

1 DAVID SPIVAK (SBN 179684)
david@spivaklaw.com
2 MARALLE MESSRELIAN (SBN 316974)
maralle@spivaklaw.com
3 THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 203
4 Encino, CA 91436
5 Telephone: (213) 725-9094
Facsimile: (213) 634-2485
6

7 Attorneys for Plaintiff,
MIKAYLA HUDDLESTON
8 (Additional Counsel on Following Page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**
(UNLIMITED JURISDICTION)

12 MIKAYLA HUDDLESTON, as an “aggrieved
employee” on behalf of other similarly situated
13 “aggrieved employees” under the Labor Code
Private Attorney General Act of 2004,

14 *Plaintiff(s),*

15 v.

16
17 EASTER 263, INC., a California corporation;
18 and DOES 1 through 50, inclusive,

19 *Defendant(s)*
20
21
22
23
24
25
26
27
28

Case No.: 34-2021-00295702

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
MIKAYLA HUDDLESTON’S MOTION
FOR APPROVAL OF PAGA
SETTLEMENT**

Action filed: 3/4/2021
Hearing Date: February 8, 2022
Hearing Time: 9:00 a.m.
Hearing Dept.: 54, Hon. Christopher E.
Krueger
Reservation ID: 2611118



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

ADDITIONAL ATTORNEYS FOR PLAINTIFF

WALTER HAINES (SBN: 71075)

whaines@uelglaw.com

UNITED EMPLOYEES LAW GROUP

4276 Katella Ave., #301

Los Alamitos, CA 90720

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff MIKAYLA HUDDLESTON



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

**DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF MIKAYLA
HUDDLESTON'S MOTION FOR APPROVAL OF PAGA SETTLEMENT**

I, DAVID SPIVAK, declare as follows:

1. I am counsel of record for Plaintiff Mikayla Huddleston (hereafter referred to as "Plaintiff" or "Huddleston") in this action against Defendant Easter 263, Inc. ("Defendant") (collectively the "Parties"). I am a member in good standing of the State Bar of California. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

2. A true and correct copy of the Settlement Agreement of Private Attorneys General Act ("PAGA") Claims (the "Agreement" or "PAGA Settlement") is attached hereto as **Exhibit 1**. A true and correct copy of the Parties' agreed upon notice to the below-defined PAGA Settlement Employees (the "PAGA Notice") is attached hereto as **Exhibit 2**.

Factual and Procedural Background

3. Defendant Easter 263 operates a Kentucky Fried Chicken restaurant where Plaintiff previously worked. Easter 263, Inc. employs persons in several hourly, non-exempt positions, including, but not limited to, crewmembers and comparable employees (hereafter "PAGA Settlement Employees"). From approximately March 14, 2018 through May 24, 2019, Easter 263 employed Plaintiff as an hourly fast food crew member in its KFC restaurant located at 10399 Folsom Blvd. in Rancho Cordova, California. Defendant's restaurant is typically staffed with approximately 10-15 employees at any given time.

4. In this lawsuit, Plaintiff contends that Defendant is liable to her and the other approximately 65 PAGA Settlement Employees for alleged violations of the California Labor Code. Specifically, Plaintiff alleges that Defendant required her to arrive before her shift began to wait for deliveries, open the restaurant if the employee scheduled to open did not show up for work, and/or be prepared to open in the event that the employee scheduled to work did not appear. Plaintiff also alleges that Defendant further prohibited Plaintiff and the PAGA Settlement Employees to leave the restaurant during their breaks and therefore, Plaintiff and the PAGA Settlement Employees were often interrupted by their coworkers during their meal periods. Huddleston further alleges that she had to use her personal automobile to transport supplies for Defendant without necessary mileage reimbursement. Based on said alleges, Plaintiff supports her request for PAGA penalties due to Defendant's alleged failure to provide



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff and the aggrieved employees with: (1) all required timely, off-duty, and unrestricted
2 meal and rest periods or pay premium wages; (2) pay all wages for all hours worked; (3)
3 reimburse the PAGA Settlement Employees for gas and mileage expenses; (4) provide accurate
4 written wage statements; (5) timely pay final wages upon termination of employment; and (6)
5 maintain accurate employment records.

6 5. Defendant denies Plaintiff's allegations. Specifically, Defendant denies that it has
7 any policy or practice in which employees are required or permitted to work off the clock without
8 pay or otherwise are not paid for all hours worked. Easter 263, Inc. further denies that
9 Huddleston, nor any of the aggrieved employees, were not provided the opportunity to take
10 compliant rest and meal periods in accordance with California law. Further, Defendant denies
11 that Huddleston nor any other aggrieved employees are required to use their personal
12 automobiles to transport supplies on its behalf and Defendant denies that it operates other
13 restaurants. At all applicable times, Defendant contends that it has complied at all times with its
14 obligations under the California Labor Code, including those obligations to pay employees all
15 regular and overtime wages due, provide all meal and rest breaks, reimburse all necessary
16 business expenses, issue accurate wage statements, and maintain accurate employment records.
17 In the event the Court does not approve Plaintiff's motion, Defendant maintains additional
18 affirmative defenses to Huddleston's allegations and this PAGA action.

19 6. Plaintiff and the PAGA Settlement Employees are subject to arbitration
20 agreements with Defendant. Plaintiff complied with the procedures of Labor Code § 2699.3 for
21 bringing suit under PAGA. By letter dated February 11, 2020, Plaintiff gave written notice to the
22 Labor and Workforce Development Agency ("LWDA"), Defendant, and Harman Management
23 Corporation¹, of various provisions of the California Labor Code that Defendant allegedly
24 violated, including the facts and theories to support the alleged violations. Specifically, Plaintiff
25 alleged that Defendant had failed to compensate her and the PAGA Settlement Employees for
26 all hours worked, including regular and overtime hours worked, failed timely pay wages, failed
27 to provide her and the PAGA Settlement Employees with legally mandated rest periods and meal
28 breaks, failed to reimburse them for business expenses they incurred, and failed to provide the

¹ Harman Management Corporation ("Harman") denies any employment relationship with Plaintiff. Agreement, ¶II.1.



1 PAGA Settlement Employees with accurate and complete itemized wage statements. A true and
2 correct copy of Plaintiff's letter to the LWDA dated February 11, 2020 is attached as **Exhibit 3**.

3 7. The LWDA did not inform Plaintiff of any intent to investigate the noticed claims
4 within the sixty-five (65) statutory deadline and, to this day, have not communicated any intent
5 to investigate the claims. Thus, Plaintiff has become authorized under Labor Code §§ 2698 *et*
6 *seq.* to act as a private attorney general for the alleged PAGA claims.

7 8. The alleged group of Aggrieved Employees (the "PAGA Settlement Employees")
8 consists of all current and former non-exempt employees who worked for Easter 263, Inc. within
9 the State of California at any time between February 4 ,2019 and September 14, 2020 (the
10 "PAGA Period").

11 9. In September 2020, the Parties attended a full-day mediation, as set forth more
12 fully below, with Mediator Jeffrey Owensby. At all times, the negotiations were adversarial and
13 contentious, although still professional in nature. Thereafter, and as set forth further herein, the
14 Parties worked to finalize their agreement through a Memorandum of Understanding and later
15 the PAGA Settlement Agreement attached herein. After finalizing said Agreements, the Parties
16 worked to prepare and finalize a joint stipulation approving the PAGA settlement. However, the
17 Parties' respective counsel of record determined through various meet and confer efforts that
18 their request to the Court to approve the settlement should be submitted by way of motion, as
19 opposed to joint stipulation. Accordingly, the Parties then worked diligently to meet and confer
20 and collaborate on the instant motion.

21 10. In connection with the Parties' pending resolution, on March 4, 2021, Plaintiff
22 filed a representative lawsuit, for settlement purposes only, with a single cause of action for civil
23 penalties under PAGA in the Sacramento County Superior Court for alleged violations of
24 California Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198,
25 and 2802 against Easter 263, Inc. pursuant to PAGA based on the same allegations set forth in
26 her LWDA letter dated February 4, 2020 (the "Action"). A true and correct copy of Plaintiff's
27 Complaint filed on March 4, 2021 is attached as **Exhibit 4**.

28 11. On May 26, 2021, Defendant filed an Answer to the Complaint and disputed all
of Plaintiff's allegations and asserted appropriate affirmative defenses. A true and correct copy
of Defendant Easter 263, Inc.'s Answer to Plaintiff's Complaint is attached as **Exhibit 5**.

12. Prior to participating in mediation, the Parties, through their respective counsel



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

of record, engaged in informal discovery and substantive discussions regarding Plaintiff's claims and Defendant's respective defenses. Prior to mediation, Defendant also provided data to Plaintiff's counsel to evaluate the potential value of Plaintiff's civil penalty claims. Defendant estimates that during the applicable PAGA period, the 65 PAGA Settlement Employees worked approximately 1,354 workweeks. Counsel for the Parties further investigated the applicable law as applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed by Plaintiff. Thereafter, the Parties engaged in extensive, arms-length negotiations and reached a settlement of the Action that are memorialized in the Agreement. Now that the Parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for approval.

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

14. PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here. First, any civil penalties recovered, whether by judgment or settlement, must be distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i). The Parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must be given notice of the settlement so that it may be heard before the Court decides whether to grant approval. Cal. Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached as **Exhibit 6**. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

15. 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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 the Court to act intelligently on the proposed settlement; and (3) Counsel for the Parties are
2 experienced with PAGA cases.

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

15 17. Plaintiff separately negotiated the settlement of her individual claims after the
16 parties agreed to the PAGA Settlement at bar. While Plaintiff and I believe that individual
17 settlement has no bearing on her adequacy as a PAGA Representative, she is willing to present
18 that Settlement to the Court *in camera* for review if the Court requests. It represents a fair
19 resolution for Plaintiff's individual claims.

20 ***Background of Counsel***

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

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

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
2 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
3 back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on
4 Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, *San Diego*
5 *Union-Tribune*, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias
6 And Retaliation" by Valerie Alvord, *San Diego Union-Tribune*, May 16, 1998.

7 B. *Jorge Guzman v. Department of Justice*, United States District Court,
8 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
9 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
10 and police brutality by agents of the Office of the Inspector General. Jury found the defendants
11 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
12 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
13 Latino, including falsified charges" by Patrick J. McDonnell, *Los Angeles Times*, January 21,
14 1999.

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

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

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



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

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

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

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

20 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
21 000382146 (appointed Class Counsel and granted final approval of class action settlement by
22 the court on behalf of nonexempt employees).

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

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

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



employees).

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

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

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

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

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

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

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

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

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

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 virtual customer account executives).

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

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

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

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

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

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

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

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

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Exposure & Risk Analysis

21. I considered various sources of information in the lead-up to and during the mediation of September 14, 2020 that enabled Plaintiff to achieve the PAGA Settlement at issue.

Among other things, Plaintiff considered the following:

- Plaintiff requested that Defendant produce any and all policies regarding job duties, position descriptions, timekeeping procedures, overtime and double-time wages, meal periods and rest breaks, meal period waivers and agreements, expense reimbursement, compensation plans, incentive pay, bonuses and complaints about working conditions in effect during the PAGA Period beginning in February of 2019. Defendant produced those policies.
- Plaintiff interviewed other employees about the claims at issue.
- Plaintiff analyzed the state of caselaw on PAGA claims and claims for off-the-clock work, meal and rest violations, and expense reimbursement.
- Plaintiff surveyed the outcomes of PAGA cases that went to trial or otherwise concluded before trial.

22. Before mediation, Defendant provided data regarding the number of employees and number of paychecks issued during the PAGA Period. There were approximately 1,354 total pay periods during the PAGA Period. Based on this information, I estimated the maximum civil penalties under the PAGA. 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 amount per pay period. *Id.*

- The maximum civil penalty for unpaid minimum wage violations is \$100.00 under Labor Code section 1197.1. As such, Plaintiff's counsel estimated that the maximum amount Plaintiff could recover for herself, the State, and the PAGA Settlement Employees is \$135,400.00 (1,354 pay periods x \$100 civil penalty amount) and only if she established that every PAGA Settlement Employee suffered an unpaid minimum wage violation in each pay period.
- The maximum civil penalty for unpaid overtime wage violations is \$50.00 under Labor Code section 558. As such, Plaintiff's counsel estimated that the maximum amount Plaintiff could recover for herself, the State, and the PAGA Settlement Employees is \$67,700.00 (1,354 pay periods x \$50 civil penalty amount) and only if she established that every PAGA Settlement Employee suffered an unpaid overtime wage violation in each pay period.
- For rest period violations, the maximum civil penalty is \$100 under Labor Code sec. 2699(f)(2). As such, Plaintiff's counsel estimated that the maximum amount Plaintiff could recover for herself, the State, and the PAGA Settlement Employee is \$135,400.00



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

(1,354 pay periods x \$100 civil penalty amount) and only if she established that every PAGA Settlement Employee suffered a rest period violation in each pay period.

- The maximum civil penalty for meal period violations is \$50 under Labor Code sec. 558. As such, Plaintiff's counsel estimated that the maximum amount Plaintiff could recover for herself, the State, and the PAGA Settlement Employees is \$67,700.00 (1,354 pay periods x \$50 civil penalty amount) and only if she established that every PAGA Settlement Employee suffered a meal period violation in each pay period.
- For unreimbursed business expenses violations, the maximum civil penalty is \$100 under Labor Code sec. 2699(f)(2). As such, Plaintiff's counsel estimated that the maximum amount Plaintiff could recover for herself, the State, and the PAGA Settlement Employees is \$135,400.00 (1,354 pay periods x \$100 civil penalty amount) and only if she established that every PAGA Settlement Employee suffered an unreimbursed expenses violation in each pay period.

23. Stacking each of these maximum recoverable civil penalty estimates yields a total amount of \$541,600.00. Unfortunately for the employees concerned, the potential for recovery of over \$500,000 in civil penalties depends on circumstances that are extremely unlikely independently and in combination. Plaintiff understands further that Defendant would have strongly opposed Plaintiff's request for stacking of penalties. Further, imposition of such penalties would depend on the Court stacking the maximum recoverable civil penalties for unpaid minimum wage violations, unpaid overtime violations, unprovided meal breaks violations, unprovided rest breaks violations, unreimbursed expenses violations per pay period for all 1,354 pay periods for every PAGA Settlement Employee during the PAGA Period. I am not aware of any California State court decision awarding a plaintiff and the other PAGA Settlement Employees she represents multiple civil penalties for the same pay period under different Labor Code provisions. Notably, even if Plaintiff proved her case in full, the Court is authorized to reduce penalties where they would "unjust, arbitrary and improper." (*See, e.g., Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F. Supp. 2d 901, 902–03; *Hernandez v. BCI Coca-Cola Bottling Co.* (C.D. Cal. Apr. 12, 2012) 2012 WL 12272348, at *2, *judgment entered*, 2012 WL 12092593 (C.D. Cal. May 9, 2012), and *aff'd*, 554 F. App'x 661 (9th Cir. 2014).) Based on Defendant's representations at mediation, Easter 263, Inc.'s restaurant business was adversely affected by the COVID-19 pandemic due to local and state-related closures and other social distancing measures. With this in mind, I reduced the civil penalties by about 75%. I concluded that \$135,400.00 was more likely the maximum possible recoverable civil penalties. I applied an additional 70% discount to account for all other risks discussed below. The Settlement of



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 \$42,500.00 involves a total payment of about 31% of the maximum possible recovery. A
2 settlement for approximately 31% of the potential recovery is a proportion substantially in excess
3 of recovery proportions sanctioned by existing case law.

4 24. There are risks to Plaintiff's claims for off-the-clock work. Defendant's policies
5 expressly prohibit non-exempt employees from working off-the-clock. Further, many of the
6 aggrieved employees, such as cashiers or cooks, had different job duties related to opening and
7 closing from Plaintiff, thereby reducing the likelihood that Plaintiff could establish they
8 consistently worked off-the-clock or that her claim may be individualized in nature.

9 25. There are risks to Plaintiff's meal and rest period claims. Defendant contends that, to
10 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
11 was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an
12 employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it
13 has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at
14 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the
15 employee from taking a proper break, or otherwise failed to release the employee of all control.
16 *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a particular
17 employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal.
18 2010) 271 F.R.D. 629, 641. Determining by a review of Defendant's time records the exact
19 reasons why a meal period appears to be short or late would be difficult and pinpointing those
20 days in which Plaintiff and the PAGA Settlement Employees worked during their meal periods
21 will be a challenge. Additionally, Defendant provided evidence that they provide employees with
22 the opportunity to take meal and rest breaks. Defendant's Employee Handbook contains legally
23 compliant meal period and rest break policies.

24 26. Defendant contends that it provided the non-exempt employees with the opportunity
25 to take rest periods in accordance with California law, and, accordingly, Plaintiff's rest break
26 claim has no support. Additionally, there are other risks to Plaintiff's rest period claim. Employers
27 are not required to record rest periods and such periods are paid. Unlike meal periods, where there
28 are often records showing whether an employee clocked out or not, there is no such evidence to
prove a missed rest period or that the employer refused to authorize and permit one. Managing
such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness
testimony and surveys to prove the claims. While a victory with such evidence is certainly



possible, relevant caselaw makes such claims risky from a trial management and due process perspective. Plaintiff also testified that, as a General Relief Manager, she permitted her employees to take their rest and meal breaks when she was at the restaurant.

27. There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges that Defendant did not reimburse her or the other PAGA Settlement Employees for use of their personal automobiles to transport supplies between stores. There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business expenses to be individual in nature.

28. The sole source of money recoverable for the PAGA Settlement Employees and the State is civil penalties available under PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above, Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Settlement Employee suffered a minimum wage violation; (2) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Settlement Employee suffered an overtime wage violation; (3) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Settlement Employee suffered a meal period violation; (4) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Settlement Employee suffered a rest period violation; and (5) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Settlement Employee suffered an unreimbursed expense violation. There are no California state court decisions under the PAGA to date with substantial awards of civil penalties. I am aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts, one of which was overturned on May 28, 2021.²

² In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from the plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein* suffered a particularly sizeable injury – the court found that the defendant's policies caused damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in *Bernstein*, who the court noted had received "millions of dollars from the state of California" to train their flight attendants, engaged in glaring



29. Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily discounted award of only \$5 per violation because it was within the Court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of \$70 million and was successful in proving the PAGA claim during a bench trial. However, the trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated that this reduction was warranted because imposing the maximum penalty would be "unjust, arbitrary, and oppressive", based on Starbucks's "good faith attempts" to comply with meal break obligations and because the Court found the violations were minimal. Applying the same formula here and assuming there was one violation during each pay period, the award of civil penalties could not exceed \$6,770.00 in PAGA penalties (1,354 violations x \$5). As such, this Settlement is an excellent result based solely on the risk the Court chooses to apply the *Carrington* formula. Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff's allegations. Thus, the chance of Plaintiff recovering a higher amount than the Settlement Fund is uncertain.

30. Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the amended judgment is attached as **Exhibit 7**. The plaintiff sought in excess of \$9

violations of the labor code, such as failing to compensate its flight attendants for work performed outside of "block time" (time during which the aircraft is moving), including time spent participating in pre-flight briefings, boarding passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049, 1055-1058. Indeed, 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 defendants' 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).



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M.
2 Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct
3 copy of the judgment transcript is attached as **Exhibit 8**, 19:8-20:19. In a similar PAGA case
4 before the Los Angeles Superior Court, *Shields v. Security Paving Company, Inc.*, LA Superior
5 Court case no. BC492828, on October 24, 2017, the court awarded the prevailing PAGA plaintiff
6 civil penalties totaling only \$50.00. A similar result could occur here.

7 31. Defendant could also convince the Court to dismiss the claims due to unmanageability.
8 *Wesson v. Staples The Office Superstore, LLC* (2021) 68 Cal.App.5th 746 (“Wesson”); *Feltz v.*
9 *Cox Communs. Cal.* (October 21, 2021) 2021 U.S. Dist. LEXIS 207087. On September 9, 2021,
10 the California Court of Appeal issued the significant decision in *Wesson v. Staples the Office*
11 *Superstore, LLC*, holding that courts have authority to ensure that PAGA claims are manageable,
12 and that courts may limit or strike unmanageable PAGA claims. Defendant contends that
13 Plaintiff’s allegations require a host of individualized inquiries which would arguably devolve into
14 a series of mini-trials based on whether each employee voluntarily elected to unilaterally waive a
15 provided meal period or authorized rest break, based on position titles, job duties and the type of
16 work they perform, whether they worked off-the-clock, and whether their work involves vehicle
17 travel, among others. (See, e.g., *Brinker*, 53 Cal.4th at 1004.) In *Ortiz v. CVS Caremark Corp.*, the
18 court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D.
19 Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case would
20 have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and
21 dismissed PAGA claims where, as here, there are a large number of allegedly aggrieved
22 individuals whose claims require individual assessments. See, e.g., *Litty v. Merrill Lynch & Co.*,
23 2014 WL 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at
24 *4 (C.D. Cal. 2015); see also *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4
25 (E.D. Cal. 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the
26 number of potential aggrieved employees, judicial economy favors deferring the representative
27 portion of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal.
28 May 13, 2015).

32. While the evidence gathered through Plaintiff’s discovery supports the merits of
the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the
risks associated with the merits of Plaintiff’s claims, the uncertainties of complex litigation, the



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 cost of pretrial and trial proceedings, the Court's discretion to lower the amount of penalties
2 ultimately awarded, and the secured benefit to the PAGA Settlement Employees and the LWDA
3 promoting compliance with the Labor Code.

4 ***Individual PAGA Payments***

5 33. Defendant represents that there are approximately 65 PAGA Settlement Employees
6 during the PAGA Period. After deducting the requested Court-approved Attorney's Fees
7 (\$14,166.67) (1/3 of the Gross Settlement Amount) and \$2,925.56 (the Agreement provides up
8 to \$3,000) for litigation expenses, and \$5,000 for Administration Costs, the PAGA Penalties
9 Fund will be approximately \$20,592.61. Seventy five percent (75%) of the PAGA Penalties will
10 be paid to the Labor and Workforce Development Agency ("LWDA") (\$15,444.46), and twenty
11 five percent (25%) (\$5,148.15), the PAGA Residual Fund, will be paid to the PAGA Settlement
12 Employees on a pro-rata basis based on the number of itemized wage statements issued to each
13 PAGA Settlement Employee during the PAGA Period. Agreement, ¶¶ I.9, III.3(c), III.7(c)(4).
14 With a total of 65 PAGA Settlement Employees, the average estimated Individual PAGA
15 Payment for each PAGA Settlement Employee is approximately \$79.20 (\$5,148.15 (the PAGA
16 Residual Fund)/65 PAGA Settlement Employees).

17 34. Although an average payment of \$79.20 per PAGA Settlement Employee is not
18 an enormous sum of money, it is an excellent result given the uncertainties this lawsuit entails.
19 It is also reasonable given the structure and purpose of the PAGA. The PAGA is not a restitution
20 statute with a traditional damages provision designed to restore victims to the position they
21 would have been in had the Labor Code violations not taken place. Rather, it is at best a
22 punishment statute designed to reduce future Labor Code violations. It provides for civil
23 penalties only. *Id.* As recent caselaw makes clear, plaintiffs in a PAGA lawsuit cannot recover
24 as part of the civil penalty any wages the Labor Code violations at issue caused. *ZB, N.A. v.*
25 *Superior Court*, 8 Cal. 5th 175 (2019). The penalties are likely limited by the PAGA's per
26 paycheck cap of only \$100 and the caps of the Labor Code statutes it incorporates, such as Labor
27 Code § 558 which limits the civil penalty for a meal period violation to \$50 per paycheck.

28 35. 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



1 amount they received in civil penalties to pursue any unpaid restitution, wages, interest, statutory
2 penalties, and attorney fees and costs they believe they are owed in arbitration pursuant to their
3 agreements with the Defendant. The Settlement does not require them to opt out to do so. As
4 such, there is no basis for objection even if the PAGA permitted it. Under the circumstances,
5 the average payment of \$79.20 per PAGA Settlement Employee is a victory by any rational
6 standard.

7 *Attorneys' Fees and Costs*

8 36. A true and correct copy of the fee sharing agreement between the Spivak Law
9 Firm and United Employees Law Group is attached as **Exhibit 9** to this declaration. My co-
10 counsel and I intend to request attorneys' fees of \$14,166.67 (1/3 of the GSA) and \$2,925.56 in
11 reasonable litigation costs through the conclusion of matters related to the Settlement. The
12 written retainer agreement I entered into with Plaintiff provides that I may elect to recover either
13 (a) statutorily awarded attorney fees or (b) up to 40% of any recovery. I will make my written
14 fee agreement available to the Court on request.

15 37. I will have waited for almost three years to be awarded attorneys' fees for work
16 performed since December of 2018, when Plaintiff first contacted my office, compared to
17 Defendant's counsel who have been paid as they performed work during this case. Moreover,
18 my co-counsel and I have expended time, effort, and money that we could have expended on less
19 risky cases instead.

20 38. My firm's current litigation costs total approximately \$2,363.05 to date. A true and
21 correct summary of my firm's costs and expense is attached as **Exhibit 10** to this declaration. I
22 will make detailed copies of such records available to the Court for *in camera* inspection upon
23 its request. I anticipate that I will incur an additional \$539.08 in costs, which consist of filing
24 fees and attorney service fees for filing this motion, Notice of Entry and Final Accounting, and
25 estimated future appearance fees regarding the hearing on the Settlement Approval and Final
26 Accounting. I anticipate my firm's litigations costs will total approximately \$2,902.13 through
27 final accounting of the Settlement. Including the out-of-pocket expenses incurred by my co
28



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

counsel³, Plaintiff's Counsel request a total of \$2,925.56 in reasonable litigation costs.⁴

39. In addition, based on my experience in wage and hour class action and PAGA matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court,

³ My co-counsel's current out of pocket expenses total approximately \$23.43. See Haines Decl. ¶ 11.

⁴ My co-counsel and I do not seek reimbursement for the wages I 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.



1 Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v.*
2 *National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of
3 fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado,
4 Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/*
5 *Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California,
6 Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard*
7 *Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris*
8 *v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-
9 third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-
10 third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-
11 CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino
12 Superior Court, Case No. CIVDS1500146 (one-third of fund).

13 40. My previous experience in litigating wage and hour class actions supports the
14 reasonableness of the fee request, as does the caliber of opposing counsel. My previous
15 experience in similar matters was integral in evaluating the strengths and weaknesses of the case
16 against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage
17 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law,
18 state and federal, as well as the procedural law of representative litigation. Because it is
19 reasonable to compensate me commensurate with my skill, reputation, and experience, attorneys'
20 fees of approximately one-third of the Settlement Fund is reasonable. Likewise, the caliber and
21 experience of opposing counsel in labor and employment litigation, Mark Posard and Annette
22 Rose of Gordon Rees Scully Mansukhani, LLP, support the fairness and reasonableness of the
23 requested fee award.

24 41. Attached hereto as **Exhibit 11** is a true and correct copy of the biography page for
25 Annette Rose from the Gordon Rees Scully Mansukhani, LLP website. She defended this case.

26 42. Attached hereto as **Exhibit 12** is a true and correct copy of the biography page for
27 Mark Posard from the Gordon Rees Scully Mansukhani, LLP website. He defended this case.

28 ***Settlement Administration Duties***

43. The duties of the Settlement Administrator are spelled out in section III.7(a) of
the Agreement and in the bid by CPT Group, Inc., a true and correct copy of which is attached
as **Exhibit 13**.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Settlement Administration Costs

44. With regard to the settlement administration costs provision (Agreement, ¶ III.3(b)), it is reasonable. Before agreeing to CPT Group, Inc. the Parties sought and reviewed bids from other reputable third-party administrators and CPT Group Inc.'s bid was comparable:

- A. Simpluris, Inc. = \$3,150.00;
- B. CPT Group, Inc. = \$5,000.00; and
- C. ILYM Group = \$ 5,451.40

A true and correct copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 14**. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 15**. Thus, settlement administration costs provision should be given approval.

Uncashed Checks

45. Individual PAGA Payment checks will remain valid and negotiable for one hundred eighty (180) days from the date of their issuance. If an Individual PAGA Payment check remains uncashed or undeliverable after the 180-day period, such check(s) will be voided by the Settlement Administrator, and any funds remaining from such uncashed checks shall be tendered to the California State Controller's Unclaimed Property Fund in the names of the Aggrieved Employees to whom the checks were issued. With regard to the Individual PAGA Payments to the PAGA Settlement Employees, IRS Form 1099s will be issued as legally appropriate. Agreement, ¶ III.3.c.2, ¶ III.7.d.

Notice of Settlement to the LWDA

46. As stated above, pursuant to Labor Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiff's Motion is being filed with the Court. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 6**.

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

Executed on Wednesday, January 12, 2022 at Encino, California.



DAVID SPIVAK,
Declarant



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

EXHIBIT 1

SETTLEMENT AGREEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS

This Settlement Agreement of Private Attorneys General Act Claims (the “Agreement”) is made and entered into between Plaintiff Mikayla Huddleston (“Plaintiff” or “Huddleston”), acting in a private attorney general capacity on behalf of herself and PAGA Settlement Employees, and Defendant Easter 263, Inc. (“Defendant” or “Easter”) a California corporation. Plaintiff and Defendant are collectively referred to herein as the “Parties.”

This Agreement shall be binding on Plaintiff and the PAGA Settlement Employees that Plaintiff purports to represent and on Defendant Easter 263, Inc. subject to the terms and conditions hereof and the approval of the Court.

I. DEFINITIONS

The following terms, when used in this Agreement, shall have the following meanings:

1. “Action” or “PAGA Action” means the action entitled *Mikayla Huddleston v. Easter 263, Inc., et al.* filed by Plaintiff on March 4, 2021, with Superior Court of California for the County of Sacramento and designated Case No.: 34-2021-00295702-CU-OE-GD.
2. “Complaint” means the operative complaint in the Action.
3. “Court” means the Superior Court of California for the County of Sacramento.
4. “Defendant” means Easter 263, Inc., a California corporation.
5. “Effective Date” means the date the Court has signed an order approving the motion or joint stipulation of settlement for approval of this PAGA Settlement, and enters an order thereon.
6. “Gross Settlement Amount” represents the maximum total payment that Easter will pay for any reason under this Agreement, inclusive of attorney’s fees and costs to PAGA Counsel, administrative costs, the PAGA Penalty Fund and/or Individual PAGA Payments as defined herein.
7. “Individual PAGA Payment” means the amount to be paid to each PAGA Settlement Employee from the Residual PAGA Fund, with such individual shares to be calculated pro-rata based on the number of itemized wage statements issued to each PAGA Settlement Employee during the PAGA Period.
8. “LWDA” means the California Labor and Workforce Development Agency.
9. “LWDA Notice” means the correspondence dated February 4, 2020, LWDA Case No.: LWDA-CM-772294-20, through which Plaintiff gave notice via certified mail to Defendant and the LWDA of her intent to pursue the PAGA Action.
10. “Harman” means Harman Management Corporation, a Utah Corporation.

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code §§ 2698 *et seq.*

12. “PAGA Counsel” means The Spivak Law Firm and United Employees Law Group.

13. “PAGA Penalty Fund” means the net amount allocable to PAGA penalties under the Agreement, and represents the balance of the Gross Settlement Amount less attorney’s fees and costs to PAGA Counsel and administrative costs. The PAGA Penalty Fund shall be distributed to the LWDA and to the PAGA Settlement Employees as further set forth below in Section III.3.c.

14. “PAGA Period” means the time period from February 4, 2019 through September 14, 2020.

15. “PAGA Released Claims” means all claims for recovery of civil penalties under the Private Attorneys General Act, Labor Code section 2698, *et seq.*, based on the facts pled in the Action, including but not limited to allegations pertaining to failure to pay minimum wage, straight time wages, or overtime wages, failure to provide statutory meal and/or rest periods, waiting time penalties, penalties for non-compliant wage statements, failure to keep accurate payroll records, and failure to reimburse employees for reasonably incurred business expenses, and shall include penalties associated with Labor Code sections 201, 202, 203, 204, 206, 210, 225.5, 226, 226.3, 226.7, 510, 511, 512, 515, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, and any amendments to any of these statutes, and any other California Labor Code provision which could have been pled based on the factual allegations in the Complaint and/or LWDA Notice.

16. “PAGA Settlement Employees” means all current and former non-exempt employees who worked for Easter 263, Inc. within the State of California at any time between February 4, 2019 and September 14, 2020.

17. “Parties” means Plaintiff Mikayla Huddleston and Easter 263, Inc.

18. “Plaintiff” means Plaintiff Mikayla Huddleston.

19. “Residual PAGA Fund” represents the 25% share of the PAGA Penalty Fund which will be distributed as Individual PAGA Payments to the PAGA Settlement Employees.

20. “Settlement Administrator” means CPT Group Inc., the third-party administrator retained by the parties to administer the settlement.

II. RECITALS

1. Plaintiff was employed by Easter 263, Inc. in California in a non-exempt position from approximately March 27, 2018 through May 26, 2019. Harman denies any employment relationship with Plaintiff.

2. On February 4, 2020, Plaintiff sent the LWDA Notice via electronic mail to the LWDA alleging claims under the PAGA against Defendant and Harman.

3. On March 4, 2021, Plaintiff filed the Action, for purposes of settlement only, against Defendant seeking to recover civil penalties on behalf of herself and other “aggrieved employees” pursuant to PAGA for alleged Labor Code violations. Defendant and Harman deny, and continue to deny, all of the allegations made by Plaintiff or that they are liable for any of the damages and/or civil penalties as alleged in the Action and/or LWDA Notice, respectively.

4. On or about September 14, 2020, the Parties engaged in mediation with Mediator Jeffrey Owensby, Esq. to resolve these claims. Prior to mediation, the Parties engaged in informal discovery related to the representative class. The Parties participated in a full-day mediation through which the Parties reached an agreement to fully and finally resolve the PAGA Action on the terms and conditions set forth in this Agreement. The Parties agreed that Huddleston would file the Action for purposes of this Court’s approval and the Parties’ settlement.

5. In furtherance of resolution of this PAGA, this Agreement is contingent upon Court approval. The termination of this Agreement, if any, is set forth fully in Section III.6.

6. Based on their own independent investigations and evaluations, the Parties, and their respective counsel, are of the opinion that the settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the PAGA Settlement Employees, the State of California, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the PAGA Settlement Employees and that the settlement for each such PAGA Settlement Member is fair, reasonable, and adequate, given the inherent risk of litigation.

7. The purpose of this Agreement is to settle and compromise the Action and all PAGA Released Claims that Plaintiff and the PAGA Settlement Employees have against Defendant and the Released Parties (as defined in Section III.4.a below).

III. TERMS AND CONDITIONS OF AGREEMENT

1. Non-Admission. Nothing in this Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendant and/or Harman of any liability or wrongdoing as to Plaintiff, the PAGA Settlement Employees, or any other person. Defendant and Harman specifically deny any such liability or wrongdoing. The Parties have entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive

order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

2. Gross Settlement Amount and Due Dates. In consideration of the executed terms and conditions of the Agreement, , and conditioned upon the Court's approval of the settlement to ensure compliance with California Labor Code §§ 2699(k)(1)(2) and 2699(k)(1)(3), Easter agrees to pay the total maximum sum of **Forty Two Thousand Five Hundred and 00/100 Dollars (\$42,500.00)** as the Gross Settlement Amount.

3. Allocation of Gross Settlement Amount. The Parties agree to the following allocations to be paid from the Gross Settlement Amount:

a. Attorneys' Fees and Costs to PAGA Counsel: PAGA Counsel request payment of attorneys' fees in the amount of \$14,166.67(1/3 of the Gross Settlement Amount) and reimbursement of actual costs not to exceed \$3,000.00. Easter shall not oppose PAGA Counsel's request for attorneys' fees and costs up to these amounts. The Settlement Administrator will report this payment on IRS Form 1099. PAGA Counsel agrees to provide an executed W-9 form in advance of receipt of any payment. Should PAGA Counsel request a lesser amount for attorney's fees and costs and/or the Court approve a lesser amount, the difference shall be allocated to the PAGA Penalty Fund and distributed accordingly. Any attorney's fees and costs awarded to PAGA Counsel shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Action and all work remaining to be performed in fully and finally resolving the Action, including but not limited to securing Court approval of the settlement, appearing at hearings, making sure that the settlement is fairly and properly administered, defending the settlement in any appeal or other post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur in connection with the Action.

b. Administration Costs: Administration Costs shall include the cost of the Settlement Administrator to administer the settlement, in an amount not to exceed \$5,000; and

c. PAGA Penalty Fund: The remainder of the Gross Settlement Amount after deducting the items (a)-(b) herein shall be designated the PAGA Penalty Fund in settlement of the PAGA Released Claims. The PAGA Penalty Fund, estimated at approximately \$20,333.33, will be subject to Court approval consistent with Labor Code § 2699. Upon approval, the PAGA Penalty Fund shall be allocated as follows:

- (1) Seventy-Five Percent (75%), currently estimated at approximately \$15,250.00, will be paid to the LWDA, as required by Labor Code § 2699.

- (2) The remaining twenty-five percent (25%) currently estimated at approximately \$5,083.33, the “Residual PAGA Fund,” shall be distributed pro rata in Individual PAGA Payments to each of the PAGA Settlement Employees. These penalty settlement payments will be reported on IRS Form 1099s by the Settlement Administrator if required by law.

4. Release of Claims.

a. Release by PAGA Settlement Employees. Upon the approval by the Court of this Agreement, Plaintiff, the State of California and each PAGA Settlement Employee shall fully release and forever discharge Easter and Harman, and any restaurant corporation with a consulting agreement with Harman Management Corporation, and their respective present and former parents, subsidiaries, divisions, related or affiliated companies, joint ventures, shareholders, officers, directors, managers, agents, attorneys, insurers, reinsurers, successors and assigns (“the Released Parties”) from all PAGA Released Claims.

b. The Parties agree and acknowledge that the terms of settlement herein stated constitute a complete compromise of matters involving disputed issues of law and fact. Plaintiff expressly and voluntarily assumes the risk that the facts or law may be other than the Parties presently believe. It is understood and agreed by the Parties that the settlement is a compromise of disputed claims and that no portion of the terms of the settlement shall be construed as an admission of liability by a Party hereto.

5. Approval Stipulation. The Parties recognize that, in accordance with Labor Code § 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code § 2699(l), the Parties shall submit a joint stipulation to the Court identifying the key terms of this Agreement and requesting that the Court approve the PAGA penalties (“Approval Stipulation”). The Approval Stipulation shall be filed with the Court within ten (10) days after this Agreement is executed by the Parties, unless otherwise agreed to between the parties in writing. If the Court requires a formally noticed motion in order to approve the terms of this Agreement, the Parties will cooperate in the preparation, filing, and service of such motion.

6. Termination of Agreement. The Settlement is contingent upon the approval by the Court. If the Court should fail to approve the allocation of the Gross Settlement Amount, including the amounts requested by PAGA Counsel for attorneys’ fees and costs and/or allocated to the PAGA Penalty Fund as reflected in this Agreement and agreed to by the Parties, the Parties agree to coordinate efforts to address the Court’s questions or concerns and resubmit the Approval Stipulation. If, after the Parties make a second attempt to obtain approval of the terms of the Settlement, the Court fails to approve this Agreement in the form agreed to by the Parties (except

for the amount of attorneys' fees or costs requested), or the Court's approval of this Agreement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall be deemed to have reverted to their respective positions as of September 14, 2020 (the dates of the Parties' mediation), without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorney's fees and costs, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

7. Administration of Settlement:

a. Administrator Duties. The Settlement Administrator will administer the settlement, the costs of which are estimated to not exceed Five Thousand Dollars and No Cents (\$5,000.00), and shall be paid from the Gross Settlement Amount. The Settlement Administrator shall be responsible for effectuating the settlement payment process, including compiling the PAGA Settlement Employee list from information provided by Easter, handling all mailings to PAGA Settlement Members, tracing undeliverable mailings, calculating Individual PAGA Payments, preparing and mailing disbursements, reporting payments to all required taxing and other authorities, distributing the Gross Settlement Amount to the appropriate persons and/or entities in the appropriate amounts, and other related tasks as mutually agreed to by the Parties.

b. Funding of Gross Settlement Amount. Within thirty (30) calendar days of the Effective Date, Easter shall remit to the Settlement Administrator the Gross Settlement Amount and provide the Settlement Administrator with a list of the following information for each PAGA Settlement Employee: name, last known address, and number of pay periods worked in a non-exempt position in California during the PAGA Period.

c. Disbursements. Within fifteen (15) days after receipt of the full Gross Settlement Amount, Settlement Administrator shall:

- (1) Release to PAGA Counsel the amounts approved by the Court for payment of Attorney's Fees and reimbursement of actual costs;
- (2) Disburse to itself payment for administration costs not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00);
- (3) Disburse to the LWDA an amount equal to 75% of the PAGA Penalty Fund, as required by Labor Code § 2699;
- (4) Calculate and disburse Individual PAGA Payments to PAGA Settlement Employees, with each PAGA Settlement Employee receiving his/her pro rata value of the Residual PAGA Fund. Individual PAGA Payments shall be based on the number of itemized wage statements issued to each PAGA Settlement Employee in California in a non-exempt position

during the PAGA Period as compared to the total number of itemized wage statements issued to all PAGA Settlement Employees during the PAGA Period. Individual PAGA Payments shall be delivered along with the explanatory letter attached hereto as **Exhibit A**.

d. Checks will remain negotiable for one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the PAGA Settlement Employee involved, and will then perform a single re-mailing. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one hundred eighty (180) days after issuance will be tendered to the California Unclaimed Property Fund.

e. Accounting. Within thirty (30) days after receipt of the full Gross Settlement Amount, Settlement Administrator shall provide an accounting under penalty of perjury of the laws of the State of California to the Parties of the amounts disbursed.

d. Taxes. Plaintiff and the PAGA Settlement Employees acknowledge and agree that Easter, Harman, Defendant's counsel, the Released Parties, and PAGA counsel have made no representations to them regarding the tax consequences of the monies paid to them pursuant to this Agreement, and that they are hereby advised to seek advice regarding taxes from a tax professional. Plaintiff and the PAGA Settlement Employees agree to pay federal and state taxes, if any, which are required by law to be paid with respect to amounts paid to them pursuant to this Agreement. Plaintiff and the PAGA Settlement Employees will receive an IRS Form 1099 for the portion of the settlement paid directly to them. Plaintiff and each PAGA Settlement Employee bear full responsibility for the payment of any taxes or withholdings arising from the Individual PAGA Payments paid to Plaintiff or from the Residual PAGA Fund paid to the PAGA Settlement Employees. Plaintiff and the PAGA Settlement Employees agree that they will indemnify Defendant and any Released Parties for the full amount of such liability within thirty (30) days after receipt of notice from Defendant or any Released Parties of the assessment of such taxes, penalties, or interest.

8. No Publicity. The Parties agree that no party shall issue any press release to the news media or otherwise post on social media or the internet concerning the settlement or the litigation. Plaintiff agrees to notify Defendant in the event that any outside entity attempts to subpoena any of such documents.

9. Covenants and Representations by Plaintiff and Plaintiff's Counsel:

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Agreement.

b. Plaintiff acknowledges that she has read this Agreement, that she fully understands her rights, privileges and duties under the Agreement, and enters this Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Agreement and the consequences of signing this Agreement.

10. Confidentiality. Except to the extent necessary to effectuate and enforce the settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of the Individual Settlement Agreement and the negotiations leading up to it, confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website, social media, or otherwise publicize the settlement or communicate its terms in public or in private. To permit judicial review and approval of the PAGA Penalty Fund, as required by Labor Code § 2699, Plaintiff's Counsel shall file this Agreement with the Court and submit it to the LWDA. Plaintiff's Counsel may also discuss the settlement upon inquiry by PAGA Settlement Employees.

11. Drafting. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that no Party shall be considered the "drafter" of this Agreement for purposes of having terms construed against that Party.

12. No Impact on Benefit Plans. Neither the Agreement nor any amounts paid to Plaintiff or any PAGA Settlement Employee under the Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Easter, if any. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plans, policies, or bonus programs. Easter retains the right, if necessary, to modify the language of their benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Agreement.

13. Successors. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

14. Costs and Fees. The parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred in connection with this Agreement and in connection with the Action, except as otherwise set forth specifically herein.

15. Governing Law. This Agreement shall be construed under and governed by the laws of the State of California. If any legal or equitable action or arbitration is necessary to enforce

the terms of this Agreement, it shall be brought in the State of California, County of Sacramento.

16. Continuing Jurisdiction and CCP 664.6. After approval of this settlement, and pursuant to Code of Civil Procedure section 664.6, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such other matters as may be appropriate under court rules or as set forth in this settlement.

17. Execution and Delivery. This Agreement may be executed and delivered in two or more counterparts, each of which when so executed and delivered shall be the original, but such counterparts together shall constitute but one and the same instrument. For purposes of this section, an executed facsimile copy or executed PDF copy of the Agreement may be “delivered” by one party to the other.

18. Cooperation. The Parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

19. Interpretation; Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement.

20. Severability. Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms or provisions shall not be affected, and the illegal, unenforceable, or invalid part, term, or provision shall be deemed not part of this Agreement.

21. Entire Agreement. This Agreement incorporates the entire understanding between the Parties concerning Plaintiff’s PAGA claims for civil penalties and recites the whole consideration for the promises exchanged herein. It fully supersedes any and all prior agreements or understandings, written or oral, between the Parties hereto pertaining to the subject matter hereof. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be amended or modified in any respect whatsoever except by a writing duly executed by the Parties, and the Parties agree that they shall make no claim(s) at any time that this Agreement has been orally amended or modified.

22. Enforcement Action. In the event that one or more of the Parties institutes any 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 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys’ fees and costs, including expert witness fees incurred in connection with any enforcement actions.

23. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any confidentiality provisions that

otherwise might apply under any rules of mediation agreed to by the Parties and/or federal or state law.

IN WITNESS THEREOF, the Parties each acknowledge that she/it/they have read the foregoing Settlement Agreement, accept and agree to the provisions contained in this Agreement and hereby executes the Agreement voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: 05 / 20 / 2021



Mikayla Huddleston

DEFENDANT:

Dated: _____

Easter 263, Inc.
By:
Its:

otherwise might apply under any rules of mediation agreed to by the Parties and/or federal or state law.

IN WITNESS THEREOF, the Parties each acknowledge that she/it/they have read the foregoing Settlement Agreement, accept and agree to the provisions contained in this Agreement and hereby executes the Agreement voluntarily and with full understanding of its consequences.

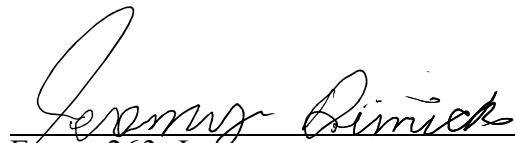
PLAINTIFF:

Dated: _____

Mikayla Huddleston

DEFENDANT:

Dated: 4/28/2021 _____


Easter 263, Inc.
By: Jeremy Dimick
Its: PRESIDENT

APPROVED AS TO FORM ONLY:

The Spivak Law Firm

Dated: 05 / 19 / 2021

By: 
David Spivak
Maralle Messrelian
Attorneys for Plaintiff

United Employees Law Group

Dated: May 20, 2021

By: 
Walter Haines
Attorneys for Plaintiff

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

In Re: Mikayla Huddleston v. Easter 263, Inc., et al.,

(Superior Court of Sacramento County, Case No.: 34-2021-00295702-CU-OE-GD)

[Settlement Administrator info]

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a lawsuit brought on a representative basis under the California Labor Code Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* (“PAGA”) (“the Action”). The plaintiff in the lawsuit is Mikayla Huddleston (“Plaintiff”) and the Defendant is Easter 263, Inc., a California corporation.

The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all non-exempt employees who were employed by Easter 263, Inc. in California during the PAGA Period of February 2, 2019 through September 14, 2020.

It is important to note that Easter 263, Inc. denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable Labor Code provisions. Additionally, the Court has not rendered any decision as to the merits of this case. To avoid further time and expense in litigating the Action, the Parties have agreed to settle the case, and the Court has approved the settlement and release of claims. By settling the Action, Easter 263, Inc. does not admit any liability whatsoever, and expressly denies that they have done anything wrong.

The Settlement resolves all claims seeking civil penalties, attorney fees, and costs to the Labor and Workforce Development Agency (LWDA) or any agency acting under the authority of the LWDA under the California Labor Code predicated on the PAGA Claims that were alleged or could have been alleged against the Released Parties based on the facts and theories alleged in the Action, including, but not limited to all claims for civil penalties pursuant to PAGA for alleged violations of California Labor Code sections 201, 201.3, 202, 203, 204, 204.1, 204.2, 221, 226, 226.7, 510, 512, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2802, and any amendments to any of these statutes, or upon any claims for unpaid wages, issuance of improper wage statements, and failure to timely pay all wages due arising from employment by Easter 263, Inc. during the PAGA Period (the “PAGA Released Claims”).

By Order dated _____, 2021, the Sacramento County Superior Court approved the Settlement of the PAGA claims.

According to the Defendant's records, you are a PAGA Settlement Employee and are therefore entitled to a share of the settlement based upon the Court-approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 120 days. Thereafter, all uncashed checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law for the benefit of the PAGA Settlement Employee who did not claim his or her property.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered civil penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Plaintiff nor Easter 263, Inc. 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, if applicable.

If you have any questions, you may call or write to _____ (the Settlement Administrator) using the contact information at the top of this correspondence.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process.

EXHIBIT 2

NOTICE OF PAGA SETTLEMENT

In Re: Mikayla Huddleston v. Easter 263, Inc., et al.,

(Superior Court of Sacramento County, Case No.: 34-2021-00295702-CU-OE-GD)

[Settlement Administrator info]

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a lawsuit brought on a representative basis under the California Labor Code Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* (“PAGA”) (“the Action”). The plaintiff in the lawsuit is Mikayla Huddleston (“Plaintiff”) and the Defendant is Easter 263, Inc., a California corporation.

The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all non-exempt employees who were employed by Easter 263, Inc. in California during the PAGA Period of February 2, 2019 through September 14, 2020.

It is important to note that Easter 263, Inc. denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable Labor Code provisions. Additionally, the Court has not rendered any decision as to the merits of this case. To avoid further time and expense in litigating the Action, the Parties have agreed to settle the case, and the Court has approved the settlement and release of claims. By settling the Action, Easter 263, Inc. does not admit any liability whatsoever, and expressly denies that they have done anything wrong.

The Settlement resolves all claims seeking civil penalties, attorney fees, and costs to the Labor and Workforce Development Agency (LWDA) or any agency acting under the authority of the LWDA under the California Labor Code predicated on the PAGA Claims that were alleged or could have been alleged against the Released Parties based on the facts and theories alleged in the Action, including, but not limited to all claims for civil penalties pursuant to PAGA for alleged violations of California Labor Code sections 201, 201.3, 202, 203, 204, 204.1, 204.2, 221, 226, 226.7, 510, 512, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2802, and any amendments to any of these statutes, or upon any claims for unpaid wages, issuance of improper wage statements, and failure to timely pay all wages due arising from employment by Easter 263, Inc. during the PAGA Period (the “PAGA Released Claims”).

By Order dated _____, 2021, the Sacramento County Superior Court approved the Settlement of the PAGA claims.

According to the Defendant's records, you are a PAGA Settlement Employee and are therefore entitled to a share of the settlement based upon the Court-approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 120 days. Thereafter, all uncashed checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law for the benefit of the PAGA Settlement Employee who did not claim his or her property.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered civil penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Plaintiff nor Easter 263, Inc. 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, if applicable.

If you have any questions, you may call or write to _____ (the Settlement Administrator) using the contact information at the top of this correspondence.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process.

EXHIBIT 3



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

February 11, 2020

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

RE: *Mikayla Huddleston / Easter 263, Inc.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Mikayla Huddleston (hereafter “Huddleston”) provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly employees (hereafter “Aggrieved Employees,”) by Harman Management Corporation, a Utah corporation, and Easter 263, Inc., a California corporation (hereafter collectively referred to as “Harman”) of violations of California Labor Code §§ 201-203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and IWC Wage Order 5-2001.

At all relevant times, Harman has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Huddleston and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

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

SPIVAKLAW.COM

Statement of Facts

Harman began employing Huddleston as an hourly fast food restaurant crew member in its Rancho Cordova, California restaurant, on or about March 14, 2018. Huddleston continuously worked at Harman from the time of her hire until approximately May 24, 2019, when she resigned. Throughout this employment period Harman failed to provide Huddleston and the Aggrieved Employees with all timely rest and meal periods. Harman failed to hire sufficient staff members to allow Huddleston and the Aggrieved Employees to take off-duty meal and rest breaks. Harman further prohibited Huddleston and the Aggrieved Employees to leave the restaurant during their breaks and therefore, Huddleston and the Aggrieved Employees were often interrupted by their coworkers during their meal periods. Harman also failed to pay premium wages for days on which it failed to provide Huddleston and the Aggrieved Employees with rest and/or meal periods. Moreover, Harman deducted approximately 30 minutes from the daily recorded work hours of Huddleston and the Aggrieved Employees, and reported less hours on their wage statements, even if Huddleston and the Aggrieved Employees were not able to take their 30-minute uninterrupted meal periods.

Harman failed to pay Huddleston and the Aggrieved Employees at one and one-half times their regular rates of pay when they worked in excess of eight hours in a workday and/or over 40 hours in a workweek. Harman required Huddleston and the Aggrieved Employees to arrive before their shifts began to wait for deliveries, to open the restaurant if the employee scheduled to open didn't show up for work, and/or be prepared to open up just in case the employee scheduled to open didn't show up for work. However, Harman failed to compensate Huddleston and the Aggrieved Employees for such off-the-clock, overtime work. Harman required Huddleston and the Aggrieved Employees to stay after their workday ended to take inventory and to clean up. However, Harman failed to compensate Huddleston and the Aggrieved Employees for such off-the-clock, overtime work.

Harman failed to reimburse Huddleston and the Aggrieved Employees for mileage they incurred traveling in their personal automobiles on Harman's behalf, such as when Harman required Huddleston and/or the Aggrieved Employees to transport supplies between restaurants.

Harman failed to provide Huddleston and the Aggrieved Employees with accurate wage statements that stated the correct name of their employer and its address. Harman failed to properly and accurately itemize each employee's gross and net wages earned and the total hours worked. Harman did not state the hours worked and wages earned described above on the wage statements of Huddleston and the Aggrieved Employees.

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

- a) Harman failed to compensate Huddleston and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, overtime wages;
- b) Harman failed to provide Huddleston and the Aggrieved Employees with all timely rest breaks and meal periods;
- c) Harman failed to compensate Huddleston and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- d) Harman failed to compensate Huddleston and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely meal periods;
- e) Harman failed to provide Huddleston and the Aggrieved Employees with accurate wage statements;
- f) Harman failed to timely pay Huddleston and the Aggrieved Employees all earned and unpaid wages during, and upon termination from, their employment with Harman;
- g) Harman unlawfully collected and received wages from Huddleston and Aggrieved Employees by deducting 30 minutes of daily time worked in spite of the fact that such time was spent on duty; and

- h) Harman failed to indemnify Huddleston and the Aggrieved Employees for the business-related expenses they incurred on Harman's behalf.

Accordingly, Huddleston now seeks civil penalties on behalf of herself and Aggrieved Employees based on Harman's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services" and includes, but is not limited to, the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

§ 2(P) (emphasis added). At all relevant times during the applicable limitations period, Harman employed Huddleston and the Aggrieved Employees as hourly crew members and other hourly employees at its restaurant. Accordingly, Huddleston and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Pay All Wages Earned For All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states,

“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.”

In relevant part, Section 2(K) of the Wage Order states,

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

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

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

As described above, all at relevant times during the applicable limitations period, Harman failed to compensate at overtime rates Huddleston and the other

Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours worked.

Accordingly, Huddleston seeks civil penalties on behalf of herself and other crew members as follows:

1. \$50 for each aggrieved employee for each initial violation of California Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
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));
3. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages (penalties set by California Labor Code § 1197.1).

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

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, 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 no waived.

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...
- (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.

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

Rest Periods:

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

“[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.

California Labor Code § 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.

As described above, Harman intentionally and improperly failed to provide all timely rest breaks and/or meal periods free from any work or duties to Huddleston and the Aggrieved Employees as required by law. Accordingly, Huddleston seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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.

All at relevant times during the applicable limitations period, Harman violated California Labor Code § 226, in that it failed to properly and accurately itemize each aggrieved employee's gross wages earned, net wages earned, total hours worked, the corresponding number of hours worked at the rate by the aggrieved employee, and other requirements of California Labor Code § 226. Harman also failed to state the correct name and address of the employer on its paycheck statements. Further, Harman failed to state the 30-minute deductions from the daily hours Huddleston and the Aggrieved Employees worked and the premium wages earned for unprovided meal and rest periods.

Accordingly, Huddleston 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 Harman's failures to pay Huddleston and the Aggrieved Employees within the time periods set by California Labor Code § 204, Harman failed to timely pay all wages due to Huddleston and the Aggrieved Employees during, and upon separation from, their employment with Harman.

Accordingly, Huddleston 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, plus 25% of the amount unlawfully withheld from each aggrieved employee, for each subsequent violation (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon End of Employment
(Lab. Code §§ 201-203)

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under Labor Code section 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. (See *ibid.*) 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. (See *ibid.*)

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 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.

By willfully failing to pay wages to Huddleston and the Aggrieved Employees as set forth above, Harman is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and Aggrieved Employees, Huddleston seeks civil penalties from Harman 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, subdivision (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, subdivision (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, subdivision (f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

In relevant part, California Labor Code section 221 states, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

///

///

At all relevant times, Harman automatically collected and received wages from Huddleston and Aggrieved Employees by deducting 30 minutes of daily time worked. As a result, Harman collected and received part of its employees' wages in violation of California Labor Code section 221.

Accordingly, Huddleston 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 section 221 (if found to be neither willful nor intentional) and \$200 for each aggrieved employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code section 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code section 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code section 225.5).

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

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

As described above, during the applicable limitations period, Harman required Huddleston and Aggrieved Employees to incur certain business expenses, including mileage, which it failed to indemnify them for both during and after their employment ended. Accordingly, Huddleston 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 section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 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

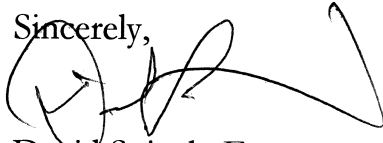
LWDA / Harman

2/11/2020

Page 15 of 15

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: Mikayla Huddleston
Walter Haines, Esq.

Harman-Management Corporation
c/o Beatriz Berumen, Esq.
Gordon Rees Scully Mansukhani, LLP
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
bberumen@grsm.com

Easter 263, Inc.
c/o Beatriz Berumen, Esq.
Gordon Rees Scully Mansukhani, LLP
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
bberumen@grsm.com

Harman-Management Corporation
c/o Bruce M. Ahlstrom
Agent for Service of Process
595 Millich Drive, Suite 106
Campbell, CA 95008-0550

Easter 263, Inc.
c/o Pamela Lewis
Agent for Service of Process
199 First Street, Suite 212
Los Altos, CA 94022

EXHIBIT 4

COPY

FILED

Superior Court Of California,
Sacramento

03/04/2021

mwhitaker

By _____, Deputy

Case Number:

34-2021-00295702

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 MARALLE MESSRELIAN (SBN 316974)

maralle@spivaklaw.com

3 THE SPIVAK LAW FIRM

16530 Ventura Blvd., Suite 203

4 Encino, CA 91436

5 Telephone: (213)725-9094

6 Facsimile: (213) 634-2485

7 Attorney for Plaintiff,

MIKAYLA HUDDLESTON

8 (Additional Counsel on Following Page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SACRAMENTO**

12 **(UNLIMITED JURISDICTION)**

13 MIKAYLA HUDDLESTON, as an "aggrieved
14 employee" on behalf of other similarly situated
15 "aggrieved employees" under the Labor Code
Private Attorney General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 EASTER 263, INC., a California corporation;
19 and DOES 1 through 50, inclusive,

20 *Defendant(s).*
21
22
23
24
25
26
27
28

Case No.:

**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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel.
(213) 634-2485 Fax
SpivakLaw.com

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff MIKAYLA HUDDLESTON (hereafter “Plaintiff”), on behalf of herself, the
2 State of California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against EASTER 263, INC., and Does 1-50, inclusive (collectively
7 “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 her, the State of California, and all current and former non-exempt hourly employees who
10 worked in California during the period of February 4, 2019 through September 14, 2020 for
11 civil penalties and other related relief. These claims are based on Defendants’ alleged (1) failure
12 to pay wages for all hours worked at the correct rates of pay, (2) failure to provide rest breaks,
13 (3) failure to provide all meal periods, (4) failure to provide accurate written wage statements,
14 (5) failure to maintain accurate employment records, (6) failure to timely pay wages during
15 employment, (7) unlawful deductions, and (8) failure to indemnify Plaintiff and the Aggrieved
16 Employees for the reasonable expenses incurred during the course of performing their duties.
Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
representative action.

17 **II. JURISDICTION AND VENUE**

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

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

25 **III. THE PARTIES**

26 5. Plaintiff is a resident of California. Defendants employed Plaintiff from about
27 March of 2018 to approximately May of 2019.

28 6. Defendant EASTER 263, INC. is a corporation organized and existing under the



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

laws of California and a citizen of California based on Plaintiff's information and belief.

7. 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.

A. THE AGGRIEVED EMPLOYEES

8. The "Aggrieved Employees" are all current and former non-exempt hourly employees Defendants employed in California during the period of February 4, 2019 through September 14, 2020 ("the PAGA Period").

9. 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.

10. 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 that resulted in Defendants allegedly not paying Plaintiff and other Aggrieved Employees in accordance with applicable California labor laws as set forth herein.

IV. FACTUAL ALLEGATIONS

11. Defendants first employed Plaintiff on or about March 14, 2018, to work as an hourly fast food restaurant crew member in their Rancho Cordova, California restaurant. Plaintiff continuously worked for Defendants from the time of her hire until approximately May 24, 2019, when her employment ended.

12. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods. Defendants failed to hire sufficient staff members to allow Plaintiff and the Aggrieved Employees to take off-duty meal and rest breaks. Defendants further prohibited Plaintiff and the Aggrieved Employees to leave the restaurant during their breaks and therefore, Plaintiff and the Aggrieved Employees were often interrupted by their coworkers during their meal periods. Defendants also failed to pay premium wages for



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 days on which they failed to provide Plaintiff and the Aggrieved Employees with rest and/or
2 meal periods. Moreover, Defendants deducted approximately 30 minutes from the daily
3 recorded work hours of Plaintiff and the Aggrieved Employees, and reported less hours on their
4 wage statements, even if Plaintiff and the Aggrieved Employees were not able to take their 30-
minute uninterrupted meal periods.

5 13. Defendants failed to pay Plaintiff and the Aggrieved Employees at one and one-
6 half times their regular rates of pay when they worked in excess of eight hours in a workday
7 and/or over 40 hours in a workweek. Defendants required Plaintiff and the Aggrieved
8 Employees to arrive before their shifts began to wait for deliveries, to open the restaurant if the
9 employee scheduled to open didn't show up for work, and/or be prepared to open up just in case
10 the employee scheduled to open didn't show up for work. However, Defendants failed to
11 compensate Plaintiff and the Aggrieved Employees for such off-the-clock, overtime work.
12 Defendants required Plaintiff and the Aggrieved Employees to stay after their workday ended to
13 take inventory and to clean up. However, Defendants failed to compensate Plaintiff and the
Aggrieved Employees for such off-the-clock, overtime work.

14 14. Defendants failed to reimburse Plaintiff and the Aggrieved Employees for
15 mileage they incurred traveling in their personal automobiles on Defendants' behalf, such as
16 when Defendants required Plaintiff and/or the Aggrieved Employees to transport supplies
17 between restaurants.

18 15. Defendants failed to provide Plaintiff and the Aggrieved Employees with
19 accurate wage statements that stated the correct name and address of their employer.
20 Defendants failed to properly and accurately itemize each employee's gross and net wages
21 earned and the total hours worked. Defendants did not state the hours worked and wages earned
22 described above on the wage statements of Plaintiff and the Aggrieved Employees.

23 16. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

24 A. Not paid all wages earned, including but not limited to, (1) at least
25 minimum wages for all hours worked, (2) one and one-half times their regular rates of pay for
26 all hours worked over eight hours in one workday or over 40 hours in one workweek and/or up
27 to eight hours on the seventh consecutive workday in a workweek, and (3) double their regular
28 rates of pay for all hours worked over twelve hours in one workday and/or over eight hours on



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 the seventh consecutive workday in a workweek;

2 B. Not provided with all rest breaks and timely meal periods;

3 C. Not paid one hour's pay for each workday in which Defendants failed to
4 provide them with one or more timely rest breaks;

5 D. Not paid one hour's pay for each workday in which Defendants failed to
6 provide them with one or more timely meal periods;

7 E. Not provided with accurate and complete wage statements;

8 F. Not timely paid all earned and unpaid wages during their employment
9 with Defendants and at the time such employment ended;

10 G. Unlawfully deducted wages; and

11 H. Not reimbursed for the reasonable expenses incurred during the course of
12 performing their duties.

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

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698, *et seq.*)**

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

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

19 **A. UNPAID WAGES**

20 18. At all relevant times, Plaintiff and the Aggrieved Employees have been entitled
21 to the benefits and protections of the California Labor Code and the applicable Wage Order.

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

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

28 21. The Division of Labor Standards Enforcement ("DLSE"), the State agency
charged with adjudicating wage claims on the behalf of workers who file claims for
nonpayment of wages, has stated with regard to the federal standard:

Unlike the meaning of "hours worked" which is specifically defined under the



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Industrial Welfare Commission Orders, the federal courts have chosen to define
2 the term for purposes of the FLSA much more restrictively. ... [T]he U.S.
3 Department of Labor's regulations (29 C.F.R. § 785.19(b)) provides employers
4 with the right to require workers to remain on the employers premises during
meal periods if the employee is "otherwise completely freed from duties during
the meal period."

5 (DLSE Op. lt. 11/1/1995.). In a later opinion, the DLSE struck its earlier opinion that:

6 If, on the other hand, the employer requires the employee to not only wear the
7 pager or listen for the in-house paging system, but also to remain within a
8 certain distance of a telephone or otherwise limits the employee's activities, such
control would require that all of the meal period time be compensated.

9 (Compare DLSE Op. lt. 7/12/1996 to DLSE Op. lt. 1/28/1992.) As reiterated in *Brinker v. Sup.*
10 *Ct. (Hohnbaum)* (2012) 53 Cal. 4th 1004, 1029, "The DLSE's opinion letters, while not
11 controlling upon the courts by reason of their authority, do constitute a body of experience and
12 informed judgment to which courts and litigants may properly resort for guidance." (*Ibid.*)

13 22. Federal court decisions interpreting the FLSA hold that time spent by an
14 employee predominantly for the employer's benefit is compensable. (See *Henson v. Pulaski*
15 *County Sheriff Dep't* (8th Cir. 1993) 6 F.3d 531, 534.) Others require that an employee be
16 completely relieved of her duties during a meal period or else the meal period is compensable
17 time. (See 29 CFR 785.19 ["The employee is not relieved if he is required to perform any
18 duties, whether active or inactive, while eating"]; *Kohlheim v. Glynn County, Ga.* (11th Cir.
1990) 915 F.2d 1473, 1477.)

19 23. Labor Code section 1198 states, "The employment of any employee . . . under
20 conditions of labor prohibited by the [Wage Order] is unlawful."

21 24. In relevant part, Labor Code section 1194 states,

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

25 25. In relevant part, Labor Code section 1197 states, "The minimum wage for
26 employees fixed by the commission is the minimum wage to be paid to employees, and the
27 payment of a less wage than the minimum so fixed is unlawful."

28 26. In relevant part, California Labor Code section 510 states,



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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.

27. 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.

28. California Labor Code section 510(a) and the Wage Order require employers to compensate employees at one and one-half times their regular rates of pay for:

A. All hours worked in excess of eight hours in one workday; and

B. All hours worked in excess of forty hours in one workweek.

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

30. As described above, at all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 31. Plaintiff is informed and believes that, at all relevant times, Defendants have
2 applied centrally devised policies and practices to her and the Aggrieved Employees with
3 respect to working conditions and compensation arrangements.

4 32. At all relevant times, Defendants failed to compensate Plaintiff and the
5 Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all
6 overtime hours worked.

7 33. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
9 Defendants' failure to compensate the Aggrieved Employees for all hours worked at the correct
10 rates of pay, including but not limited to, at least minimum wages for on-duty meal periods and
11 30-minute meal periods Defendants deducted from Plaintiff and the Aggrieved Employees' time
12 records that they did not take, one and one-half times their regular rate of pay for all hours
13 worked over eight hours in one workday or over 40 hours in one workweek, and doubletime
14 wages for all hours worked over 12 hours in one workday.

15 **B. UNPROVIDED REST PERIODS**

16 34. In relevant part, section 12 of the Wage Order states
17 Rest Periods:

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

26 (B) If an employer fails to provide an employee a rest period in accordance
27 with the applicable provisions of this Order, the employer shall pay the
28 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.

36. In addition, Labor Code Section 226.7 states



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

(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 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.

38. 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 timely rest breaks required by California law.

39. Defendants failed to pay Plaintiff the additional wages required by California Labor Code section 226.7 for workdays in which one or more timely rest breaks were 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 Aggrieved Employees with additional wages for all workdays on which one or more timely rest breaks were not provided to them as required by California Labor Code section 226.7.

C. UNPROVIDED MEAL PERIODS

40. 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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 with a second meal period of not less than 30 minutes, except that if the total
2 hours worked is no more than 12 hours, the second meal period may be waived
3 by mutual consent of the employer and the employee only if the first meal
4 period was not waived.

41. 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.

(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.

42. Pursuant to California Labor Code section 512 and the Wage Order, Plaintiff and
the Aggrieved Employees were entitled to an uninterrupted meal period of at least thirty (30)
minutes before they worked more than five (5) hours.

43. During the relevant time period, Defendants failed to provide Plaintiff with all
timely meal periods in accordance with the Wage Order. Plaintiff is informed and believes and
thereon alleges that, at all relevant times within the applicable limitations period, Defendants
maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing
the Aggrieved Employees with all timely meal periods required by California Labor Code
section 512 and the Wage Order.

44. Defendants failed to pay Plaintiff the additional wages required by California
Labor Code section 226.7 for all workdays in which one or more timely meal periods were 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 Aggrieved Employees with
additional wages for all workdays on which one or more timely meal periods were not provided
to them as required by California Labor Code section 226.7.

D. INCOMPLETE AND INACCURATE WAGE STATEMENTS

45. Pursuant to California Labor Code section 226(a), Plaintiff and the Aggrieved



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
2 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all
3 applicable hourly rates in effect during the pay period; and d) the corresponding number of
4 hours worked at each hourly rate by the employee.

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

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

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

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

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

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

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

25 48. As alleged herein, Defendants failed to pay Plaintiff and the Aggrieved
26 Employees all wages owed. As a result, Defendants have failed to properly and accurately
27 itemize each employee’s gross wages earned, net wages earned, total hours worked,
28 corresponding number of hours worked, and other requirements of California Labor Code
section 226. As a result, Defendants have violated California Labor Code section 226.
Defendants also failed to state the correct name and address of the employer on its paycheck
statements. Further, Defendants failed to state the 30-minute deductions from the daily hours



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff and the Aggrieved Employees worked and the premium wages earned for unprovided
2 meal and rest periods.

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

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

18 **E. UNTIMELY WAGES DURING EMPLOYMENT**

19 51. Labor Code section 204 states,

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

28 (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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

period for which the employer is correcting its initial report of hours worked.

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

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

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

F. UNTIMELY FINAL WAGES

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

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

55. By failing to pay Plaintiff and the Aggrieved Employees earned minimum and overtime wages, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

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

G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

57. Labor Code section 1174 states:

Every person employing labor in this state shall:

...



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

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

12 58. Labor Code section 1174.5 states:

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

18 59. Section 7 of Wage Order states,

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

- 21 1. Full name, home address, occupation and social security number.
- 22 2. Birth date, if under 18 years, and designation as a minor.
- 23 3. Time records showing when the employee begins and ends each work
24 period. Meal periods, split shift intervals and total daily hours worked shall also
25 be recorded. Meal periods during which operations cease and authorized rest
26 periods need not be recorded.
- 27 4. Total wages paid each payroll period, including value of board, lodging,
28 or other compensation actually furnished to the employee.
- 29 5. Total hours worked in the payroll period and applicable rates of pay.
30 This information shall be made readily available to the employee upon
31 reasonable request.
- 32 6. When a piece rate or incentive plan is in operation, piece rates or an
33 explanation of the incentive plan formula shall be provided to employees. An
34 accurate production record shall be maintained by the employer.

35 60. On information and belief, Plaintiff alleges that Defendants failed to maintain
36 accurate employment records for Plaintiff and the Aggrieved Employees.

37 **H. UNLAWFUL DEDUCTIONS**

38 61. Labor Code section 221 states, "It shall be unlawful for any employer to collect



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 or receive from an employee any part of wages theretofore paid by said employer to said
2 employee.”

3 62. On information and belief, Plaintiff alleges on behalf of herself and other
4 Aggrieved Employees that Defendants deducted wages for meal periods that Plaintiff and the
5 Aggrieved Employees did not take in violation of Labor Code section 221.

6 **I. FAILURE TO REIMBURSE FOR EXPENSES**

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

10 64. In relevant part, Section 9 of the Wage Order states,

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

16 65. Labor Code section 1198 prohibits employers from employing their employees
17 under conditions prohibited by the Wage Order.

18 66. On information and belief, Plaintiff alleges on behalf of herself and other
19 Aggrieved Employees that Defendants required Plaintiff and the Aggrieved Employees to incur
20 business expenses by using their personal automobiles. Specifically, Defendants required
21 Plaintiff and the Aggrieved Employees to use their personal automobiles to transport supplies as
22 a necessary condition of employment. Defendants failed to indemnify Plaintiff and the
23 Aggrieved Employees for such expenses.

24 **J. CIVIL PENALTIES SOUGHT**

25 67. During the applicable time period, Defendants violated California Labor Code
26 sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

27 68. California Labor Code section 2699, subdivisions (a) and (g) authorize an
28 aggrieved employee, on behalf of themselves and other current or former employees, to bring a
civil action to recover civil penalties pursuant to the procedures specified in California Labor
Code section 2699.3.

69. Pursuant to California Labor Code section 2699, subdivisions (a) and (f),
Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Defendants' violations of California Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code section 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code section 210).

B. For violations of California Labor Code section 221, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code section 225.5).

C. For violations of California Labor Code section 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code section 226.3).

D. For violations of California Labor Code sections 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code section 1197, one hundred dollars (\$100.00) for each aggrieved employee for each initial and intentional violation per pay period (regardless of whether the initial violations were intentionally committed) 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).

F. For violations of California Labor Code sections 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code section 2699(f)(2)).

G. For the violations of California Labor Code section 1174, \$500 for each



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

aggrieved employee for each violation of California Labor Code section 1174 (penalty amounts established by California Labor Code § 1174.5).

K. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

70. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code section 2699.3. By letter dated February 4, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated February 4, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

71. Pursuant to California Labor Code section 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.

VI. PRAYER FOR RELIEF

72. WHEREFORE, Plaintiff, on behalf of herself 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
- D. Such other relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 4, 2021

By: 

DAVID SPIVAK
MARALLE MESSRELIAN, Attorneys for
Plaintiff, MIKAYLA HUDDLESTON, and
the Aggrieved Employees



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

February 4, 2020

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

RE: *Mikayla Huddleston / Easter 263, Inc.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Mikayla Huddleston (hereafter “Huddleston”) provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly employees (hereafter “Aggrieved Employees,”) by Harman Management Corporation, a Utah corporation, and Easter 263, Inc., a California corporation (hereafter collectively referred to as “Harman”) of violations of California Labor Code §§ 201-203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802, and IWC Wage Order 5-2001.

At all relevant times, Harman has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Huddleston and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

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

SPIVAKLAW.COM

Statement of Facts

Harman began employing Huddleston as an hourly fast food restaurant crew member in its Rancho Cordova, California restaurant, on or about March 14, 2018. Huddleston continuously worked at Harman from the time of her hire until approximately May 24, 2019, when she resigned. Throughout this employment period Harman failed to provide Huddleston and the Aggrieved Employees with all timely rest and meal periods. Harman failed to hire sufficient staff members to allow Huddleston and the Aggrieved Employees to take off-duty meal and rest breaks. Harman further prohibited Huddleston and the Aggrieved Employees to leave the restaurant during their breaks and therefore, Huddleston and the Aggrieved Employees were often interrupted by their coworkers during their meal periods. Harman also failed to pay premium wages for days on which it failed to provide Huddleston and the Aggrieved Employees with rest and/or meal periods. Moreover, Harman deducted approximately 30 minutes from the daily recorded work hours of Huddleston and the Aggrieved Employees, and reported less hours on their wage statements, even if Huddleston and the Aggrieved Employees were not able to take their 30-minute uninterrupted meal periods.

Harman failed to pay Huddleston and the Aggrieved Employees at one and one-half times their regular rates of pay when they worked in excess of eight hours in a workday and/or over 40 hours in a workweek. Harman required Huddleston and the Aggrieved Employees to arrive before their shifts began to wait for deliveries, to open the restaurant if the employee scheduled to open didn't show up for work, and/or be prepared to open up just in case the employee scheduled to open didn't show up for work. However, Harman failed to compensate Huddleston and the Aggrieved Employees for such off-the-clock, overtime work. Harman required Huddleston and the Aggrieved Employees to stay after their workday ended to take inventory and to clean up. However, Harman failed to compensate Huddleston and the Aggrieved Employees for such off-the-clock, overtime work.

Harman failed to reimburse Huddleston and the Aggrieved Employees for mileage they incurred traveling in their personal automobiles on Harman's behalf, such as when Harman required Huddleston and/or the Aggrieved Employees to transport supplies between restaurants.

Harman failed to provide Huddleston and the Aggrieved Employees with accurate wage statements that stated the correct name of their employer and its address. Harman failed to properly and accurately itemize each employee's gross and net wages earned and the total hours worked. Harman did not state the hours worked and wages earned described above on the wage statements of Huddleston and the Aggrieved Employees.

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

- a) Harman failed to compensate Huddleston and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, overtime wages;
- b) Harman failed to provide Huddleston and the Aggrieved Employees with all timely rest breaks and meal periods;
- c) Harman failed to compensate Huddleston and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- d) Harman failed to compensate Huddleston and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely meal periods;
- e) Harman failed to provide Huddleston and the Aggrieved Employees with accurate wage statements;
- f) Harman failed to timely pay Huddleston and the Aggrieved Employees all earned and unpaid wages during, and upon termination from, their employment with Harman;
- g) Harman unlawfully collected and received wages from Huddleston and Aggrieved Employees by deducting 30 minutes of daily time worked in spite of the fact that such time was spent on duty; and

- h) Harman failed to indemnify Huddleston and the Aggrieved Employees for the business-related expenses they incurred on Harman's behalf.

Accordingly, Huddleston now seeks civil penalties on behalf of herself and Aggrieved Employees based on Harman's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services" and includes, but is not limited to, the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

§ 2(P) (emphasis added). At all relevant times during the applicable limitations period, Harman employed Huddleston and the Aggrieved Employees as hourly crew members and other hourly employees at its restaurant. Accordingly, Huddleston and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Pay All Wages Earned For All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

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

Section 4 of Wage Order states,

"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."

In relevant part, Section 2(K) of the Wage Order states,

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

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

(a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

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.

As described above, all at relevant times during the applicable limitations period, Harman failed to compensate at overtime rates Huddleston and the other

Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours worked.

Accordingly, Huddleston seeks civil penalties on behalf of herself and other crew members as follows:

1. \$50 for each aggrieved employee for each initial violation of California Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
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));
3. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages (penalties set by California Labor Code § 1197.1).

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

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, 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 no waived.

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...
- (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.

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

Rest Periods:

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

“[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.

California Labor Code § 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.

As described above, Harman intentionally and improperly failed to provide all timely rest breaks and/or meal periods free from any work or duties to Huddleston and the Aggrieved Employees as required by law. Accordingly, Huddleston seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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.

All at relevant times during the applicable limitations period, Harman violated California Labor Code § 226, in that it failed to properly and accurately itemize each aggrieved employee's gross wages earned, net wages earned, total hours worked, the corresponding number of hours worked at the rate by the aggrieved employee, and other requirements of California Labor Code § 226. Harman also failed to state the correct name and address of the employer on its paycheck statements. Further, Harman failed to state the 30-minute deductions from the daily hours Huddleston and the Aggrieved Employees worked and the premium wages earned for unprovided meal and rest periods.

Accordingly, Huddleston 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 Harman' failures to pay Huddleston and the Aggrieved Employees within the time periods set by California Labor Code § 204, Harman failed to timely pay all wages due to Huddleston and the Aggrieved Employees during, and upon separation from, their employment with Harman.

Accordingly, Huddleston 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, plus 25% of the amount unlawfully withheld from each aggrieved employee, for each subsequent violation (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon End of Employment
(Lab. Code §§ 201-203)

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under Labor Code section 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. (See *ibid.*) 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. (See *ibid.*)

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 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.

By willfully failing to pay wages to Huddleston and the Aggrieved Employees as set forth above, Harman is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and Aggrieved Employees, Huddleston seeks civil penalties from Harman 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, subdivision (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, subdivision (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, subdivision (f)(2)).

Unlawful Collection of Wages

(Lab. Code § 221)

In relevant part, California Labor Code section 221 states, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

///

///

At all relevant times, Harman automatically collected and received wages from Huddleston and Aggrieved Employees by deducting 30 minutes of daily time worked. As a result, Harman collected and received part of its employees' wages in violation of California Labor Code section 221.

Accordingly, Huddleston 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 section 221 (if found to be neither willful nor intentional) and \$200 for each aggrieved employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code section 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code section 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code section 225.5).

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

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

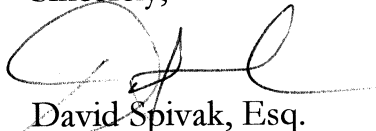
As described above, during the applicable limitations period, Harman required Huddleston and Aggrieved Employees to incur certain business expenses, including mileage, which it failed to indemnify them for both during and after their employment ended. Accordingly, Huddleston seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 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: Mikayla Huddleston
Walter Haines, Esq.

Harman-Management Corporation
c/o Beatriz Berumen, Esq.
Gordon Rees Scully Mansukhani, LLP
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
bberumen@grsm.com

Easter 263, Inc.
c/o Beatriz Berumen, Esq.
Gordon Rees Scully Mansukhani, LLP
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
bberumen@grsm.com

Harman-Management Corporation
c/o Bruce M. Ahlstrom
Agent for Service of Process
595 Millich Drive, Suite 106
Campbell, CA 95008-0550

Easter 263, Inc.
c/o Pamela Lewis
Agent for Service of Process
199 First Street, Suite 212
Los Altos, CA 94022

EXHIBIT 5

MARK S. POSARD (SBN: 208790)
ANNETTE L. ROSE (SBN: 311274)
GORDON REES SCULLY MANSUKHANI, LLP
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
Telephone: (916) 565-2900
Facsimile: (916) 920-4402
mposard@grsm.com
arose@grsm.com

Attorneys for Defendant
EASTER 263, INC.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

MIKAYLA HUDDLESTON, as an	)	CASE NO. 34-2021-00295702
"aggrieved employee" on behalf of other	)	
similarly situated "aggrieved employees"	)	
under the Labor Code Private Attorney	)	DEFENDANT EASTER 263, INC.'S
General Act of 2004,	)	ANSWER TO COMPLAINT
	)	
Plaintiff,	)	
	)	
vs.	)	Complaint Filed: March 4, 2021
	)	Trial Date: Not yet set
EASTER 263, INC., a California corporation;	)	
and DOES I through 50, inclusive,	)	
	)	
Defendants.	)	

Defendant EASTER 263, INC. ("Defendant") hereby answer Plaintiff MIKAYLA HUDDLESTON's ("Plaintiff") 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. (the "Complaint"), as follows:

GENERAL DENIAL

Pursuant to the provisions of California Code of Civil Procedure § 431.30(d), Defendant denies specifically and generally each, every, and all allegations in the Complaint, and each, every and all purported cause of action contained therein. Defendant further denies that Plaintiff was damaged in the sum alleged or in any other sum, or at all, by reason of any conduct on the part of Defendant or any of their respective officers, agents, or employees.

AFFIRMATIVE DEFENSES

Defendant alleges each and every of the following separate Affirmative Defenses to each cause of action in the Complaint, the applicability of which will be determined through the course of investigation and discovery:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

FIRST AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's claims are barred by the applicable statute of limitation, including but not limited to, the statute of limitations contained in Code of Civil Procedure §§ 337, 338, 339, and 343; PAGA and the applicable sections of the California Labor Code.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

Defendant alleges that Plaintiff lacks standing and/or capacity to assert or pursue the claims alleged in the Complaint, or to obtain the relief sought.

THIRD AFFIRMATIVE DEFENSE

(Avoidable Consequences)

Defendant alleges that Plaintiff unreasonably failed to make use of employer-provided remedies, policies and procedures designed to prevent and eliminate the harm alleged by Plaintiff and it is more likely than not that at least some of Plaintiff's alleged damages would have been avoided by the reasonable use of these internal procedures.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Provide Adequate Notice)

Plaintiff's claims for penalties under the Private Attorneys General Act, Labor Code § 2698, et seq. ("PAGA"), are barred by Plaintiff's failure to provide the Labor Workforce Development Agency (LWDA) sufficient notice of her claims, including but not limited to Plaintiff's failure to adequately identify the "aggrieved employees" on whose behalf Plaintiff

intends to seek penalties and/or adequately describe the facts underlying Plaintiff's 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 the PAGA claims.

FIFTH AFFIRMATIVE DEFENSE

(Plaintiff Not Similarly Situated)

Defendant alleges that the named Plaintiff is not similarly situated with the other alleged aggrieved employees, and therefore cannot adequately serve as a representative on their behalf.

SIXTH AFFIRMATIVE DEFENSE

(Individualized Assessment)

Defendant alleges that Plaintiff is barred from obtaining the relief sought because California law does not permit representative actions where liability can only be determined through fact-intensive individualized assessments of alleged wage and hour violations.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel/Waiver/Laches)

Defendant alleges that Plaintiff is estopped from asserting, and have waived any right to assert, any claims against Defendant under the doctrines of waiver, estoppel, and laches by virtue of their acts, failures to act, conduct, representations, admissions, and the like.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Defendant alleges that Plaintiff is barred from any relief by the equitable doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Defendant alleges that Plaintiff has suffered no damages as a result of any alleged act or omission of Defendant, and that Plaintiff has failed to mitigate their respective damages, if any.

TENTH AFFIRMATIVE DEFENSE

(Frivolous Claims)

Defendant alleges that Plaintiff's claims against Defendant are asserted in bad faith,

1 and are frivolous, unreasonable and without foundation. Defendant is therefore entitled to an
2 award of costs and expenses of litigation, including reasonable attorneys' fees and costs.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 **(No Willful Violation)**

5 Defendant alleges that any alleged failure to pay wages purportedly due was not
6 "willful" and thus Plaintiff is not entitled to waiting time penalties or fees.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 **(Bona Fide Dispute)**

9 Defendant alleges there exists a *bona fide* dispute as to whether any further
10 compensation is actually due to Plaintiff and, if so, the amount thereof.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 **(Payment in Full)**

13 Defendant alleges Plaintiff and all alleged "aggrieved" employees been paid in full all
14 monies and other consideration due, or claimed to be due.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

16 **(Excessive Fines)**

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

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 **(Plaintiff Not Aggrieved)**

23 Neither Plaintiff nor any individual she purports to represent are "aggrieved" as that term
24 is defined in California Labor Code § 2698 et seq.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 **(Offset)**

27 Any damages claimed by Plaintiff should be reduced to the extent they are subject to an
28 offset, representing amounts improperly obtained or which would constitute unjust enrichment of

Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Additional Defenses)

Defendant presently has insufficient knowledge or information on which to form a belief as to whether it may have any additional affirmative defenses and may plead additional facts to support such affirmative defenses. Defendant reserves the right to amend their answer in the event discovery indicates such amendment would be appropriate.

PRAYER FOR RELIEF

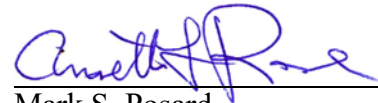
WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by way of this action;
2. That judgment be entered in favor of Defendant and against Plaintiff and the action be dismissed in its entirety with prejudice;
3. That Defendant be awarded costs of suit incurred herein;
4. That Defendant be awarded reasonable attorneys' fees incurred herein, pursuant to applicable law; and
5. For any and all such other relief as this Court may seem just and proper.

Dated: May 26, 2021

GORDON REES SCULLY MANSUKHANI, LLP

By:



Mark S. Posard
Annette L. Rose
Attorneys for Defendant
EASTER 263, INC.

Re: *Huddleston vs. Easter 263, Inc., et al.*
Sacramento County Superior Court Case No. 34-2021-00295702

PROOF OF SERVICE

I am a citizen of the United States. My business address is 3 Parkcenter Drive, Suite 200, Sacramento, California 95825. I am employed in the City and County of Sacramento where this service occurs. I am over the age of 18 years and not a party to the within action. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On May 26, 2021, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

DEFENDANT EASTER 263, INC.'S ANSWER TO COMPLAINT

☒ BY EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to CCP § 1010.6, I caused the document(s) to be sent to the person(s) at the E-Mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

David G. Spivak
Maralle Messrelian
The Spivak Law Firm
16530 Ventura Blvd., Suite 312
Encino, CA 91436
T: 818-582-3086; F: 818-582-2561
david@spivaklaw.com
maralle@spivaklaw.com
Attorneys for Plaintiff, Mikayla Huddleston

Walter Haines
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Avenue, Suite 201
Huntington Beach, CA 92649
T: 562-256-1047; F: 562-256-1006
whaines@uelglaw.com
Attorneys for Plaintiff, Mikayla Huddleston

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

Executed on May 26, 2021, at Sacramento, California.

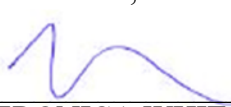

VERONICA WHITAKER

EXHIBIT 6

EXHIBIT 7

2012-05-18 21:56:18 (GMT)

The Spivek Law Firm From: David Glenn Spivak

CONFIRMED COPY
ORIGINAL 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONFIRMED COPY
ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

JUN 21 2012

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

**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,

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

5 **Other Aggrieved Employees**

6 Moreover, the Court awarded the following amounts to the other aggrieved employees:
7 (1) For violations of Labor Code sections 510 and 512, \$125,000.00 pursuant to Labor Code
8 section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7,
9 \$200,000.00 pursuant to Labor Code section 1197.1. This totals \$325,000.00 for the aggrieved
10 employees. Of the \$325,000.00 in civil penalties, twenty-five percent (25%), \$81,250.00, is
11 awarded to the aggrieved employees other than the two named-Plaintiffs, and the remaining
12 seventy-five percent (75%), \$243,750.00, is awarded to the California Labor & Workforce
13 Development Agency pursuant to Labor Code § 2699(i).

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

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

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

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

27 **¶ 1** Plaintiff Alina Ghrdilyan shall have judgment under the PAGA against
28 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 3 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 ~~\$368,773.29~~ \$300,073.29

7 Defendant Ramil Abalkhad must pay the Plaintiffs and their attorneys on the First
8 Amended Complaint attorneys' fees in the amount of \$ _____ and costs in the amount
9 of \$ _____.

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

13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14 JUN 21 2012

15 DATE

16 RONALD M. SOHIGIAN

17 THE HONORABLE RONALD
18 SOHIGIAN, JUDGE OF THE
19 SUPERIOR COURT
20
21
22
23
24
25
26
27
28

1
2
3 PROOF OF SERVICE

4 State of California,
5 County of Los Angeles

6 1. I am a citizen of the United States and am employed in the County
7 of Los Angeles, State of California. I am over the age of 18 years, and not a
8 party to the within action. My business address is 9454 Wilshire Blvd., Suite
9 303,, Beverly Hills, California 90212.

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

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

19 F. Michael Sabzevar, Esq.
20 Law Ofc F Michael Sabzevar
21 16633 Ventura Blvd #555
22 Encino, CA 91436
23 msabzevar@aol.com

24 XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for
25 collection and mailing, in the course of ordinary business practice, with
26 other correspondence of The Spivak Law Firm, 9454 Wilshire Boulevard, Suite
27 303, Beverly Hills, California 90212.

28 _____ (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.

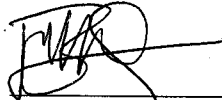
24
25
26
27
28

BRECK OYAMA

EXHIBIT 8

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL

3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --

4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT

5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,

6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A

7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO

8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY

9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE

11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG

12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE

13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION

14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590

16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY

17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO

18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:

21 STATE THAT IT IS THE COURT'S PROPOSED

22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S

23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE

25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT

27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

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

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND 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 AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

3 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

4

5

6

8

9

REPORTER'S CERTIFICATE

LO

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

ANGELA Z. PARADELA, OFFICIAL REPORTER

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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 9



SPIVAK LAW

ATTORNEY CONSULTATION AND FEE CONTRACT FOR CONTINGENCY CASES

THIS FEE CONTRACT FOR CONTINGENCY CASES ("Contract") is made on January 7, 2020, in Encino, between **Mikayla Huddleston** hereinafter referred to as "Client," and The Spivak Law Firm of Los Angeles County, CA and United Employees Law Group, PC of Orange County, CA hereinafter referred to as "Attorney."

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.01 Client hereby retains and employs Attorney to sue for and recover all damages and compensation to which Client may be entitled as well as to compromise and settle all claims described below:

class action and private attorneys general action against Harman and related entities for unpaid overtime, unpaid regular wages, wage deductions, unprovided rest and meal periods and unreimbursed expenses

1.02 This agreement will not become binding on either party, and Attorney will not begin providing legal services, until Client has paid the initial deposit, if any, as described in Paragraph 2.03, and has signed this Agreement. This written agreement supersedes any and all previous agreements between the parties, if any.

1.03 Attorney will provide reasonably necessary legal services, and will take steps to keep Client informed of the progress of the case. Attorney will respond within a reasonable time and manner to Client's inquiries. If court action becomes necessary, Attorney will represent Client through trial and post-trial motions. Separate arrangements must be made for any appeal or execution proceedings that client wishes to pursue after judgment, or any other matters for which Client wishes to employ Attorney other than the matter described above.

II. ATTORNEY'S FEE AND EXPENSES

2.01 In consideration of services rendered and to be rendered by Attorney, Client hereby agrees to pay to Attorney in the event of an individual settlement or judgment the following amounts on any settlements, monies, judgments or other consideration which have or may be paid on this legal matter:

a. Before the filing of a lawsuit or arbitration demand: 33 and 1/3 percent of any recovery.

b. After the filing of a lawsuit or arbitration demand: 40 percent of any recovery. In the event Client prevails at trial (or arbitration) of this matter, any fee awarded by the court, pursuant to statute or contract, in connection with the subject matter of this representation, shall be paid to Attorney and shall be applied against Client's fee obligation under this Agreement, but shall not limit or discharge Client's fee obligation. In the event there is a fee award by the court upon Client prevailing at trial, the Attorney shall receive either the fee award or 40% of the total award, whichever is greater.

If the total legal fees received in this case are \$250,000.00 or greater, it is agreed that the United Employees Law Group, PC will shall receive 33 and 1/3% of the total legal fees received and the Spivak Law Firm shall receive the remaining 66 and 2/3% of the total legal fees received. If the total legal fees received in this case are less than \$250,000.00, it is agreed that the United Employees Law Group, PC will shall receive 25% of the total legal fees received and the Spivak Law Firm shall receive the remaining 75% of the total legal fees received.

It is agreed and understood that if the amount of attorney's fees on this claim or cause of action are regulated or governed by law, and that law precludes any other fee arrangement other than the amount set by the law or regulation, then the amount payable hereunder to said Attorney shall be limited to the maximum so allowed by law. In the event of a class action settlement or judgment, Private Attorneys General Action settlement or judgment, or other representative settlement or judgment, a court's approval of an award of attorney fees is necessary. Normally with such settlements and judgments, a request for attorney fees will be for no more than one third (33 and 1/3%) of the total value of the settlement or judgment amount. Attorney will apply for an award of attorney fees from the court that may be more or less than the percentages stated above. Under such circumstances. Attorney will also ask the court to separately award Attorney the costs Attorney has advanced for this matter. In advance of such requests to a Court for attorney fees and costs, Attorney will seek Client's written consent to the attorney fees and costs sought.

2.01.1 This section concerns the possibility of settlement of individual claims, attorney fees, and costs in the event representative claims are no longer viable.

Under this Agreement, Attorney agrees to represent Client in Client's pursuit of the claims described in Section 1.01 of this Agreement, stated above. These claims are representative claims because Client agrees that Client will pursue the Claims for Client and all comparable employees and individuals. In this regard, Attorney advises Client of the following material information:

1. Attorney has chosen to represent Client primarily because the Client has claims that Client may be able to bring on behalf of numerous other comparable employees. As a result, Client's claims have the potential to support a class action lawsuit and/or a Private Attorneys General Act lawsuit.

2. Client's individual claims - and those of each of the other comparable employees that Attorney will file the lawsuit on behalf of - are generally worth very small amounts in unpaid wages, unreimbursed work expenses, interest, and/or statutory monetary penalties. Attorney would not have agreed to represent Client if it were not for the strong likelihood that a Court will permit Client's lawsuit to proceed to trial on behalf of numerous other employees with comparable claims to Client's claims.
3. Only by combining the claims of numerous individuals can Attorney reasonably hope to recover the attorney fees and costs Attorney incurs as part of Attorney's contingency representation of Client.
4. For reasons that are unknown at the time of this Agreement and for reasons that are well outside of the control of the Attorney and the Client, Attorney may discover after Client executes this Agreement that numerous comparable employees with comparable claims to Client's claims do not exist. In this instance, the Attorney and the Client may not be able to pursue the class action or Private Attorneys General Act claims any longer.
5. Based on Attorney's prior experience, Defendants (the party or parties Client sues or intends to sue) in class actions and Private Attorneys General Actions often attempt to settle with the Plaintiff (the party suing or intending to sue) for the maximum value of the Plaintiff's individual claims. Such settlements prevent the Plaintiff from continuing to represent comparable individuals (sometimes known as "class members," "putative class members," "proposed class members," and/or "aggrieved employees") who Client brought the lawsuit on behalf of.
6. Based on Attorney's prior experience, the Defendant may offer to settle Client's individual claims for an amount of money that equals or exceeds the maximum value of Client's claims. In this event, the Attorney's fees and costs will likely exceed the maximum value of Client's individual claims. Often in Attorney's experience, the Attorney's fees and costs will far exceed the value of Client's individual claims.
7. Attorney may advise Client to accept an individual settlement of Client's claims if numerous individuals with claims that are comparable to Client's do not exist and an individual settlement is in Client's best interest. Alternatively, Client may choose to enter into a settlement for an amount that equals or exceeds the maximum value of Client's individual claims even if there are numerous individuals with claims that are comparable to Client's claims.
8. Based on evidence Attorney may obtain after entering into this Agreement with client, Attorney's estimate of maximum value of Client's claims may change over the course of the Attorney-Client relationship under this Agreement.

In the event the Defendant offers to settle with Client for an amount of money that equals or exceeds the maximum value of Client's individual claims, Client agrees that, if the Attorney's fees and costs exceed the maximum value of Client's claims, Attorney may elect, solely at Attorney's option, that Client receive only the maximum value of Client's individual claims from the settlement funds and that the Attorney receives the remaining settlement funds to cover all or part of the Attorney's fees and costs and the risks that arise from Attorney's contingency representation of Client. In other words, Client agrees to accept as settlement the amount equal to the estimated maximum value of Client's claims. Attorney discloses that attorney's fees and costs incurred may substantially exceed the client's net recovery.

Within seven days of Client's written request to Attorney, Attorney will provide Client with Attorney's estimate of the maximum value of Client's claims. This estimate of maximum value may change over the course of litigation.

Attorney strongly recommends that Client consult with an independent lawyer about this provision, including whether this provision is in Client's best interests. By initialing below, Client agrees that Attorney has provided Client with a reasonable opportunity to consult with an independent lawyer about this provision and Client consents to this provision.

MJH (Client initials here)

2.02 The rates set forth above are not set by law, but are negotiable between an attorney and client.

2.03 Client agrees to grant law firm a lien on any and all claims or causes of action that are the subject of this Agreement. The lien, to ensure payment of any sums owing to law firm at the conclusion of services performed, will attach to any recovery you may obtain. Law firm may compel payment of fees and costs from any such funds recovered on behalf of you, even if law firm has been discharged before the end of the case. You may seek the opinion of an independent lawyer of your choice before agreeing to this lien. By initialing below, Client agrees that Client has had reasonable opportunity to consult an independent law firm, regardless of whether you have actually consulted such law firm, and Client agrees that law firm will have a lien as specified above.

MJH (Client initials here) SA (Attorney initials here)

III. APPROVAL NECESSARY FOR SETTLEMENT

3.01 Attorney is hereby authorized to enter into any and all settlement negotiations on behalf of those whom Attorney represents as Attorney deems appropriate. This includes, but is not limited to, Attorney's prerogative to pursue cash or structured payment settlement negotiations.

3.02 Client hereby grants unto Attorney a power of attorney to handle negotiations and settlement discussions regarding the obtaining of possession of any and all monies or other things of

value subject of the matter due to Client under this claim as fully as Client could do so in person.

a. This expressly includes the right to sign Client's name on and to any insurance company drafts, money orders, cashier's checks, checks or other negotiable instruments made payable to Attorney and Client, Attorney, or to Client without the joinder of Attorney, submitted to Attorney on behalf of Client in full or partial settlement of this case.

b. This limited power of attorney further authorizes Attorney to place these monies, referred to above, in Attorney's trust account and from that trust account, make distributions and payments to Attorney for the agreed to fee stated above, reimbursement to Attorney for any and all expenses incurred by Attorney in handling this case, payments to Client of Client's interest in the monies recovered as stated above, and payments to parties other than Client and Attorney for their services performed, fees charged or bills rendered in connection with representing Client, including but not limited to medical bills, court reporter fees, deposition fees, investigative services, costs of exhibits or other special expenses incurred by Attorney on behalf of Client.

3.03 No settlement of any nature shall be made for any of the aforesaid claims or profits of Client without the complete approval of Client, nor shall Client obtain any settlement on the aforesaid claims without the complete approval of attorney.

3.04 Attorney is granted a limited power of attorney so that Attorney may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reduce to possession any and all monies or other things of value due to Client under this claim as fully as Client could do so in person.

IV. REPRESENTATIONS

4.01 It is expressly agreed and understood that no promises or guarantees as to the outcome of the case have been made to Client by Attorney. Attorney has not represented to Client that Client will recover all or any of the funds so desired. Client also acknowledges that obtaining a judgment does not guarantee that the opposing party will be able to satisfy the judgment. It is further expressly understood and agreed that no other representations have been made to Client, except for those set out in this Contract.

V. DEDUCTION OF EXPENSES

5.01 All reasonable expenses incurred by Attorney in the handling of this legal matter shall be deducted from the gross settlement proceeds at the time the case is settled or resolved, and before the contingent fee is calculated.

5.02 The expenses contemplated above, include but are not limited to any and all out-of-pocket

expenses incurred in connection with this case, including but not limited to the following expenses: filing fees, court costs, certified copies of documents, pleadings, orders etc., transcripts, depositions, duplication costs, postage, office supplies, photographs, trial exhibits, long distance phone and fax calls, appraisal fees, consultants, expert witnesses and other fees associated with preparation and trial testimony, investigation fees, delivery charges, overnight mail/parcel services, parking, toll road and mileage expenses, out of town expenses including travel expense, air fare, hotels, meals, and any other expense incurred in connection with the matter.

5.03 Except for the following, all expenses and costs will be charged to Client at Attorney's cost: mileage at \$0.50/mile and photocopying at \$0.25/page.

VI. COOPERATION OF CLIENT

6.01 Client shall keep Attorney advised of Client's whereabouts at all times, and provide Attorney with any changes of address, phone number or business affiliation during the time period which Attorney's services are required, and shall comply with all reasonable requests of Attorney in connection with the preparation and presentation of aforesaid representation.

6.02 Attorney may, at Attorney's option, withdraw from the case and cease to represent Client for any reason, including without limitation Client's failure to timely pay fees and expenses or deposits for same in accordance with this Contract, subject to the professional responsibility requirements to which attorneys are subject.

It is further understood and agreed between the parties that upon such termination of any services of Attorney, any of Client's deposits remaining in Attorney's Trust Account shall be applied to any balance remaining owing to Attorney for fees and/or expenses and any surplus then remaining shall be refunded to Client.

6.03 Duties As A Class Representative In A Class Action or Private Attorney General Action. Client has retained Attorney to prosecute a class action and/or private attorney general action on behalf of Client and comparable employees and other individuals. This section applies only to Client's responsibilities as a class representative or as a private attorney general. Client will have certain duties and responsibilities to the comparable individuals the lawsuit is on behalf of. Certain of these duties are explained in greater detail below.

6.03.01 Attorney may apply to the Court for a special award to compensate the Client as the class representative or private attorney general for Client's contribution to the action and/or Client's release of all individual claims Client may have. Client understands however that unless such an award is approved by the Court, Client will only be entitled to Client's pro rata share of funds available for distribution to all class members, aggrieved employees, and comparable individuals.

6.03.02 A class representative represents the interests of all members of his class in litigation to recover money unpaid wages, penalties, reimbursement, restitution and/or obtain injunctive relief for the class. Likewise, a private attorney general represents the interests of all comparable aggrieved

employees in litigation to recover money civil penalties (monetary penalties that traditionally only the State can sue for) on behalf of the Client, aggrieved employees, and the State of California.

6.03.03 The class or group of aggrieved employees usually consists of all persons who are similarly situated with respect to a common course of conduct or practice. In other words, all those persons who are affected by the challenged behavior.

6.03.04 A class representative or private attorney general has claims that are typical of those of the class or group of aggrieved employees, and thus involve common issues of law or fact. For example, as a class representative, Client's claims against the defendant are typical of the class and private attorney general claims against the defendant, simply because Client was injured by the same unlawful employment practices as the other class members and aggrieved employees.

6.03.05 A class representative and private attorney general always considers the interests of the class and/or aggrieved employees just as Client would consider Client's own interests and in some cases must put the interests of the class and other aggrieved employees before Client's own interests. This means that Client is a champion of the other individuals or a fiduciary litigant.

6.03.06 A class representative or private attorney general always actively participates in the lawsuit, as necessary, by among other things, answering interrogatories, producing documents to the defendants and giving deposition and trial testimony if requested. Client may be required to travel to give such testimony.

6.03.07 A class representative or private attorney general recognizes and accepts that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be designed in the best interest of the class as a whole.

6.03.08 A class representative or private attorney general is not required to be particularly sophisticated or knowledgeable about the subject of the lawsuit. However, a class representative private attorney general should follow the progress of the lawsuit and should provide all relevant facts to the lawyers for the class or aggrieved employees.

6.03.09 A class representative or private attorney general volunteers to represent or champion many other people with similar claims and injuries because of the importance of the case and that necessity that all class members or aggrieved employees benefit from the lawsuit equally; the savings of time, money and effort should benefit all parties and the court. Class actions and private attorney general actions are an important tool to assure compliance with the law even where an individual's losses may be relatively small.

By initially below, Client has reviewed and acknowledges Client's duties as a class representative and/or private attorney general.



_____ (Client initials here)

VII. CALIFORNIA LAW TO APPLY

7.01 This Agreement shall be construed under the laws of California, and all obligations of the parties created hereunder are performable in Los Angeles County, CA.

VIII. PARTIES BOUND

8.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

IX. LEGAL CONSTRUCTION

9.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

X. PRIOR AGREEMENTS SUPERSEDED

10.01 This Agreement constitutes the sole and only agreement by and between the parties. It supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter discussed herein.

XI. RESOLUTION OF DISPUTES BY ARBITRATION

11.01 You have the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, in any dispute subject to the jurisdiction of the State of California over attorneys' fees, charges, costs or expenses, as set forth in California Business and Professions Code Section 6200, et seq. If, after receiving a notice of this right to arbitrate, you do not elect to proceed under the State Bar fee arbitration procedures, and do not file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as described below.

11.02 Any controversy between the parties regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The sole and exclusive venue for the arbitration and or any legal dispute shall be Los Angeles County, California.

11.03 By initialing below, Client and law firm confirm that they have read and understand the paragraphs above, and voluntarily agree to binding arbitration. In doing so, Client and law firm voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. You are advised that you have the right to have an independent law firm of your choice review these

arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

 MJH (Client initials here) [Signature] (Attorney initials here)

TAX DISCLOSURE AND ACKNOWLEDGMENT:

CLIENT IS ADVISED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE REGARDING THESE LEGAL MATTERS SINCE LEGAL TRANSACTIONS CAN GIVE RISE TO TAX CONSEQUENCES.

THE UNDERSIGNED LAW FIRM AND ATTORNEY HAVE NOT AGREED TO RENDER ANY TAX ADVICE AND ARE NOT RESPONSIBLE FOR ANY ADVICE REGARDING TAX MATTERS OR PREPARATION OF TAX RETURNS, OR OTHER FILINGS, INCLUDING, BUT NOT LIMITED TO, STATE AND FEDERAL INCOME AND INHERITANCE TAX RETURNS.

FURTHERMORE, CLIENT SHOULD OBTAIN PROFESSIONAL HELP REGARDING THE VALUATION AND LOCATION OF ALL ASSETS WHICH MAY BE THE SUBJECT OF A LEGAL MATTER INCLUDING BUT NOT LIMITED TO PENSIONS, EMPLOYMENT BENEFIT AND PROFIT SHARING RIGHTS THAT MAY BE CONTROLLED BY ANY OTHER PARTY TO THE LEGAL MATTER.

XII. DISCLAIMER OF GUARANTEE

12.01 Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in this matter. Attorney's comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Attorney has made no promises or guarantees about the outcome.

XIII. DISCHARGE AND WITHDRAWAL

13.01 Client may discharge Attorney at any time, with written notice. Attorney may withdraw with Client's consent, or for good cause, which includes Client's breach of this Agreement, refusal to cooperate or communicate with Attorney on this matter, or any fact or circumstance that would render Attorney's representation unlawful or unethical. Attorney will, upon Client's request, deliver Client's file and property in Attorney's possession, unless subject to lien as provided above, whether or not Client has completed payment for all services rendered.

XIV. EFFECTIVE DATE

14.01 This Agreement will govern all legal services beginning on the date that Attorney began performing work for Client. That date of this document is to be used for reference only. Client will

Mikayla Huddleston

1/7/2020

Page 10 of 13

be required to pay Attorney the reasonable value of services performed by Attorney, even if this agreement never takes effect.

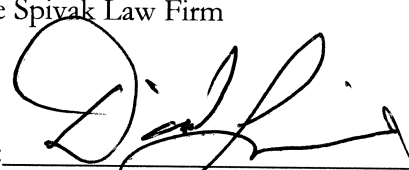
I further certify and acknowledge that I have read this Contract, and that I have voluntarily entered into this Contract fully aware of its terms and conditions as of the date Attorney first provided services. All clients signing below agree to be liable, jointly and severally, for all obligations under this agreement.

SIGNED on 1/7/2020


Mikayla Huddleston

SIGNED on 1/16/20

The Spivak Law Firm

BY: 

David G. Spivak
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(818) 582-3086
(818) 582-2561 (telefax)
California Bar No. 179684

United Employees Law Group, PC

BY: 

Walter L. Haines
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
(562) 256-1047
(562) 256-1006 (telefax)
California Bar No. 71075

STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights.

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one (1) lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one (1) lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interest and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money has or will be spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to

[illegible]

Mikayla Huddleston

1/7/2020

Page 13 of 13

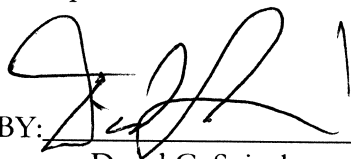
11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The California Bar, the agency that oversees the practice and behavior of all lawyers in California. For information on how to reach The California Bar, contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration.

SIGNED on 1/7/2020


Mikayla Huddleston

SIGNED on 1/19/20

The Spivak Law Firm

BY: 

David G. Spivak
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(818) 582-3086
(818) 582-2561 (telefax)
California Bar No. 179684

EXHIBIT 10

TSLF COSTS HUDDLESTON

Date	Expense Type	Expense Description	Expense Amount
01/24/20	Photocopies	FAQ, two copies of retainer, apr lt retainer	\$ 15.00
02/04/20	Photocopies	February 2020 Photocopies	\$ 15.00
02/05/20	Postage	Postage Jan 2020	\$ 2.50
02/05/20	Lexis/Westlaw	Westlaw usage Jan 2020	\$ 11.07
02/05/20	Record request fees	Pacer download Jan 2020	\$ 3.70
02/27/20	Filing Fee	LWDA	\$ 75.00
03/03/20	Postage	Postage Feb 2020	\$ 14.90
03/03/20	Lexis/Westlaw	Lexis usage Feb 2020	\$ 25.63
03/03/20	Lexis/Westlaw	Westlaw usage Feb 2020	\$ 4.92
05/01/20	Postage	Postage Apr 2020	\$ 7.20
05/05/20	Photocopies	***Konica Printer copies (2470 pgs as of 05/05/20) (SPLIT WITH RELATED MATTER)	\$ 308.75
09/14/20	Mediator Fees	Judicate West Invoice Number: [REDACTED] (SPLIT WITH RELATED MATTER)	\$ 1,250.00
03/04/21	Attorney Service-Filing	Rapid Legal Filing (Invoice [REDACTED])	\$ 547.23
04/06/21	Photocopies	printing S&C for service N&A	\$ 4.75
05/04/21	Postage	Postage Apr 2021	\$ 7.91
05/14/21	Attorney Service-Filing	One Legal Sale No. [REDACTED] re POS	\$ 69.49
TBD	Attorney Service & Filing Fees	<i>Estimated Attorney Service charges for filing Motion for Settlement</i>	\$ 404.08
TBD	Attorney Service & Filing Fees	<i>Estimated Attorney Service charges for filing Notice of Entry of Order</i>	\$ 67.50
TBD	Attorney Service & Filing Fees	<i>Estimated Attorney Service charges for a final accounting declaration regarding distribution of the settlement by the Administrator</i>	\$ 67.50
THE SPIVAK LAW FIRM COSTS THROUGH 01/10/22			\$ 2,363.05
THE SPIVAK LAW FIRM ESTIMATED FUTURE COSTS			\$ 539.08
UNITED EMPLOYEES LAW GROUP COSTS THROUGH 01/10/22			\$ 23.43
TOTAL COSTS THROUGH FINAL ACCOUNTING OF SETTLEMENT			\$ 2,925.56

EXHIBIT 11



ANNETTE L. ROSE

ASSOCIATE PRACTICES

- Employment Law
- Cannabis, Hemp & CBD

CONTACT

Sacramento

- (916) 830-6538

Email

- arose@grsm.com

Attorney Biography

Annette Rose is attentive and responsive to her clients' needs. Ms. Rose is an associate with the Employment Law group and focuses on employer defense. She has specific experience in defending against claims of discrimination, retaliation, and harassment, and related wrongful termination claims. Her practice also includes counsel and defense against Labor Code claims, including defense of complex wage and hour class actions.

In addition to her employment law practice, Ms. Rose also has significant experience working with and advising hospitality clients. She regularly provides advice and counsel with regard to landlord and tenant relationships, premises liability, and the multitude of regulations applicable to hoteliers in all 50 States. Prior to joining Gordon & Rees, Ms.

Rose provided general and coverage counsel services for public educational entities and guidance regarding the rights and duties of insureds and insurers.

Between earning her Bachelor's Degree and Juris Doctor, Ms. Rose taught English as a Second Language in Southeast Asia, giving her practice an international perspective. In her spare time, Ms. Rose enjoys spending time with her family, cooking, reading, and traveling.

Admissions

California

Memberships

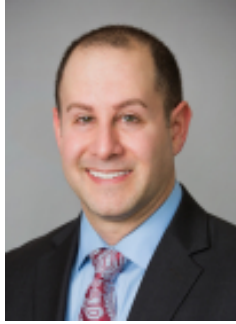
Member of SacLEGAL
 Member of Women Lawyers of Sacramento
 Sacramento County Bar Association

Education

J.D., *with great distinction*, University of the Pacific, McGeorge School of Law, 2016

B.A., Criminology, Law, & Society, minor in Philosophy, University of California, Irvine, 2006

EXHIBIT 12



MARK S. POSARD

PARTNER

PRACTICES

- Employment Law
- Commercial Litigation
- Retail & Hospitality
- Community Association Law
- Cyber, Privacy & Data Security
- Entertainment & Recreation Law

CONTACT

San Francisco

Sacramento

Fresno

- (415) 875-3343

Email

- mposard@grsm.com

Attorney Biography

Mark S. Posard is a senior partner in the California offices of Gordon & Rees since 2003. He has a diverse commercial litigation and trial practice, which focuses on employment, representation of Directors and Officers and several other sub-specialty areas of law. He has won numerous jury trials and arbitrations, in addition to resolving many cases through mediation. Mr. Posard has significant experience representing businesses and management in virtually every area of employment law, including discrimination, workplace harassment, ADA/disability claims (including online access issues), compensation, unfair competition, trade secret violations, unfair labor practices, OSHA, and wage and hour class actions. Mr. Posard also routinely assists management with workplace investigations and preventative business and employment counseling.

Mr. Posard represents clients nationwide, and has experience in other fields including construction, transportation, cargo, tort and product liability, intellectual property, residential and commercial real estate matters, business and unfair competition litigation. Representative clients of Mr. Posard include EPL, D&O, PL, GL, Cyber and Casualty insurers, large and small hospitality, construction and development and transportation companies, and many California education institutions (from preschool through post-grad).

Mr. Posard has an array of personal interests. Among them is his passion for world travel. Post-pandemic, Mr. Posard and family anticipate visiting London and Paris.

Experience

Representative Experience

Recent examples of Mr. Posard's experience include the following:

- Won summary judgment in Los Angeles County Superior Court on behalf of trucking company Dependable Highway Express (DHE), in an employment case with 13 causes of action.
- Defense verdict in December 2013 in a whistleblower termination/discrimination case in which the plaintiff sought \$1.8 million+ in damages.
- Won a binding arbitration. After a three-hour cross examination of the claimant, the following day the claimant abandoned his claims.
- Won summary judgment in the high-profile *Dariano v. Morgan Hill Unified School District* matter.
- Defense judgment on behalf of large employer in Napa Valley on 7 of 8 claims (including harassment, discrimination and retaliation). Plaintiff prevailed partially on overtime claim at trial, but verdict was less than 4% of pretrial demand.
- Defense verdict on behalf of the University of California after month-long trial involving 17-year employee who brought 23 causes of action against the University and several high-ranking managers.
- Counseling three separate companies on the separation from employment of high level corporate executives including officers, directors and shareholders.
- Winning summary judgment against a high profile civil rights attorney on behalf of a renowned California university.
- Negotiating a favorable settlement against two local District Attorneys in an "unfair competition" case where hundreds of millions of dollars were at stake.
- Co-chairing a two month trial in Honolulu, Hawaii on behalf of an international hospitality chain.

Publications & Presentations

Presentations

Mr. Posard has participated in many speaking engagements and this year has presented seminars on responding to allegations of sexual or racial harassment, avoiding claims of workplace harassment, and how to conduct an effective workplace investigation. Mr. Posard has presented for organizations such as the Northern California Human Resources Association, Risk & Insurance Management Society, Women For WineSense and HR Options. He also regularly conducts training seminars in all areas of labor and employment law for his clients.

In The Media

Mr. Posard is adept at representing clients whose issues attract media attention. Mr. Posard is currently lead counsel on a half dozen matters that have received media attention, including from national media outlets.

Admissions

California

Education

J.D., University of Pacific, McGeorge School of Law

- Moot Court Honors Board
- Recipient, Highest honors in oral advocacy

B.A., University of Redlands

Honors

2017 Client Choice Award

Rising Stars® distinction in the fields of Employment & Labor (2009 -2015, *Law & Politics*)

Attended the FDCC's Leadership Institute at the University of Chicago's Graduate School of Business

Legal & Legislative Chair for the Peninsula Chapter of the Northern California Human Resources Association

EXHIBIT 13



Class Action Administrators

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: Huddleston v Easter 263

Date: November 23, 2021

PAGA Disbursement Only

Requesting Attorney: **Shant Jaltorossian**

* Class Members: **65**

Plaintiff or Defense: **Plaintiff**

Postage Total: **\$41.18**

Firm Name: **The Spivak Law Firm**

Grand Total: **\$5,989.43**

Telephone: **(818) 208-7309**

***** CAPPED FLAT FEE: \$5,000.00**

Email: shant@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

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	1	\$95.00
System Programming/Data Base Setup	\$150.00	1	\$150.00
Project Manager-Notice Format	\$95.00	1	\$95.00
NCOA	\$150.00	1	\$150.00
Call Center Support	\$3.00	13	\$39.00
Spanish Translation	\$500.00	1	\$500.00
Total			\$1,029.00

* 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	2	\$190.00
SSN Verification	\$0.20	65	\$13.00
Total			\$353.00

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Notice in English & Spanish, 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	2	\$300.00
Project Manager-Correspond w/ Attorney	\$95.00	1	\$95.00
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	65	\$195.00
Estimated Postage (up to 1 oz.)	\$0.58	65	\$37.70

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	1	\$5.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	5	\$6.25
Remail Undeliverable Checks	\$3.00	5	\$15.00
Estimated Postage (up to 1 oz.)	\$0.58	6	\$3.48
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*	\$750.00	1	\$750.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Escheat to LWDA	No Fee	1	No Fee
Total			\$2,779.73

**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.*

Grand Total: \$5,989.43

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

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and/or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
- a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination", Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
- a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
- a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 14



Class Action Settlement Administration

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	12913V2	Prepared By:	Kimberly Sutherland
Estimate Date:	2/9/2021	Direct Dial #	321-223-5067
		Email:	ksutherland@simpluris.com

Attorney/Client:	<u>Attorney</u> Shant Jaltorossian	Attorney/Client:	<u>Defense Attorney</u>
Firm:	Spivak Law	Firm:	
Email:	Shant Jaltorossian < shant@spivaklaw.com >	Email:	

Case Name: HUDDLESTON/EASTER: Distribution

Anticipated Total Cost:	\$3,889
Not to Exceed Fee:	\$3,150

Terms:

1) Estimated Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	65	Undeliverable Rate:	25%
Response Rate:	0%	Call Rate:	
Mailing Document Language:	English, Spanish	Redistribution:	None
Reminder Post Card	No	States	One
Unclaimed Funds	LWDA		

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports			
Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$75.00	1	\$75.00
Translation	\$0.25	2000	\$500.00
Database Manager - Initial Data Analysis	\$140.00	1	\$140.00
Total			\$715.00

Distribution

Setup a Disbursement Account			
Print & Mail Checks to Class Members- 1099's-- File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation.			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Mailing Supervisor	\$50.00	1	\$50.00
NCOA	\$25.00	1	\$25.00
Print & Mail-Check, 1099/W-2/ 1- Page notice included	\$4.00	65	\$260.00
Postage	\$0.42	65	\$27.30
Process Returned Checks	\$0.50	13	\$6.50
Skip Trace Search Undeliverable Checks	\$5.00	13	\$65.00
Remail Checks	\$5.00	13	\$65.00
Uncashed fund distribution - Escheat Process	\$75.00	1	\$75.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee, 2019	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	1	\$5.00
Reissuing W2s/1099s	\$5.00	1	\$5.00
Responding to IRS, State, Agency Inquiries	\$75.00	0	\$0.00
Disbursement Manager	\$125.00	1	\$125.00
Total			\$2,873.80



Class Action Settlement Administration

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Case Wrap Up

Send Final Reports to Counsel			
Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Total Case Costs \$3,888.80

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) 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. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier 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. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally 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 irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **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.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, 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 Simpluris 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 Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT 15

Case Name: Huddleston v. Easter

Monday, November 29, 2021

Requesting Law Firm:	The Spivak Law Firm
Law Firm Contact:	Maralle Messrelian
E-Mail:	maralle@spivaklaw.com
ILYM Contact:	Sean Hartranft
E-Mail:	Sean@ilymgrouppclassaction.com
Contact Number:	949.690.2564

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggrieved Employees	65
Certified Spanish Translation	Yes
Remail of Undeliverables	Yes
Toll-Free Telephone Support Included	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
----------	-----------	-----------	--------	--------

CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Toll-Free Telephone Support	Flat Rate	\$75.00	1	\$75.00
NCOA	Flat Rate	\$50.00	1	\$50.00
Certified Spanish Translation	Flat Rate	\$1,250.00	1	\$1,250.00

*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 \$2,155.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$3.00	65	\$195.00
USPS First Class 1oz Postage	Per Piece	\$0.76	65	\$49.40
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$4.00	13	\$52.00
Preparation of Taxes	Hourly	\$125.00	10	\$1,250.00
Annual Filing of Tax Return	Per Year	\$750.00	1	\$750.00

*Additional Bank fees may apply

Subtotal \$2,846.40

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$450.00

TOTAL CASE COSTS: \$5,451.40

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.