved Employees because the wage statements failed to properly and



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1 accurately itemize each employee's gross wages earned, net wages earned, the corresponding
2 number of hours worked at each rate by the employee, and other requirements of California Labor
3 Code § 226. Due to the violations above, Davis failed to provide Plaintiff and the Aggrieved
4 Employees with accurate wage statements because Davis did not state on the wage statements all
5 hours Plaintiff and the Aggrieved Employees worked and all wages they earned, including, but
6 not limited to minimum, regular, and overtime wages. As a result, Davis violated California Labor
Code § 226.

7 **D. UNTIMELY FINAL WAGES**

8 71. Labor Code section 201 provides that all earned and unpaid wages of an
9 employee who is discharged are due and payable immediately at the time of discharge.

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

14 73. By failing to pay all earned regular, overtime, and premium wages to Plaintiff
15 and the Aggrieved Employees as described above, Defendants failed to timely pay them all
16 earned and unpaid wages in violation of Labor Code section 201 or 202.

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

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

24 76. In relevant part, California Labor Code § 558.1 states:

25 (a) Any employer or other person acting on behalf of an employer, who violates,
26 or causes to be violated, any provision regulating minimum wages or hours and
27 days of work in any order of the Industrial Welfare Commission, or violates, or
28 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
as the employer for such violation.



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(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

77. At all relevant times herein, Defendant Davis owned and operated Davis Guest Home, Inc. and employed Plaintiff and the Aggrieved Employees. Davis was the “owner,” “managing agent,” and “officer” of Davis Guest Home, Inc. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

78. Davis intentionally failed to pay Plaintiff and the Aggrieved Employees timely wages upon termination of employment as required by law. By willfully failing to pay wages to Plaintiff and the Aggrieved Employees as set forth above, at the time of termination of employment, Davis violated California Labor Code § 203.

E. UNTIMELY WAGES DURING EMPLOYMENT

79. Labor Code § 204 states

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

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

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

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall



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1 apply to the covered employees.

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

5 80. Defendants paid wages to employees on regular intervals. However, Defendants
6 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
7 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
8 intervals for all wages earned and all hours worked.

9 **F. CIVIL PENALTIES SOUGHT**

10 81. During the applicable time period, Defendants violated California Labor Code §§
11 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

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

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

19 **A.** For violations of California Labor Code § 204, one hundred dollars
20 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
21 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
22 (penalty amounts established by California Labor Code § 210).

23 **B.** For violations of California Labor Code § 1174, five hundred dollars
24 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
25 California Labor Code § 1174.5).

26 **C.** For violations of California Labor Code § 226(a), two hundred fifty dollars
27 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
28 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
California Labor Code § 226.3).

D. For violations of California Labor Code § 510 and 512 fifty dollars
(\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for



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each Aggrieved Employee for each subsequent violation per pay period (penalty amounts established by California Labor Code § 558).

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

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

G. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

84. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated February 27, 2020, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated February 27, 2020 is attached as Exhibit A. Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate these allegations.

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

PRAYER FOR RELIEF

86. WHEREFORE, Plaintiff, on behalf of herself, the State of California, and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and



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

87. For clarity, any reference above to liabilities other than PAGA civil penalties is made only to establish liability for PAGA civil penalties.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 13, 2020

By 
DAVID SPIVAK
CAROLINE TAHMASSIAN
Attorneys for Plaintiff, TINA CALDERON



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

February 27, 2020

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

RE: *Tina Calderon/Davis Guest Home, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Tina Calderon (hereafter “Calderon”) provides notice on behalf of herself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to direct care providers and persons in similar positions (hereafter referred to as “Aggrieved Employees”), by Davis Guest Home, Inc., a California corporation, and Lonny Gene Davis, CEO, CFO, secretary and sole owner of Davis Guest Home, Inc. (together referred to below as “Davis Guest Home”), for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174, 1174.5, 1194, 1197, 1197.1 and 1198.

At all relevant times, Davis Guest Home has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Calderon and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c). At all relevant times, Lonny Davis participated in interviewing potential employees, setting the expectations of the duties the Aggrieved Employees would perform, hiring

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employees, determining employees' hourly rates, raises, and bonuses, and notifying employees of their termination at the end of their employment.

Statement of Facts

Davis Guest Home operates residential care facilities for people who face mental health challenges in Stanislaus County, California. On or about August 16, 2018, Davis Guest Home first employed Calderon to work in California as a direct care provider at its residential care facility on Hatch Street, Modesto, California. Throughout her employment, Calderon worked for Davis Guest Home at all of its residential care facilities. Davis Guest Home continuously employed Calderon from her hire date until December 19, 2019.

At all relevant times, Calderon and the other Aggrieved Employees earned their wages at an hourly rate and Davis Guest Home provided Calderon and the Aggrieved Employees with their paychecks on a semi-monthly basis.

At all relevant time, Davis Guest Home failed to pay Calderon and the other Aggrieved Employees premium wages for time they worked during their meal periods and rest breaks. Davis Guest Home required Calderon and the Aggrieved Employees to perform work during their off-the-clock meal and on-the-clock rest periods, including helping the residents, cleaning the facilities, and preparing meals for the day. Davis Guest Home prohibited Calderon and the Aggrieved Employees from taking duty-free meal periods and rest breaks unless another employee could cover their responsibilities during the meal period or rest break. However, Davis Guest Home did not have sufficient staffing to allow Calderon and the Aggrieved Employees to obtain cover and take meal or rest periods free of duty. For example, Davis Guest Home employs only one staff member to care for its 38 residents at its Ohio Ave (Modesto, California) residential care facility at night. During the day, Davis Guest Home employs only three staff members and a supervisor for such residents. At all relevant times, Davis Guest Home employs only one staff member for eight to nine residents at its smaller residential care facilities, such as those on Central Ave., Mauna Loa, and Nadine in the cities of Modesto and Ceres. Although Calderon and the Aggrieved Employees did not receive 30-minute duty-free meal periods, Davis Guest Home

required Calderon and the Aggrieved Employees to clock-out for 30-minute periods during their work shifts. Davis Guest Home sent an email bulletin to Calderon and the Aggrieved Employees directing them to clock-out for meal periods. Additionally, Misty (last name unknown), an administrator at Davis Guest Home, Cassandra Profeta, a supervisor at Davis Guest Home, and Rachel Brown, a supervisor at Davis Guest Home, told Calderon that she needed to clock-out for meal periods regardless of whether she took duty-free 30 minute meal periods.

At all relevant time, Davis Guest Home did not pay Calderon and the Aggrieved Employees 1.5 times their regular rate of pay for all hours over eight in a day or forty in a week. Davis Guest Home did not pay employees overtime premium wages for all hours over eight in a day and forty in a week because it did not pay them for those daily 30-minute time periods that it directed Calderon and the Aggrieved Employees to arbitrarily clock out for. Had Davis Guest Home counted such unpaid 30-minute periods as hours worked, it would have credited Calderon and the Aggrieved Employees with some or all of the 30-minute periods as overtime hours.

At all relevant times, Davis Guest Home knowingly and intentionally failed to maintain accurate employee records pertaining to Calderon and the Aggrieved Employees, including accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226. Due to its failure to state on the itemized wage statements of Calderon and the Aggrieved Employees the overtime and minimum wages they earned for unpaid work during clocked-out periods, Davis Guest Home failed to provide Calderon and the Aggrieved Employees with accurate wage statements.

At all relevant times, upon resignation or termination, Davis Guest Home failed to pay final wages in a timely manner because it did not pay employees for all off-the-clock work as described above. Davis Guest Home willfully failed and refused to pay timely compensation and wages, for among other things, regular time and overtime.

For the reasons stated herein, Calderon alleges the following violations of the California Labor Code and the Wage Order 5 on behalf of herself and the Aggrieved Employees:

- a) Davis Guest Home failed to provide Calderon and the Aggrieved Employees with all rest breaks and meal periods;
- b) Davis Guest Home failed to pay Calderon and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) Davis Guest Home failed to pay Calderon and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Davis Guest Home failed to pay Calderon and the Aggrieved Employees minimum wages for all hours worked;
- e) Davis Guest Home failed to pay Calderon and the Aggrieved Employees overtime wages for all overtime hours worked;
- f) Davis Guest Home failed to provide Calderon and the Aggrieved Employees with accurate wage statements;
- g) Davis Guest Home failed to timely pay Calderon and the Aggrieved Employees all earned and unpaid wages during their employment with Davis Guest Home;
- h) Davis Guest Home failed to timely pay Calderon and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with Davis Guest Home; and

- i) Davis Guest Home willfully failed to maintain accurate employment records regarding Calderon and the Aggrieved Employees.

Accordingly, Calderon now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Davis Guest Home's alleged violations of the California Labor Code and Wage Order 5.

Wage Order 5

Wage Order 5 applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. "Public Housekeeping Industry" means 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:

- (2) Hospitals, sanitariums, rest homes, child nurseries, childcare 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)(4). Also see §2(J) which defines "Healthcare Industry" to include: "....home health agencies..."

At all relevant times during the applicable limitations period, Davis Guest Home employed Calderon and the Aggrieved Employees as direct patient providers who performed all of their duties in a home-health agency setting. Accordingly, Calderon and the Aggrieved Employees are entitled to the protections provided under Wage Order 5.

///
///

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, 558.1, and 1198)

In relevant part, California Labor Code § 1198 states:

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

In relevant part, 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 Wage Order 5 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. 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 workday that the meal period is not provided.

...

- (D) 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.

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 5, § 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 the 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. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.

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. Greinetz*, 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

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had 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).

In relevant part, Section 12 of Wage Order 5 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 often (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.

California Labor Code § 226.7 states in relevant part:

- (b) An employer shall not require an employee to work during a meal or rest or recovery 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 or rest or recovery 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 workday that the meal or rest or recovery period is not provided.

By requiring Calderon and the Aggrieved Employees to work during what should have been duty-free rest breaks and meal periods, Davis Guest Home has intentionally and improperly failed to provide Calderon and the Aggrieved Employees all rest breaks and/or meal periods free from any duties as required by law. In failing to provide such breaks, Davis Guest Home has violated the provisions of California Labor Code §§ 226.7, 512 and 1198.

Davis Guest Home failed to provide timely meal and rest periods to Calderon and the Aggrieved Employees, including by requiring them to work in excess of five hours with no duty-free, 30-minute meal breaks. Davis Guest Home did not pay premium wages to Calderon and the Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by law.

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Davis owned and operated Davis Guest Home and employed Calderon and the Aggrieved Employees. Davis was the “owner,” “managing agent,” and “officer” of Davis Guest Home. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Calderon and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

Davis intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Calderon and the Aggrieved Employees as required by law. Additionally, Davis required Calderon and the Aggrieved Employees to work through their off-the-clock meal periods. As a result, Davis violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Calderon 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 § 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 (penalties set by 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)).

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Failure to Pay Minimum, Regular, Overtime, and Doubletime Wages
(Lab. Code §§ 510, 1194, 1197, 1197.1 and 1198)

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, § 3 of Wage Order 5 ("Hours and Days of Work") states:

(A) Daily Overtime - General Provisions

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

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

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (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.

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

Under 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."

Davis Guest Home did not pay Calderon and the other Aggrieved Employees for off-the-clock work, including, but not limited to, all worked performed during off-the-clock meal periods. In so doing, Davis Guest Home violated Labor Code §§ 1197 and 1198.

Section 4 of Wage Order 5, pertaining to "Minimum Wages" states in pertinent part:

(A) Every employer shall pay to each employee wages not less than the following:

- (1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following:
 - a. Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2017; and
 - b. Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018.
 - (2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following:
 - a. Ten dollars (\$10.00) per hour for all hours worked, effective January 1, 2016 through December 31, 2017; and
 - b. Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2018.
- ...
- (B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

Employers must compensate nonexempt employees for all work whether or not it is scheduled or recorded if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000). Davis Guest Home failed to pay Calderon and the other Aggrieved Employees for all hours worked. Davis Guest Home supervisors knowingly and intentionally required Calderon and the other Aggrieved Employees to work during their clocked-out meal periods. Davis Guest Home and its managers thus acted in violation of the Labor Code. As a result, Davis Guest Home often required Calderon and the other Aggrieved Employees to work in excess of 8

hours per day and 40 hours per week without being paid for the time over 8 hours and 40 hours, respectively.

Because Davis Guest Home failed to pay Calderon and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, Calderon seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2));
3. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226 and 558.1)

California Labor Code § 226 require 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 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 all relevant times during the applicable limitations period, Davis Guest Home violated California Labor Code § 226 in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. Davis Guest Home failed to state in the wage statements it issued to Calderon and other Aggrieved Employees all the hours worked and wages earned, including minimum and overtime wages, as described above.

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating

minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Davis owned and operated Davis Guest Home and employed Calderon and the Aggrieved Employees. Davis was the “owner,” “managing agent,” and “officer” of Davis Guest Home. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Calderon and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

Davis intentionally failed to provide accurate wage statements to Calderon and the Aggrieved Employees as required by law. Davis failed to provide accurate wage statements to Calderon and the Aggrieved Employees because the wage statements failed to properly and accurately itemize each employee’s gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee, and other requirements of California Labor Code § 226. Due to the violations above, Davis failed to provide Calderon and the Aggrieved Employees with accurate wage statements because Davis did not state on the wage statements all hours Calderon and the Aggrieved Employees worked and all wages they earned, including, but not limited to minimum, regular, and overtime wages. As a result, Davis violated California Labor Code §§ 226.

Accordingly, Calderon seeks civil penalties on behalf of herself and 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).

Failures 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 Davis Guest Home's failure to pay Calderon and the Aggrieved Employees wages for off-the-clock work, including, but not limited to, off-the-clock meal periods and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Davis Guest Home failed to timely pay all wages due during employment. Accordingly, Calderon seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203, and 558.1)

Under 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 § 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 72 hours thereafter, unless the employee has given 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 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 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 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. Davis Guest Home failed to pay final wages in a timely manner to Calderon and the Aggrieved Employees because it did not pay employees for all off-the-clock work as described above. Davis Guest Home willfully failed and refused to pay timely compensation and wages, for among other things, minimum, regular time, and overtime.

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

At all relevant times herein, Davis owned and operated Davis Guest Home and employed Calderon and the Aggrieved Employees. Davis was the “owner,” “managing agent,” and “officer” of Davis Guest Home. Davis directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Calderon and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

Davis intentionally failed to pay Calderon and the Aggrieved Employees timely wages upon termination of employment as required by law. By willfully failing to pay wages to Calderon and other Aggrieved Employees as set forth above, at the time of termination of employment, Davis violated California Labor Code § 203.

By willfully failing to pay wages to Calderon and other Aggrieved Employees as set forth above, at the time of termination of employment, Davis Guest Home is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Calderon seeks civil penalties from Davis Guest Home as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in

which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f) (2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

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

Every person employing labor in this state shall:

...

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

(d) Keep, at a central residential care facility 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.

Davis Guest Home 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, overtime records, records pertaining to unpaid hours worked and hours of shifts that should not have been off the clock.

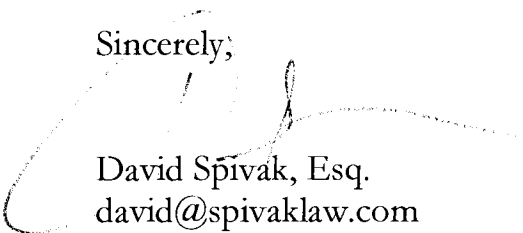
Accordingly, Calderon seeks civil penalties from Davis Guest Home on behalf of herself and other Aggrieved Employees as follows:

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 section 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 section 1021.5 to resolve this matter before litigation.

Sincerely;



David Spivak, Esq.
david@spivaklaw.com

cc: Tina Calderon
Walter Haines, Esq.

Davis Guest Home, Inc.
c/o Lonny Gene Davis,
Agent for Service of Process
1008 Chardonnay Ave
Modesto, CA 95351

///

Lonny Gene Davis
1878 E. Hatch Road
Modesto, CA 95351

Lonny Gene Davis
1008 Chardonnay Ave
Modesto, CA 95351

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Wednesday, May 13, 2020, I served the foregoing document described as **PLAINTIFF'S FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

**Mollie Burks
Chad Saunders
Gordon & Rees
275 Battery Street, Suite 2000
San Francisco, CA 94111
mburks@grsm.com
csaunders@grsm.com**

____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203, Encino, California 91436.

____ (BY EMAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address nora@spivaklaw.com.

EXECUTED on Wednesday, May 13, 2020, at Encino, California.

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

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



NORA GREER

EXHIBIT 6

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Attorneys for Defendants
DAVIS GUEST HOME, INC. AND LONNY GENE DAVIS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF STANISLAUS

TINA CALDERON, on behalf of herself, and
all others similarly situated,

Plaintiff(s),

vs.

DAVIS GUEST HOME, INC., a California
corporation; LONNY GENE DAVIS, an
individual; and DOES 1-50, inclusive,

Defendant(s).

CASE NO. CV-20-001500

*Assigned for all purposes to
Hon. Marie Sovey Silveira, Dept. 21*

**ANSWER TO FIRST AMENDED
COMPLAINT**

Complaint filed: March 5, 2020

COME NOW Defendants DAVIS GUEST HOME, INC., and LONNY GENE DAVIS,
("Defendants"), by and through their attorneys of record, and hereby answer the First Amended
Complaint ("Complaint") of Plaintiff TINA CALDERON ("Plaintiff") as follows:

GENERAL DENIAL

Pursuant to the provisions of the California Code of Civil Procedure section 431.30(d),
Defendants deny generally and specifically each and every allegation contained in Plaintiff's
Complaint, and further specifically deny that Plaintiff was damaged in the sum alleged or in any
sum, or at all, by reason or any conduct on the part of Defendants, their officers, agents or
employees.

///

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses with respect to each cause of action of Plaintiff's Complaint. By alleging the defenses set forth below, Defendants do not thereby agree or admit that it has the burden of proof, persuasion, or production with respect to any of elements of its defense or that Plaintiff has properly asserted any causes of action against Defendants.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiff's Complaint as a whole, and each and all causes of action alleged therein, fails to state facts sufficient to constitute any cause of action against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Avoidable Consequences)

Each of Plaintiff's causes of action and claims for damages are barred, in whole or in part, by the doctrine of avoidable consequences.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiff suffered no damages, is barred from recovering any damages or must have any recovery reduced by virtue of her failure to exercise reasonable diligence to mitigate her alleged damages.

FOURTH AFFIRMATIVE DEFENSE

(Plaintiff's Conduct)

If Plaintiff has suffered damages or injuries, Plaintiff's negligence, by reason of her own acts, omissions, representations and/or courses of conduct, was a contributing proximate cause of said damages or injuries.

FIFTH AFFIRMATIVE DEFENSE

(No Causation)

Plaintiff is barred from recovery because any injuries or damages alleged by her, if any, was the result of new, independent, intervening or superseding causes that are unrelated to any

1 conduct of Defendants. Any action on the part of Defendants was not the proximate or
2 producing cause of any alleged injuries or damages Plaintiff claims were sustained.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 (No Violation of Plaintiff's Rights)

5 Defendants have taken no action and made no omission that violated or sought to violate
6 any statutory or constitutional right relating to Plaintiff.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 (Good Cause)

9 The relief prayed for in the Complaint is barred because, if Defendants engaged in any
10 alleged conduct, they had good cause to do so.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 (Receipt of Rights and Benefits)

13 Plaintiff has received all rights, entitlements and benefits to which she was entitled under
14 the law from Defendants.

15 **NINTH AFFIRMATIVE DEFENSE**

16 (Violations of California Labor Code)

17 Each of Plaintiff's causes of action and claims for damages are barred to the extent
18 Plaintiff failed to use ordinary care and diligence, or exercise a reasonable degree of skill, in
19 performing the terms and conditions of her employment, and failed to substantially comply with
20 all directions concerning her employment, in violation of California Labor Code sections 2854,
21 2856, 2858, 2859 and 2865.

22 **TENTH AFFIRMATIVE DEFENSE**

23 (Failure to Perform Job Duties)

24 Each of Plaintiff's causes of action and claims for damages is barred to the extent
25 Plaintiff failed to perform her job duties pursuant to the terms and conditions of her employment
26 in conformity with either the usage of the place of performance or as directed by her supervisors,
27 as required by California Labor Code section 2857.

28 ///

ELEVENTH AFFIRMATIVE DEFENSE

(Frivolous Lawsuit)

This suit is frivolous, unreasonable and/or without foundation and, as a result, Defendants are entitled to recover costs and attorneys' fees from Plaintiff, and hereby seeks that recovery.

TWELFTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

Plaintiff's Complaint, and each cause of action therein, is barred by the doctrines of waiver and estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

(Conduct of Others)

Any injuries or damages alleged by Plaintiff were caused, in whole or in part, by the acts or omissions of others, for whose conduct Defendants are not responsible.

FOURTEENTH AFFIRMATIVE DEFENSE

(Speculative Damages)

Plaintiff's losses, if any, are speculative, remote and/or uncertain and, therefore, not compensable.

FIFTEENTH AFFIRMATIVE DEFENSE

(Good Faith)

Plaintiff is not entitled to any relief on any of their claims from Defendants because Defendants' conduct was at all times reasonable, in good faith, based upon good cause, and undertaken pursuant to the terms of applicable laws and regulations.

SIXTEENTH AFFIRMATIVE DEFENSE

(Plaintiff Not Entitled to Attorneys' Fees)

Plaintiff's Complaint and each cause of action therein fails to state facts upon which attorneys' fees can be awarded.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Timely Receipt of Payments Owed)

Plaintiff has been timely paid and/or received all sums and benefits due to her from

Defendants by virtue of her employment and, therefore, Defendants are released from any and all continuing obligations to Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Wage Law Conformity)

Defendants have complied in good faith with all wage and hour laws, and other applicable laws, and reasonable interpretations of the same, pertaining to the employment and compensation of Plaintiff, including, but not limited to failure to pay overtime wages, nonpayment of minimum wages, failure to provide rest breaks, failure to provide meal breaks, failure to pay wages upon termination, and any other wage and hour claim and/or violation of law alleged by Plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Defendants allege that Plaintiff is barred from recovery because allowing any recovery would result in Plaintiff's unjust enrichment.

TWENTIETH AFFIRMATIVE DEFENSE

(No Willful Failure to Pay Wages)

Plaintiff's claims are barred in whole or in part because Defendants did not willfully fail to pay wages or a good faith dispute exists as to any amounts that Plaintiff claims are owing.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Right to Pre-Judgment Interest)

Plaintiff is not entitled to recover pre-judgment interest because their alleged damages are not certain or capable of being made certain by any calculation.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Laches)

Defendants alleges that Plaintiff's Complaint, and each cause of action therein, is barred by the doctrine of laches.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Comparative Fault)

The right of Plaintiff to any recovery herein, if any right exists, is reduced and limited to the percentage of fault attributable to Defendants pursuant to California Civil Code section 1431.2 and/or other applicable law.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Not Willful)

Defendants allege that the conduct and/or violation of law alleged against Defendants is not sufficient to be “willful.”

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Injury)

Defendants allege that any failure to provide an itemized wage statement did not cause any injury.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Reasonable Interpretation of Applicable Law)

Defendants allege that it acted in good faith reliance upon the reasonable interpretation of applicable law.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Remedies)

Defendants allege that they are not liable for penalties or damages because Plaintiff failed to exhaust all applicable administrative remedies.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Plaintiff Not Aggrieved)

Neither Plaintiff nor any individual she purports to represent is “aggrieved” as that term is defined in California Labor Code section 2698 *et seq.*

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TWENTY-NINTH AFFIRMATIVE DEFENSE

(Plaintiff Not Adequate Representative)

Plaintiff is not an adequate representative of the interests of absent putative aggrieved employees.

THIRTIETH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Defendants allege that Plaintiff's claims are barred by the applicable statutes of limitation including, but not limited to, California Code of Civil Procedure sections 337, 338, 339, 340 and 343; California Labor Code section 1197.5; California Business and Professions Code section 17208; and any other applicable statutes of limitation.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(No Standing)

Defendants allege that Plaintiff has no standing to bring some or all of the claims which are therefore barred. Plaintiff also has no standing to serve as an adequate representative of allegedly "aggrieved" employees.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Facial Due Process)

Defendants allege that California Labor Code section 2699 fails to identify the manner in which penalties for violations of the California Labor Code accrue and thus, is facially ambiguous and violates due process notions pursuant to the United States Constitution.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Excessive Fines)

Defendants allege that the penalties and fines sought are unconstitutional and excessive under the United States Constitution, and specifically under the Excessive Fines Clause of the Eighth Amendment, U.S. Const. Amend. VIII, and the Due Process Clause of the Fourteenth Amendment, U.S. Const. Amend. XIV, Section 1.

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Penalties Cannot Be Determined on a Class or Community-Wide Basis)

Plaintiff's claims for penalties under the Private Attorneys General Act, Labor Code section 2698 et seq. ("PAGA") cannot be determined on a class or community-wide basis.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Provide Notice)

Plaintiff's claims for penalties under PAGA are barred by Plaintiff's failure to provide the Labor Workforce Development Agency ("LWDA") sufficient notice of her claims, the names of the "aggrieved employees" on whose behalf she intends to seek penalties, and/or the facts underlying her claims to permit the LWDA to make a reasoned determination regarding whether to investigate, and thus Plaintiff's notice was deficient and the Court lacks jurisdiction over their claims for violation of PAGA.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Unlawful Delegation)

Plaintiff's claims for penalties under PAGA are barred to the extent private actions seeking PAGA penalties manifest an unlawful delegation of executive or other authority.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Jury Trial to any Particular Individual Plaintiff)

As a matter of constitutional right and substantive due process, Defendants would be entitled to contest by jury trial its liability to any particular individual Plaintiff, even if the representatives of the purported plaintiff class or other representative group prevail on their claims. Trying this case as a class or representative action would violate the United States Constitution and the California Constitution.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Plaintiff at Fault for any Failure to Take Meal and/or Rest Periods)

Defendants allege that they made Plaintiff aware of her right to and encouraged Plaintiff to take meal and/or rest periods, and did not require Plaintiff to work during meal and/or rest

periods. Accordingly, Defendants are not liable to Plaintiff for any failure to take such meal and/or rest periods.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Defendants presently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Also, because the Complaint is couched in conclusory terms, Defendants reserve the right to assert additional defenses in the event discovery indicates they would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by way of her Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. For costs of suit incurred in defense of this action;
4. For recovery of attorneys' fees expended in the defense of this action; and
5. For such other and further relief as the Court deems just and proper.

Dated: June 12, 2020

GORDON REES SCULLY MANSUKHANI, LLP

By:



Mollie M. Burks
Chad A. Saunders
Attorneys for Defendants
DAVIS GUEST HOME, INC.
AND LONNY GENE DAVIS

PROOF OF SERVICE

Calderon v. Davis Guest House, et al.

Stanislaus County Superior Court Case No. CV-20-001500

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 275 Battery Street, Suite 2000, San Francisco, CA 94111. On the date set forth below, I served the within documents:

ANSWER TO FIRST AMENDED COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by transmitting VIA ELECTRONIC MAIL the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- ☐ by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FEDEX as part of the ordinary business practices of Gordon Rees Scully Mansukhani, LLP described below, addressed as follows:

David G. Spivak
Caroline Tahmassian
The Spivak Law Firm
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
Tel: 818-582-3086
Fax: 818-582-2561
Email: david@spivaklaw.com
caroline@spivaklaw.com

Attorneys for Plaintiff

Walter Haines
United Employees Law Group
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Tel: 562-256-1047
Fax: 562--1006256
Email: whaines@uelglaw.com
Attorney for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 12, 2020 at San Francisco, California.



Stacey Drucker

EXHIBIT 7

EXHIBIT 8

41
FILED

Superior Court Of California
County Of Los Angeles

JUN 21 2012

John A. Clarke, Executive Officer/Clerk
BY Nancy Sandoval Deputy

Received

MAY 18 2012

Fax Filing

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
(UNLIMITED JURISDICTION)**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: BC430633

**~~(PROPOSED)~~ JUDGMENT AGAINST
DEFENDANT RAMIL ABALKHAD**

Action filed: 01/28/2010
CMC: 09/29/2010, 8:30 a.m.
FSC: 04/09/2012, 8:30 a.m.
Trial: 04/09/2012, 8:30 a.m.
Dept: 41, Hon. Ronald M.
Sohigian

Plaintiffs Alina Ghrdilyan and Evgenia Sultanian ("Plaintiffs") filed a complaint Defendant RJ Financial, Inc., a California corporation, on January 28, 2010. On February 24, 2010, Plaintiffs filed a First Amended Complaint which added Ramil Abalkhad, an individual, as a defendant, and a claim against him for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("The PAGA"). In the First Amended Complaint, the Plaintiffs contended that Defendants violated Labor Code sections 226.7, 510, 512, 1194, 1197, and 1198 and Industrial Welfare Commission Wage Order 7-2001 and in so doing, was liable to the Plaintiffs and other aggrieved employees under the PAGA.

On July 26, 2011, the Court granted Plaintiffs' motion to compel further responses to deposition questions, and ordered Defendant Ramil Abalkhad to pay monetary sanctions to

1 Plaintiffs in the amount of \$2,700.00. Defendant Ramil Abalkhad has not paid such amount to
2 date.

3 On April 10 through 23, 2012, the case was tried in Department 41 of the above-entitled
4 court, the Honorable Ronald M. Sohigian, presiding. Defendant Ramil Abalkhad was present
5 throughout the trial. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian appeared for the trial.
6 David Spivak of the Spivak Law Firm and Louis Benowitz of the Law Offices of Louis
7 Benowitz represented the Plaintiffs, Alina Ghrdilyan and Evgenia Sultanian, and the other
8 aggrieved employees. F. Michael Sabzevar of the Law Office of Michael Sabzevar represented
9 the Defendant Ramil Abalkhad.

10 Before the trial without a jury began, Defendant RJ Financial, Inc. petitioned for
11 bankruptcy protection. Pursuant to 11 U.S.C. section 362, the claims against RJ Financial, Inc.
12 were stayed, and the case proceeded to trial against Defendant Ramil Abalkhad only on the
13 claim for civil penalties under the PAGA.

14 The jury was waived. Testimony was heard and documentary evidence was admitted.
15 Following argument, the court considered the evidence. Only Plaintiffs requested a written
16 statement of decision, however, on April 23, 2012, the Court orally presented its tentative
17 statement of decision on the record.

18 **Plaintiff Alina Ghrdilyan**

19 In its tentative statement of decision, the Court awarded the following amounts to
20 Plaintiff Alina Ghrdilyan: (1) For violations of Labor Code sections 510 and 512, \$7,654.60
21 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and
22 Wage Order 7, \$14,218.00 pursuant to Labor Code section 1197.1. This totals \$21,872.60 for
23 Plaintiff Alina Ghrdilyan, of which \$4,572.60 is wages. Of the \$17,300.00 in civil penalties that
24 do not represent wages, twenty-five percent (25%), \$4,325.00, is awarded to Plaintiff Alina
25 Ghrdilyan, and the remaining seventy-five percent (75%), \$12,975.00, is awarded to the
26 California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

27 **Plaintiff Evgenia Sultanian**

28 Additionally, the Court awarded the following amounts to Plaintiff Evgenia Sultanian:
(1) For violations of Labor Code sections 510 and 512, \$5,264.19 pursuant to Labor Code
section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$13,936.50
pursuant to Labor Code section 1197.1. This totals \$19,200.69 for Plaintiff Evgenia Sultanian,

of which \$3,000.69 represents wages. Of the \$16,200.00 in civil penalties that do not represent wages, twenty-five percent (25%), \$4,050.00, is awarded to Plaintiff Evgenia Sultanian, and the remaining seventy-five percent (75%), \$12,150.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

Other Aggrieved Employees

Moreover, the Court awarded the following amounts to the other aggrieved employees:

(1) For violations of Labor Code sections 510 and 512, \$125,000.00 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$200,000.00 pursuant to Labor Code section 1197.1. This totals \$325,000.00 for the aggrieved employees. Of the \$325,000.00 in civil penalties, twenty-five percent (25%), \$81,250.00, is awarded to the aggrieved employees other than the two named-Plaintiffs, and the remaining seventy-five percent (75%), \$243,750.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

As part of its statement of decision, the Court stated that, in committing the acts that led to the Court's award, Defendant Ramil Abalkhad had "the intention simply of trying to run things through and get off as cheaply as he could while he was running his businesses."

After more than ten days had passed from the Court's tentative statement of decision, Defendant Ramil Abalkhad did not request a written statement of decision, object to the tentative statement of decision, nor specify omitted issues to be included in the statement of decision. The Court adopted that tentative statement of decision as its final statement of decision in the manner prescribed by Rule of Court 3.1590(c)(4).

In accordance with the court's Statement of Decision, it is hereby ORDERED, ADJUDGED AND DECREED:

~~1. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian shall have judgment against Defendant Ramil Abalkhad in the amount of \$2,700.00 as sanctions against Defendant Ramil Abalkhad pursuant to the Court's July 26, 2011 decision on Plaintiffs' motion to compel.~~

1 Plaintiff Alina Ghrdilyan shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$8,897.60.

2 Plaintiff Evgenia Sultanian shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$7,050.69.

1 **43** The aggrieved employees shall have judgment under the PAGA against
2 Defendant Ramil Abalkhad in the amount of \$81,250.

3 **4** The California Labor & Workforce Development Agency shall have judgment
4 against Defendant Ramil Abalkhad in the amount of \$268,875.00.

5 The total amount awarded against Defendant Ramil Abalkhad, exclusive of interest,
6 attorneys' fees and costs, is ~~\$268,875.00~~ **\$366,073.29**

7 Defendant Ramil Abalkhad must pay the Plaintiffs and their attorneys on the First
8 Amended Complaint attorneys' fees in the amount of **\$581,770.78** and costs in the amount
9 of **\$21,272.88**.

10 The total amount awarded against Defendant Ramil Abalkhad, inclusive of attorneys'
11 fees and costs, is **\$969,116.95**, plus interest thereon at the legal rate of ten percent (10%)
12 per year.

13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14 **JUNE 21, 2012**
15 DATE

Ronald M. Sohigian
16 THE HONORABLE RONALD
17 SOHIGIAN, JUDGE OF THE
18 SUPERIOR COURT
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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 9454 Wilshire Blvd., Suite 303, Beverly Hills, California 90212.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Friday, May 18, 2012, I served the foregoing document described as [PROPOSED] JUDGMENT AGAINST DEFENDANT RAMIL ABALKHAD on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

F. Michael Sabzevar, Esq.
Law Ofc F Michael Sabzevar
16633 Ventura Blvd #555
Encino, CA 91436
msabzevar@aol.com

XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 9454 Wilshire Boulevard, Suite 303, Beverly Hills, California 90212.

____ (BY PERSONAL SERVICE) My agent delivered such envelope by hand to the home/offices of the addressee.

EXECUTED on Friday, May 18, 2012, at Beverly Hills, California.

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

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


BROCK OYAMA

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

CENTRAL DISTRICT-STANLEY MOSK COURTHOUSE
CIVIL DIVISION **ROOM 118**
111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012



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THE SPIVAK LAW FIRM
David Spivak, Esq.
9454 Wilshire Blvd., Suite 303
Beverly Hills, CA 90212

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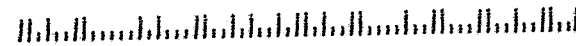


EXHIBIT 9

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

9 Attorney for Plaintiffs,

10 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 **(UNLIMITED JURISDICTION)**

14 ALINA GHRDILYAN; EVGENIA
15 SULTANIAN; and all others similarly situated,

16 *Plaintiffs,*

17 vs.

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

21 *Defendants.*

Case No.: BC430633

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

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

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

25
26
27
THE
SPIVAK
LAW FIRM

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

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

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
period beginning four (4) years prior to the filing of this action and ending
on the date that final judgment is entered in this action.

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

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.

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 they 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;

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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 10

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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(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

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 WRANGLLED 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 AWARDED 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

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 11

OCT 24 2017

Sherri R. Carter, Executive Officer/Clerk
By: V. Jalme, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Jon N. Shields, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

Security Paving Company, Inc.,

Defendant.

Case No. BC492828

Proposed Statement of Decision

Having concluded the trial, the Court now issues a Proposed Statement of Decision.

Pursuant to CCP Section 632 and Cal. Rules of Court 3.1590 (g), the parties shall have fifteen days from the issuance of this decision to object, concur or correct the Proposed Statement of Decision.

The Court shall hold a hearing on the objections on November 17, 2017 at 11:00 a.m.

1 I. BACKGROUND

2 On September 26, 2012, plaintiff filed an individual and class action against Security Paving
3 Company, Inc. ("Security Paving"), a licensed contractor that performs construction work on
4 public works projects throughout California.
5

6 The operative First Amended Complaint alleges a class action and representative action for
7 violations of the California Labor Code and Wage Order 16, breach of contract and a violation of
8 the Business and Professions Code arising from Security Paving's operations.¹
9

10 In 2016, the Court denied plaintiff's motion to certify the class. The case proceeded solely on the
11 individual claims of plaintiff Jon Shields and a representative action under PAGA brought by
12 Shields as an aggrieved employee.
13

14 In August 2017, the Court granted the defendant's motion for summary adjudication as to the
15 PAGA claim for failure to provide meal periods, but denied the motion as to the PAGA claim
16 based on the defendant's alleged failure to provide rest breaks.
17

18 In that decision, the court considered whether Labor Code §512(e), which became effective on
19 January 1, 2011, exempted Security Paving from meal period requirements. The court found that
20 Security Paving was exempted from the meal period requirements as a union-signatory
21 construction contractor. Further, the court concluded that because plaintiff's PAGA claim is
22 subject to a one-year statute of limitations and covers the period from September 26, 2011 onward
23 only,² it could not include challenges based on meal-period violations.³
24

25
26 ¹ The plaintiff abandoned his cause of action for breach of contract at closing argument.

27 ² This date is one year prior to the September 26, 2012 filing date of the original complaint.

28 ³ PAGA claims are subject to CCP §340(a)'s one-year statute of limitations period governing "actions for a penalty or forfeiture."

1 As for the PAGA claim for rest break violations, the court considered whether Wage Order 16
2 barred that claim and concluded that it did not. Under section 11(D) of that Wage Order, in cases
3 where a valid collective bargaining agreement provides a final and binding mechanism for
4 resolving disputes regarding rest breaks, the collective bargaining agreement shall prevail. But,
5 under section 11(E) of that order, the collective bargaining agreement exemption shall not apply
6 unless the collective bargaining agreement provides "equivalent protection" to Wage Order 16.
7 The Court found that the collective bargaining agreements at issue in this case did not afford the
8 same protection as the three-year statute of limitations period to recover premium pay for missed
9 rest periods. The court also found that the collective bargaining agreements did not expressly
10 provide for the one-hour premium pay for missed rest breaks. They are either silent on this issue
11 or they provide for pay "at the rate of two times the standard straight-time and overtime" rates.
12 Accordingly, the court denied summary adjudication on the rest period portion of plaintiff's PAGA
13 claim.

14
15 The Court also denied the defendant's motion for summary adjudication on plaintiff's individual
16 claims for failure to provide meal periods,⁴ failure to authorize and permit rest breaks, breach of
17 contract, unfair business practices and failure to provide accurate itemized wage statements.

18
19 A court trial on these causes of action began on September 19, 2017 and concluded on October 2,
20 2017.⁵ The parties filed post-trial briefs on October 16, 2017. The defendant, thereafter, filed a
21 motion to strike the plaintiff's pre-trial brief on October 18, 2017. The plaintiff filed an
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23
24 ⁴ The protections afforded under Labor Code §512(e) foreclose the individual meal period claim for a small
25 period of plaintiff's individual three-year meal break claim. It would exempt only the period of after January 1, 2011
26 (i.e., Labor Code §512(e)'s effective date). As defendant's argument under Section 512(e) did not dispose of the
plaintiff's individual meal period claim, it could not be resolved by way of a motion for summary adjudication. CCP
§437c(f)(1).

27 ⁵ The Court reserved ruling on the defendant's motion for judgment, which Security Paving filed at the close of the
28 plaintiff's case, and declined to render any judgment until all evidence was presented. *See Watt v. Kantel* (1970) 13
Cal. App. 3d 249, 253. For the reasons set forth in this decision, that motion is denied.

1 opposition to that motion on October 23, 2017. Thereafter, the Court took the matter under
2 submission and now renders a proposed statement of decision.

3 4 II. OUTLINE OF ISSUES DECIDED AT TRIAL

5
6 The Court begins by setting forth the issues to be decided in this trial:

- 7 (1) Did defendant violate the Labor Code by failing to authorize and permit rest breaks to
8 the representative plaintiff and other aggrieved employees for the period from
9 September 2011 to the present? If so, what penalties are owed under the PAGA cause
10 of action as a result of these violations?
- 11 (2) Did defendant violate Labor Code sections 226.7 and 512 by failing to provide plaintiff
12 Jon Shields meal periods for the period September 26, 2009 until December 31, 2010?
13 If so, what unpaid wages are owed to Jon Shields for missed meal periods?
- 14 (3) Did defendant violate Labor Code sections 226.7 by failing to authorize and permit rest
15 breaks to Jon Shields? If so, what unpaid rest break premiums for the period from
16 September 26, 2009 until September 26, 2012 are owed to Jon Shields?
- 17 (4) Did defendant violate Labor Code Section 226 by failing to provide Jon Shields with
18 accurate wage statements for the period from September 26, 2009 until September 26,
19 2012? If so, what penalties are owed to Jon Shields?
- 20 (5) Is Jon Shields owed "waiting time" penalties under Labor Code §§ 201-203?
- 21 (6) Is plaintiff entitled to any relief based on his claim that defendant violated Business
22 and Professions Code Section 17200 *et seq.* If so, what is an appropriate remedy?

23 24 III. PAGA REST BREAK CLAIMS

25 Jon Shields, as a representative plaintiff for himself and other aggrieved employees, alleges that
26 Security Paving violated the law by failing to afford certain of its crewmembers the rest periods
27 mandated by the applicable Wage Order. The plaintiff's PAGA rest break claim covers the period
28 September 2011 through the present.⁶

⁶ Jon Shields began working for Security Paving in late 2008. (Trial Exhibit ("Exh.") 506 at 14-16). The defendant terminated his employment in October 2011 (Exh. 506 at 17). At closing, the Court inquired of plaintiff's counsel whether an employee who did not work for the defendant during a substantial portion of the relevant period of the PAGA claim was properly characterized as an aggrieved employee. Certainly, in a class action setting, such a representative might be challenged on the basis of his adequacy to testify accurately and competently regarding the

1 A. Labor Code Provisions and Wage Order 16

2
3 Labor Code section 226.7 prohibits employers from requiring employees to work during any rest
4 period mandated by a Wage Order. It establishes a premium if an employer fails to provide
5 employees a meal or rest period required by the Wage Orders. Under the rule, employers must
6 pay employees one additional hour's pay for failure to provide one or more rest periods. The
7 employer must pay the premium in addition to the compensation owed for the worked time,
8 including time worked during a missed meal or rest period.

9
10 The applicable Wage Order in this case -- Wage Order 16 -- provides that "[e]very employer *shall*
11 *authorize and permit* all employees to take rest periods, which insofar as practicable, shall be in
12 the middle of each work period The authorized rest period shall be based on the total hours
13 worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major
14 fraction thereof." Wage Order 16-2001, § 11(A)(emphasis added).

15
16 Work Order 16 -- covering the construction industry -- contains a measure of flexibility regarding
17 rest breaks not found in other wage orders. (See Exhibit 513 at 7). Employers in the construction
18 industry may stagger rest periods to avoid interruption in the flow of work and to maintain
19 continuous operations, or may schedule rest periods to coincide with breaks in the flow of work
20 that occur in the course of a workday. Rest periods are to take place at designated areas, which
21 may include or be limited to the employees' immediate work area. Rest periods need not be
22 authorized in limited circumstances when the disruption of continuous operations would
23 jeopardize the product or process of the work. However, the employer shall make up the missed

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27 defendant's practices during much of the relevant period. PAGA, however, does not impose class action requirements
28 on its representatives. *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985. Further, the testimony of other witnesses,
including the defendant's witnesses, supported the finding that in certain settings -- most specifically in crews working
on overnight road paving projects with required lane closures -- the defendant's rest break practices were the same in
2015 as they were in 2011.

1 rest period within the same workday or compensate the employee for the missed ten minutes of
2 rest time at his regular rate of pay within the same pay period.⁷

3
4 A rest period -- whenever it is authorized and wherever it occurs -- must be "duty-free."
5 *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 237. In 2016, the Supreme
6 Court in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, clarified the rest period
7 obligations. It explained that employers must relieve employees of all duties and relinquish any
8 control over how employees spend their time during rest periods. However, the Division of Labor
9 Standards Enforcement will not find a rest period violation where an employee who is authorized
10 and permitted to take a rest period freely chooses, without any coercion or encouragement, to
11 forego or waive it. In *Augustus*, the court also explained that circumstances may occasionally
12 arise that prevent employees from taking a rest period at a scheduled time or cause an interruption
13 in a rest period. If this occurs, employers can reschedule rest periods when the need arises, or if
14 they interrupt employees during a rest period, provide them another rest period to replace the one
15 that was interrupted.

16
17 If an employer fails to provide an employee a rest period in accordance with the applicable
18 provisions of the wage order, "the employer shall pay the employee one (1) hour of pay at the
19 employee's regular rate of compensation for each work day that the rest period is not provided."
20 (Wage Order 16-2001 §11(D); Cal. Lab. Code § 226.7).

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25 ⁷ As for timing, California Wage Orders require employers to authorize and permit rest periods for non-exempt
26 employees whose total daily work time is at least 3 and a half hours. The mandatory rest periods must be, insofar as is
27 practicable, in the middle of each work period and must be at the minimum rate of ten consecutive minutes for each
28 four hours or major fraction thereof. The employer must count rest periods as working time and, accordingly, must
pay for such periods. For a shift longer than 3 and a half hours and less than six hours, a ten minute rest break is
required. For a shift over six hours and up to ten hours, twenty minutes of rest is required. For a shift of over ten up
to fourteen hours, thirty minutes of rest is mandated. The Wage Orders do not mandate when the breaks are taken,
only that they fall in the middle of work periods "insofar as practicable."

1 B. The Credible Evidence Establishes that Defendant Did Not "Authorize and Provide"
2 Duty-Free Rest Breaks During Production Downtimes to Nighttime Road Repair and
3 Replacement Crews.

4 At closing argument, plaintiff's counsel confusingly conceded, then repudiated, then later
5 conceded after questioning by the court, that the focus of the plaintiff's PAGA claim was not
6 directed at the defendant's employees who worked on daylight crews in those locations where
7 there were no time-pressures associated with lane closures. Rather, the crux of the challenged
8 practice in this case was directed at defendant's failure to afford employees working on nighttime
9 road paving and replacement crews rest breaks in which they were relieved of all duties and in
10 which management relinquished all control.⁸

11 Both plaintiff and defense witnesses testified that during these nighttime road replacement jobs --
12 which generally entail time-limited lane closures -- workers do not receive fixed rest breaks at
13 defined intervals during the shift.⁹ Instead, Security Pacific expected that rest breaks could be
14 accomplished by having their crews take breaks during downtimes in the overnight construction
15 process.¹⁰

16
17 ⁸ In the post-trial brief, plaintiff once again attempted to re-define its "aggrieved employees" group to extend
18 beyond the defendant's nighttime freeway paving operations employees. Defendant objected strenuously to this
19 "about face" by the plaintiff. (See Defendant's Motion to Strike Plaintiff's Post Trial Brief at 3). The Court agrees
20 with the defendant. After five years of litigation and nine years of trial, and two recesses for the plaintiff's counsel
to confer during their closing statement and rebuttal, the plaintiff identified a representative group upon which the
action was asserted. This decision cannot be revisited two weeks after the close of the case.

21 ⁹ Defendant's witness Jeremy Strobl testified that the defendant's rest break policies were no different on the lane-
22 closure road replacement jobs than on jobs where lane closures were not required. That testimony was flatly
23 contradicted by defendant's witnesses Shane Hunter and Ray Guillen, both of whom supervised night crews on Cal
24 Trans road replacement policies. Unlike many defense witnesses, these supervisors testified that break times were
25 not fixed and that employees were told and were expected to take their breaks during "downtimes" in the
production process. This admitted practice stands in stark contrast -- and contradicts -- the testimony of many of the
defendant's witnesses who worked almost exclusively on day shifts that they were authorized and permitted to take
fixed and regular rest periods.

26 ¹⁰ As for this group, the credible testimony provided by both plaintiff's and defendant's witnesses clearly supports
27 that roadway replacement and repair crews, who operated largely overnight and subject to Cal Trans lane closures,
28 generally did not receive fixed rest breaks but, instead, were instructed by their supervisors to use "downtime" for
meal and rest breaks. This evidence provides a basis upon which the plaintiff can claim a shared employment
practice by Security Paving -- at least as to a cognizable group of employees -- upon which a representative action
can be based. Cf. *Bronco Wine Co. v. Frank A. Logoluso Farms* (1989) 214 Cal.App.3d 699, 720.

1 According to the defense witnesses, during these downtimes, employees were free to leave their
2 equipment, leave the location and otherwise absent themselves from the immediate vicinity in
3 order to take a legally compliant rest period during which they would not be subject to managerial
4 control.

5
6 The credible testimony at trial clearly failed to corroborate the defendant's version of how
7 downtimes were, in fact, used by nighttime construction crews. The credible testimony of a
8 number of witnesses established that a heavy equipment worker was not free to leave his vehicle
9 or that laborers performing traffic control could not abandon their positions during "downtimes" in
10 order to receive a legally compliant – management control-free – rest period. Carpenters were not
11 allowed to simply stop working on pouring forms in order to take a ten-minute break. Credible
12 and compelling testimony from a number of foremen and crewmembers supports the court's
13 finding that workers were instructed to "stay busy" during downtimes. In fact, on more than one
14 occasion, Jon Shields was "written up" for sleeping in his truck during a downtime. If, as
15 defendant argues, an employee was free of management control during this period, why would the
16 defendant have written him up for the exercise of that autonomy?

17 The credible testimony of a number of witnesses called by both plaintiff and defendant establishes
18 by a preponderance of the evidence that Security Paving did not relinquish control over these
19 employees at any time once they arrived at nighttime road paving worksites.¹¹ Throughout these
20 shifts, the various trades were performing interrelated and time-critical functions. Supervisorial
21 control over their activities – including being directed by walkie-talkie – was continuous.

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25 ¹¹ Darrel Matheson, a foreman for Security Paving for four years, credibly testified that during the "set up work" part
26 of a paving process -- which accounted for about 20 percent of his shift working on highway projects -- you could take
27 a meal or rest break, but that after the "pour" started -- usually about 80 percent of the shift time -- you could not take
28 any breaks. Work during that part of the shift continued without interruption. As he explained, when you are pouring
concrete, "it's not stopping . . . because you can't have a cold joint on your concrete slab you're pouring." To afford the
crew a break (even of ten minutes) would mean that "all your concrete is going to be hard behind you by the time you
take off again." And, while authorized or permitted breaks would have been possible had additional "relief"
crewmembers been provided, Security Paving did not typically structure its crews with relief workers.

1 Moreover, the credible testimony of a number of workers on these nighttime paving crews
2 corroborated that they were expressly told by their foremen to stay busy at all times. To quote one
3 witness who patiently tried to correct defense counsel during cross-examination: "You're not
4 understanding, sir. There's no rest breaks. It's not a matter of taking one. You don't get them.
5 They're not there." Dennis Hake, who worked as a grading foreman, was instructed by his
6 superintendent to have the crewmembers work through meal breaks.

7
8 Plaintiff's witnesses credibly testified that they were not free to use pauses in the production
9 process to rest. In fact, one witness credibly testified that the company's reputation was that if you
10 couldn't work and eat at the same time, you didn't eat. While waiting their turn to perform a task,
11 workers were instructed to stay busy – sweeping, chipping the cement trucks, cleaning the interior
12 – any number of tasks. Credible testimony established that if you didn't stay busy or if you left
13 even for the minute or two it would take to relieve yourself, you might find yourself out of a job.

14
15 Ryan Tevelde, a heavy equipment operator called by the defense, credibly testified that he never
16 believed that he could walk away from the equipment during "downtime." Shane Hunter, another
17 of the defendant's witnesses, testified that although he expected employees to use a slow period
18 for breaks, he also talked to them during their breaks and wanted them to stay busy removing
19 cement from their vehicles and standing by their trucks while waiting in the line for the cement
20 pour.¹² Hunter complained that he caught Jon Shields napping while waiting in line to pour
21 concrete – without ever ascertaining whether Shields was, in fact, taking a rest break.

22
23 John Guerra testified credibly about once trying to take a break during one such "downtime."
24 While waiting for dowel bars as part of a cement road replacement job, he bent down to take a

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26
27 ¹² A compelling piece of testimony by Dennis Hake underscores that "downtimes" were not duty-free. When he got
28 "mad," Hake would instruct his crew that they were taking a lunch break today – and during that period of time, they
would be duty-free. When he wasn't fed up with the company, however, he followed his bosses' instruction and
instructed his crews to "work through."

1 rock out of his shoe and reached into his lunch box and took out a Gatorade and drank it. During
2 that brief moment, his Superintendent Shane Hunter, pulled up in his truck and instructed him to
3 get to work. As Guerra testified (in a version where the language had been cleaned up for court),
4 he was told by Shane that "there's something for you to do -- do it." As shown by this testimony
5 and that of other plaintiff's witnesses, even during downtimes, these crewmembers were told to
6 keep busy.

7
8 The Court finds, based on this credible testimony, that production "downtimes" were not free of
9 supervisory control. In fact, the named plaintiff and aggrieved employee, Jon Shields, testified
10 about the practical limitations on affording rest breaks (in which supervisory control was
11 surrendered) given the size of the crews and the amount of work undertaken by Security Paving
12 during any one shift. As he credibly and competently described, the process of removing and
13 replacing highway surfaces is a continuous one.¹³ The workers operate, essentially a train, of
14 complementary and interconnected tasks. Each one of which is dependent on the "just in time"
15 presence of the next step. As a member of a cement paving crew, the pour required continuous
16 and uninterrupted work. And, supervisors ensured that continuity by ongoing and constant
17 supervision and control. While it might have been possible to hire relief workers to allow these
18 breaks to occur, Security Paving did not do so. Nor did they pay these workers premiums when
19 the nature of the work occasioned missed rest breaks.¹⁴

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24 ¹³ Exacerbating the continuous nature of the construction work being performed by pavement crews was the additional
25 pressure of Cal Trans' lane closure rules. As credibly testified to by Darren Jones, the closure time of a freeway lane
is limited. The work to be done has to be completed in a short period of time. "Once we got started, we didn't stop
until we were -- the job was finished for the night."

26 ¹⁴The only evidence showing the payment of premium pay was for the period after January 2015 and shows only 19
27 premiums paid for the entire two and a half year period. Darren Jones credibly testified that in his experience if a rest
28 break could not be afforded, they were entitled to compensation for those missed breaks. He never received extra pay
from Security Paving for those missed rest breaks. Dennis Hake also credibly testified that neither he nor his crew
received premiums for missed rest breaks.

1 The company also monitored its crews to ensure that the workers kept busy all the time. Hake
2 testified that his Superintendent – who was Security Paving’s owner’s son Jason – would sit in a
3 pick-up truck across from work sites and monitor the crews to ensure that they remained busy at
4 all times. As Hake described it, he was "bird-dogged" by Jason to ensure that his crew did not
5 take breaks.

6
7 On occasion, especially at the beginning of a shift during which the project was being set up,
8 workers might be able to take a single rest break during which they were not subject to the control
9 of their supervisors. For example, on a night paving project, the volumetric truck drivers might be
10 able to take a ten-minute break on their way to the freeway location after filling up their truck.
11 Once they arrived at the work site, however, there were no periods of time in which they were free
12 to leave their vehicles, or even take a nap while in their vehicles. Second rest breaks during an
13 eight-hour shift did not occur.

14
15 A number of these witnesses credibly testified that they were either expressly told or were led to
16 believe that you would be fired if you requested or took a rest break. Darren Jones testified that
17 "we knew we weren't allowed to [take a rest break]." And, that if you tried to take a break or
18 lunch, then there was a good chance you probably weren't going to work the next night. John
19 Guerra credibly testified that when workers complained about the absence of breaks, they would
20 not be working at the job site the next day.

21
22 The absence of any written policy or any means by which the company could verify that
23 employees were receiving their required rest breaks further supports the Court’s finding that
24 legally compliant rest breaks were neither authorized nor permitted. Although there was a
25 contention by the defendant that it orally described its meal and rest break policy at every
26 “tailgate” safety meeting and obtained signed statements from employees attesting to that fact, the
27 Court believes the credible testimony that such presentations did not occur. According to the
28 credible testimony of a former foreman for Security Paving, Darrel Matheson, he never spoke with

1 management regarding any rest break policy and he irregularly attended or conducted tailgate
2 meetings. He estimated that he had maybe 15 or 20 of such meetings during his four-year tenure
3 at Security Paving. And, at those meetings, he never discussed rest breaks. Rather, as makes
4 sense, he discussed the work that they were to be performing that week and any unique safety
5 concerns posed by that work. Matheson also credibly testified to handing out multiple, blank
6 forms to his crews to sign before they could receive their paychecks.¹⁵

7
8 Nor did complaints made by these workers as to the unavailability of rest breaks to their unions
9 obtain needed redress. As credibly testified to by several of the plaintiff's witnesses, they told
10 business agents and union officials that they were not getting bargained for rest breaks. But, those
11 complaints were not acted upon.¹⁶ For a significant portion of the relevant period, the economy
12 and construction industry were in steep decline. Work was scarce. Unions were unwilling to
13 lodge complaints against contractors when "we just started to get work again." The unions were
14 unwilling to "piss off" Security Paving – a large employer -- by lodging a complaint about missed
15 rest breaks. And, employees were concerned that if they complained about missed breaks, that
16 they would be "blackballed" at the union hiring hall. As John Guerra reminded everyone, "I
17 wanted just to work, man . . . I lost everything in 2009, you know. I was just getting on my feet
18 again. I was just happy to be working." When Bret Leutzinger complained to his union, he was

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22 ¹⁵ Being handed blank forms to have their crews sign was also testified to credibly by Hake. He also recalled being
handed "stacks of sheets" by his superintendents when they were trying to catch up on their paperwork.

23 ¹⁶ The court finds entirely not credible the testimony of a number of union representatives called by the defendant as
24 witnesses. Unlike the characterization of these witnesses as disinterested, they clearly had an interest in appearing to
25 have performed their role as protecting their members. And, surprisingly, one representative in particular, testified as
26 if he currently worked for Security Paving. His testimony was remarkably similar to answers given by current
27 employees of the firm, even though he hadn't worked at the company in some time. The union reps claimed to have
28 never heard a complaint; claimed that their business agents routinely monitored working conditions at these worksites
and generally testified to policies at Security Paving for which they had no personal knowledge. Their demeanor
while testifying was hostile and defensive and they expressed no real concern about the possibility that their union
members had received unfair treatment by an employer. They appeared to be entirely captured by a large employer
who afforded their members regular and high-paying work. The court affords the testimony of these witnesses no
weight.

1 told that there were over 500 operators on the union hall hiring list and that he was lucky to have a
2 job.

3
4 Providing the plaintiff's witnesses with an extra measure of credibility is the fact that the testimony
5 that these witnesses provided at this trial is potentially adverse to their financial interests. These
6 workers work for a number of different contractors and remain busy by moving from one project
7 to the next. It is not without considerable risk to future employment that a worker comes forward
8 to report the types of violations testified about in this case. That they were willing to do so, and
9 that they did so in such a credible fashion, gives even more weight to this testimony.¹⁷

10
11 The witnesses called by Security Paving to rebut the aggrieved employee's claims fell into two
12 general groups -- union officials who had every reason to deny ever hearing or grieving a
13 complaint about missed breaks, and current employees, who also had financial and employment
14 reasons to testify as they did.¹⁸ Every single defense witness who worked for Security paving
15 testified that he had not missed a single rest or meal break (although it might have been briefly
16 postponed for less than ten minutes) or, if he had, he had been paid a premium.

17
18 These witnesses and their testimony were neither credible nor was the testimony corroborated by
19 contemporaneous employment or payroll records. Despite testimony that missed rest breaks were
20 recorded by foremen on timesheets, the defendant failed to mark or admit as a separate exhibit
21
22

23 ¹⁷ By contrast, the defendant's current employees uniformly sponsored the wholly incredible testimony that they were
24 indifferent to losing their jobs -- all of which were incredibly high-paying positions. These defense witnesses had an
25 obvious and clear financial motive to testify in a way to assist the company. When each and every one of them
26 testified that they were indifferent to the possibility of losing their six-figure salaries, they lost a good deal of
credibility. Equally problematic to their credibility was the recurrent admission that they'd spoken with defense
counsel and had been told what questions to expect to be asked.

27 ¹⁸ The union witnesses -- all of whom uniformly testified to hearing nothing and knowing nothing -- were entirely not
28 credible. They actually testified to rest period practices at Security Paving despite their testimony that they personally
had not investigated any complaints nor had they regularly visited Security Paving work sites.

1 even one of those handwritten, amended timesheets.¹⁹ Nor did the company produce any evidence
2 of the premium payments made for most of the relevant period for these missed breaks. The
3 payroll system evidence of premium payments showed 19 missed rest periods since January 2015
4 -- a remarkably small number in light of the company's 500 or more employees and the nature of
5 the work being performed.²⁰

6
7 Many of the witnesses called by the defendant did not work on projects that involved lane closures
8 or night work. Jeremy Strobl rarely worked on freeway repair and panel replacement. Kenneth
9 Dahlke worked at the concrete plant. Charles Graham and Jose Munoz both worked day shifts as
10 carpenter journeymen and carpenter foremen. Robert Walsh worked as a laborer on day shifts.
11 Ryan Tevelde, Chris Manoukian, Abel Lemus, Raymond Reames, Eduardo Castaneda, Kamran
12 Sepanlou and Dan Jelenicki predominantly worked on day shifts at locations where there were no
13 temporary lane closures.

14
15 Of those witnesses who worked day shifts, their testimony was inconsistent and failed to establish
16 defendant's claim that it had a consistent and enforced policy of authorizing and permitting two
17 rest periods -- one in the morning and one in the afternoon. Many of these defense witnesses
18 testified to different rest break practices in key aspects. Graham's crew had fixed rest and meal
19 breaks and would be required to ask permission if they wanted to take a break at a different time.
20 Jose Munoz, also a carpenter foreman, instructed his crew when to take their breaks. Walsh took
21 his breaks at fixed times and never deviated from that schedule for "any reason." Ryan Tevelde,
22 an equipment operator, took regular breaks but would deviate from a fixed schedule if necessitated
23 by the work being performed without asking permission.

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26 ¹⁹ In defendant's post-trial brief, defendant drew the court's attention to two pages of an admitted exhibit of hundreds
27 of certified payroll records -- an exhibit that was so voluminous that it was submitted in the form of a thumb drive.
(Exh. 55). The absolutely scarcity of such examples supports the conclusion that, in the vast, vast, vast majority of
occasions, missed rest break premiums were not paid by the defendant.

28 ²⁰ Until 2015, defendant did not have a time-keeping system that was capable of capturing or preserving this
information.

1 Only five of the defendant's nineteen witnesses worked on the types of shifts that are being
2 challenged by these aggrieved employees -- overnight road replacement and paving shifts
3 involving lane closures during which work assignments for lane removal and replacement had to
4 be performed within a relatively short time period. As to the small number of defense witnesses
5 who had worked on night shifts, they did not testify consistently or credibly as to whether and
6 when rest breaks were provided during those assignments. As discussed above, two defense
7 witnesses testified that they instructed their crews to use "downtimes" for meal and rest breaks.
8 Tevelde testified that he took breaks and he never believed that he could walk away from the
9 equipment during "downtime." Abel Lemus testified that he took his breaks during downtime.
10 But, Kamran Sepanlou, testified that he took breaks whenever he wanted to and he was free to
11 take a break and walk away from his equipment during a cement pour if he wanted and no
12 questions would be asked.

13
14 Other of these defense witnesses were impeached by prior testimony or appeared during their
15 testimony as evasive, defensive and not credible. Michael Rodriguez, the defendant's "PMQ" was
16 entirely not credible. His demeanor while testifying was hostile and defensive. His testimony, in
17 critical aspects, defied common sense. For example, although he testified that there was no
18 record-keeping by the defendant regarding rest breaks until 2015, he was confident that before this
19 change in 2015 employees had been paid premiums "many times" for missed rest breaks.²¹ This
20 testimony was contradicted by his deposition testimony. At his deposition, he testified that he was
21 not aware of employees being paid a one-hour penalty for rest breaks.²² He also incredibly
22 testified that meal and rest breaks were discussed at *every* tailgate meeting, even though he was
23 personally present at only maybe 20 of the more than 2000 weekly meetings held over his seven-

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26 ²¹ The documents show that Security Paving has only paid 19 hours of missed rest periods since the new program was introduced in January 2015.

27 ²² Equally incredible was defendant's witnesses' claim that Wage Order 16 was prominently posted at all the
28 overnight road paving job sites. There was no fixed location based on the nature of these projects at which such a posting could have been provided. The credible testimony of plaintiff's witnesses is that they never saw any postings because they worked hours in which the main offices were closed.

1 year employment history at Security Paving. His most incredible testimony was his claim that the
2 2015 improvement in record-keeping at Security Paving had nothing to do with this lawsuit,
3 despite a complete lack of foundation as to that question because he admitted that he'd never
4 attended a meeting during which the lawsuit was discussed.

5
6 Shane Hunter, a superintendent for Security Paving, provided some of the most unbelievable
7 testimony at the trial. He acknowledged that the road replacement crews were expected to
8 complete a target of pavement removed and pavement replaced for each shift. He also testified
9 that Cal Trans lane closure requirements and stipulated time for completion in contracts are factors
10 in making work schedules. He then, however, went on to testify that these conditions have no
11 effect on the pace at which work is performed and whether breaks are authorized and permitted.
12 He admitted that even though there are liquidated damages as much as \$30,000 per hour, the
13 workers would never work through lunch or breaks for the sake of contract completion. He then,
14 amended his testimony and admitted that although he did discuss daily project completion
15 deadlines with the foremen who reported to him, he never discussed project completion targets
16 with them. How one can discuss one without discussing the other was never made apparent. His
17 inconsistent testimony severely affected the credibility of his testimony regarding whether rest
18 breaks were authorized and permitted by the defendant.

19
20 The defense witness who offered the most unbelievable testimony was Ray Guillen, the foreman
21 who worked, at least for some relevant period, with plaintiff Jon Shields. Guillen was sullen,
22 defensive and avoidant while testifying. His posture and attitude revealed an unbelievable
23 antipathy for the plaintiff. Like other defense witnesses, Guillen started answering questions
24 before defense counsel even finished asking them -- showing that he clearly had been told what
25 questions would be asked and had prepared answers with the assistance of someone else. During
26 cross-examination, Guillen was visibly angry with plaintiff's counsel.

1 Moreover, Guillen's testimony made no sense. His version of Bret Leutzinger's complaint about
2 the absence of breaks is one example. Why would an employee voluntarily retreat from a
3 complaint about receiving breaks -- as Guillen testified? The only logical explanation -- which
4 was proffered by Leutzinger himself -- would be that the employee believed that he would be
5 retaliated against if he continued to complain.

6
7 Another incredible part of Guillen's testimony is that he told his crews -- each and every week at
8 every single tailgate meeting -- about the company's meal and rest break policies. And, what
9 would he have told them? According to him, crews were to take breaks while there was
10 "downtime." The problem with that testimony is that when Jon Shields took a nap during such a
11 "downtime" break, he was written up -- twice. So, if you are disciplined for taking a nap during
12 downtime, how can you take a break during which you are free from management control? How
13 does a foreman know if the nap you are taking is your break or not? How can you be relieved of
14 all responsibility, and yet be disciplined for taking a nap during the same downtime?

15
16 That the defendant is subject to oversight by Cal Trans and other regulatory agencies does not
17 persuade the court that duty-free rest breaks during downtime were authorized and permitted. It
18 would be virtually impossible for the intermittent presence of government representatives during a
19 nighttime road replacement operation -- who would be focused on progress of the task,
20 engineering/plans or questions of safety compliance -- to detect the absence of rest breaks and/or
21 the failure to pay a premium wage for those missed breaks. Even the occasional business agent of
22 the unions failed to detect the defendant's non-compliance. As credibly testified to by a number of
23 plaintiff's witnesses, employees were too scared to complain and business agents were too
24 captured by the employer to investigate. Again and again, the absence of a complaint was
25 considered by the union to be a reason not to investigate.

26
27 Nor does the existence of a number of collective bargaining agreements -- all of which were
28 admitted as exhibits during the defendant's case -- exonerate or excuse the failure by Security

1 Paving to authorize and permit nighttime road repair and replacement crews to take legally
2 compliant rest breaks. While the defendant may have believed that it provided a complete defense
3 for the workplace practices it engaged in, it does not – as a matter of law – provide that protection.
4 And, that the company was required to pay for an eight-hour shift, even if the shift workers
5 completed their tasks before eight hours elapsed does not provide an excuse or defense to the
6 company’s failure to authorize and permit employees to take rest periods, or to pay premiums for
7 missed periods.²³

8
9 In conclusion, the plaintiff has met his burden of proving that the defendant failed to comply -- at
10 least with regard to nighttime road replacement and repair crews -- with the Labor Code's
11 requirements with regard to rest breaks.

12
13 C. The Petersen Survey and Damage Study Are Entitled to No Weight

14
15 Having established the factual existence of a violation of the labor laws based on Security
16 Paving’s failure to afford nighttime road repair and replacement crews legally compliant rest
17 breaks, the next question is how many aggrieved employees on how many shifts failed to receive a
18 legally compliant rest break?

19
20 Under Labor Code Section 2699(a), aggrieved employees can initiate actions to recover civil
21 penalties for Labor Code violations that may be recovered by the Labor and Workforce
22 Development Agency (“LWDA”) or any of its departments, divisions or employees. To prevail in
23 his representative claims, Plaintiff must prove Labor Code violations with respect to each and
24 every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA. *See*
25 *Hibbs-Rines v. Seagate Tech., LLC* (N.D. Cal. Mar. 2, 2009) 2009 WL 513496, at *4.

26
27 ²³ Although one or two witnesses testified to leaving early on those days when rest breaks were missed, the vast
28 majority of the witnesses for both sides testified to working an eight-hour shift and remaining at work until the end of
the shift.

1
2 Such actions are fundamentally law enforcement actions, with the aggrieved employee acting as a
3 private attorney general to collect penalties from employers who violate labor laws. *Esparza v. KS*
4 *Industries* (2017) 13 Cal.App.5th 1240-1241 (the employee plaintiff represents the same legal right
5 and interest as the LWDA). In a PAGA representative action, the government enforcement entity
6 is “always the real party in interest in the suit.” This is an important distinction between civil
7 penalties and statutory damages. *Id.* at 1241.

8
9 To establish the number of Security Paving employees who were not afforded and permitted a
10 legally compliant rest break during the PAGA period, plaintiff proffered a survey and report
11 prepared by Dr. Jeffrey Petersen. This survey was undertaken to measure how many aggrieved
12 employees during the PAGA period missed a legally compliant rest break and to compute their
13 unpaid wage amounts, penalties and interest.²⁴

14
15 As a preliminary matter, Dr. Petersen received from plaintiff’s counsel a list (“the July 2017 list”)
16 of individuals provided by the defendant as part of a “contact list” process. Of the 1013 names on
17 that list, 858 of these individuals had phone numbers. If an individual did not have a phone
18 number, he or she would be excluded from consideration for the survey.²⁵

19
20 Dr. Petersen then randomly ordered the remaining names from the July 2017 contact list provided
21 by the defendant and identified the first 400 persons on this list.²⁶

22
23 ²⁴ Before trial began, defendant moved to exclude Dr. Petersen’s survey as unsupported by general scientific theory
24 and having been conducted using improper scientific survey techniques. *See Sargon Enterprises, Inc. v. University of*
25 *Southern California* (2012) 55 Cal.4th 747, 772. Although the court denied that motion, it did so with the
understanding that the weight to be given to the plaintiff’s evidence would be independently evaluated after the
conclusion of all the testimony. *Cf. Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 60.

26 ²⁵ Although Dr. Petersen testified that the elimination of employees without phone numbers would have no effect on
27 the survey results because whether or not an individual has a working phone number is not likely a source of bias, his
only authority for this proposition was an article that he wrote. (Exh. 41 at 3, n.12).

28 ²⁶ Dr. Petersen testified that he believed that 400 was a sufficient size for his survey based on his “pilot study” that he
claims to have performed previously. Dr. Petersen did not perform a pilot for his 2017 survey. The survey that he

1 Dr. Petersen then contacted Susan Allman to survey these persons. Ms. Allman is a CPA and is
2 his business partner's daughter-in-law. Ms. Allman has received no formal training in survey
3 techniques; but she conducted two other surveys for Dr. Petersen. Dr. Petersen gave Ms. Allman
4 instructions on the telephone as to the "proper survey protocol."²⁷ Dr. Petersen instructed Ms.
5 Allman to keep a call log to detail her interaction with potential survey participants, including
6 whether she was able to validate that the phone numbers belonged to the people on the random
7 list.

8
9 Ms. Allman attempted to call each individual on the list of 400 four times. Out of the 400, 162
10 had valid phone numbers and 91 participated in the survey.²⁸

11
12 In the survey that Dr. Petersen prepared, he asked the participants whether they had *received* rest
13 breaks, which he defined as a ten-minute period where they were relieved of their job
14 responsibilities.²⁹ (Exh. 41 at 22 (emphasis added)).

15
16 If the participant provided an answer, such as "everyday" or "always," the survey would conclude.

17
18 submitted to the court for purposes of the 2016 motion for class certification was not a "pilot" for this survey – despite
19 his testimony to the contrary. The declaration filed by Dr. Petersen in support of the 2016 survey did not mention nor
20 did it describe the survey conducted in 2016 as a "pilot" survey. Further, the 2016 survey asked different questions
than those posed in the 2017 survey. Dr. Petersen's testimony where he claimed that the 2016 survey was a pilot for
the 2017 survey is wholly not credible and generally (adversely) affected his credibility with regards to his entire
testimony.

21 ²⁷ That protocol and the particular training received by Ms. Allman was not described in Dr. Petersen's report, other
22 than by citing to a chapter in a book written by Robert Groves. Ms. Allman was not given scripts regarding certain
23 responses to particular inquiries by the participants; she was told only to refer questions to Dr. Petersen. Ms. Allman
24 was not told to make her phone calls during identified times of the day, nor was she instructed on how to record
information provided by the participants fully and accurately. At the time that she conducted the survey, Ms. Allman
was aware of the lawsuit, the company and that the survey sought to obtain information regarding the participant's
employment.

25 ²⁸ Listed employees who spoke Spanish were eliminated from participation in the survey because Ms. Allman did not
26 speak Spanish. (Exh. 41-1).

27 ²⁹ Specifically, the survey asked each participant: "[t]hinking about your entire employment period at Security
28 Paving and all the different projects you worked on; if you worked a five day work week, how many of those days
would you receive a 10 minute paid rest break for every four hours worked, on average?"

1 For all other respondents, the survey asked each participant to estimate the exact number of days
2 that they had *received* a rest break. (Id.)

3
4 Then, the survey presented the participants with an open-ended question: “What was the reason,
5 or reasons, you did not receive the rest breaks?” (Id.)

6
7 If the participant reported that they did not receive a rest break, the survey then asked whether
8 they’d received a payment for their missed rest break time. (Id.)

9
10 The survey also asked the participants if the frequency regarding receiving rest breaks changed
11 depending on the project and they were asked, by year, to estimate for each year worked how
12 many rest breaks they received, on average. (Id.)

13
14 The potential survey participants knew about the litigation-related purpose of the survey in
15 advance of receiving a phone call. In a letter sent by plaintiff’s counsel to those employees on the
16 July 2017 list in advance of the survey being conducted, the plaintiff’s counsel told the potential
17 interviewees that they were “potentially” aggrieved employees. (Exh. 41 at 4, 25). In the event a
18 survey participant didn’t read or forgot about the letter, Ms. Allman reminded the participants that
19 they were potentially interested parties in a lawsuit: “[w]e have been asked by the lawyers who
20 seek to represent employees who performed work for Security Paving in a collective action
21 lawsuit to conduct a survey.” (Exh. 41 at 21).

22
23 The survey was conducted over a very brief period of time – during approximately six days in late
24 August 2017. (Exh. 41-1 (Excel spreadsheet of Allman call-log contained on disc attached to the
25 hard copy portion of Exhibit 41)).

1 For those persons who participated in the survey, their responses to the open-ended question 6
2 were recorded by Ms. Allman.³⁰ These answers were provided to Dr. Petersen who reviewed and
3 coded the information obtained in the survey. Specifically, Dr. Petersen took these answers to the
4 open-ended question 6 asking the participant to explain why a rest break had not been provided
5 and then assigned either a 1 or 0 to those responses. A 1 was used to signify that a break had been
6 provided and a 0 was used to show that a legally-compliant break had not been received. (See CD
7 attached as part of Exhibit 41 at Excel Tab Analy L2). Thus, coding was used by Dr. Petersen to
8 interpret answers to the open-ended question 6 ("What was the reason, or reasons, you did not
9 receive the rest breaks?") to determine how frequently a violation occurred.

10
11 Dr. Hildreth, defendant's expert, challenged certain of the coding decisions made by Dr. Petersen.
12 For example, he declined to agree with Dr. Petersen that an answer of "Don't know just went
13 along with the program" should be counted as a rest break violation. Another example, "pouring
14 concrete they would leave early" was also recorded as a violation, even though the employee can
15 elect to take their rest break at the end of the shift by leaving early.

16
17 When asked to explain the methodology that he used in assigning a violation to an explanation,
18 Dr. Petersen vaguely testified that these answers didn't "indicate any personal choice to me." As
19 he explained further why he coded certain answers as violations:

20
21 "Well, they were just – the situation, as I understood it, is they're just out there working
22 and they didn't get a break, so they don't know why they didn't get a break. It just didn't
23 happen."
24
25
26
27

28 ³⁰ An additional four responses were included by Dr. Petersen in his report, but they were obtained in an earlier survey conducted by him as part of plaintiff's class certification motion.

1 Based on this coding, Dr. Petersen then computed the percentage of survey participants who stated
2 that they did not receive all of their required rest breaks due to reasons other than personal choice
3 and computed PAGA penalties based upon this information.

4
5 Dr. Hildreth, who testified for the defendant, criticized a number of errors in the design and
6 implementation of this survey and further challenged the conclusions reached by Dr. Petersen.

7
8 The Court finds the testimony of Dr. Hildreth very credible and adopts, as findings, many of his
9 conclusions with regard to the unscientific nature of Dr. Petersen's survey.

10
11 First, the sample employed by Dr. Petersen was self-selected and biased. Before the survey
12 process even began, the plaintiff's law firm sent a letter out to persons on the 2017 contact list to
13 inform them of the impending survey contact and questionnaire. The letter explicitly stated the
14 plaintiff's law firm was preparing for trial and that, although none of them would be required to
15 appear or attend the trial, they were potentially aggrieved employees. In this way, the letter
16 entreated future participants in the upcoming survey by a promise of potential financial gain.³¹
17 (Exh. 41 at 25). Similarly, the interviewer in this case also knew about the lawsuit. Thus both
18 respondents and interviewer were on notice of the possibility of financial gain associated with
19 certain answers to the questions that were to be posed. This survey design is clearly contrary to
20 the "double blind" standard methods of scientific survey research.³²

21
22 The survey letter and script also allowed participants to believe that their answers would not
23 subject them to legal process, thus providing them with a degree of anonymity. These notices

24
25
26 ³¹ In the event that survey participants had not received the letter or had forgotten its contents, they were reminded as
27 part of the telephone script that "this survey is part of a collective action lawsuit." While an advance letter may have
been useful to improve respondent cooperation, Dr. Hildreth competently testified that these should be written without
mentioning the purpose or the sponsor of the survey.

28 ³² Although Dr. Petersen (again citing only to his own article) opined that double-blind surveys were impossible in
wage and hour cases, he cited no factual basis for that conclusion.

1 gave the impression that any information the survey provided would be anonymous. As Dr.
2 Petersen himself acknowledged in one of his articles, the promise of anonymity increases bias
3 because the participants will exaggerate their reported harm. Both the letter and the survey taker's
4 remarks in this case alerted and informed a specific sub-section of the sample that they were
5 aggrieved and could exaggerate their alleged harms without consequence.

6
7 Second, the sample size selected by Dr. Petersen was too small to obtain the 95 percent confidence
8 estimates sponsored by Dr. Petersen. Moreover, the reason provided by Dr. Petersen to support
9 his decision to limit the sample size to 400 (i.e., that a pilot study was performed previously and
10 supported this sample size) is found by the court to be factually untrue.

11
12 Third, even if the survey methodology were proper, the survey questions themselves failed to
13 elicit how often a violation of the relevant Labor Code rest break provisions had occurred. By
14 asking whether they received breaks, employees were incorrectly directed to report every instance
15 in which a rest break was not 'received,' not whether the employer authorized or permitted such
16 breaks – which is what the law requires.³³

17
18 Fourth, the use of an open-ended question failed to convert the improper "received" breaks
19 question into one that discovered whether employees were "authorized and permitted" but simply
20 elected not to take breaks. Dr. Petersen coded answers from respondents in a biased and
21 unscientific manner, thus rendering the survey's conclusion as to the frequency of violations
22 invalid. A number of Dr. Petersen's coding decisions demonstrate his partisan viewpoint and his
23 lack of objectivity – taking this survey well outside the bounds of proper scientific study.³⁴

24
25 ³³ An employer is obligated only to authorize and permit rest breaks; it has no obligation to ensure that employees take
26 rest breaks. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033. Employees are free to decline rest
27 breaks. *Id.* Thus, the survey (which inquires as to whether a rest break was received in four separate questions) did
28 not gather relevant information regarding the defendant's liability.

³⁴ Another example of Dr. Petersen's embroilment in this litigation is his computation of the margin of error, which he
admitted was underestimated. Performing the correct scientific calculations and accepting Dr. Petersen's 95%
confidence level, the relative margin of error using a t-distribution (due to the small sample size) was 23.7%. In other

1 Fifth, Dr. Petersen's damages analysis, based on his survey results, failed to utilize rates of pay of
2 specific employees to calculate the amounts due for allegedly unpaid premiums for missed rest
3 breaks. Instead he impermissibly used a 'blended' rate averaging the pay rates of the entire
4 Security Paving workforce. This aggregation is legally impermissible for two reasons. By
5 looking at the entire workforce, Dr. Petersen failed to use the pay rates only of those nighttime
6 shift employees who suffered the violations. Secondly, this use of a blended average is flatly
7 contrary to the requirement of Labor Code section 226.7, which requires a premium be computed
8 as "one additional hour of pay *at the employee's* regular rate of compensation for each workday
9 that the . . . rest . . . period is not provided. *See Medlock v. Taco Bell Corp.* (E.D. Cal. Dec. 11,
10 2015) 2015 WL 10791410 at *5.

11
12 In short, the court concludes that the plaintiff's survey results cannot be used to identify each and
13 every employee who did not receive a legally compliant rest break, nor does it permissibly
14 compute back wages or PAGA penalties for aggrieved employees in this case.

15
16 D. If the Petersen Survey and Damage Study Are Entitled to No Weight, What Is the Effect of that
17 Failure of Proof?

18 The only evidence adduced by the plaintiff to quantify how frequently the defendant failed to
19 provide its nighttime road replacement and repair crews with legally compliant rest breaks was the
20 Petersen survey. The only evidence adduced by the plaintiff to quantify unpaid wages and
21 penalties for the aggrieved employees was the Petersen damage study.³⁵

22
23 words, to give an estimate of the proper penalty with 95 percent confidence, Dr. Petersen's estimate would have to
24 vary by almost a quarter from the lower end to the higher end. While this is, admittedly, better than the 49 percent
25 margin of error in the *Duran* case, it is substantially worse than the 5 or 10 margins of error that Dr. Hildreth testified
26 were found in well-performed statistical studies.

27 ³⁵ Although in his post-trial brief, plaintiff's counsel attempted to reopen the trial to adduce two more evidentiary
28 bases by which to identify the number of rest breaks missed by aggrieved employees, such evidence cannot be
"deduced" from Exhibit 55. Exhibit 55 is a "thumb drive" that holds pdf copies of thousands of handwritten
signatures on the bottom of numerous Security Paving "tail gate meeting" forms and other undifferentiated payroll
reports and business records. It is incapable – without considerable review, selection, computation and handwriting
discernment – of becoming the basis by which to "deduce" the basis for any employee's claim for rest break
violations. It is not, as plaintiff contends, nothing more than "simple math." Moreover, even if it were, defendant has

1 The individual plaintiff, Jon Shields, did not testify regarding the number of rest breaks (or meal
2 breaks) that he contended were not received. None of the witnesses from these crews called by the
3 plaintiff testified regarding the number of shifts they worked during the relevant period and how
4 often, once or twice per eight-hour shift, they were not afforded and provided a legally compliant
5 rest break. Nor did any of these witnesses testify as to their hourly or regular rate of pay.

6
7 Where, as here, the plaintiff has met his burden of proof of establishing the fact of a Labor Code
8 violation but has failed to answer by competent evidence how often that violation occurred, what
9 is the effect of that failure of proof?

10
11 Defendant contends that as plaintiff has failed to adduce any competent evidence as to the
12 measurement of how often the aggrieved employees suffered this violation, it should be granted
13 judgment in this case. In support of that contention, defendant cites a number of cases holding
14 that a plaintiff's failure to establish an amount of damage is fatal to the claim. *See, e.g., City of*
15 *Oakland v. Pacific Gas & Elec. Co.* (1941) 47 Cal.App.2d 444, 450; *Saunders v. Taylor* (1996) 42
16 Cal.App.4th 1538, 1543.

17
18 The court agrees that, in general except as otherwise provided by law, a party has the burden of
19 proof as to each fact the existence or non-existence of which is essential to the claim for relief or
20 defense that he is asserting. *Amaral v. Cintas* (2008) 163 Cal. App. 4th 1157, 1188. On occasion,
21 however, courts may alter the normal allocation of the burden of proof. *Id.* In determining
22 whether the normal allocation of proof should be altered, courts consider a number of factors: the
23 knowledge of the parties concerning the particular fact, the availability of the evidence to the
24

25 been deprived of the opportunity to question a witness who has conducted that mathematical analysis. Plaintiff's
26 attempt to reopen the trial at this late date to adduce alternative evidence to the Petersen survey violates due process
27 and shall not be considered by the Court. *See People v. Bolton* (1979) 23 Cal.3d 208, 213 n.2 (axiomatic that new
28 evidence cannot be adduced in closing argument."); *Garcia v. ConMed Corp.* (2014) 204 Cal.App.4th 144, 159.
Defendant Security Paving's motion to strike Exhibit A and B of Plaintiff's Post-Trial Brief. There is no basis upon
which to reopen the proceeding and to allow plaintiff to present new evidence that could have been presented at trial.
See Town of Atherton v. California High-Speed Rail Auth. (2014) 228 Cal.App.4th 314, 325.

1 parties, the most desirable result in terms of public policy in the absence of proof of a particular
2 fact, and the probability of the existence or nonexistence of the fact. *Id.*

3
4 A long-standing application of burden-shifting occurs in the wage and hour context when an
5 employer's compensation records are so incomplete or inaccurate that an employee cannot prove
6 his or her damages.³⁶ *Id.* Even when the records at issue are not legally required to be maintained,
7 the burden may be shifted. *Id.* at 1190 ("fundamental principle of American jurisprudence that for
8 every wrong there is a remedy, and that, unless countered by public policy, an injured party should
9 be compensated for all damage proximately caused by the wrongdoer.")

10
11 The problem in this case, however, is that the aggrieved plaintiff never argued for that burden-
12 shifting to be applied and defendant adduced no evidence whatsoever from which an estimate
13 could be made of the frequency of the violations or the employees on the nighttime road repair and
14 replacement crews who suffered them. Accordingly, while the lack of this evidence may not be
15 fatal to the plaintiff's PAGA case – as the burden had shifted to the defendant to provide this
16 critical, missing information – it still presents the problem that the Court does not have any
17 competent evidence by which to award unpaid wages or penalties to the aggrieved employees.

18
19 Where, as here, the fact that the defendant has failed to comply with the Labor Code's requirement
20 of authorizing and permitting rest breaks during which employees are free from supervisory
21 control has been established, but the frequency of occurrence of this violation and the employees
22 who suffered this deprivation cannot be identified, nominal damages should be available.

23 Nominal damages are granted neither to compensate the plaintiff nor punish the defendant.

24 Nominal damages can be awarded when the defendant has invaded a cognizable legal interest of
25 the plaintiff, *i.e.*, to be afforded legally compliant rest breaks, even when the plaintiff cannot prove

26
27
28 ³⁶ Outside of the wage and hour context, when the parties have unequal access to evidence necessary to prove a
disputed issue, the party who exclusively possesses facts essential to that claim bears the burden of going forward with
the evidence on the issue, although it is not the party asserting the claim. *See Amaral*, 163 Cal.App.4th at 1189-1190.

1 compensatory damages and sues only to establish a right or to obtain a ruling regarding the
2 defendant's conduct. *See Restatement 2d of Torts* § 907. The award of nominal damages in such
3 cases avoids allowing a wrongdoer to avoid punishment and furthers the public's interest in the
4 robust enforcement of the labor laws. Nominal damages are properly awarded when, although the
5 claimant has shown significant harm, its amount is not proved with sufficient certainty to entitle
6 him to an award of compensatory damages. *Id.*

7
8 In this case, therefore, the aggrieved employees have shown significant harm, but its amount has
9 not been proved with sufficient certainty to allow the court to compute or award civil penalties.
10 Accordingly, the court awards a nominal civil penalty assessment of \$50 for an initial violation of
11 Labor Code § 558.³⁷

12 IV. SHIELDS' INDIVIDUAL CLAIMS

13
14 Jon Shields also alleged individual causes of action for lost wages due to missed meal and rest
15 breaks, waiting period penalties and an individual claim for restitution and/or injunctive under the
16 UCL based on these statutory violations.

17 A. Meal and Rest Breaks

18
19 California's meal period rules are set forth in Labor Code Section 512 and the Wage Orders.
20 These rules generally prohibit employers from employing an employee for a work period of more
21 than five hours without providing a meal period of at least 30 minutes. As explained and
22

23 ³⁷ Injunctive relief is not available under PAGA. PAGA actions can recover only statutory penalties in fixed amounts
24 per violation. *Plaisted v. Dress Barn, Inc.* (C.D. Cal. Sept. 20, 2012) 2012 WL 4356158, *2). Moreover, even if such
25 relief were available, plaintiff adduced no evidence after March 27, 2015 with regard to Security Paving's rest break
practices. Thus, there is no basis to find an ongoing violation that would occasion the need for an injunction.

26 The court declines to award a separate PAGA statutory penalty in this case. PAGA is simply a procedural statute
27 allowing aggrieved employees to recover civil penalties for Labor Code violations. PAGA's plain language confirms
28 that the statute allows only civil penalties. The civil penalty awarded in this case of \$50 must be distributed 75% to
the Labor and Workforce Development Agency and 25% to the aggrieved employees. *See* Labor Code § 2699(i).
Where, as here, Labor Code Section 558 provides a civil penalty, PAGA does not allow a separate double penalty to
be imposed. *See Wert v. U.S. Bancorp* (S.D. Cal. Jun. 23, 2014) 2014 WL 2860287, *2-3.

1 examined in *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, it is not a duty of
2 an employer to ensure that no work is performed. Rather, an employer satisfies its obligation if it
3 (1) relieves employees of all duties; (2) relinquishes control over their activities; (3) permits them
4 a reasonable opportunity to take a 30-minute break, and (4) does not discourage or impede them
5 from doing so.

6
7 Employers must also comply with the meal period timing rules when providing meal periods. In
8 the absence of a waiver, Labor Code Section 512 requires a first meal period no later than the end
9 of an employee's fifth hour of work, and a second meal period no later than the end of an
10 employee's tenth hour of work. This has been construed to mean that a meal break should be
11 afforded no later than the start of an employee's sixth hour of work and no later than what would
12 be the start of the 11th hour of work.³⁸

13
14 Shields' individual claim for missed rest breaks, as discussed *supra*, are controlled by Wage Order
15 16, which provides that "[e]very employer *shall authorize and permit* all employees to take rest
16 periods, which insofar as practicable, shall be in the middle of each work period The
17 authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
18 net rest time for every four (4) hours worked, or major fraction thereof." Wage Order 16-2001, §
19 11(A).

20
21
22 ³⁸ The plaintiff -- at a very late point in the case -- asserted that his individual meal break claim could also be proved
23 based on the absence of potable water, soap and towels with which to wash his hands before eating. *See* Wage Order
24 Section 10(c). Defendant objects, understandably, to the lateness of these allegations. The plaintiff's complaint fails
25 to mention a claim for individual meal period violations pursuant to Section 10(c). Section 10(c) requires that
26 employers provide "an adequate supply of potable water, soap, or other suitable cleansing agent, and single use towels
27 for handwashing." There is nothing that requires the potable water to be provided at any particular location or to be
28 located proximately to the soap and towels. The credible testimony adduced from the witnesses proffered by both
plaintiff and defendant established that defendant's work sites had both potable water and separate wash stations with
soap and hand towels -- albeit at different locations. There was no testimony adduced by the plaintiff suggesting that it
was a problem for soap and towels to be taken over to the potable water for use in handwashing. Thus, it is not
necessary to rule on defendant's late objection to the claim because plaintiff failed to meet his burden of proving that
defendant violated 10(c).

1 Shields testified credibly that he had not been provided legally compliant meal and rest breaks
2 during the eight months that he drove a volumetric mixer for Security Paving as part of a night
3 roadway repair and replacement crews. He did not, however, quantify that claim. He did not
4 testify how often he missed his meal and/or rest breaks, how many shifts he worked for Security
5 Paving during the eight months that he worked on overnight road crews, what his regular or hourly
6 rate was, or any other fact upon which his individual losses could be calculated with reasonable
7 certainty.

8
9 Unlike the position that the PAGA aggrieved employees found themselves in, however, Shields
10 possessed all of the information required to perfect his individual claims. He testified that he
11 verified the hours appearing on his paychecks against his personally maintained work records and,
12 on occasion, brought errors to the attention of his employer.³⁹ Unlike the representative group of
13 employees, Shields as an individual plaintiff possessed the information from which a reasonable
14 estimate of missed meal and/or rest breaks during this eight-month period could have been
15 computed and sponsored at trial.⁴⁰ And, he testified that he knew the number of occasions for
16 which he had received premium pay for missed breaks. But, for reasons not entirely clear to the
17 court, he failed to provide any evidence concerning his damages at trial.

18
19 Where, as here, there is no basis to shift the burden of demonstrating damages to the defendant,
20 the plaintiff's failure to prove the amount of his loss is fatal to his individual meal and rest break
21 claims. *See City of Oakland*, 47 Cal.App.2d at 450.

22
23
24

³⁹ He further testified that he received premium payments for some missed meal periods during the time that he
25 worked on asphalt projects and could answer the question of how often by referring to his "notes." (Trial Transcript –
26 September 20, 2017 at 26:2-3).

27
28
⁴⁰ Jon Shields kept track of every hour that he worked for Security Paving and followed up with the company if his
records did not match the company records. (See Exh. 508 at 2.) The company also maintained payroll records to the
same effect for his days of employment. (Id. at 17-21.) The Court, however, declines to consider the plaintiff's late
interjection of this information – which has been extracted, manipulated and computed -- in the post-trial brief as
proof of individual damages for Jon Shields. *See supra* n. 35.

1
2 B. Derivative Wage Statement Claims and Waiting Time Penalties

3
4 Not only did plaintiff Jon Shields fail to adduce competent evidence with which to establish his
5 damages from missed meal periods and rest breaks during the time that he worked with nighttime
6 road paving crews, he adduced no evidence on either his derivative wage statement claim or his
7 cause of action for waiting time penalties.

8 C. UCL Claims

9
10 Jon Shields' final individual cause of action asserts a claim for restitution and injunctive relief
11 under the UCL. There is no evidence in this record as to the amount of any unpaid wages that
12 might be claimed by the individual plaintiff as restitution. Nor is there any basis for injunctive
13 relief presented in this case. Jon Shields was fired by Security Paving many years ago. A UCL
14 representative plaintiff who is no longer employed by or otherwise affiliated in any way with a
15 defendant-employer apart from a lawsuit lacks standing to pursue an injunction against his former
16 employer as he faces no "real and immediate threat of repeated injury from such practices."
17 *Cleveland v. Groceryworks.com LLC* (N.D. Cal. 2016) 200 F. Supp.3d 924, 961-962.

18
19 CONCLUSION

20
21 Shields, as an aggrieved employee on behalf of the representative group, shall receive a nominal
22 award in the amount of \$50. Defendant has prevailed on the remaining causes of action. Plaintiff
23 shall prepare a judgment consistent with this ruling.

24
25 DATED: October 24, 2017

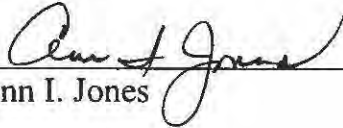
26 
Hon. Ann I. Jones

EXHIBIT 12

TSLF TIME CALDERON

Attorney/Paralegal	Average of Rate	Total Hours	Sum of Lodestar
Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	\$ 150.00	0.16	\$ 24.00
Emily Ly (1st Year Paralegal)	\$ 150.00	0.17	\$ 25.50
Daniela Linares (1st Year Intake Assistant)	\$ 150.00	0.08	\$ 150.08
Anel Tovar (Formerly Employed 1st Year Intake Assistant)	\$ 150.00	4.57	\$ 1,054.57
Nora Greer (15+ Year Paralegal)	\$ 200.00	131.65	\$ 26,330.00
Lizzett Cortez (9th Year Paralegal)	\$ 250.00	3.24	\$ 810.00
Stephanie Greenberg (Formerly Employed 1st Year Attorney)	\$ 250.00	12.33	\$ 3,082.50
Breck Oyama (13th Year Paralegal)	\$ 300.00	6.16	\$ 1,848.00
Shoshanha Essakhar (7+ Year Attorney)	\$ 450.00	0.92	\$ 414.00
Caroline Tahmassian (9th Year Attorney)	\$ 450.00	99.96	\$ 44,982.00
David Spivak (26th Year Attorney)	\$ 700.00	20.33	\$ 14,231.00
Grand Total	279.5499022	279.57	\$ 92,951.65

Firm	Total Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	279.55	\$92,951.65
United Employees Law Group	32.30	\$ 23,417.50
Grand Total	311.85	\$ 116,369.15

Fees Requested	\$33,000.00
Multiplier	0.284

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
1/17/2020	Nora Greer (15+ Year Paralegal)	TC with CL re intake, email UELG retainer agreement	0.60	\$200.00	\$ 120.00
1/22/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	saved personnel file	0.08	\$ 250.00	\$ 20.83
1/27/2020	David Spivak (26th Year)	call with Tina Calderon	0.08	\$700.00	\$ 56.00
1/28/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	Returned Client Call, left message	0.08	\$ 250.00	\$ 20.00
1/29/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	reviewed personnel file, began LWDA letter	0.75	\$ 250.00	\$ 187.50
1/31/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	reviewed personnel file	0.50	\$ 250.00	\$ 125.00
1/31/2020	Nora Greer (15+ Year Paralegal)	Prepare and send It re retainer, It re faq, email re check list and questionnaire with return envelope	0.50	\$200.00	\$ 100.00
2/3/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	LWDA letter, texts with client, reviewed docs	2.00	\$ 250.00	\$ 500.00
2/4/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	LWDA letter and client call	2.75	\$ 250.00	\$ 687.50
2/4/2020	Nora Greer (15+ Year Paralegal)	Send Evidence Prez re Phone via mail, fax, email, Lwda Search, CPRA Search	0.67	\$200.00	\$ 134.00
2/7/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	drafted LWDA letter, reviewed docs	1.00	\$ 250.00	\$ 250.00
2/9/2020	David Spivak (26th Year)	review and revise LWDA notice	0.42	\$700.00	\$ 294.00
2/13/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	revised LWDA letter	0.42	\$ 250.00	\$ 104.17
2/14/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	revised LWDA letter	0.75	\$ 250.00	\$ 187.50
2/18/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	revised LWDA letter,sent to DGS for review	0.50	\$ 250.00	\$ 125.00
2/27/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	finished and finalized LWDA letter, drafted complaint	2.50	\$ 250.00	\$ 625.00
2/27/2020	Nora Greer (15+ Year Paralegal)	Format, File and Serve LWDA Notice with LWDA cc CL.Calendar deadline	1.50	\$200.00	\$ 300.00
2/27/2020	David Spivak (26th Year)	review and revise LWDA notice	0.33	\$700.00	\$ 231.00
2/28/2020	Nora Greer (15+ Year Paralegal)	Prepare and send It re lwda check encl	0.33	\$200.00	\$ 66.00
3/4/2020	Stephanie Greenberg (Formerly Employed 1st Year Attorney)	finished drafting complaint, sent to DGS for review	1.00	\$ 250.00	\$ 250.00
3/4/2020	David Spivak (26th Year)	review complaint	0.25	\$700.00	\$ 175.00
3/5/2020	Nora Greer (15+ Year Paralegal)	Prepare summons, Civil Case Mgmt, Civil Case Cover Sheet, file complaint	0.55	\$200.00	\$ 110.00
3/6/2020	Nora Greer (15+ Year Paralegal)	Resubmit Summons and add filing fee	0.17	\$200.00	\$ 34.00
3/9/2020	Breck Oyama (13th Year Paralegal)	review case, mtg w/ NG, add litigation chains re new lawsuit/CMC and PAGA	0.25	\$300.00	\$ 75.00
3/19/2020	Breck Oyama (13th Year Paralegal)	review SOP order and email NG re add'l SOP orders	0.17	\$300.00	\$ 51.00
3/19/2020	Nora Greer (15+ Year Paralegal)	Prepare additional SOP order	0.25	\$200.00	\$ 50.00
3/24/2020	Nora Greer (15+ Year Paralegal)	Send Client Contact Information Email	0.08	\$200.00	\$ 16.00
3/26/2020	Breck Oyama (13th Year Paralegal)	check POS and SOP, msg NG re individual defendant	0.25	\$300.00	\$ 75.00
3/26/2020	Nora Greer (15+ Year Paralegal)	TC with Cl re client contact information and client questionnaire	0.25	\$200.00	\$ 50.00
3/26/2020	Breck Oyama (13th Year Paralegal)	add deadline chain re D served, email NG to calendar	0.08	\$300.00	\$ 24.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
3/27/2020	Nora Greer (15+ Year Paralegal)	Update calendars for deadlines	0.08	\$200.00	\$ 16.00
4/2/2020	Breck Oyama (13th Year Paralegal)	review status of SOP, update deadline chains	0.33	\$300.00	\$ 99.00
4/9/2020	Nora Greer (15+ Year Paralegal)	File POS Summons individual, update calendars, enter expenses	0.25	\$200.00	\$ 50.00
4/13/2020	Breck Oyama (13th Year Paralegal)	review file, update deadline chain re SOP	0.17	\$300.00	\$ 51.00
4/16/2020	David Spivak (26th Year Attorney)	conf with OC; email instructions to NG and CT	0.25	\$700.00	\$ 175.00
4/16/2020	Caroline Tahmassian (9th Year Attorney)	review dgs email; research re arb agreements	1.25	\$450.00	\$ 562.50
4/17/2020	Caroline Tahmassian (9th Year Attorney)	further research re arbitration agreements; review D's client's arb agreement and email dgs re terms of the agreement	0.67	\$450.00	\$ 301.50
4/20/2020	Nora Greer (15+ Year Paralegal)	Review def doc production, lwda, and complaint	0.75	\$200.00	\$ 150.00
4/20/2020	Nora Greer (15+ Year Paralegal)	Draft BW Stip and Protective Order	1.00	\$200.00	\$ 200.00
4/21/2020	Nora Greer (15+ Year Paralegal)	Draft Discovery Requests, R4P, Special Rogs, Form Rogs Gen, Form Rogs Employ for both defendants	1.50	\$200.00	\$ 300.00
4/21/2020	David Spivak (26th Year Attorney)	review and revise discovery requests	1.50	\$700.00	\$ 1,050.00
4/21/2020	Nora Greer (15+ Year Paralegal)	Revise discovery requests, confer with LC, IM to CT	1.00	\$200.00	\$ 200.00
4/21/2020	Nora Greer (15+ Year Paralegal)	Confer with LC re calendaring, TC with CL re dates, update calendar with misc. calendar dates re deadlines	0.25	\$200.00	\$ 50.00
4/21/2020	Caroline Tahmassian (9th Year Attorney)	emails client re PAGA action; call with client	0.67	\$450.00	\$ 301.50
4/22/2020	Nora Greer (15+ Year Paralegal)	Revise BW Stip, email to DGS	0.33	\$200.00	\$ 66.00
4/22/2020	Caroline Tahmassian (9th Year Attorney)	draft 1AC and email to dgs	1.50	\$450.00	\$ 675.00
4/22/2020	David Spivak (26th Year Attorney)	review amended pleading	0.25	\$700.00	\$ 175.00
5/13/2020	Caroline Tahmassian (9th Year Attorney)	email OC re 1AC; call with NG to discuss filing	0.17	\$450.00	\$ 76.50
5/13/2020	Nora Greer (15+ Year Paralegal)	Upload conformed 1ac to LWDA, serve OC with same	0.17	\$200.00	\$ 34.00
5/13/2020	Breck Oyama (13th Year Paralegal)	update deadline chain	0.08	\$300.00	\$ 24.00
5/13/2020	Nora Greer (15+ Year Paralegal)	Confer with CT, Create POS for file, prepare pos, prepare 1ac for filing, serve on oc, cc client	0.67	\$200.00	\$ 134.00
5/18/2020	Breck Oyama (13th Year Paralegal)	review calendar/FV, email NG re 1AC resp pldg	0.25	\$300.00	\$ 75.00
6/5/2020	Nora Greer (15+ Year Paralegal)	Email OC re M/C availability	0.08	\$200.00	\$ 16.00
6/8/2020	Caroline Tahmassian (9th Year Attorney)	review case, prep for CMC meet and confer with OC; meet and confer call with OC; email dgs and NG re call and next steps	1.50	\$450.00	\$ 675.00
6/8/2020	Caroline Tahmassian (9th Year Attorney)	review CMC order/notice; download/review local rules; email OC re meet and confer; IM staff re local rules and CMC stm deadline	0.33	\$450.00	\$ 148.50
6/18/2020	Nora Greer (15+ Year Paralegal)	Prepare, file, serve and circulate Plaintiff's CMC Statement	0.70	\$200.00	\$ 140.00
6/19/2020	Nora Greer (15+ Year Paralegal)	Email OC re courtesy copy of answer to complaint	0.08	\$200.00	\$ 16.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
6/19/2020	Breck Oyama (13th Year Paralegal)	review file/docket, email NG re answer	0.17	\$300.00	\$ 51.00
6/22/2020	Nora Greer (15+ Year Paralegal)	Email CL D's Answer to Complaint, OCR same	0.17	\$200.00	\$ 34.00
6/25/2020	Breck Oyama (13th Year Paralegal)	review filing, email NG	0.08	\$300.00	\$ 24.00
6/25/2020	Nora Greer (15+ Year Paralegal)	Revise Jury Notice and send to CT	0.17	\$200.00	\$ 34.00
6/26/2020	Nora Greer (15+ Year Paralegal)	Prepare, file, serve Plaintiff's Notice of Posting Jury Fees	0.60	\$200.00	\$ 120.00
6/26/2020	Caroline Tahmassian (9th Year Attorney)	call with OC re early mediation; email dgs re mediation and proposed mediators	0.25	\$450.00	\$ 112.50
6/28/2020	David Spivak (26th Year Attorney)	Review D CMC statement	0.08	\$700.00	\$ 56.00
6/29/2020	Nora Greer (15+ Year Paralegal)	Confer with BO re rejection, prepare amended CMC and send to CT	0.25	\$200.00	\$ 50.00
6/30/2020	Caroline Tahmassian (9th Year Attorney)	research re mediators and email dgs re results	0.50	\$450.00	\$ 225.00
6/30/2020	Breck Oyama (13th Year Paralegal)	review odyssey, update costs	0.25	\$300.00	\$ 75.00
6/30/2020	Nora Greer (15+ Year Paralegal)	Prepare, serve, file, Amended CMC Statement	0.30	\$200.00	\$ 60.00
7/6/2020	Caroline Tahmassian (9th Year Attorney)	CMC hearing; call with OC re mediation; email dgs re witness interviews	0.50	\$450.00	\$ 225.00
7/6/2020	Shoshanha Essakhar (7+ Year Paralegal)	called witnesses and FV update	0.42	\$450.00	\$ 189.00
7/6/2020	Shoshanha Essakhar (7+ Year Paralegal)	reviewed the complaint	0.50	\$450.00	\$ 225.00
7/27/2020	Nora Greer (15+ Year Paralegal)	Review calendars for mediation dates, email to oc re same, TC to CL re same, leave voice mail	0.30	\$200.00	\$ 60.00
7/30/2020	Caroline Tahmassian (9th Year Attorney)	review documents and case notes; draft mediation discovery; call with client re mediation and mediation discovery; revise mediation discovery and email dgs	1.50	\$450.00	\$ 675.00
7/31/2020	Nora Greer (15+ Year Paralegal)	Texts to CL, email to Mediator, update calendar	0.30	\$200.00	\$ 60.00
8/3/2020	Nora Greer (15+ Year Paralegal)	Email Mediation Notice to CL, update calendar with Mediation deadlines	0.30	\$200.00	\$ 60.00
8/11/2020	Nora Greer (15+ Year Paralegal)	Email CL Minute Order, update calendars with new CMC deadlines	0.30	\$200.00	\$ 60.00
8/14/2020	David Spivak (26th Year Attorney)	Review official personnel file of the client; review and revise Caroline Tahmassian's informal mediation discovery requests	1.50	\$700.00	\$ 1,050.00
8/17/2020	Caroline Tahmassian (9th Year Attorney)	revise mediation discovery request; review file and time/payroll records; call with client to discuss time/payroll; email dgs re call with client; email OC mediation discovery	3.00	\$450.00	\$ 1,350.00
8/21/2020	Nora Greer (15+ Year Paralegal)	TC to witness REDACTED no answer	0.04	\$200.00	\$ 8.00
8/25/2020	Nora Greer (15+ Year Paralegal)	TC with witness REDACTED	0.83	\$200.00	\$ 166.00
8/27/2020	Nora Greer (15+ Year Paralegal)	F/U Call with REDACTED	0.50	\$200.00	\$ 100.00
9/7/2020	David Spivak (26th Year Attorney)	Review and respond to NG email about Tina's supervisor's issues	0.25	\$700.00	\$ 175.00
9/9/2020	Nora Greer (15+ Year Paralegal)	TC to Witness REDACTED	0.08	\$200.00	\$ 16.00
9/28/2020	Nora Greer (15+ Year Paralegal)	Circulate Minute Order, Update calendar	0.25	\$200.00	\$ 50.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
10/22/2020	David Spivak (26th Year)	review mediation docs	0.25	\$700.00	\$ 175.00
10/22/2020	Nora Greer (15+ Year Paralegal)	Email to Mediator re payment, email DGS re same	0.08	\$200.00	\$ 16.00
10/27/2020	David Spivak (26th Year)	email OC re mediation	0.08	\$700.00	\$ 56.00
1/12/2021	Caroline Tahmassian (9th Year Attorney)	FU email to OC re mediation discovery; call with NG re mediation prep; email NG re sample selection	0.25	\$450.00	\$ 112.50
1/13/2021	Nora Greer (15+ Year Paralegal)	Send sample selection to oc	0.60	\$200.00	\$ 120.00
1/14/2021	Nora Greer (15+ Year Paralegal)	Confer with CT re CMC, prepare stip to cont same	0.35	\$200.00	\$ 70.00
1/15/2021	David Spivak (26th Year)	review and revise cmc statement	0.25	\$700.00	\$ 175.00
1/15/2021	Nora Greer (15+ Year Paralegal)	Prepare pos, file, serve, circulate Stip and Proposed Order to Cont CMC pending mediation	0.60	\$200.00	\$ 120.00
1/21/2021	Nora Greer (15+ Year Paralegal)	Circulate Notice of Judge Reassignment to CL	0.08	\$200.00	\$ 16.00
1/22/2021	Nora Greer (15+ Year Paralegal)	Check docket for stip	0.08	\$200.00	\$ 16.00
1/22/2021	Nora Greer (15+ Year Paralegal)	Confer with CT re Mediation documents	0.25	\$200.00	\$ 50.00
1/25/2021	Nora Greer (15+ Year Paralegal)	Lvm for Witness	0.08	\$200.00	\$ 16.00
1/25/2021	Nora Greer (15+ Year Paralegal)	Search Lonny Davis FB and Linked In	0.25	\$200.00	\$ 50.00
1/25/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Mediation	0.75	\$200.00	\$ 150.00
1/25/2021	Nora Greer (15+ Year Paralegal)	TC with Witness	0.50	\$200.00	\$ 100.00
1/25/2021	Nora Greer (15+ Year Paralegal)	Sear for witnesses - FB and LinkedIn	0.50	\$200.00	\$ 100.00
1/25/2021	Nora Greer (15+ Year Paralegal)	Prepare Data Entry Templates for CL and Sample Pay Recs	0.70	\$200.00	\$ 140.00
1/25/2021	Nora Greer (15+ Year Paralegal)	Search Glassdoor for Reviews	0.08	\$200.00	\$ 16.00
1/25/2021	Nora Greer (15+ Year Paralegal)	Lvm vm for Witness	0.08	\$200.00	\$ 16.00
1/26/2021	Nora Greer (15+ Year Paralegal)	Prepare, file, serve, and circulate Notice of Entry of Order	0.50	\$200.00	\$ 100.00
1/26/2021	Nora Greer (15+ Year Paralegal)	Leave VM for Witnesses	0.17	\$200.00	\$ 34.00
1/26/2021	Nora Greer (15+ Year Paralegal)	Practice Zoom Session with Client	0.50	\$200.00	\$ 100.00
1/29/2021	Nora Greer (15+ Year Paralegal)	Spot check data entry, email expert re data	0.25	\$200.00	\$ 50.00
2/1/2021	Nora Greer (15+ Year Paralegal)	TC with CT and Expert	0.50	\$200.00	\$ 100.00
2/1/2021	Nora Greer (15+ Year Paralegal)	Email to Expert with more time rec notes	0.17	\$200.00	\$ 34.00
2/1/2021	Nora Greer (15+ Year Paralegal)	TC with CL re names of people she worked with, email to expert	0.50	\$200.00	\$ 100.00
2/1/2021	Nora Greer (15+ Year Paralegal)	Respond to witness message on linked in, email witness	0.17	\$200.00	\$ 34.00
2/2/2021	Nora Greer (15+ Year Paralegal)	TC with Witness, prepare and send autho	0.50	\$200.00	\$ 100.00
2/2/2021	Nora Greer (15+ Year Paralegal)	TC with Witness, prepare and send autho	0.50	\$200.00	\$ 100.00
2/2/2021	Nora Greer (15+ Year Paralegal)	Leave vm	0.08	\$200.00	\$ 16.00
2/4/2021	Nora Greer (15+ Year Paralegal)	Send evidence prez letter for witness, calendar due date, tc with witness re status of hellosign	0.30	\$200.00	\$ 60.00
2/4/2021	Nora Greer (15+ Year Paralegal)	Tc to witness re status re hellosign	0.08	\$200.00	\$ 16.00
2/4/2021	Nora Greer (15+ Year Paralegal)	Circulate Mediation Confidentiality Agreement	0.17	\$200.00	\$ 34.00
2/5/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Mediation Confidentiality Agreement, circulate same to Mediator	0.17	\$200.00	\$ 34.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
2/5/2021	Nora Greer (15+ Year Paralegal)	Leave VM for Witness	0.08	\$200.00	\$ 16.00
2/5/2021	Nora Greer (15+ Year Paralegal)	TC with Witness, prepare and send autho	0.40	\$200.00	\$ 80.00
2/8/2021	Nora Greer (15+ Year Paralegal)	Send evidence prez letter for witness, calendar due date	0.17	\$200.00	\$ 34.00
2/8/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Mediation Questions, email to CT	0.70	\$200.00	\$ 140.00
2/8/2021	Caroline Tahmassian (9th Year Attorney)	mediation prep; review docs; FU emails to staff re docs/facts	4.00	\$450.00	\$ 1,800.00
2/8/2021	Nora Greer (15+ Year Paralegal)	Email Expert re analysis	0.08	\$200.00	\$ 16.00
2/9/2021	Caroline Tahmassian (9th Year Attorney)	mediation prep; review docs; call with expert re data; emails to OC re mediation discovery; research company and owner; calls with NG re facts/docs; draft mediation brief	7.00	\$450.00	\$ 3,150.00
2/10/2021	Nora Greer (15+ Year Paralegal)	TC to Witness	0.25	\$200.00	\$ 50.00
2/10/2021	Nora Greer (15+ Year Paralegal)	TC with CT re case, lvm for cl, email expert re conversion of docs	0.30	\$200.00	\$ 60.00
2/10/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Mediation Questions, email CT	0.42	\$200.00	\$ 84.00
2/10/2021	Caroline Tahmassian (9th Year Attorney)	review documents; discuss records with staff; draft mediation brief; emails with expert re data	6.50	\$450.00	\$ 2,925.00
2/10/2021	Nora Greer (15+ Year Paralegal)	TC with Witness	0.25	\$200.00	\$ 50.00
2/10/2021	Nora Greer (15+ Year Paralegal)	LVM for Witnesses	0.08	\$200.00	\$ 16.00
2/11/2021	Caroline Tahmassian (9th Year Attorney)	draft mediation brief; review documents/records for damages; call with plaintiff re facts and mediation; call/emails with NG re records;	7.50	\$450.00	\$ 3,375.00
2/11/2021	Nora Greer (15+ Year Paralegal)	Lvm for witness	0.08	\$200.00	\$ 16.00
2/11/2021	Nora Greer (15+ Year Paralegal)	Multiple calls with CL re mediation, save emails to file, combine Def Docs, confer with CT	3.25	\$200.00	\$ 650.00
2/11/2021	Nora Greer (15+ Year Paralegal)	Prepare additional templates for time records for data entry	0.60	\$200.00	\$ 120.00
2/11/2021	Nora Greer (15+ Year Paralegal)	Prepare CMC Statement, Prepare POS, file, serve, circulate CMC Statement	0.70	\$200.00	\$ 140.00
2/12/2021	David Spivak (26th Year Attorney)	Review mediation statement	1.00	\$700.00	\$ 700.00
2/12/2021	Caroline Tahmassian (9th Year Attorney)	revise mediation brief; draft witness chart; call with client	4.50	\$450.00	\$ 2,025.00
2/12/2021	Nora Greer (15+ Year Paralegal)	Pull exhibits for Brief, confer with CL, Confer with CT, combine docs for dgs	2.50	\$200.00	\$ 500.00
2/15/2021	Caroline Tahmassian (9th Year Attorney)	revise mediation brief and email dgs	4.00	\$450.00	\$ 1,800.00
2/15/2021	David Spivak (26th Year Attorney)	Review and revise mediation statement	1.58	\$700.00	\$ 1,106.00
2/16/2021	Nora Greer (15+ Year Paralegal)	Review Data Entry Files, send same to expert, finalize Mediation Brief and circulate	1.25	\$200.00	\$ 250.00
2/16/2021	Caroline Tahmassian (9th Year Attorney)	revise mediation brief and email NG	0.25	\$450.00	\$ 112.50
2/17/2021	Caroline Tahmassian (9th Year Attorney)	revise MOU	0.75	\$450.00	\$ 337.50
2/17/2021	Nora Greer (15+ Year Paralegal)	TC with Witness	0.08	\$200.00	\$ 16.00
2/18/2021	David Spivak (26th Year Attorney)	mediation prep.	2.17	\$700.00	\$ 1,519.00
2/18/2021	Caroline Tahmassian (9th Year Attorney)	prep for mediation; revise MOU	1.00	\$450.00	\$ 450.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
2/18/2021	David Spivak (26th Year Attorney)	review and revise memorandum of understanding	0.75	\$700.00	\$ 525.00
2/18/2021	Nora Greer (15+ Year Paralegal)	Email Mediator re Zoom login, email CL re same, update calendar, email Mediator damages, email CT re witnesses, Prepare future costs and fees chart, confer with BO	1.00	\$200.00	\$ 200.00
2/19/2021	Nora Greer (15+ Year Paralegal)	Mediation Prep, Mediation, TC with CL after Mediation	6.25	\$200.00	\$ 1,250.00
2/19/2021	Nora Greer (15+ Year Paralegal)	Draft Protective Order and begin to draft BW Stip	1.00	\$200.00	\$ 200.00
2/19/2021	Nora Greer (15+ Year Paralegal)	Finalize Set One Discovery for Def Davis Guest Home, Inc. Notice Lonny Gene Davis Depo, Prepare 5 POS, serve and circulate set one discovery, update calendar	0.50	\$200.00	\$ 100.00
2/19/2021	Caroline Tahmassian (9th Year)	prep and attend mediation	6.50	\$450.00	\$ 2,925.00
3/2/2021	Nora Greer (15+ Year Paralegal)	Save CMC notes to file, update calendar with new dates and deadlines	0.17	\$200.00	\$ 34.00
3/3/2021	Nora Greer (15+ Year Paralegal)	Check docket for MO, download Defs CMC, circulate same to CL, update calendar	0.25	\$200.00	\$ 50.00
3/4/2021	Nora Greer (15+ Year Paralegal)	Obtain Minute Order from docket, circulate same to CL	0.17	\$200.00	\$ 34.00
3/9/2021	Nora Greer (15+ Year Paralegal)	Prepare and send 4 Evidence Prez Letters to Both Defendants (Two Witnesses), update calendar	1.00	\$200.00	\$ 200.00
3/22/2021	Nora Greer (15+ Year Paralegal)	Update calendar with D's new discovery deadline	0.08	\$200.00	\$ 16.00
4/1/2021	Nora Greer (15+ Year Paralegal)	Download, ocr, and circulate witness personnel files, update fv	0.30	\$200.00	\$ 60.00
4/9/2021	Breck Oyama (13th Year)	update deadline chain	0.08	\$300.00	\$ 24.00
5/4/2021	Nora Greer (15+ Year Paralegal)	Update calendar with new Discovery deadline	0.08	\$200.00	\$ 16.00
5/27/2021	Nora Greer (15+ Year Paralegal)	Prepare and revise BW Stip, PO, and PMQ Notice	1.00	\$200.00	\$ 200.00
6/4/2021	Nora Greer (15+ Year Paralegal)	Update calendar re extension for D's responses to Discover	0.08	\$200.00	\$ 16.00
6/7/2021	David Spivak (26th Year Attorney)	Review and revise opt out stipulation and protective order	0.58	\$700.00	\$ 406.00
6/7/2021	Nora Greer (15+ Year Paralegal)	Finalize PO and BW Stip and send to OC	0.25	\$200.00	\$ 50.00
6/11/2021	Nora Greer (15+ Year Paralegal)	Save D's responses to discovery set one to file, ocr, calendar mx compel deadline, upload docs to FV	0.40	\$200.00	\$ 80.00
6/14/2021	Caroline Tahmassian (9th Year Attorney)	review OC revisions to protective order and email dgs	0.17	\$450.00	\$ 76.50
6/15/2021	Caroline Tahmassian (9th Year Attorney)	review discovery responses; call with OC re protective order; call with dgs re protective order	2.00	\$450.00	\$ 900.00
6/15/2021	Nora Greer (15+ Year Paralegal)	Send CL Discovery Responses, Summarize Discovery Responses, Review Local Rules, TC to Court, Review Document Production	2.50	\$200.00	\$ 500.00
6/30/2021	David Spivak (26th Year)	review discovery from OC	0.25	\$700.00	\$ 175.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
7/1/2021	Breck Oyama (13th Year Paralegal)	review emails, add deadline chain re discovery resps	0.17	\$300.00	\$ 51.00
7/1/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Discovery, set appt, update calendar	0.08	\$200.00	\$ 16.00
7/1/2021	Nora Greer (15+ Year Paralegal)	Save/OCR D's Discovery Requests to P, update calendar, email same to CL, create chart for R4P, upload discovery to FV	0.75	\$200.00	\$ 150.00
7/2/2021	Nora Greer (15+ Year Paralegal)	Begin Form Rogs Employ	0.50	\$200.00	\$ 100.00
7/5/2021	David Spivak (26th Year Attorney)	review discovery responses; email tasks to staff	1.25	\$700.00	\$ 875.00
7/6/2021	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$300.00	\$ 24.00
7/6/2021	Jessica Bencomo (Formerly Employed 1st Year Legal)	reviewed emails	0.08	\$150.00	\$ 12.00
7/6/2021	Caroline Tahmassian (9th Year Attorney)	review dgs notes re d's discovery responses and emailed dgs	0.17	\$450.00	\$ 76.50
7/7/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Discovery	1.50	\$200.00	\$ 300.00
7/7/2021	Nora Greer (15+ Year Paralegal)	Review Email from DGS re Discovery Summary, respond to same, run been verified reports, f/u with OC re BW Stip	0.50	\$200.00	\$ 100.00
7/8/2021	Nora Greer (15+ Year Paralegal)	Discuss discovery with LC, prepare RFP, Set 2 and send to CT for Review	0.50	\$200.00	\$ 100.00
7/8/2021	Lizzett Cortez (9th Year Paralegal)	discussed discovery w/ NG	0.08	\$250.00	\$ 20.00
7/8/2021	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$300.00	\$ 24.00
7/9/2021	Lizzett Cortez (9th Year Paralegal)	messaging NG re depo dates	0.08	\$250.00	\$ 20.00
7/9/2021	Nora Greer (15+ Year Paralegal)	Form Rogs Employ and Format R4P and RFA	2.17	\$200.00	\$ 434.00
7/9/2021	Breck Oyama (13th Year Paralegal)	review deadline, email team	0.08	\$300.00	\$ 24.00
7/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal)	review emails	0.08	\$150.00	\$ 12.00
7/12/2021	Nora Greer (15+ Year Paralegal)	Begin damages chart	1.58	\$200.00	\$ 316.00
7/12/2021	Nora Greer (15+ Year Paralegal)	Draft CMC Statement, send to CT for Review	0.42	\$200.00	\$ 84.00
7/12/2021	Caroline Tahmassian (9th Year Attorney)	review CMC stm and email NG	0.17	\$450.00	\$ 76.50
7/12/2021	Nora Greer (15+ Year Paralegal)	Begin R4P Response	1.50	\$200.00	\$ 300.00
7/12/2021	Nora Greer (15+ Year Paralegal)	Begin Responses to RFA	0.33	\$200.00	\$ 66.00
7/12/2021	Breck Oyama (13th Year Paralegal)	review emails/cmc statement	0.08	\$300.00	\$ 24.00
7/13/2021	Breck Oyama (13th Year Paralegal)	review emails re cmc	0.08	\$300.00	\$ 24.00
7/13/2021	Caroline Tahmassian (9th Year Attorney)	email NG re CMC stm; review discovery history; review/revise discovery requests	1.00	\$450.00	\$ 450.00
7/14/2021	Caroline Tahmassian (9th Year Attorney)	review file; review D's discovery responses; review documents; draft M&C letter; review FV feed	4.50	\$450.00	\$ 2,025.00
7/14/2021	Nora Greer (15+ Year Paralegal)	Prepare POS, file, serve and circulate CMC Statement	0.42	\$200.00	\$ 84.00
7/15/2021	Nora Greer (15+ Year Paralegal)	Continue with damages chart	1.50	\$200.00	\$ 300.00
7/15/2021	Nora Greer (15+ Year Paralegal)	Prepare R4P Set 3 (PCMs), Revise R4P Set 2 and send both to CT for review	0.50	\$200.00	\$ 100.00
7/16/2021	Nora Greer (15+ Year Paralegal)	Email to CT re mx to compel deadline	0.08	\$200.00	\$ 16.00
7/16/2021	Nora Greer (15+ Year Paralegal)	TC with CL re CMC Statement	0.25	\$200.00	\$ 50.00
7/19/2021	David Spivak (26th Year Attorney)	Review and revise meet and confer letter concerning discovery	0.58	\$700.00	\$ 406.00
7/19/2021	Lizzett Cortez (9th Year Paralegal)	mtg w/ NG re case	0.25	\$250.00	\$ 62.50
7/19/2021	Caroline Tahmassian (9th Year Attorney)	revise/email dgs meet and confer; review/revise RFP set 3 requests	1.00	\$450.00	\$ 450.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
7/19/2021	Nora Greer (15+ Year Paralegal)	Confer with LC re Discovery, Evidence Prez, send Evid Prez letter re witness, update calendar, finalize R4P Set 2 and Set 3, Prepare drafts of Discov for individual Defendant	1.00	\$200.00	\$ 200.00
7/20/2021	Nora Greer (15+ Year Paralegal)	Prepare POS, serve R4P Set 2, update calendar, circulate to CL,	0.40	\$200.00	\$ 80.00
7/20/2021	Caroline Tahmassian (9th Year	revise M&C letter and email OC	0.75	\$450.00	\$ 337.50
7/21/2021	Nora Greer (15+ Year Paralegal)	TC with CL re R4P, Set 2	0.17	\$200.00	\$ 34.00
7/22/2021	Breck Oyama (13th Year Paralegal)	review emails/deadlines, update deadline chain re discovery	0.08	\$300.00	\$ 24.00
7/22/2021	Caroline Tahmassian (9th Year Attorney)	email OC and staff re M&C and MC compel extension	0.17	\$450.00	\$ 76.50
7/23/2021	Caroline Tahmassian (9th Year Attorney)	emails OC to schedule M&C; message NG re calendar	0.17	\$450.00	\$ 76.50
7/23/2021	Nora Greer (15+ Year Paralegal)	Review emails, update calendar with P's new mx compel deadline	0.17	\$200.00	\$ 34.00
7/26/2021	Nora Greer (15+ Year Paralegal)	F/U email to CT re discovery set 3 and Def Davis	0.08	\$200.00	\$ 16.00
7/27/2021	Breck Oyama (13th Year Paralegal)	update deadline chain re extension	0.08	\$300.00	\$ 24.00
7/27/2021	Nora Greer (15+ Year Paralegal)	Schedule VCourt appearance, update calendar	0.25	\$200.00	\$ 50.00
7/27/2021	Nora Greer (15+ Year Paralegal)	Continue Damages Chart	0.67	\$200.00	\$ 134.00
7/27/2021	Nora Greer (15+ Year Paralegal)	Request Discovery Response Extension, Update Calendar, Save Defendants' CMC to file, circulate same, TC with CL re appointment for discovery phone call	0.70	\$200.00	\$ 140.00
7/27/2021	David Spivak (26th Year	review status report cmc by OC	0.25	\$700.00	\$ 175.00
7/30/2021	Nora Greer (15+ Year Paralegal)	Continue damage chart	0.42	\$200.00	\$ 84.00
7/30/2021	Caroline Tahmassian (9th Year	FU email to OC	0.08	\$450.00	\$ 36.00
7/30/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Discovery	1.00	\$200.00	\$ 200.00
8/2/2021	Nora Greer (15+ Year Paralegal)	Save CMC notes to file, update calendar	0.17	\$200.00	\$ 34.00
8/2/2021	Caroline Tahmassian (9th Year Attorney)	prep for CMC; CMC hearing; email to OC re M&C	1.00	\$450.00	\$ 450.00
8/3/2021	Caroline Tahmassian (9th Year Attorney)	prep for M&C with OC; call with OC re discovery disputes	1.25	\$450.00	\$ 562.50
8/3/2021	Nora Greer (15+ Year Paralegal)	Download Minute Order and Circulate, Prepare Evidence Prez letter re PCM	0.42	\$200.00	\$ 84.00
8/4/2021	Nora Greer (15+ Year Paralegal)	Email CL no need to go to Court, and cmc statement	0.17	\$200.00	\$ 34.00
8/5/2021	Nora Greer (15+ Year Paralegal)	Confer with LC re Discovery	0.33	\$200.00	\$ 66.00
8/5/2021	Breck Oyama (13th Year Paralegal)	review emails/hearing notes, update litigation chain	0.08	\$300.00	\$ 24.00
8/5/2021	Lizzett Cortez (9th Year	mtg w/ NG re discovery	0.33	\$250.00	\$ 82.50
8/10/2021	Nora Greer (15+ Year Paralegal)	Update Calendar, f/u with OC re BW and PO	0.17	\$200.00	\$ 34.00
8/11/2021	Nora Greer (15+ Year Paralegal)	Form Rogs employ 17.1	1.50	\$200.00	\$ 300.00
8/12/2021	Lizzett Cortez (9th Year	mtg w/ NG re discovery	1.00	\$250.00	\$ 250.00
8/12/2021	Nora Greer (15+ Year Paralegal)	Work on Discovery Responses, Confer with LC re same	1.25	\$200.00	\$ 250.00
8/12/2021	Nora Greer (15+ Year Paralegal)	Discovery responses	0.92	\$200.00	\$ 184.00
8/13/2021	Nora Greer (15+ Year Paralegal)	F/U email re BW Stip and PO	0.08	\$200.00	\$ 16.00
8/16/2021	Nora Greer (15+ Year Paralegal)	Update Calendar with discovery extensions	0.08	\$200.00	\$ 16.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
8/17/2021	Nora Greer (15+ Year Paralegal)	Request Extension on Mx Compel Deadline, update calendar	0.17	\$200.00	\$ 34.00
8/20/2021	Nora Greer (15+ Year Paralegal)	F/U email to OC re BW and PO	0.08	\$200.00	\$ 16.00
8/23/2021	Caroline Tahmassian (9th Year Attorney)	emails OC re discovery deadline; email mediator	0.25	\$450.00	\$ 112.50
8/24/2021	Lizzett Cortez (9th Year)	mtg w/ NG re discovery	0.33	\$250.00	\$ 82.50
8/25/2021	Nora Greer (15+ Year Paralegal)	Finish discovery drafts and sent to CT for review, bates label responsive docs.	1.25	\$200.00	\$ 250.00
8/27/2021	Caroline Tahmassian (9th Year Attorney)	review claims; review discovery responses	0.75	\$450.00	\$ 337.50
8/30/2021	Caroline Tahmassian (9th Year Attorney)	review/revise discovery responses	3.25	\$450.00	\$ 1,462.50
8/31/2021	Nora Greer (15+ Year Paralegal)	TC with CT re Discovery Responses	1.20	\$200.00	\$ 240.00
8/31/2021	Nora Greer (15+ Year Paralegal)	Email to OC re request for extension on Plaintiff Discovery Responses	0.08	\$200.00	\$ 16.00
8/31/2021	Caroline Tahmassian (9th Year Attorney)	call with NG re discovery responses	1.33	\$450.00	\$ 598.50
9/1/2021	Nora Greer (15+ Year Paralegal)	Update calendar with discovery extension	0.08	\$200.00	\$ 16.00
9/2/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Client Docs	0.33	\$200.00	\$ 66.00
9/7/2021	Caroline Tahmassian (9th Year Attorney)	review deadlines; email OC re extension and PO	0.17	\$450.00	\$ 76.50
9/8/2021	Nora Greer (15+ Year Paralegal)	Update calendar with Defendants' discovery deadlines, mx compel deadlines, email OC PO	0.25	\$200.00	\$ 50.00
9/10/2021	Nora Greer (15+ Year Paralegal)	Combine PCM Personnel File, OCR and Circulate, TC with PCM	0.33	\$200.00	\$ 66.00
9/10/2021	Nora Greer (15+ Year Paralegal)	Prepare POS, file, serve and circulate PO, TC with CL re PO	0.42	\$200.00	\$ 84.00
9/12/2021	David Spivak (26th Year Attorney)	Review and revise discovery draft responses	1.08	\$700.00	\$ 756.00
9/12/2021	Nora Greer (15+ Year Paralegal)	RFP and RFA	2.42	\$200.00	\$ 484.00
9/13/2021	Nora Greer (15+ Year Paralegal)	TC with CL re OT work	0.25	\$200.00	\$ 50.00
9/13/2021	Nora Greer (15+ Year Paralegal)	TC with LC re Discovery	0.42	\$200.00	\$ 84.00
9/13/2021	Lizzett Cortez (9th Year)	Mtg w/ NG re discovery	0.42	\$250.00	\$ 105.00
9/13/2021	Nora Greer (15+ Year Paralegal)	Damages and Form Rogs Employ	1.58	\$200.00	\$ 316.00
9/15/2021	Nora Greer (15+ Year Paralegal)	Meeting with LC re Discovery, Prepare Notice of Entry, send to CT for signature, download filed documents	0.50	\$200.00	\$ 100.00
9/15/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Notice of Entry, email again	0.17	\$200.00	\$ 34.00
9/15/2021	Lizzett Cortez (9th Year)	mtg w/ NG re discovery	0.25	\$250.00	\$ 62.50
9/15/2021	Nora Greer (15+ Year Paralegal)	File, serve, circulate notice of entry of Order, save expenses to file	0.33	\$200.00	\$ 66.00
9/16/2021	Nora Greer (15+ Year Paralegal)	Continue to work on discovery responses and damages	0.83	\$200.00	\$ 166.00
9/16/2021	Nora Greer (15+ Year Paralegal)	Save filed docs to file	0.08	\$200.00	\$ 16.00
9/21/2021	Nora Greer (15+ Year Paralegal)	Save and OCR discovery Responses, update calendar with Mx Compel deadline	0.25	\$200.00	\$ 50.00
9/21/2021	Lizzett Cortez (9th Year)	Mtg w/ NG re supp deadline	0.17	\$250.00	\$ 42.50
9/22/2021	Nora Greer (15+ Year Paralegal)	Email OC Discovery Extension Request, Update calendar	0.17	\$200.00	\$ 34.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
9/23/2021	Nora Greer (15+ Year Paralegal)	Prepare Discovery Responses Summary, Confer with LC, Update Calendar with Mx Compel deadlines	1.83	\$200.00	\$ 366.00
9/23/2021	Nora Greer (15+ Year Paralegal)	Review emails, TC with CL re Defendant Discovery Response	0.17	\$200.00	\$ 34.00
9/23/2021	Lizzett Cortez (9th Year Paralegal)	mtgs w/ NG re mx compel and discovery	0.33	\$250.00	\$ 82.50
9/30/2021	David Spivak (26th Year Attorney)	Review and revise responses to request for admission, requests for production of documents, and form interrogatories employment law	0.67	\$700.00	\$ 469.00
9/30/2021	Caroline Tahmassian (9th Year Attorney)	call with Ng re status of discovery	0.08	\$450.00	\$ 36.00
9/30/2021	Nora Greer (15+ Year Paralegal)	TC with CT re M/C, messages with BO re Mx compel deadline, f/u DGS re discovery responses	0.25	\$200.00	\$ 50.00
10/1/2021	Caroline Tahmassian (9th Year Attorney)	review dgs discovery revisions; call with NG and dgs re discovery responses; call with NG re discovery; review D's responses; draft discovery meet and confer	2.00	\$450.00	\$ 900.00
10/1/2021	David Spivak (26th Year Attorney)	conference over discovery responses with Caroline and Nora	0.67	\$700.00	\$ 469.00
10/1/2021	David Spivak (26th Year Attorney)	Review supplemental responses to discovery served by the plaintiff	1.25	\$700.00	\$ 875.00
10/1/2021	Nora Greer (15+ Year Paralegal)	TC with DGS and CT re Discovery Responses	0.67	\$200.00	\$ 134.00
10/1/2021	Nora Greer (15+ Year Paralegal)	Email OC request for extension on discovery	0.08	\$200.00	\$ 16.00
10/1/2021	Nora Greer (15+ Year Paralegal)	Send CL R4P and docs to review	0.17	\$200.00	\$ 34.00
10/1/2021	Nora Greer (15+ Year Paralegal)	Prepare for call with DGS, review discovery redlines	0.33	\$200.00	\$ 66.00
10/1/2021	Nora Greer (15+ Year Paralegal)	TC with CT	0.17	\$200.00	\$ 34.00
10/5/2021	Nora Greer (15+ Year Paralegal)	TC with CT re M/C and Mx Compel Deadlines	0.25	\$200.00	\$ 50.00
10/5/2021	Nora Greer (15+ Year Paralegal)	Send CL RFAs for review	0.08	\$200.00	\$ 16.00
10/5/2021	Caroline Tahmassian (9th Year Attorney)	email/call with OC; email dgs re call with Oc; call with Ng re MC an deadlines; review discovery and draft M&C email	3.25	\$450.00	\$ 1,462.50
10/5/2021	Nora Greer (15+ Year Paralegal)	TC with CL, check rutte guide, revisions to RFA and Form Rogs Employ	0.92	\$200.00	\$ 184.00
10/6/2021	Nora Greer (15+ Year Paralegal)	Review emails, schedule call with Mediator, TC with Mediator assistant, update MX compel deadlines, email OC re Mx Compel	0.42	\$200.00	\$ 84.00
10/6/2021	Caroline Tahmassian (9th Year Attorney)	revise/email OC meet and confer letter; FU with OC re extensions	1.00	\$450.00	\$ 450.00
10/7/2021	David Spivak (26th Year Attorney)	call with tripper and prep for call	0.17	\$700.00	\$ 119.00
10/7/2021	Nora Greer (15+ Year Paralegal)	Call with DGS/CT and Mediator	0.17	\$200.00	\$ 34.00
10/7/2021	Caroline Tahmassian (9th Year Attorney)	prep for call with mediator; call with mediator and dgs	0.67	\$450.00	\$ 301.50
10/13/2021	Nora Greer (15+ Year Paralegal)	TC with CL re conf call, Conf call with CT and CL	0.25	\$200.00	\$ 50.00
10/13/2021	Caroline Tahmassian (9th Year Attorney)	email dgs re settlement	0.08	\$450.00	\$ 36.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
10/14/2021	Caroline Tahmassian (9th Year Attorney)	emails OC re meet and confer; email dgs; email mediator	0.25	\$450.00	\$ 112.50
10/15/2021	Nora Greer (15+ Year Paralegal)	Review emails, update calendar, email CL re discovery	0.25	\$200.00	\$ 50.00
10/15/2021	Nora Greer (15+ Year Paralegal)	Calls with 2 Witnesses and Lvm for another, email AT to send Authos	0.33	\$200.00	\$ 66.00
10/18/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Discovery, prepare verifications, finalize RFP and RFA and email and hellosign same to client	0.83	\$200.00	\$ 166.00
10/18/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Edit, and sent out two authorization forms.	1.00	\$150.00	\$ 151.00
10/19/2021	Nora Greer (15+ Year Paralegal)	Prepare and send evidence prez letter to OC, calendar dealine	0.20	\$200.00	\$ 40.00
10/19/2021	Nora Greer (15+ Year Paralegal)	Email OC and request extension on Disc responses	0.08	\$200.00	\$ 16.00
10/19/2021	Nora Greer (15+ Year Paralegal)	Resend Client discovery hellsign docs	0.08	\$200.00	\$ 16.00
10/19/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Update Filevine re signed autho	0.33	\$150.00	\$ 150.33
10/19/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Edit and sent evidence preservation for PCM	1.00	\$150.00	\$ 151.00
10/20/2021	Nora Greer (15+ Year Paralegal)	Update calendar re Discovery responses and Mediator	0.08	\$200.00	\$ 16.00
10/22/2021	Nora Greer (15+ Year Paralegal)	Save verifications to file, email cl re initialed responses to rfa and r4p	0.17	\$200.00	\$ 34.00
10/25/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Resent the authorization form for REDACTED. Checked in with REDACTED to verify email address. Confered with NG regarding the case update, called back REDACTED to provide her with brief case update. She is driving but will check later today to make sure the email when through, and I offered to take her call and help re-test her emails if she still has not received the authorization. Updated, NG, and Filevine to add the preferred email address.	0.83	\$150.00	\$ 150.83
10/26/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Sent eSent an email to the team regarding evidence preservation, CT, DGS asked to hold off. mail	0.33	\$150.00	\$ 150.33
10/26/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Reviewed and Reply to emails re authorization form	0.75	\$150.00	\$ 150.75
10/27/2021	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$200.00	\$ 16.00
10/27/2021	Nora Greer (15+ Year Paralegal)	Draft CMC Statement, send to CT for Review	0.25	\$200.00	\$ 50.00
10/28/2021	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$200.00	\$ 16.00
10/29/2021	Nora Greer (15+ Year Paralegal)	TC with CL, email DGS and CT re Discovery	0.17	\$200.00	\$ 34.00
11/1/2021	Caroline Tahmassian (9th Year Attorney)	emails to OC; email to staff re discovery	0.17	\$450.00	\$ 76.50
11/1/2021	Nora Greer (15+ Year Paralegal)	Update Mx Compel deadline, serve RFP and RFA to OC, circulate to CL, email to dgs re employ	0.42	\$200.00	\$ 84.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
11/2/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Employ, messages and emails to CT re extension on discovery, update calendar	0.33	\$200.00	\$ 66.00
11/2/2021	Caroline Tahmassian (9th Year Attorney)	emails OC re extensions; messaged NG to discuss extensions	0.25	\$450.00	\$ 112.50
11/8/2021	Nora Greer (15+ Year Paralegal)	Review emails, tc with CL	0.25	\$200.00	\$ 50.00
11/9/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Review emails, read and reply. Sent NG an update regarding PCM evidence preservation request	0.33	\$150.00	\$ 150.33
11/9/2021	Nora Greer (15+ Year Paralegal)	Update calendar with Ev Prez deadline	0.08	\$200.00	\$ 16.00
11/10/2021	Nora Greer (15+ Year Paralegal)	Schedule Court Connect, Save docs to file, update calendar	0.25	\$200.00	\$ 50.00
11/12/2021	Nora Greer (15+ Year Paralegal)	Messages with DGS, TC with CL, finalize, file, serve and circulate Form Rogs Employ	0.58	\$200.00	\$ 116.00
11/15/2021	Caroline Tahmassian (9th Year Attorney)	prep for hearing; attend hearing	1.25	\$450.00	\$ 562.50
11/16/2021	Nora Greer (15+ Year Paralegal)	Save notes to file, update calendar	0.08	\$200.00	\$ 16.00
11/16/2021	Nora Greer (15+ Year Paralegal)	Check docket for MO, update calendar	0.08	\$200.00	\$ 16.00
11/17/2021	Nora Greer (15+ Year Paralegal)	Download, ocr, and circulate PCM PF	0.25	\$200.00	\$ 50.00
11/17/2021	Nora Greer (15+ Year Paralegal)	Emails to Mediator, schedule call, circulate invites	0.17	\$200.00	\$ 34.00
11/19/2021	Nora Greer (15+ Year Paralegal)	TC with DGS, Mediator, send notes	0.25	\$200.00	\$ 50.00
12/1/2021	Nora Greer (15+ Year Paralegal)	Review emails, update calendar with new mx compel deadlines	0.17	\$200.00	\$ 34.00
12/3/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Case status, email to Mediator	0.08	\$200.00	\$ 16.00
12/7/2021	Nora Greer (15+ Year Paralegal)	Save and Review D's Meet and Confer re Supplemental Discovery Responses, Calendar Deadline, email OC requesting extension	0.25	\$200.00	\$ 50.00
12/7/2021	Nora Greer (15+ Year Paralegal)	Email to Client re Mediator update	0.08	\$200.00	\$ 16.00
12/7/2021	Caroline Tahmassian (9th Year Attorney)	review OC M&C letter; email dgs and staff	0.17	\$450.00	\$ 76.50
12/7/2021	Nora Greer (15+ Year Paralegal)	F/U email to Mediator re negotiations, schedule	0.17	\$200.00	\$ 34.00
12/8/2021	Nora Greer (15+ Year Paralegal)	Update calendar with new supplemental	0.08	\$200.00	\$ 16.00
12/14/2021	Nora Greer (15+ Year Paralegal)	Email to Mediator re availability for call	0.08	\$200.00	\$ 16.00
12/15/2021	Nora Greer (15+ Year Paralegal)	Emails to Mediator re call, messages with DGS,	0.25	\$200.00	\$ 50.00
12/16/2021	David Spivak (26th Year Attorney)	call with mediator; Email client about call with	0.25	\$700.00	\$ 175.00
12/16/2021	Nora Greer (15+ Year Paralegal)	TC with CL	0.08	\$200.00	\$ 16.00
12/16/2021	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$200.00	\$ 16.00
12/16/2021	Nora Greer (15+ Year Paralegal)	TC with PCM	0.08	\$200.00	\$ 16.00
12/20/2021	Nora Greer (15+ Year Paralegal)	TC with Client, review emails	0.17	\$200.00	\$ 34.00
12/28/2021	Nora Greer (15+ Year Paralegal)	LVM for witness	0.08	\$200.00	\$ 16.00
12/28/2021	Nora Greer (15+ Year Paralegal)	TC with Witness	0.17	\$200.00	\$ 34.00
12/29/2021	Nora Greer (15+ Year Paralegal)	Email to DGS re Settlement, Review emails,	0.17	\$200.00	\$ 34.00
1/4/2022	Nora Greer (15+ Year Paralegal)	TC with PCM	0.17	\$200.00	\$ 34.00
1/4/2022	Nora Greer (15+ Year Paralegal)	Email OC re stay discovery and mx compel	0.08	\$200.00	\$ 16.00
1/5/2022	Nora Greer (15+ Year Paralegal)	Review emails, update calendar re discovery	0.17	\$200.00	\$ 34.00
1/5/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status	0.08	\$200.00	\$ 16.00
1/10/2022	Nora Greer (15+ Year Paralegal)	TC with PCM re case status	0.08	\$200.00	\$ 16.00
1/11/2022	Nora Greer (15+ Year Paralegal)	F/U with Mediator re status of settlement	0.08	\$200.00	\$ 16.00
1/12/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status	0.08	\$200.00	\$ 16.00
1/19/2022	Nora Greer (15+ Year Paralegal)	Email to CL re case status	0.08	\$200.00	\$ 16.00
1/20/2022	Nora Greer (15+ Year Paralegal)	F/U with Mediator re status of settlement, email	0.25	\$200.00	\$ 50.00
1/21/2022	Nora Greer (15+ Year Paralegal)	Review emails, update calendar	0.17	\$200.00	\$ 34.00
1/25/2022	Nora Greer (15+ Year Paralegal)	Review emails, update calendar, email dgs re	0.25	\$200.00	\$ 50.00
1/27/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status	0.08	\$200.00	\$ 16.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
2/1/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.17	\$200.00	\$ 34.00
2/4/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.17	\$200.00	\$ 34.00
2/7/2022	Caroline Tahmassian (9th Year	call with OC to discuss MOU; emails dgs re call	0.33	\$450.00	\$ 148.50
2/7/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.25	\$200.00	\$ 50.00
2/8/2022	Emily Ly (1st Year Paralegal)	Call with NG re TPA bids.	0.17	\$150.00	\$ 25.50
2/8/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status	0.17	\$200.00	\$ 34.00
2/8/2022	Nora Greer (15+ Year Paralegal)	Review emails and FAB re bids, TC with EL re Bids	0.42	\$200.00	\$ 84.00
2/8/2022	Nora Greer (15+ Year Paralegal)	Lvm for CL re case status	0.08	\$200.00	\$ 16.00
2/9/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
2/9/2022	Nora Greer (15+ Year Paralegal)	Review emails, email to OC re Number of AEs,	0.50	\$200.00	\$ 100.00
2/9/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
2/10/2022	Nora Greer (15+ Year Paralegal)	Review and Save received bid to file, update	0.17	\$200.00	\$ 34.00
2/10/2022	Nora Greer (15+ Year Paralegal)	Review and Save received bid to file, update	0.17	\$200.00	\$ 34.00
2/11/2022	Nora Greer (15+ Year Paralegal)	Review and save bid, update chart, email bids to	0.33	\$200.00	\$ 66.00
2/11/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
2/14/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
2/14/2022	Nora Greer (15+ Year Paralegal)	F/U email to CT/DGS re MOU	0.08	\$200.00	\$ 16.00
2/15/2022	Caroline Tahmassian (9th Year	review/revise MOU; call with dgs to discuss	0.75	\$450.00	\$ 337.50
2/15/2022	Nora Greer (15+ Year Paralegal)	TC re CL re case status	0.08	\$200.00	\$ 16.00
2/17/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
2/22/2022	Nora Greer (15+ Year Paralegal)	Save Client's new email address to FV, respond to	0.08	\$200.00	\$ 16.00
2/23/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re MOU	0.08	\$200.00	\$ 16.00
2/23/2022	Nora Greer (15+ Year Paralegal)	Email to TPA re bids	0.08	\$200.00	\$ 16.00
2/24/2022	Nora Greer (15+ Year Paralegal)	Email to CL re case status	0.08	\$200.00	\$ 16.00
2/25/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
2/28/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$200.00	\$ 16.00
2/28/2022	Nora Greer (15+ Year Paralegal)	F/U email re MOU	0.08	\$200.00	\$ 16.00
3/1/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status	0.08	\$200.00	\$ 16.00
3/2/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
3/2/2022	Caroline Tahmassian (9th Year	review dgs revisions to MOU; make further	0.50	\$450.00	\$ 225.00
3/2/2022	Nora Greer (15+ Year Paralegal)	Review emails, save drafts of MOU to file	0.25	\$200.00	\$ 50.00
3/3/2022	Nora Greer (15+ Year Paralegal)	Email UELG re costs, work on time and cost	1.08	\$200.00	\$ 216.00
3/4/2022	Nora Greer (15+ Year Paralegal)	TC to Court re Hearing dates	0.08	\$200.00	\$ 16.00
3/4/2022	Caroline Tahmassian (9th Year	update FV on settlement terms; discuss with dgs	0.50	\$450.00	\$ 225.00
3/7/2022	Nora Greer (15+ Year Paralegal)	Confer with BO re Future Costs, messages to CT,	0.25	\$200.00	\$ 50.00
3/7/2022	David Spivak (26th Year	Prepare settlement agreement	0.67	\$700.00	\$ 469.00
3/10/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
3/10/2022	Nora Greer (15+ Year Paralegal)	F/U email with OC, Email to CL re case Status	0.17	\$200.00	\$ 34.00
3/15/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re SA and MOU	0.08	\$200.00	\$ 16.00
3/15/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status, review email	0.17	\$200.00	\$ 34.00
3/17/2022	Caroline Tahmassian (9th Year	VM/email to OC re MOU/settl agreement	0.17	\$450.00	\$ 76.50
3/18/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$200.00	\$ 16.00
3/21/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
3/21/2022	Nora Greer (15+ Year Paralegal)	Review emails, save drafts of MOU to file	0.17	\$200.00	\$ 34.00
3/21/2022	Caroline Tahmassian (9th Year	review OC revisions; email dgs re revisions; email	0.25	\$450.00	\$ 112.50
3/22/2022	Nora Greer (15+ Year Paralegal)	Email to CL re case status	0.08	\$200.00	\$ 16.00
3/23/2022	Nora Greer (15+ Year Paralegal)	Review calendar, email to DGS.CT re CMC, email to OC re CMC/Stip to Cont	0.25	\$200.00	\$ 50.00
3/24/2022	Breck Oyama (13th Year	review deadline chain/docket	0.08	\$300.00	\$ 24.00
3/25/2022	Nora Greer (15+ Year Paralegal)	Review stip, redline stip, send to OC, save executed stip to file, update calendar	0.58	\$200.00	\$ 116.00
3/25/2022	Caroline Tahmassian (9th Year	review stip and email NG	0.17	\$450.00	\$ 76.50
3/25/2022	Breck Oyama (13th Year	review emails/filing	0.17	\$300.00	\$ 51.00
3/28/2022	Nora Greer (15+ Year Paralegal)	Combine MOU Signatures and circulate to OC and Client	0.25	\$200.00	\$ 50.00
3/28/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
3/28/2022	Nora Greer (15+ Year Paralegal)	Review emails, circulate MOU for signature	0.17	\$200.00	\$ 34.00
3/28/2022	Breck Oyama (13th Year	review emails	0.08	\$300.00	\$ 24.00
3/29/2022	Caroline Tahmassian (9th Year	VM/email atty Robin McStay	0.17	\$450.00	\$ 76.50

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
3/30/2022	Nora Greer (15+ Year Paralegal)	Check docket for stip, update calendar	0.08	\$200.00	\$ 16.00
3/30/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$200.00	\$ 16.00
3/30/2022	Caroline Tahmassian (9th Year Attorney)	call with Robin Mc Stay; emails to dgs re call	0.25	\$450.00	\$ 112.50
3/31/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$300.00	\$ 24.00
4/1/2022	Nora Greer (15+ Year Paralegal)	Pull Oder from docket and circulate to Client, update calendar, f/u email to OC re Settlement Agreement	0.25	\$200.00	\$ 50.00
4/1/2022	Breck Oyama (13th Year Paralegal)	review emails, update litigation chain	0.08	\$300.00	\$ 24.00
4/5/2022	Caroline Tahmassian (9th Year Attorney)	review OC revisions to agreement; emails OC re agreement; email dgs	0.25	\$450.00	\$ 112.50
4/5/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status	0.17	\$200.00	\$ 34.00
4/5/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$200.00	\$ 16.00
4/8/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$300.00	\$ 24.00
4/8/2022	Nora Greer (15+ Year Paralegal)	Review settlement agreement and update FV tabs	0.58	\$200.00	\$ 116.00
4/11/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re signed Settlement Agreement, update calendar	0.08	\$200.00	\$ 16.00
4/11/2022	Nora Greer (15+ Year Paralegal)	TC with Client re Settlement Agreement	0.25	\$200.00	\$ 50.00
4/11/2022	Nora Greer (15+ Year Paralegal)	Save signed SA to file, circulate to Client and co-counsel for signature	0.17	\$200.00	\$ 34.00
4/12/2022	Nora Greer (15+ Year Paralegal)	Combine signed settlement agreement, circulate to Defendant and Client	0.25	\$200.00	\$ 50.00
4/12/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$300.00	\$ 24.00
4/18/2022	Nora Greer (15+ Year Paralegal)	TC with PCM	0.08	\$200.00	\$ 16.00
4/25/2022	Caroline Tahmassian (9th Year Attorney)	review settlement agreement; review/revise motion	0.67	\$450.00	\$ 301.50
4/25/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$300.00	\$ 24.00
4/25/2022	David Spivak (26th Year Attorney)	prepare settlement approval mx	1.17	\$700.00	\$ 819.00
4/26/2022	Daniela Linares (1st Year Intake Attorney)	call w pcm. xsfer to ng vm	0.08	\$150.00	\$ 150.08
4/26/2022	Caroline Tahmassian (9th Year Attorney)	review/review motion	3.25	\$450.00	\$ 1,462.50
4/27/2022	Breck Oyama (13th Year Paralegal)	review emails, add log, search emails w/ client	0.08	\$300.00	\$ 24.00
4/27/2022	Nora Greer (15+ Year Paralegal)	TC with PCM re case status	0.08	\$200.00	\$ 16.00
4/27/2022	Nora Greer (15+ Year Paralegal)	LVM for PCM	0.08	\$200.00	\$ 16.00
4/27/2022	Nora Greer (15+ Year Paralegal)	Review mx paga settlement, update, scrub, send to OC, email to BO re Client Time Log, TC to Court	0.67	\$200.00	\$ 134.00
5/2/2022	Caroline Tahmassian (9th Year Attorney)	revise motion and email dgs re revisions	0.25	\$450.00	\$ 112.50
5/4/2022	Caroline Tahmassian (9th Year Attorney)	email/message wtih dgs re motion; email revised motion to OC	0.17	\$450.00	\$ 76.50
5/5/2022	Nora Greer (15+ Year Paralegal)	TC with CL re Time Log	0.08	\$200.00	\$ 16.00
5/5/2022	Nora Greer (15+ Year Paralegal)	Pull exhibits for Mx	0.42	\$200.00	\$ 84.00
5/5/2022	Nora Greer (15+ Year Paralegal)	TC to Court re reserve mx, update calendar, email OC re same	0.25	\$200.00	\$ 50.00
5/5/2022	Nora Greer (15+ Year Paralegal)	Enter Client Time Log	1.00	\$200.00	\$ 200.00
5/5/2022	Nora Greer (15+ Year Paralegal)	Begin TOA for Mx	0.67	\$200.00	\$ 134.00
5/5/2022	Nora Greer (15+ Year Paralegal)	TC to Court re hearing dates, email to OC re same	0.08	\$200.00	\$ 16.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
5/9/2022	Breck Oyama (13th Year Paralegal)	review emails, add deadline chain re PAGA mx	0.08	\$300.00	\$ 24.00
5/16/2022	Nora Greer (15+ Year Paralegal)	Finalize Mx Paga	2.00	\$200.00	\$ 400.00
5/17/2022	Nora Greer (15+ Year Paralegal)	TOA/TOC, prepare exhibits	1.25	\$200.00	\$ 250.00
5/19/2022	Nora Greer (15+ Year Paralegal)	Confer with BO, Finalize TOC, File, Serve, Circulate Mx Paga Settlement, Enter Expenses	2.58	\$200.00	\$ 516.00
5/25/2022	Caroline Tahmassian (9th Year)	review/revise CMC stm	0.17	\$450.00	\$ 76.50
5/25/2022	Nora Greer (15+ Year Paralegal)	Draft Stip to Cont. CMC, review redlines, confer with CT	0.42	\$200.00	\$ 84.00
5/26/2022	Breck Oyama (13th Year Paralegal)	review emails/filing, msg NG re rejection	0.08	\$300.00	\$ 24.00
5/26/2022	Nora Greer (15+ Year Paralegal)	Save filed docs to file, re file rejected MPA, messages with BO	0.25	\$200.00	\$ 50.00
6/1/2022	Nora Greer (15+ Year Paralegal)	Listen to VM and TC to PCM	0.08	\$200.00	\$ 16.00
6/2/2022	Nora Greer (15+ Year Paralegal)	Prepare, file, serve, circulate CMC Statement	0.58	\$200.00	\$ 116.00
6/6/2022	Nora Greer (15+ Year Paralegal)	Review settlement agreement, prepare post paga chart	0.33	\$200.00	\$ 66.00
6/8/2022	Nora Greer (15+ Year Paralegal)	TC with Court re Remote Appearance, save filed docs to file	0.17	\$200.00	\$ 34.00
6/10/2022	Nora Greer (15+ Year Paralegal)	Schedule VCourt appearance, update calendar, enter expense	0.25	\$200.00	\$ 50.00
6/10/2022	Breck Oyama (13th Year)	review emails	0.08	\$300.00	\$ 24.00
6/13/2022	Nora Greer (15+ Year Paralegal)	Messages with CT, TC with BO, Pull and circulate Tentative Ruling, TC to Clerk re Request Oral Arguments, Email to OC, Post Paga Chart	0.42	\$200.00	\$ 84.00
6/13/2022	Breck Oyama (13th Year)	review emails, mtg w/ NG	0.08	\$300.00	\$ 24.00
6/14/2022	Breck Oyama (13th Year Paralegal)	review notes, msgs w/ team, update deadline chain	0.17	\$300.00	\$ 51.00
6/14/2022	Breck Oyama (13th Year)	review emails	0.08	\$300.00	\$ 24.00
6/14/2022	Nora Greer (15+ Year Paralegal)	File, Serve, Circulate Notice re Continued Hearing, Suppl Decl Spivak, Proof of Service	0.75	\$200.00	\$ 150.00
6/14/2022	Nora Greer (15+ Year Paralegal)	TC with Client re case status	0.08	\$200.00	\$ 16.00
6/14/2022	Breck Oyama (13th Year)	call w/ NG re notice	0.17	\$300.00	\$ 51.00
6/14/2022	Nora Greer (15+ Year Paralegal)	Messages with CT re hearing, Confer with BO re Cont. Notice, Suppl Decl, Prepare same, send to DGS and CT for Review, Update calendar	0.75	\$200.00	\$ 150.00
6/14/2022	Breck Oyama (13th Year Paralegal)	review draft suppl docs/notice, email notes	0.17	\$300.00	\$ 51.00
6/15/2022	Nora Greer (15+ Year Paralegal)	Save filed docs to file	0.08	\$200.00	\$ 16.00
6/16/2022	Nora Greer (15+ Year Paralegal)	Obtain and Circulate Minute Order	0.17	\$200.00	\$ 34.00
6/16/2022	Nora Greer (15+ Year Paralegal)	Revise Stip to Cont. CMC, TC to Clerk re CMC, Schedule Appearance, Enter Expense, Save MO, Circulate to OC, update calendar	0.58	\$200.00	\$ 116.00
6/17/2022	Nora Greer (15+ Year Paralegal)	Enter expense to file	0.08	\$200.00	\$ 16.00
7/8/2022	Nora Greer (15+ Year Paralegal)	Schedule Appearance, update calendar, enter expense	0.25	\$200.00	\$ 50.00
7/11/2022	Nora Greer (15+ Year Paralegal)	Review emails, LVM for PCM	0.08	\$200.00	\$ 16.00
7/12/2022	Nora Greer (15+ Year Paralegal)	TC with CT re costs	0.50	\$200.00	\$ 100.00
7/12/2022	Nora Greer (15+ Year Paralegal)	TC with PCM re case status	0.08	\$200.00	\$ 16.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
7/12/2022	Caroline Tahmassian (9th Year Attorney)	prep for hearing; review costs with NG; review TR and email/call with dgs	1.50	\$450.00	\$ 675.00
7/12/2022	Nora Greer (15+ Year Paralegal)	Circulate Tentative Ruling to OC	0.08	\$200.00	\$ 16.00
7/13/2022	Caroline Tahmassian (9th Year Attorney)	prep for hearing; attend hearing; email dgs notes of hearing	0.75	\$450.00	\$ 337.50
7/13/2022	Nora Greer (15+ Year Paralegal)	Messages with CT re hearing, save notes to file, update calendar	0.25	\$200.00	\$ 50.00
7/13/2022	Nora Greer (15+ Year Paralegal)	TC with Client case status	0.25	\$200.00	\$ 50.00
7/14/2022	Nora Greer (15+ Year Paralegal)	Obtain and circulate Minute Orders	0.17	\$200.00	\$ 34.00
7/15/2022	Nora Greer (15+ Year Paralegal)	TC with PCM	0.08	\$200.00	\$ 16.00
7/25/2022	Nora Greer (15+ Year Paralegal)	Email CT reminder re Suppl Briefing	0.08	\$200.00	\$ 16.00
7/25/2022	Caroline Tahmassian (9th Year Attorney)	research re PAGA enhancement award; draft supp brief	3.50	\$450.00	\$ 1,575.00
7/26/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, update deadline chains	0.08	\$300.00	\$ 24.00
7/26/2022	Caroline Tahmassian (9th Year Attorney)	finalize/proof read supp brief and email to dgs	0.25	\$450.00	\$ 112.50
7/27/2022	Breck Oyama (13th Year Paralegal)	review emails/messages, check court re filing, file/serve suppl brief and email client	0.42	\$300.00	\$ 126.00
7/27/2022	Caroline Tahmassian (9th Year Attorney)	finalize supp brief; email supp brief to OC; discuss filing with staff	0.25	\$450.00	\$ 112.50
8/2/2022	Nora Greer (15+ Year Paralegal)	Schedule Appearance, update calendar,	0.17	\$200.00	\$ 34.00
8/4/2022	Caroline Tahmassian (9th Year Attorney)	review TR; call with dgs re TR	0.17	\$450.00	\$ 76.50
8/4/2022	Nora Greer (15+ Year Paralegal)	Obtain Tentative Ruling, Circulate to Client, messages with Team, Email to OC re Oral Arguments, TC to Court to Request Oral Arguments	0.25	\$200.00	\$ 50.00
8/4/2022	Nora Greer (15+ Year Paralegal)	Update Post paga chart and email to CT	0.17	\$200.00	\$ 34.00
8/4/2022	Nora Greer (15+ Year Paralegal)	TC with CT and Client re Enhancement Award, save notes to file	0.25	\$200.00	\$ 50.00
8/4/2022	Breck Oyama (13th Year Paralegal)	review emails/TR, msg w/ team	0.17	\$300.00	\$ 51.00
8/4/2022	Caroline Tahmassian (9th Year Attorney)	review tentative; call with dgs re tentative; call with client re release payment	0.50	\$450.00	\$ 225.00
8/5/2022	Nora Greer (15+ Year Paralegal)	Save notes to file, update calendar	0.17	\$200.00	\$ 34.00
8/5/2022	Nora Greer (15+ Year Paralegal)	TC with Client re Hearing	0.17	\$200.00	\$ 34.00
8/5/2022	Caroline Tahmassian (9th Year Attorney)	prep for hearing; attend hearing; send notes of hearing to dgs and staff	0.75	\$450.00	\$ 337.50
8/12/2022	Nora Greer (15+ Year Paralegal)	TC to Court re schedule Mx Paga Hearing, email to OC re same, Update calendar	0.25	\$200.00	\$ 50.00
8/22/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status	0.08	\$200.00	\$ 16.00
8/29/2022	Nora Greer (15+ Year Paralegal)	Messages with CT, Revise Costs Chart re Mx Paga Approval MX	0.75	\$200.00	\$ 150.00
9/2/2022	Caroline Tahmassian (9th Year Attorney)	review TRs; discuss motion with NG; amend motion and supporting docs	3.00	\$450.00	\$ 1,350.00
9/2/2022	Nora Greer (15+ Year Paralegal)	Messages with CT, emails to UELG re Decl	0.25	\$200.00	\$ 50.00

TSLF TIME CALDERON

Date	Attorney/Paralegal	Description	Hours	Rate	Lodestar
9/5/2022	David Spivak (26th Year Attorney)	review and revise amended mx PAGA approval	0.50	\$700.00	\$ 350.00
9/6/2022	Nora Greer (15+ Year Paralegal)	Send draft of Motion to OC for review	0.08	\$200.00	\$ 16.00
9/7/2022	Nora Greer (15+ Year Paralegal)	Pull exhibits for Amended Mx Paga Approval	0.25	\$200.00	\$ 50.00
9/7/2022	Nora Greer (15+ Year Paralegal)	Review emails, TC with CT re Mx	0.17	\$200.00	\$ 34.00
9/7/2022	Nora Greer (15+ Year Paralegal)	Mx Paga Settlement, email to UELG re Decl, update client time log, review DGS Decl., update exhibits	0.83	\$200.00	\$ 166.00
9/7/2022	Nora Greer (15+ Year Paralegal)	TC with Client re Time Log and Decl, email client re same	0.17	\$200.00	\$ 34.00
9/8/2022	Nora Greer (15+ Year Paralegal)	Mx Paga Approval Work. TOA, TOC, Send Client Decl., Review OCs decl, finalize DGS Decl	2.50	\$200.00	\$ 500.00
		TOTAL PRE-MULTIPLIER LODESTAR AS OF 09/08/2022	279.57		\$92,951.65

EXHIBIT 13

TSLF COST EXHIBIT CALDERON

Date	Expense Type	Expense Description	Expense Amount
2/28/2020	Filing Fee	LWDA Filing Fee	\$ 75.00
3/5/2020	Attorney Service-Filing	Odyssey 4128488 - Filing Fee Summons and Complaint	\$ 450.56
3/6/2020	Filing Fee	Complex Fee	\$ 1,031.10
3/26/2020	Attorney Service-Service	One Legal Invoice 14537715 - Process Server Fee	\$ 127.00
4/8/2020	Attorney Service-Service	One Legal 14600122 - Process Server Fee Individual Defendant	\$ 120.00
4/9/2020	Attorney Service-Filing	Odyssey efilng - Proof of Service of Summons - Individual Defendant	\$ 3.60
5/13/2020	Attorney Service-Filing	Odyssesey - 1AC 4334242	\$ 3.60
6/18/2020	Attorney Service-Filing	Odyssey - Case Management Conference Statement	\$ 3.60
6/26/2020	Attorney Service-Filing	Odyssey efilng notice posting jury fees (rejected)	\$ 3.60
6/30/2020	CourtCall	Court CALL 10682704	\$ 94.00
6/30/2020	Attorney Service-Filing	Odyssey efilng amended CMC statement	\$ 157.72
10/22/2020	Mediator Fees	Ortman Mediation, Inc. #2342	\$ 9,000.00
1/15/2021	Attorney Service-Filing	Odyssey Envelope Id 5655348 - Stip to Cont CMC Pending Mediation	\$ 24.15
1/26/2021	Attorney Service-Service	Envelope Id 5711075 Notice of Entry of Order Stip to Cont CMC	\$ 3.60
2/2/2021	Data Entry	Invoice #:0945 (Invoice reissued. Disregard Invoice #0943)	\$ 300.00
2/11/2021	Attorney Service-Filing	Odyssey Envelope Id 5831391 - CMC Statement	\$ 3.60
2/16/2021	Data Entry	Invoice 0947	\$ 350.00
2/24/2021	CourtCall	CourtConnect Confirmation Number: 05178C	\$ 96.35
3/1/2021	Expert or Data Analysis	Botao Zhou paid via paypal 2/26/21"	\$ 1,250.00
5/8/2021	Expert or Data Analysis	Expert Data Analysis	\$ 36.55
7/14/2021	Attorney Service-Filing	Odyssey Envelope ID 6843667 (CMC Statement)	\$ 3.60
7/27/2021	CourtCall	VCourt - Confirmation Number 08068E - CNC	\$ 96.35
9/10/2021	Attorney Service-Filing	Odyssey Envelope Id 7241397 - Protective Order	\$ 24.15
9/15/2021	Attorney Service-Filing	Odyssey 7274588 Notice of Entry of Order	\$ 3.60

TSLF COST EXHIBIT CALDERON

Date	Expense Type	Expense Description	Expense Amount
10/29/2021	Attorney Service-Filing	Odyssey Envelope Id 7566417 - CMC Statement	\$ 3.60
5/19/2022	Attorney Service-Filing	Odyssey Envelope ID 9031339 - Notice of Paga Settlement MX	\$ 65.25
5/26/2022	Attorney Service-Filing	Odyssey Envelope 9083294 - MPA	\$ 3.60
6/2/2022	Attorney Service-Filing	Odyssey Envelope ID 9123420 - CMC Statement	\$ 3.60
6/3/2022	Attorney Service-Filing	Odyssey Envelope ID 9133817	\$ 3.60
6/10/2022	CourtCall	VCourt Conf. Number 09248E - MX Paga Approval Hearing	\$ 96.35
6/14/2022	Attorney Service-Filing	Odyssey Envelope ID 9216907 - Notice of Continued Hearing	\$ 3.60
6/14/2022	Attorney Service-Filing	Odyssey 9216579 Envelope ID - Supplemental Declaration	\$ 3.60
6/16/2022	CourtCall	VCourt Confirmation Number: 03643E - REFUND	\$ 5.00
7/8/2022	CourtCall	VCourt Conf. No. 05883E (Mx Paga Approval) Hearing on Paga Settlement MX	\$ 96.35
7/27/2022	Attorney Service-Filing	odyssey efile 9555980 - Supplemental MPA	\$ 3.60
8/2/2022	CourtCall	VCOURT Conf. Number Confirmation Number: 04230E Hearing on Mx Paga Settlement	\$ 96.35
THE SPIVAK LAW FIRM COSTS THROUGH 8/29/2022			\$11,761.27
UNITED EMPLOYEES LAW GROUP COSTS THROUGH 8/29/2022			\$ 11.10
TOTAL COSTS THROUGH FINAL ACCOUNTING OF SETTLEMENT			\$ 11,772.37

EXHIBIT 14

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Calderon v. Davis Guest Home, Inc.

Wednesday, February 9, 2022

Law Firm Contact:

Nora Greer

E-Mail Address:

nora@spivaklaw.com

ILYM Contact:

Sean Hartranft

E-Mail Address:

Sean@ilymgroupclassaction.com

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggrieved Employees	400
Certified Spanish Translation	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	4	\$600.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	6	\$720.00
NCOA	Flat Rate	\$75.00	1	\$75.00
Toll-Free Telephone Support	Flat Rate	\$95.00	1	\$95.00
Certified Spanish Translation	Flat Rate	\$500.00	1	\$500.00
ILYM Group Static Website, Includes Hosting	Flat Rate	\$750.00	1	\$750.00

*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 \$2,740.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Fulfillment of Notice & Check - (including 1099)	Per Check	\$1.50	400	\$600.00
USPS First Class Postage	Per Piece	\$0.55	400	\$220.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	40	\$80.00
Preparation of Taxes	Hourly	\$125.00	10	\$1,250.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$4,475.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	4	\$400.00
Processing Unclaimed Funds to State Controller's Office	Flat Fee	\$500.00	1	\$500.00
Declaration	Hourly	\$125.00	3	\$375.00

Subtotal \$1,275.00

Will Not Exceed: \$8,490.00

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 15



www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Calderon v. Davis Guest Home, Inc.

Date: **February 9, 2022**

PAGA Disbursement Only

Requesting Attorney: **Nora Greer**

* Class Members: **400**

Plaintiff or Defense: **Plaintiff**

Postage Total: **\$274.81**

Firm Name: **The Spivak Law Firm**

Grand Total: **\$11,835.41**

Telephone: **(818) 582-3086**

***** DISCOUNTED FLAT FEE: \$8,000.00**

Email: nora@spivaklaw.com

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / NCOA / TFN Establish, Setup & Support / Spanish Translation / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	4	\$380.00
System Programming/Data Base Setup	\$150.00	4	\$600.00
Project Manager-Notice Format	\$95.00	1	\$95.00
NCOA	\$150.00	1	\$150.00
Call Center Support	\$3.00	80	\$240.00
Spanish Translation	\$750.00	1	\$750.00
Static Website	\$500.00	1	\$500.00
Total			\$2,715.00

* Up to 120 days after disbursement

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	400	\$80.00
Total			\$515.00

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Notice, Checks/1099's

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
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 Notice, Checks & 1099	\$3.00	400	\$1,200.00
Estimated Postage (up to 1 oz.)	\$0.58	400	\$232.00
Total			\$3,272.00

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	4	\$20.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	32	\$40.00
Remail Undeliverable Checks	\$3.00	32	\$96.00
Estimated Postage (up to 1 oz.)	\$0.58	36	\$20.88
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
Project Supervisor - Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$3,176.88

*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	84	\$12.60
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	8	\$42.00
1st Class Postage for Reissues	\$0.58	8	\$4.87
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			\$2,156.53

Grand Total: **\$11,835.41**

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 disabling 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

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

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
- 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

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 EXCEED 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

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.

- 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

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 16

Class Action Claims Administration, Inc.

Karin Peternel
 59 Damonte Ranch Parkway Ste. B224
 Reno, NV 89521
karin@classactionclaimsadmin.net
 (775) 378-5458

Estimate for PAGA Settlement

February 11, 2022
 To: Nora Greer
 The Spivak Law Firm

Eligible Employees 400
 Postage Total \$540.00
COST ESTIMATE \$16,591

Calderon v. Davis Guest Home, Inc.

1. Employee list provided must be excel delimited with names, addresses, SSNs, weeks worked in separate columns
2. Two-page insert with check mailing
3. Unclaimed fund distribution: LWDA
4. IRS 1099 only - No CA taxes

Case Setup**Case Setup/Data Management/Create Mailing List/Website**

<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
Case Manager	50	2	\$100.00
Document Review/Database Management	35	2	\$70.00
Website	500	1	\$500.00
Calculations (incl taxes)	750	1	\$750.00
TOTAL			\$1,420.00

Notification Process**National Change of Address Search/Notice**

<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
NCOA	150	1	\$150.00
Merge Data	35	2	\$70.00
Notice	0.7	400	\$280.00
Postage	0.58	400	\$232.00
Spanish Translation	2	200	\$400.00
TOTAL			\$1,132.00

SSN Verification**Verify SSN for Validity with IRS/IRS Backup Withholdings**

<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
Programming for Upload to SSA	35	2	\$70.00
PM/Staff Review	50	2	\$100.00
SSN Verification	0.15	400	\$60.00
TOTAL			\$230.00

Disbursement**Calculations/Data Management/Create and Manage QSF/Print and Mail Checks, 1099**

<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
Prepare Database/Tax Calculations	35	5	\$175.00
PM Review/Atty Corr	50	2	\$100.00
Obtain EIN/CA EIN, QSF Bank Account	50	4	\$200.00
Program/Setup and Printing of Checks	35	8	\$280.00
Print Mail checks	1.5	400	\$600.00
Print Mail 1099	1.5	400	\$600.00
Submit checks to Atty, Plaintiff, LWDA	50	2	\$100.00
Weekly Admin Updates	60	24	\$1,440.00
Initial skip trace	1.6	400	\$640.00
Postage checks and 1099	0.6	800	\$480.00
Administration insurance - not to exceed	1	5000	\$5,000.00
TOTAL			\$9,615.00

Post-Disbursement & Tax Reporting

Account Maintenance/Skip Trace/Reissue Checks/Annual Tax Reporting/Final Reporting and Declaration			
<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
Re-issue Checks as Necessary (25%)	1.5	100	\$150.00
PM Data/Bank Acct Management	35	16	\$560.00
Follow up Skip Trace	1.6	40	\$64.00
Remail Undeliverable Checks	0.6	100	\$60.00
Postage	0.6	100	\$60.00
Prepare Final Reports/Declaration/Corr	50	4	\$200.00
CA Tax Preparation	2500	0	\$0.00
Annual Tax Reporting to IRS	2500	1	\$2,500.00
QSF Annual Tax Reporting	150	1	\$150.00
Unclaimed Funds Distribution	450	1	\$450.00
TOTAL			\$4,194.00

EXHIBIT 17

DIVISION CHART CALDERON

Maximum Settlement Sum \$	\$	99,000.00
Plaintiff's Counsel's Attorney Fees %		33.33%
Plaintiff's Counsel's Attorney Fees	\$	33,000.00
Plaintiffs' Counsel's Attorney Costs \$	\$	11,772.37
Settlement Administrator Fees \$	\$	8,490.00
Plaintiff's Incentive Payment	\$	5,000.00
PAGA Fund \$	\$	40,737.63
>> LWDA %		75%
>> LWDA \$	\$	30,553.22
PAGA Members %		25%
>> PAGA Members \$ (PAGA Settlement Payments)	\$	10,184.41
PAGA Members		400
PAGA Member Ave Share \$	\$	25.46
Paychecks		14,000
Per Paycheck Value	\$	0.73