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8 ANTHONY SIKES, and all others similarly situated
9 (Additional attorneys for Plaintiff(s) on following page)

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

13 ANTHONY SIKES, on behalf of himself, all
14 others similarly situated, the general public, and
15 as an “aggrieved employee” on behalf of other
16 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 WING DHABA, INC., a California corporation;
20 2 SINGHS HAVE WINGS, INC., a California
21 corporation; DAD'S SAPNA INC., a California
22 corporation; PKA CORPORATION, a
23 California corporation; WINGS FOR 2 SINGHS
24 INC, a California corporation; BIKRAMJIT
SINGH RANDHAWA, an individual; and
DOES 1–50, inclusive,

25 *Defendant(s).*
26
27
28

Case No. FCS054490

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
ANTHONY SIKES’S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: 4/26/2023
Hearing Time: 9:30 a.m.
Hearing Dept.: 3, The Honorable
Stephen Gizzi

Action filed: March 05, 2020
Trial Date: None Set



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ANTHONY SIKES, and all others similarly situated



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I, DAVID SPIVAK, declare as follows:

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

Factual and Procedural Background

5. On February 5, 2020, Plaintiff notified Defendant Wing Dhaba, Inc. and the California Labor and Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations committed by Defendant Wing Dhaba, Inc. A true and correct copy of the letter to the LWDA dated February 05, 2020 is attached hereto as **Exhibit 2**.

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causes of action against Wing Dhaba, Inc. and adding the remaining Defendants, 2 Singhs Have Wings, Inc., Dad's Sapna, Inc. PKA Corporation, Wings for 2 Singhs, Inc. and Bikramjit Singh Randhawa. The Third Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). Defendants deny all of Plaintiff's allegations and strongly contend that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. A true and correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff's Third Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendants' Answer to the Second Amended Complaint is attached hereto as **Exhibit 5**.

7. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced Plaintiff's entire personnel file, copies of their relevant company written policies, time-keeping records, and paycheck data and time and payroll data for the putative class members.

8. On November 18, 2021, January 7, 2022, July 13, 2022, November 21, 2022, and December 14, 2022, the Parties participated in mediation sessions presided over by Mr. Jeffrey Owensby Esq. of Judicate West, an experienced class action mediator, which led to this agreement to settle the Action. During the mediation sessions, each side, represented by his/their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by the Settlement pursuant to the terms and conditions of the Settlement. Prior to and during the mediation sessions, Plaintiff obtained, through informal discovery, the number of comparable employees, sample time records, payroll records, financial records, and related information. The Parties also jointly engaged an outside analyst to examine the records and to issue a report thereon. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

9. At the mediation, it became clear that Defendants had insufficient resources to cover the full extent of the potential liability. As part of the settlement negotiations, within the context of mediation privilege, as requested by Plaintiff's counsel, each of the Defendants produced copies of its/his federal and state tax returns for the last three years and other financial records. Plaintiff's Counsel has reviewed the financial records with the aid of a forensic economist. The information provided was sufficient to demonstrate the financial condition of the

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1 company and its owner. Based on such records, Plaintiff, on his own behalf and on behalf of the
2 putative Class Members, has agreed to settle the lawsuit on the terms set forth in the Settlement.

3 ***Ascertainable and Numerous Class***

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

9 11. The Settlement Class has sufficiently numerous members to render joinder
10 impractical. No set number is required as a matter of law to maintain a class action. The California
11 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
12 approximately 2,822 Class Members. Plaintiff maintains that it would be impractical and
13 economically inefficient to require each Settlement Class Member to separately maintain an
14 individual action or be joined as a named plaintiff in this action. In light of these considerations,
15 the Settlement Class' membership is sufficiently numerous.

16 ***Predominant Common Questions***

17 12. A question of law or fact is common to the members of a class if it may be resolved
18 through common proof. In this case, there are many predominant common questions. Plaintiff
19 asserts all class members were subject to the same or similar operations and employment policies,
20 practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay
21 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to
22 issue proper wage statements, failure to timely pay wages, failure to maintain required payroll
23 records, and related labor law violations, all of which Plaintiff claims constitute unfair business
24 practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but
25 are not limited to: (1) Whether Defendants failed to pay all wages earned to class members for
26 all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class
27 with all meal and rest periods in compliance with California law; (3) Whether Defendants failed
28 to pay the class one additional hour of pay on workdays they failed to provide the class with one
or more meal or rest periods in compliance with California law; (4) Whether Defendants
knowingly and intentionally failed to provide the class with accurate wage statements; (5)
Whether Defendants willfully failed to provide the class with timely final wages; and (6) Whether

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1 Defendants engaged in unfair competition within the meaning of Business and Professions Code
2 section 17200, *et seq.*, with respect to the class.

3 ***Typicality***

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

12 ***Adequacy***

13 14. The adequacy requirement is met where the plaintiff is represented by counsel
14 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
15 the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
16 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
17 ability to represent the class.

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

29 ***Background of Class Counsel***

30 16. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
31 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from

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Southwestern University School of Law.

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

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

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

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

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

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

c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton

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

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

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

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

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

21. Since 2007, I have prosecuted several traditional wage & hour class actions as the sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*

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1 v. *Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*
2 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
3 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
4 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
5 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
6 an hourly rate of \$525.00 for my services.

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

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

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

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

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

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

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

28 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.



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

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

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

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

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

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

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

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

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

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

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

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

26 ***Class Action Treatment Is Superior***

27 24. A class action is also superior to other means adjudicating the issues in this action.
28 The predominance of common legal and factual questions shows that this Court could fairly
adjudicate the claims of Class Members through a single class action. In view of the *theoretical*
alternatives that proposed class members could potentially utilize—representative PAGA action
(where there is less relief available), individual civil lawsuits or wage claims through the Division

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1 of Labor Standards Enforcement (where there would be relatively little money at stake, but the
2 claims would be time-consuming to litigate)—a class action is plainly superior to all of them.
3 Thus, this consideration supports conditional class action treatment for purposes of this
4 Settlement only.

5 ***The Settlement is Presumptively Fair***

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

17 ***Exposure & Risk Analysis***

18 26. Plaintiff alleges that Defendants failed to provide its hourly, non-exempt
19 employees with a meal period within the first five hours of work and compelled them to work
20 through their off-the-clock meal periods without compensation and failed to provide the
21 employees with duty-free rest breaks. Plaintiff also alleges in addition to compelling employees
22 to work off the clock during their clocked-out meal periods, Defendants required them to work
23 off-the-clock before they clocked in or after they clocked out for their shifts to paint, power-wash
24 the patio floor, and assist coworkers with tasks such as food preparation and orders. Plaintiff
25 further alleges that Defendants failed to compensate employees for the daily overtime hours at
26 one and one half (1½) times their regular rates of pay. Plaintiff prepared "damages" estimates in
27 advance of the mediation. In advance of the mediation, Plaintiff determined Defendants'
28 maximum exposure for restitution and penalties to be approximately \$8,039,062.24 (consisting
of \$343,523.88 in unpaid wages, \$387,685.97 in missed meal period premium wages,
\$528,879.91 in missed rest break premium wages, \$507,235.07 for wage statement penalties,
\$3,798,548.16 for waiting time penalties, and \$2,347,180.27 for civil penalties). Plaintiff

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1 calculated the damages based on the information provided by Defendants, Plaintiff's reports, and
2 the sample data. *Id.* Plaintiff also considered the possibility that Defendants could launch a *Pick*
3 *Up Stix* campaign and pursue individual release agreements from the Class Members. Plaintiff's
4 Counsel applied discounts to the maximum exposure to account for all other risks discussed
5 below. While it is difficult to assign anything but crudely-determined percentages of risk to any
6 of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery
7 for such employees is substantial and alone justifies a significant discount because Defendants
8 would likely by trial have gathered releases from the majority of the Class Members. A settlement
9 for approximately 24.88% of the potential recovery is a proportion substantially in excess of
recovery proportions sanctioned by existing case law.⁶

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

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

18 29. **Risks Associated with Unpaid Wages Claim.** Plaintiff's claim for unpaid daily
19 overtime wages is strong, but is not large by itself. Its value is as a predicate for various penalties,
20 which depend on showings intent, or willfulness, as discussed further below. Regarding
21 Plaintiff's other unpaid wage claims, there is a risk that Plaintiff's recovery for unpaid wages
22 would be extremely limited at best, largely because Defendants' written policies throughout the

23 _____
24 ⁶ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
25 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
26 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
27 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
28 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
potential recovery asserted by either party.”).



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1 relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a
2 defendant requires in its written policies that all work must take place while clocked in. *See Jong*
3 *v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-
4 the-clock work for it to be compensable). *Id.* In their written employment policies, Defendants
5 mandate that employees must record all time worked accurately on their time records and prohibit
6 employees from performing any work off-the-clock. Moreover, while Defendants dispute that
7 off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The
8 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested
9 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
10 compensable. (Stating that “We do not decide whether there are circumstances where
11 compensable time is so minute or irregular that it is unreasonable to expect the time to be
12 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
13 because the time spent off the clock were insignificant. Accordingly, a large award of penalties
14 seems unlikely with respect to this claim.

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

25 31. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
26 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
27 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
28 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
or prohibited the employee from taking a proper break, or otherwise failed to release the



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1 employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
2 reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*
3 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

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

13 33. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest
14 period claim. Employers are not required to record rest periods and such periods are paid.
15 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
16 accordance with California law. Further, Defendants’ written policies on meal and rest periods
17 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
18 showing whether an employee clocked out or not, there is no such evidence to prove a missed
19 rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims
20 at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and
21 surveys to prove the claims. While a victory with such evidence is certainly possible, relevant
22 caselaw makes such claims risky from a trial management and due process perspective. *See*
23 *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common
24 questions exist to support class certification, it may be possible to manage individual issues
25 through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015)
26 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

27 34. **Risks Associated with the Statutory “Wage Statement” Penalty Claims.**
28 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA
penalties. Under Labor Code section 226, wage statements must include various information,
including the applicable rates of pay, corresponding hours worked, and gross pay. Here,
Plaintiff’s wage statement claim has the same underlying risks as the above claims, as it is



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1 derivative of them. On their face, the wage statements issued by Defendants comply with the
2 requirements of Labor Code section 226.

3 35. **Risks Associated with The Waiting Time Penalties Claim.** Plaintiff's claim for
4 untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor
5 Code sec. 226, Plaintiff must establish that the late payments were willful. The evidence of good
6 faith Defendants put forth will defeat this claim.

7 36. **Risks Associated With the PAGA Claim.** Regarding PAGA, a court has
8 discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman*
9 *v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA
10 award). Defendants have posed valid defenses to the Labor Code claims underlying Plaintiff's
11 PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk
12 that the Court would consider the maximum civil penalty available to be confiscatory. Moreover,
13 the current COVID-19 pandemic could motivate the Court to further reduce the penalty award to
14 avoid what it may consider a confiscatory taking.

15 37. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
16 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
17 counsel estimated a maximum exposure of approximately \$2,347,180.27 in civil penalties. This
18 estimate did not take into account any of the risks discussed above and assumed a violation for
19 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
20 period for the same alleged violations of different Labor Code provisions and derivative
21 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
22 this fashion may be appropriate to determine the amount in controversy for purposes of removal
23 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
24 multiple PAGA penalties for the same violation for the same pay period under different Labor
25 Code provisions. This may be because the PAGA does not provide for what many employers
26 characterize as claim splitting and not merely stacking.

27 38. I am aware of only two significant awards under the PAGA in a contested
28 proceeding, both issued by federal district courts.⁷ PAGA penalty awards are often small even

⁷ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were



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for egregious, intentional violations of the Labor Code.⁸ For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant’s meal period violations. A similar result could occur here.

39. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member’s disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796

\$18,695,692.58. In this regard, the district court stated,

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

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

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

⁸ 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 first amended complaint in *Ghrdilyan* is attached as **Exhibit 10**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 11**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.

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(2009). As discussed above, Defendants may launch a “pick off” settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 2822 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

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

Allocation of the PAGA Payment

41. The settlement of PAGA penalties in the sum of \$100,000.00, of which 75% (\$75,000.00) will be paid to the LWDA and 25% (\$25,000.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members.

Attorneys’ Fees and Costs

42. I intend to request Class Counsel Attorneys’ Fees of \$666,666.66 (one-third of the GSA) and Class Counsel’s litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$24,384.23 and will be no more than \$25,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court’s preliminary approval. In addition, based on my experience in wage and hour class action matters,

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fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los

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1 Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern*
2 *California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of
3 fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third
4 of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-
5 282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior
6 Court, Case No. CIVDS1500146 (one-third of fund).

7 43. The amount of fees and costs requested are commensurate with (1) the risk Class
8 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the
9 case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel
10 achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class
11 Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained
12 information from putative class members, met and conferred with Defendants' counsel on
13 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
14 by Defendants and obtained through other sources, researched applicable law, and estimates of
15 "damages" for purposes of settlement discussions, among other tasks.

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

21 ***Class Representative Service Payment***

22 45. The Settlement provides that Plaintiff may seek a Class Representative Service
23 Payment of \$30,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action
24 and the risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours
25 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
26 retaining experienced counsel, providing them with information about his work history with
27 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
28 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
being actively involved in the settlement process to ensure a fair result for the Settlement Class
as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See Labor*

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Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrant preliminary approval.

46. The Individual Settlement Payments will be paid to each Class Member based on his or her eligible Pay Periods compared to the total Pay Periods. Settlement, ¶ 4. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

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

47. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, Settlement, ¶ 4.4.3. Although there are current employee Class Members, it is uncertain whether Defendants' records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice (attached as Exhibits 1 the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class Member. Additionally, the Notice will include the number of Eligible Workweeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

Settlement Administration Duties

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

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Settlement Administration Costs

49. With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Phoenix, the Parties sought and reviewed bids from other reputable third-party administrators: (A) CPT Group, Inc. = \$33,500.00; (B) Phoenix = \$17,000.00; and C) ILYM Group, Inc. = \$27,900.00. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 7**. A true and correct copy of the bid from IMLY Group, Inc. is attached hereto as **Exhibit 8**. The bid provided by Phoenix was less than the others. Thus, settlement administration costs provision should be given preliminary approval.

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Notice of Settlement to the LWDA

50. 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 9**.

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 Monday, April 03, 2023 at Los Angeles, California.



DAVID SPIVAK,
Declarant



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EXHIBIT 1

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

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

13 ANTHONY SIKES, on behalf of himself and all
14 others similarly situated, and as “aggrieved
15 employees” on behalf of other “aggrieved
16 employees” under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 WING DHABA, INC., a California corporation;
20 2 SINGHS HAVE WINGS, INC., a California
corporation; DAD'S SAPNA INC., a California
21 corporation; PKA CORPORATION, a
California corporation; WINGS FOR 2 SINGHS
22 INC, a California corporation; BIKRAMJIT
SINGH RANDHAWA, an individual; and
23 DOES 1–50, inclusive,

24 *Defendant(s).*
25
26
27

Case No. FCS054490

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

Action filed: March 05, 2020
Dept: 3, The Honorable Stephen
Gizzi

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12 ANTHONY SIKES, and all others similarly situated

13 **ATTORNEYS FOR DEFENDANT(S)**

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23 Attorneys for Defendant(s),
24 WING DHABA, INC., 2 SINGHS HAVE WINGS, INC., DAD'S SAPNA INC., PKA
25 CORPORATION, WINGS FOR 2 SINGHS INC, and BIKRAMJIT SINGH RANDHAWA
26
27
28

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Anthony Sikes (“Plaintiff”) and defendants Wing Dhaba, Inc., 2 Singhs Have
3 Wings, Inc., Dad's Sapna Inc., PKA Corporation, Wings For 2 Singhs INC, and Bikramjit Singh
4 Randhawa (collectively “Defendants”). The Agreement refers to Plaintiff and Defendants
5 collectively as “Parties,” or individually as “Party.”

6 **1. DEFINITIONS.**

7 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
8 Wing Dhaba, Inc., 2 Singhs Have Wings, Inc., Dad’s Sapna Inc., PKA Corporation, Wings For 2
9 Singhs INC, and Bikramjit Singh Randhawa captioned “Anthony Sikes, on behalf of himself, and
10 all others similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved
11 employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs.
12 defendants Wing Dhaba, Inc., 2 Singhs Have Wings, Inc., Dad’s Sapna Inc., PKA Corporation,
13 Wings For 2 Singhs, Inc. , and Bikramjit Singh Randhawa; and DOES 1 through 50, inclusive,
14 *Defendant(s)*,” Case No. FCS054490 initiated on March 05, 2020 by complaint against Wing
15 Dhaba, Inc. and on March 9, 2022 by third amended complaint adding 2 Singhs Have Wings,
16 Inc., Dad's Sapna, Inc., PKA Corporation, Wings for 2 Singhs, Inc. and Bikramjit Singh
17 Randhawa, which is pending in Superior Court of the State of California, County of Solano.

18 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the
19 Parties have agreed to appoint to administer the Settlement.

20 1.3. “Administration Expenses Payment” means the amount the Administrator will be
21 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
22 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
23 with Preliminary Approval of the Settlement.

24 1.4. “Aggrieved Employee” means all current and former hourly, non-exempt employees
25 employed by Defendants in California at any time from February 5, 2019 through the preliminary
26 approval order date or 120 days from the execution of the Memorandum of Understanding,
27 whichever is earlier.

28 1.5. “Class” means all current and former persons employed by Defendants in
California and classified as hourly, non-exempt who worked for Defendants at any time from
March 5, 2016 through the preliminary approval order date or 120 days from the execution of the

Memorandum of Understanding, whichever is earlier, during the Class Period.

1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as counsel for the Settlement Class for all purposes in the Action.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action, as approved by the Court in the Action.

1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Pay Periods and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from March 5, 2016 through the date of entry of the preliminary approval order or 120 days from the execution of the Memorandum of Settlement, whichever is earlier.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as the Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Solano.

1.16. “Defendants” means named Defendants Wing Dhaba, Inc., 2 Singhs Have Wings, Inc., Dad’s Sapna Inc., PKA Corporation, Wings For 2 Singhs, Inc. , and Bikramjit Singh

1 Randhawa.

2 1.17. “Defense Counsel” means Steven H. Bovarnick of Leland, Parachini, Steinberg,
3 Matzger & Melnick LLP.

4 1.18. “Effective Date” means the date by when both of the following have occurred: (a)
5 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
6 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
7 Participating Class Member objects to the Settlement , the day the Court enters Judgment; (b) if
8 one or more Participating Class Members objects to the Settlement , the day after the deadline for
9 filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed,
10 the day after the appellate court affirms the Judgment and issues a remittitur.

11 1.19. “Final Approval” means the Court’s order granting final approval of the
12 Settlement.

13 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
14 Approval of the Settlement.

15 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final
16 Approval of the Settlement.

17 1.22. “Gross Settlement Amount” means \$2,000,000.00 which is the total amount
18 Defendants agree to pay on an all-in and non-reversionary basis, inclusive of all amounts to be paid
19 to Class Members, attorney fees, costs, enhancement award to the named Plaintiff, PAGA penalties
20 to both the California Labor and Workforce Development Agency (“LWDA”) and allegedly
21 aggrieved employees, and Settlement Administration expenses, and under no circumstances will
22 Defendants’ settlement payment exceed the Gross Settlement Amount. Defendants will pay the
23 Gross Settlement Amount in multiple installments as set forth in Paragraph 4 below.

24 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata
25 share of the Net Settlement Amount calculated according to the number of Pay Periods worked
26 during the Class Period.

27 1.24. “Individual PAGA payment” means the Aggrieved Employee’s pro rata share of
28 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the
PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon the Final
Approval.

1 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
2 agency entitled, under Labor Code section 2699, subd. (i).

3 1.27. "LWDA PAGA payment" means the 75% of the PAGA Penalties paid to the
4 LWDA under Labor Code section 2699, subd. (i).

5 1.28. "Memorandum of Understanding" means the settlement agreement signed by
6 Plaintiff, Class Counsel, Defendants and Defense Counsel on December 15, 2022.

7 1.29. "Net Settlement Amount" means the Gross Settlement Amount, less the following
8 payments in the amounts approved by the Court: Individual PAGA payments, the LWDA PAGA
9 payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
10 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
11 paid to Participating Class Members as Individual Class Payments.

12 1.30. "Non-Participating Class Member" means any Class Member who opts out of the
13 Settlement by sending the Administrator a valid and timely Request for Exclusion.

14 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
15 worked for Defendants for at least one day during the PAGA Period.

16 1.32. "PAGA Period" means the period from February 5, 2019 to the date of preliminary
17 approval of this Settlement.

18 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).

19 1.34. "PAGA Notice" means Plaintiff's February 5, 2020 letter to Defendant Wing
20 Dhaba, Inc. and LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

21 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
22 the Gross Settlement Amount, \$100,000.00, allocated 25% to the Aggrieved Employees
23 (\$25,000.00) and the 75% to LWDA (\$75,000.00) in settlement of PAGA claims.

24 1.36. "Participating Class Member" means a Class Member who does not submit a valid
25 and timely Request for Exclusion from the Settlement.

26 1.37. "Plaintiff" means Anthony Sikes, the named plaintiff in the Action.

27 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
28 of the Settlement.

1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary
Approval and Approval of PAGA Settlement.

1.40. "Released Class Claims" means the claims being released as described in

Paragraph 6.2 below.

1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 6.2 below.

1.42. “Released Parties” means: Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.44. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment as embodied in the Memorandum of Understanding executed by the Parties on December 15, 2022.

2. RECITALS.

2.1. On March 5, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant Wing Dhaba, Inc. for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, a representative cause of for civil penalties under PAGA and related claims. On May 18, 2020, Plaintiff filed a First Amended Complaint against Defendant Wing Dhaba, Inc.. On August 11, 2020, Plaintiff filed a Second Amended Complaint to include the PAGA Notice, Exhibit A, that Plaintiff had inadvertently omitted from the complaint filed on March 5, 2020 and First Amended Complaint filed on May 18, 2020. On March 9, 2022, Plaintiff filed a Third Amended Complaint alleging the same causes of action against Wing Dhaba, Inc. and adding the remaining Defendants, 2 Singhs Have Wings, Inc., Dad’s Sapna, Inc. PKA Corporation, Wings for 2 Singhs, Inc. and Bikramjit Singh Randhawa. The Third Amended Complaint is the operative complaint in the

1 Action (the “Operative Complaint”). Defendants deny the allegations in the Complaint, First
2 Amended Complaint, Second Amended Complaint and the Operative Complaint, deny any failure
3 to comply with the laws identified in the Complaint, First Amended Complaint, Second Amended
4 Complaint and Operative Complaint and deny any and all liability or wrongdoing of any kind for
5 the causes of action alleged and further deny that, for any purpose other than settling the Action,
6 this action is or would be appropriate for representative treatment. Defendants maintain, among
7 other things, that they have complied with California law in all aspects, and continue to do so.
8 Nothing in the Memorandum of Understanding, settlement negotiations, approval of settlement
9 orders related to settlement or any other aspect of the settlement shall be construed or deemed as
10 an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants, with
11 this settlement made in the interest of compromise and resolution of disputed claims.

12 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
13 notice to Defendants and the LWDA by sending the PAGA Notice.

14 2.3. On November 18, 2021, January 7, 2022, July 13, 2022, November 21, 2022, on
15 December 14, 2022, the Parties participated in mediation sessions presided over by Mr. Jeffrey
16 Owensby Esq. of Judicate West which led to this Agreement to settle the Action.

17 2.4. Prior to and during the mediation sessions, Plaintiff obtained, through informal
18 discovery, the number of comparable employees, sample time records, payroll records, financial
19 records, and related information. The Parties also jointly engaged an outside analyst to examine
20 the records and to issue a report thereon. Plaintiff’s investigation was sufficient to satisfy the
21 criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794,
22 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130
23 (“*Dunk/Kullar*”).

24 2.5. The Court has not granted class certification.

25 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
26 of any other pending matter or action asserting claims that will be extinguished or affected by the
27 Settlement.

28 **3. MONETARY TERMS.**

3.1. Gross Settlement Amount. Defendants agree to pay a total of \$2,000,000.00
inclusive of all amounts to be paid to Class Members, attorney fees, costs, enhancement award to

1 the named Plaintiff, PAGA penalties to both the California Labor and Workforce Development
2 Agency (“LWDA”) and allegedly aggrieved employees and Settlement Administration expenses.
3 Under no circumstances will Defendants’ settlement payment exceed the Gross Settlement
4 Amount. Notwithstanding the foregoing, Defendants’ share of any employer payroll taxes to be
5 paid in connection with the Settlement (e.g. FICA, FUTA, payroll taxes and/or similar tax or
6 charge – collectively “Employer Taxes” shall be paid by Defendants in addition to the Gross
7 Settlement Amount owed on the Wage Portions of the Individual Class Payments. Defendants
8 have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the
9 deadlines stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire
10 Gross Settlement Amount without asking or requiring Participating Class Members to submit a
11 claim form as a condition of receipt of their individual settlement. None of the Gross Settlement
12 Amount will revert to Defendants. The expiration date on the settlement checks will be one
13 hundred and eighty (180) days from the date the settlement checks are issued. The Administrator
14 will pay those funds represented by uncashed checks to the California Unclaimed Property Fund
15 in the name of the class members concerned.

16 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
17 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
18 the Court in the Final Approval:

19 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
20 Representative, subject to approval by the Court, not to exceed \$30,000.00 (in addition to any
21 Individual Class Payment and any Individual PAGA payment the Class Representative is entitled
22 to receive as a Participating Class Member). Defendants shall not oppose any enhancement award
23 to Plaintiff as a Class Representative Service Payment up to \$30,000.00. As part of the motion for
24 Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court
25 approval for the Class Representative Service Payment no later than 16 court days prior to the
26 Final Approval Hearing. If the Court approves a Class Representative Service Payment in less
27 than the amount requested, the Administrator shall add the remainder to the Net Settlement
28 Amount. The Administrator will report the Class Representative Service Payment on IRS Form
1099. Plaintiff assumes full responsibility and liability for all taxes owed on the Class
Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of up to Thirty-Three

1 and One-Third (33 and 1/3%) on the Gross Settlement Amount, which is estimated to be
2 \$666,666.66, subject to approval of the Court, and a Class Counsel Litigation Expenses Payment
3 as actually and reasonably incurred by Class Counsel not to exceed Twenty-Five Thousand
4 Dollars (\$25,000.00), subject to approval of the Court. Defendants shall not oppose requests for
5 these payments provided that they do not exceed these amounts and with respect to the Class
6 Counsel Litigation Expenses Payment, the costs were actually and reasonably incurred by Class
7 Counsel. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and
8 Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval
9 Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation
10 Expenses Payment less than the amounts requested, the Administrator will add the remainder to
11 the Net Settlement Amount. The Court-approved attorney fees and costs of suit are part of, and
12 to be deducted from, the Gross Settlement Amount. Released Parties shall have no liability to
13 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
14 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
15 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
16 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
17 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and will hold
18 Defendants harmless with respect thereto, and will indemnify, defend and hold Defendants
19 harmless, from any dispute or controversy regarding any division or sharing of any of these
20 Payments.

21 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
22 \$17,000.00 except for a showing of good cause and as approved by the Court. To the extent the
23 Administration Expenses are less or the Court approves payment less than \$17,000.00, the
24 Administrator will retain the remainder in the Net Settlement Amount.

25 3.2.4. To Each Participating Class Member: An Individual Class Payment will
26 be calculated by the Administrator by (a) dividing the Net Settlement Amount by the total number
27 of Pay Periods worked by all Participating Class Members during the Class Period and (b)
28 multiplying the result by each Participating Class Member's Pay Periods.

3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
each Participating Class Member's Individual Class Payment will be allocated as payment for
alleged wages (the "Wage Portion"). The Wage Portions are subject to tax withholding and will

1 be reported on an IRS W-2 Form. 33.33% as alleged unpaid interest and 33.33% as alleged unpaid
2 civil and statutory penalties (the “Non-Wage Portion”). The Non-Wage Portion is not subject to
3 tax withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume
4 full responsibility and liability for any employee taxes owed on their Individual Class Payment.

5 3.2.5. Effect of Non-Participating Class Members on Calculation of
6 Individual Class Payments. Non-Participating Class Members will not receive any Individual
7 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
8 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

9 3.2.6. To the LWDA and Aggrieved Employees: PAGA Penalties in the
10 amount of \$100,000.00 to be paid from the Gross Settlement Amount, with 75% (\$75,000.00)
11 allocated to the LWDA PAGA payment and 25% (\$25,000.00) allocated to the Individual PAGA
12 payments.

13 3.2.6.1. The Administrator will calculate each Individual PAGA payment
14 by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties
15 \$25,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
16 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA
17 Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes
18 owed on their Individual PAGA payment.

19 3.2.6.2. If the Court approves PAGA Penalties of less than the amount
20 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
21 Administrator will report the Individual PAGA payments on IRS 1099 Forms.

22 **4. SETTLEMENT FUNDING AND PAYMENTS.**

23 4.1. Class Pay Periods and Aggrieved Employee Pay Periods. Based on a review of
24 its records to date, Defendants estimate there are 2822 Class Members who collectively worked
25 a total of 22,948 Pay Periods, and 1605 Aggrieved Employees who worked a total of 17,500
26 PAGA Pay Periods.

27 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
28 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the
Administrator must maintain the Class Data in confidence, use the Class Data only for purposes

1 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
2 employees who need access to the Class Data to effect and perform under this Agreement.
3 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
4 Class Data omitted class member identifying information and to provide corrected or updated
5 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
6 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
7 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
8 to missing or omitted Class Data.

8 4.3. Funding of Gross Settlement Amount. The Gross Settlement Amount shall be
9 paid by Defendants in multiple installment payments, and also pay the amount necessary to pay
10 Defendants' share of employer payroll taxes by transmitting the funds to the Administrator as
11 follows:

12 4.3.1. (1) Within thirty (30) calendar days of the Effective Date, Defendants shall
13 pay the amount of One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00)
14 of the Gross Settlement Amount ("First Payment"). (2) Defendants shall pay the amount of Fifty
15 Thousand Dollars and No Cents (\$50,000.00) no later than the first anniversary of the First
16 Payment. (3) Thereafter, Defendants shall pay Fifty Thousand Dollars and No Cents (\$50,000.00)
17 every 180 days thereafter until the Gross Settlement Amount is paid in full ("Installment
18 Payments").

19 4.3.2. In the event that the financial condition of Defendants is such that they are
20 unable to make any payment after the First Payment when due, fifteen (15) days before the due
21 date of such subsequent payment, counsel for Defendants will notify counsel for Plaintiff and
22 discuss extension of the due date, and if no agreement is reached, the parties will contact Jeff
23 Owensby to mediate and resolve the issue. Defendants will cover Mr. Owensby's fees for such
24 services.

25 4.4. Distributions from the Installment Payments toward the Gross Settlement
26 Amount. There will be multiple distributions of the Gross Settlement Amount as follows:

27 4.4.1. **First Distribution.** Within fourteen (14) calendar days of the Effective
28 Date, or within ten (10) calendar days of the deadline for the First Payment (whichever is later),
the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement
Amount Defendants paid by that date, including *pro rata* portions of the Individual Class

1 Payments, Individual PAGA Payments, LWDA PAGA payment, Class Representative Service
2 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
3 the Administrator's expenses.

4 4.4.2. **Second Distribution.** Within ten (10) calendar days of the final
5 Installment Payment, the Settlement Administrator shall distribute, *pro rata*, the portion of the
6 Gross Settlement Amount Defendants paid since the first distribution, including *pro rata* portions
7 of the Individual Class Payments, Individual PAGA Payments, LWDA PAGA payment, Class
8 Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
9 Expenses Payment, and the Administrator's expenses.

10 4.4.3. The Administrator will issue checks for the Individual Class Payments
11 and/or Individual PAGA payments and send them to the Class Members via First Class U.S. Mail,
12 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
13 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
14 not cashed by the void date. The Administrator will send checks for Individual Settlement
15 Payments to all Participating Class Members (including those for whom Class Notice was
16 returned undelivered). The Administrator will send checks for Individual PAGA payments to all
17 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
18 Employees (including those for whom Class Notice was returned undelivered). The
19 Administrator may send Participating Class Members a single check combining the Individual
20 Class Payment and the Individual PAGA payment. Before mailing any checks, the Administrator
21 must update the recipients' mailing addresses using the National Change of Address Database.

22 4.4.4. The Administrator must conduct a Class Member Address Search for all
23 other Class Members whose checks are returned undelivered without USPS forwarding address.
24 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
25 forwarding address provided or to an address ascertained through the Class Member Address
26 Search. The Administrator need not take further steps to deliver checks to Class Members whose
27 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
28 replacement check to any Class Member whose original check was lost or misplaced, requested
by the Class Member prior to the void date.

4.4.5. For any Class Member whose Individual Class Payment check or
Individual PAGA payment check is uncashed and cancelled after the void date, the Administrator

1 shall transmit the funds represented by such checks to the California Controller's Unclaimed
2 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
3 the requirements of California Code of Civil Procedure Section 384, subd. (b).

4 4.4.6. The payment of Individual Class Payments and Individual PAGA
5 payments shall not obligate Defendants to confer any additional benefits or make any additional
6 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
7 this Agreement.

8 **5. [OMITTED]**

9 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire
10 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
11 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
12 against all Released Parties as follows:

13 6.1 Plaintiff's Releases. Plaintiff and his respective former and present spouses,
14 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
15 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
16 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
17 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
18 that were, or reasonably could have been, alleged based on facts contained in the Operative
19 Complaint, Plaintiff's PAGA Notices, or ascertained during the Action and released under 6.2,
20 below. ("Plaintiff's Releases.") Plaintiff's Releases do not extend to any claims or actions to
21 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
22 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
23 on occurrences outside the Class Period. Plaintiff acknowledges that he may discover facts or
24 law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
25 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
26 notwithstanding such different or additional facts or his discovery of them.

27 6.1.1 Plaintiff's Waivers of Rights Under California Civil Code Section 1542.
28 For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

1 **A general release does not extend to claims that the creditor or releasing party does**
2 **not know or suspect to exist in his or her favor at the time of executing the release,**
3 **and that if known by him or her would have materially affected his or her settlement**
4 **with the debtor or Released Party.**

5 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:

6 All Participating Class Members, on behalf of themselves and their respective former and present
7 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
8 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
9 Class Period facts stated in the Operative Complaint and ascertained in the course of the Action
10 including, failure to pay wages, failure to provide meal periods, failure to authorize and permit
11 rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to
12 maintain required payroll records, and related allegations. Except as set forth in Section 6.3 of
13 this Agreement, Participating Class Members do not release any other claims, including claims
14 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
15 unemployment insurance, disability, social security, workers' compensation, or claims based on
16 facts occurring outside the Class Period.

16 6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:

17 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
18 behalf of themselves and their respective former and present representatives, agents, attorneys,
19 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
20 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
21 facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the
22 Action including, failure to pay wages, failure to provide meal periods, failure to authorize and
23 permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure
24 to maintain required payroll records, and related claims.

24 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
25 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
26 the Court's current checklist for Preliminary Approvals.

27 7.1 Defendants' Declaration in Support of Preliminary Approval. Within 15 days of

1 the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a
2 signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any
3 actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their
4 Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other
5 pending matter or action asserting claims that will be extinguished or adversely affected by the
Settlement.

6 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
7 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
8 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
9 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
10 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
11 and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration
12 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
13 attesting to its willingness to serve; competency; operative procedures for protecting the security
14 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
15 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
16 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
17 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
18 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
19 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
20 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
21 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
22 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
23 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to
24 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
25 potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient.
In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware
of any other pending matter or action asserting claims that will be extinguished or adversely
affected by the Settlement.

26 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
27 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later

1 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
2 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
3 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
4 Approval to the Administrator.

5 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
6 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
8 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
9 Preliminary Approval or conditions Preliminary Approval on any material change to this
10 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
11 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
12 otherwise satisfy the Court's concerns.

12 **8. SETTLEMENT ADMINISTRATION.**

13 8.1 Selection of Administrator. The Parties have jointly selected Administrator to
14 serve as the Administrator and verified that, as a condition of appointment, Administrator agrees
15 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
16 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
17 represent that they have no interest or relationship, financial or otherwise, with the Administrator
18 other than a professional relationship arising out of prior experiences administering settlements.

19 8.2 Employer Identification Number. The Administrator shall have and use its own
20 Employer Identification Number for purposes of calculating payroll tax withholdings and
21 providing reports state and federal tax authorities.

22 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
23 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
24 Regulation section 468B-1.

25 8.4 Notice to Class Members.

26 8.4.1 No later than three (3) business days after receipt of the Class Data, the
27 Administrator shall notify Class Counsel that the list has been received and state the number of
28 Class Members, PAGA Members, Pay Periods, and Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than

1 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
2 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice
3 with Spanish translation, if applicable substantially in the form attached to this Agreement as
4 **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any
5 Individual Class Payment and/or Individual PAGA payment payable to the Class Member, and the
6 number of Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
7 mailing Class Notices, the Administrator shall update Class Member addresses using the National
Change of Address database.

8 8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class
9 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
10 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
11 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
12 Notice to the most current address obtained. The Administrator has no obligation to make further
13 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
USPS a second time.

14 8.4.4 The deadlines for Class Members’ written objections, Challenges to Pay
15 Periods and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days
16 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is
17 re-mailed. The Administrator will inform the Class Member of the extended deadline with the
re-mailed Class Notice.

18 8.4.5 If the Administrator, any of the Defendants or Class Counsel is contacted
19 by or otherwise discovers any persons who believe they should have been included in the Class
20 Data and should have received Class Notice, the Parties will expeditiously meet and confer in
21 person or by telephone, and in good faith in an effort to agree on whether to include them as Class
22 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
23 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
24 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
of Class Notice, or the deadline dates in the Class Notice, which ever are later.

25 8.5 Requests for Exclusion (Opt-Outs).

26 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
27 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for

1 Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional
2 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
3 from a Class Member or his representative that reasonably communicates the Class Member's
4 election to be excluded from the Settlement and includes the Class Member's name, address and
5 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
6 emailed, or postmarked by the Response Deadline.

7 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
8 because it fails to contain all the information specified in the Class Notice. The Administrator
9 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
10 identity of the person as a Class Member and the Class Member's desire to be excluded. The
11 Administrator's determination shall be final and not appealable or otherwise susceptible to
12 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
13 the Administrator may demand additional proof of the Class Member's identity. The
14 Administrator's determination of authenticity shall be final and not appealable or otherwise
15 susceptible to challenge.

16 8.5.3 Every Class Member who does not submit a timely and valid Request for
17 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
18 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
19 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
20 Participating Class Member actually receives the Class Notice or objects to the Settlement.

21 8.5.4 Every Class Member who submits a valid and timely Request for
22 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
23 or have the right to object to the class action components of the Settlement. Because future PAGA
24 claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class
25 Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph
26 6.4 of this Agreement and are eligible for an Individual PAGA payment.

27 8.6 Challenges to Calculation of Pay Periods. Each Class Member shall have 60 days
28 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
whose Class Notice is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay
Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
challenge the allocation by communicating with the Administrator via fax, email or mail. The

1 Administrator must encourage the challenging Class Member to submit supporting
2 documentation. In the absence of any contrary documentation, the Administrator is entitled to
3 presume that the Pay Periods contained in the Class Notice are correct so long as they are
4 consistent with the Class Data. The Administrator's determination of each Class Member's
5 allocation of Pay Periods and/or Pay Periods shall be final and not appealable or otherwise
6 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
7 calculation of Pay Periods and/or Pay Periods to Defense Counsel and Class Counsel and the
Administrator's determination the challenges.

8 8.7 Objections to Settlement.

9 8.7.1 Only Participating Class Members may object to the class action
10 components of the Settlement and/or this Agreement, including contesting the fairness of the
11 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
Litigation Expenses Payment and/or Class Representative Service Payment.

12 8.7.2 Participating Class Members may send written objections to the
13 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
14 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
15 Hearing. A Participating Class Member who elects to send a written objection to the
16 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

17 8.7.3 Non-Participating Class Members have no right to object to any of the class
18 action components of the Settlement.

19 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
20 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

21 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
22 establish and maintain and use an internet website to post information of interest to Class
23 Members including the date, time and location for the Final Approval Hearing and copies of the
24 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
25 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
26 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
27 Approval and the Judgment. The Administrator will also maintain and monitor an email address
and a toll-free telephone number to receive Class Member calls, faxes and emails.

1 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
2 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
3 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
4 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
5 and other identifying information of Class Members who have timely submitted valid Requests
6 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
7 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
8 Exclusion from Settlement submitted (whether valid or invalid).

9 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
10 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
11 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
12 Exclusion (whether valid or invalid) received, objections received, challenges to Pay Periods
13 and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments
14 and Individual PAGA payments (“Weekly Report”). The Weekly Reports must include provide
15 the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all
16 Requests for Exclusion and objections received.

17 8.8.4 Pay Period Challenges. The Administrator has the authority to address and
18 make final decisions consistent with the terms of this Agreement on all Class Member challenges
19 over the calculation of Pay Periods and/or Pay Periods. The Administrator’s decision shall be
20 final and not appealable or otherwise susceptible to challenge.

21 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
22 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
23 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
24 for filing in Court attesting to its due diligence and compliance with all of its obligations under
25 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
26 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
27 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
28 number of written objections and attach the Exclusion List. The Administrator will supplement
its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
for filing the Administrator’s declaration(s) in Court.

 8.8.6 Final Report by Administrator. Within 10 days after the Administrator

1 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
2 and Defense Counsel with a final report detailing its disbursements by employee identification
3 number only of all payments made under this Agreement. At least 15 days before any deadline
4 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
5 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
6 payments required under this Agreement. Class Counsel is responsible for filing the
7 Administrator's declaration in Court.

8 **9. CLASS SIZE ESTIMATES.** Based on its records, Defendants estimate that, as of the
9 date of this Settlement Agreement, (1) there are 2,822 Class Members and 22,948 Total Pay
10 Periods during the Class period and (2) there were 1,605 Aggrieved Employees who worked
11 17,500 Pay Periods during the PAGA Period.

12 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
13 Exclusion identified in the Exclusion List that have been timely and validly filed to opt out of the
14 Settlement exceeds 5.00% of the total of all Class Members prior to the date the Court enters final
15 approval of the Settlement or if the Court fails to approve material terms of the settlement,
16 including the scope of the release, Defendants have the right in their sole and exclusive discretion
17 to terminate and withdraw from the Settlement. The Parties agree that, if Defendants terminate
18 and withdraw from the Settlement, the Settlement shall be void ab initio, have no force or effect
19 whatsoever, and that neither Party will have any further obligation to perform under this
20 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
21 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
22 Court of its election to withdraw not later than 10 business days after the Administrator has
23 notified Defendants of a 5% or greater opt-out rate or the Court's denial of the settlement with
24 prejudice.

25 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
26 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
27 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
28 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for

Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

1 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
2 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
3 material modification of this Agreement (including, but not limited to, the scope of release to be
4 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
5 expeditiously work together in good faith to address the appellate court's concerns and to obtain
6 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
7 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
8 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
9 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
as long as the Gross Settlement Amount remains unchanged.

10 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
11 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
12 amended judgment.

13
14 **13. ADDITIONAL PROVISIONS.**

15 13.1 No Admission of Liability, Class Certification or Representative Manageability
16 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
17 claims. Nothing in this Agreement is intended or should be construed as an admission by
18 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
19 have any liability for any claims asserted; nor should it be intended or construed as an admission
20 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
21 certification and representative treatment is for purposes of this Settlement only. If, for any reason
22 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
23 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
24 available defenses to the claims in the Action, and Plaintiff reserve the right to move for class
25 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
26 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
Settlement and this Agreement).

27 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,

1 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
2 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
3 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
4 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
5 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
6 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
7 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
8 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
9 government agency.

10 Each Party agrees to immediately notify each other Party of any judicial or agency
11 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and
12 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
13 communication, before the filing of the Motion for Preliminary Approval, any with third party
14 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
15 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
16 communications with Class Members in accordance with Class Counsel's ethical obligations
17 owed to Class Members.

18 13.3 No Solicitation. The Parties separately agree that they and their respective
19 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
20 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
21 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
22 obligations owed to Class Members.

23 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
24 Agreement together with its attached exhibits shall constitute the entire agreement between the
25 Parties relating to the Settlement, superseding any and all oral representations, warranties,
26 covenants, or inducements made to or by any Party.

27 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
28 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
to effectuate its terms, and to execute any other documents reasonably required to effectuate the
terms of this Agreement including any amendments to this Agreement.

1 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
2 use their best efforts, in good faith, to implement the Settlement by, among other things,
3 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
4 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
5 the form or content of any document necessary to implement the Settlement, or on any
6 modification of the Agreement that may become necessary to implement the Settlement, the
Parties will seek the assistance of a mediator and/or the Court for resolution.

7 13.7 No Prior Assignments. The Parties separately represent and warrant that they
8 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
9 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
10 action, or right released and discharged by the Party in this Settlement.

11 13.8 No Tax Advice. Neither any Plaintiff, Class Counsel, Defendants nor Defense
12 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
13 Settlement be relied upon as such within the meaning of United States Treasury Department
Circular 230 (31 CFR Part 10, as amended) or otherwise.

14 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
15 amended, modified, changed, or waived only by an express written instrument signed by all
16 Parties or their representatives, and approved by the Court.

17 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
18 inure to the benefit of, the successors of each of the Parties.

19 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
20 be governed by and interpreted according to the internal laws of the state of California, without
regard to conflict of law principles.

21 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
22 preparation of this Agreement. This Agreement will not be construed against any Party on the
basis that the Party was the drafter or participated in the drafting.

23 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
24 entered during Action and in this Agreement relating to the confidentiality of information shall
25 survive the execution of this Agreement.

26 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
27 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class

1 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
2 connection with the Settlement, may be used only with respect to this Settlement, and no other
3 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
4 or rule of court. Not later than 90 days after the date when the Court discharges the
5 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
6 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
7 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
8 make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

9 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
10 is inserted for convenience of reference only and does not constitute a part of this Agreement.

11 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
12 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
13 weekend or federal legal holiday, such date or deadline shall be on the first business day
14 thereafter.

15 13.17 Notice. All notices, demands or other communications between the Parties in
16 connection with this Agreement will be in writing and deemed to have been duly given as of the
17 third business day after mailing by United States mail, or the day sent by email or messenger,
18 addressed as follows:

19 To Plaintiff:
20 DAVID G. SPIVAK
21 david@spivaklaw.com
22 THE SPIVAK LAW FIRM
23 8605 Santa Monica Bl
24 PMB 42554
25 West Hollywood, CA 90069
26 Telephone: (213) 725-9094
27 Facsimile: (213) 634-2485

28 WALTER L. HAINES
29 walter@uelglaw.com
30 UNITED EMPLOYEES LAW GROUP
31 4276 Katella Ave
32 Suite 301
33 Los Alamitos, CA 90720
34 Telephone: (562) 256-1047
35 Facsimile: (562) 256-1006

To Defendants:
Steven H. Bovarnick, Esq.
Leland, Parachini, Steinberg, Matzger & Melnick LLP
199 Fremont Street
21st Floor
San Francisco, CA 94105
SBovarnick@lpslaw.com

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 03 / 09 / 2023

By: 
ANTHONY SIKES

Dated: _____

By: _____
Bikram Singh Randhawa
CEO for Wing Dhaba, Inc., 2 Singhs
Have Wings, Inc., Dad's Sapna Inc.,
PKA Corporation, Wings For 2 Singhs
Inc., and as an individual

THE SPIVAK LAW FIRM

Dated: 03 / 09 / 2023

By: 
DAVID G. SPIVAK, Attorneys for
Plaintiff, ANTHONY SIKES, and all
others similarly situated

To Defendants:
Steven H. Bovarnick, Esq.
Leland, Parachini, Steinberg, Matzger & Melnick LLP
199 Fremont Street
21st Floor
San Francisco, CA 94105
SBovarnick@lpslaw.com

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: _____

By: _____
ANTHONY SIKES

Dated: 3/14/23

By: 
Bikram Singh Randhawa
CEO for Wing Dhaba, Inc., 2 Singhs
Have Wings, Inc., Dad's Sapna Inc.,
PKA Corporation, Wings For 2 Singhs
Inc., and as an individual

THE SPIVAK LAW FIRM

Dated: _____

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, ANTHONY SIKES, and all
others similarly situated

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UNITED EMPLOYEES LAW GROUP

Dated: March 8, 2023

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, ANTHONY SIKES, and all
others similarly situated

LELAND, PARACHINI, STEINBERG,
MATZGER & MELNICK LLP

Dated:

By: 
STEVEN H. BOVARNICK, Attorneys
for Defendants, Wing Dhaba, Inc., 2
Singhs Have Wings, Inc., Dad's Sapna
Inc., PKA Corporation, Wings For 2
Singhs Inc., and Bikramjit Singh
Randhawa

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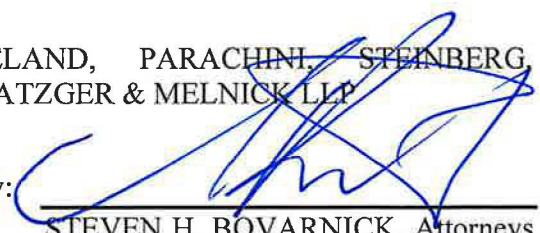
UNITED EMPLOYEES LAW GROUP

Dated: _____

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, ANTHONY SIKES, and all
others similarly situated

LELAND, PARACHINI, ~~STEINBERG~~
MATZGER & MELNICK LLP

Dated: 3/14/23

By:  _____
STEVEN H. BOVARNICK, Attorneys
for Defendants, Wing Dhaba, Inc., 2
Singhs Have Wings, Inc., Dad's Sapna
Inc., PKA Corporation, Wings For 2
Singhs Inc., and Bikramjit Singh
Randhawa

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EXHIBIT A

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

3 (Anthony Sikes on behalf of himself and all others similarly situated, etc v. Wing Dhaba, Inc., 2
4 Singhs Have Wings, Inc., Dad's Sapna, Inc., PKA Corporation, Wings For 2 Singhs, Inc.,
5 Bikramjit Singh Randhawa, Solano County Superior Court case number FCS054490)

6 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
7 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

8 **You may be eligible to receive money** from an employee class action lawsuit (“Action”) against Wing Dhaba, Inc., 2 Singhs Have Wings, Inc., Dad’s Sapna Inc., PKA Corporation, Wings For 2 Singhs Inc., and Bikramjit Singh Randhawa (collectively “Defendants”) for alleged wage and hour violations. The Action was filed by a former Wing Dhaba, Inc. employee, Anthony Sikes (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Defendants during the Class Period (March 5, 2016 to the date of preliminary approval of this Settlement); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly, non-exempt employees who worked for Defendants during the PAGA Period (February 15, 2019 to the date of preliminary approval of this Settlement) (“Aggrieved Employees”).

13 The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

16 Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$___ (less withholding) and your Individual PAGA payment is estimated to be \$___**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA payment, then according to Defendants’ records you are not eligible for an Individual PAGA payment under the Settlement because you didn’t work during the PAGA Period.)

20 The above estimates are based on Defendants’ records showing that **you worked ___ Pay Periods** during the Class Period and **you worked ___ Pay Periods** during the PAGA Period. If you believe that you worked more Pay Periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

23 The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and his attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is 	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Pay Period / Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and LWDA PAGA payment (if any) depend on how many Pay Periods you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Pay Periods and number of PAGA Period Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits.

1 In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to
2 resolve the Action by negotiating an end to the case by agreement (settle the case) rather than
3 continuing the expensive and time-consuming process of litigation. The negotiations were
4 successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to
5 jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff
and Defendants have negotiated a proposed Settlement that is subject to the Court's Final
Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By
agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

6 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
7 believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount
8 considering the strength of the claims and the risks and uncertainties of continued litigation; and
9 (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court
preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this
Notice, and scheduled a hearing to determine Final Approval.

10 If the number of valid Requests for Exclusion that have been timely and validly filed to opt out
11 of the Settlement exceeds 5.00% of the total of all Class Members prior to the date the Court
12 enters approval of the Settlement or if the Court fails to approve material terms of the settlement,
including the scope of the release, Defendants have the right in their sole and exclusive discretion
to terminate and withdraw from the Settlement.

13 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

14
15 1. Defendants Will Pay a total of \$2,000,000.00 as the Gross Settlement Amount
16 (Gross Settlement), inclusive of all amounts to be paid to Class Members, attorney fees, costs,
17 enhancement award to the named Plaintiff, PAGA penalties to both the California Labor and
18 Workforce Development Agency ("LWDA") and allegedly agreed employees and Settlement
19 Administration expenses. Under no circumstances will Defendants' settlement payment exceed
20 the Gross Settlement. Notwithstanding the foregoing, Defendants' share of any employer payroll
21 taxes and/or similar tax or charge – collectively "Employer Taxes" shall be paid by Defendants
22 in addition to the Gross Settlement owed on the Wage Portions of the Individual Class Payments.
23 Defendants have agreed to deposit the Gross Settlement into an account controlled by the
24 Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the
25 Individual Class Payments, Individual PAGA payments, Class Representative Service Payment,
26 Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be
27 paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the
Court grants Final Approval, Defendants will begin to fund the Gross Settlement as follows:
Within thirty (30) calendar days of the Effective Date, Defendants shall pay the amount of One
Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) of the Gross Settlement
Amount ("First Payment"). Defendants shall pay the amount of Fifty Thousand Dollars and No
Cents (\$50,000.00) no later than the first anniversary of the First Payment and Fifty Thousand
Dollars and No Cents (\$50,000.00) every 180 days Beginning within 365 days of the First
Payment deadline, Defendants shall \$50,000.00 every 180 days thereafter until the Gross

1 Settlement Amount is paid in full. (“Installment Payments”). The Administrator will make
2 distributions as follows:

3 **First Distribution.** Within fourteen (14) calendar days of the Effective Date, or
4 within ten (10) calendar days of the deadline for the First Payment (whichever is later), the
5 Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement Amount
6 Defendants paid by that date, including *pro rata* portions of the Individual Class Payments,
Individual PAGA Payments, LWDA PAGA payment, Class Representative Service Payment,
the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
Administrator’s expenses.

7 **Second Distribution.** Within ten (10) calendar days of the final Installment
8 Payment, the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross
9 Settlement Amount Defendants paid since the first distribution, including *pro rata* portions of
10 the Individual Class Payments, Individual PAGA Payments, LWDA PAGA payment, Class
Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
Expenses Payment, and the Administrator’s expenses.

11 2. In the event that the financial condition of Defendants is such that they are unable
12 to make any payment *after* the First Payment when due, fifteen (15) days before the due date of
13 such subsequent payment, counsel for Defendants will notify counsel for Plaintiff and discuss
14 extension of the due date, and if no agreement is reached, the parties will contact mediator Jeffrey
Owensby to mediate and resolve the issue. Defendants will cover Mr. Owensby’s fees for such
services.

15 3. Disbursements of the pro rata portions of the Class Counsel Fees Payment, the
16 Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall
17 not precede disbursement of pro rata portions of the Individual Class Payments and Individual
PAGA payments.

18 4. The Judgment will be final on the date the Court enters Judgment, or a later date
19 if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

20 5. Court Approved Deductions from Gross Settlement. At the Final Approval
21 Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions
22 from the Gross Settlement, the amounts of which will be decided by the Court at the Final
Approval Hearing:

23 A. Up to \$666,666.00 (33.33%) of the Gross Settlement to Class Counsel for
24 attorneys’ fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have
worked and incurred expenses on the Action without payment.

25 B. Up to \$30,000.00 as a Class Representative Award to Plaintiff for filing
26 the Action, working with Class Counsel and representing the Class. A Class Representative
27 Award will be the only monies Plaintiff will receive other than his Individual Class Payment and
any Individual PAGA payment.

1 C. Up to \$17,000.00 to the Administrator for services administering the
2 Settlement.

3 D. Up to \$100,000.00 for PAGA Penalties, allocated 75% to the LWDA
4 PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on
5 their PAGA Period Pay Periods.

6 Participating Class Members have the right to object to any of these deductions. The Court
7 will consider all objections.

8 6. Net Settlement Distributed to Class Members. After making the above deductions
9 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
10 Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class
11 Members based on their Class Period Pay Periods.

12 7. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
13 the Court to approve an allocation of 33.33% of each Individual Class Payment to alleged taxable
14 wages (“Wage Portion”), 33.33% to alleged unpaid interest and 33.33% to alleged unpaid civil
15 and statutory penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and
16 will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they
17 owe on the Wage Portion. The Individual PAGA payments are counted as penalties rather than
18 wages for tax purposes. The Administrator will report the Individual PAGA payments and the
19 Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

20 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
21 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
22 are responsible for paying all taxes (including penalties and interest on back taxes) on any
23 Payments received from the proposed Settlement. You should consult a tax advisor if you have
24 any questions about the tax consequences of the proposed Settlement.

25 8. Need to Promptly Cash Payment Checks. The front of every check issued for
26 Individual Class Payments and Individual PAGA payments will show the date when the check
27 expires (the void date). If you don’t cash it by the void date, your check will be automatically
28 cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property
Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property
Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

9. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
Administrator in writing, not later than sixty (60) days from the date the Settlement Administrator
mails notice to you that you wish to opt-out. The easiest way to notify the Administrator is to
send a written and signed Request for Exclusion by the ___ Response Deadline. The Request for
Exclusion should be a letter from a Class Member or his representative setting forth a Class

1 Member's name, present address, telephone number, and a simple statement electing to be
2 excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members)
3 will not receive Individual Class Payments, but will preserve their rights to personally pursue
4 wage and hour claims against Defendants.

4 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
5 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
6 Individual PAGA payments and are required to give up their right to assert PAGA claims against
7 Defendants based on the PAGA Period facts alleged in the Action.

7 10. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
8 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
9 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff
10 and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
11 pay any money and Class Members will not release any claims against Defendants.

10 11. Administrator. The Court has appointed a neutral company, Phoenix Settlement
11 Administrators (the "Administrator") to send this Notice, calculate and make payments, and
12 process Class Members' Requests for Exclusion. The Administrator will also decide Class
13 Member Challenges over Pay Periods, mail and re- mail settlement checks and tax forms, and
14 perform other tasks necessary to administer the Settlement. The Administrator's contact
15 information is contained in Section 9 of this Notice.

14 12. Participating Class Members' Release. After the Judgment is final and Defendants
15 have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
16 Participating Class Members will be legally barred from asserting any of the claims released under
17 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
18 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or
19 related entities for wages based on the Class Period facts and PAGA penalties based on PAGA
20 Period facts, as alleged in the Action and resolved by this Settlement.

19 The Participating Class Members will be bound by the following release:

20 All Participating Class Members, on behalf of themselves and their respective former and
21 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
22 release Released Parties from (i) all claims that were alleged, or reasonably could have
23 been alleged, based on the Class Period facts stated in the Operative Complaint and
24 ascertained in the course of the Action including failure to pay wages, failure to provide
25 meal periods, failure to authorize and permit rest periods, failure to issue proper wage
26 statements, failure to timely pay wages, failure to maintain required payroll records, and
27 related allegations. Except as set forth in Section 6.3 of the Settlement Agreement,
28 Participating Class Members do not release any other claims, including claims for vested
benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation, or claims
based on facts occurring outside the Class Period.

1 13. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and
2 Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes),
3 all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether
4 or not they exclude themselves from the Settlement. This means that all Aggrieved Employees,
5 including those who are Participating Class Members and those who opt-out of the Class
Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against
Defendants or their related entities based on the PAGA Period facts alleged in the Action and
resolved by this Settlement.

6 The Aggrieved Employees' Releases for Participating and Non-Participating Class
7 Members are as follows:

8 All Participating and Non-Participating Class Members who are Aggrieved Employees
9 are deemed to release, on behalf of themselves and their respective former and present
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
11 Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been
12 alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice
and ascertained in the course of the Action including failure to pay wages, failure to provide meal
periods, failure to authorize and permit rest periods, failure to issue proper wage statements,
failure to timely pay wages, failure to maintain required payroll records, and related allegations.

13 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

14 1. Individual Class Payments. The Administrator will calculate Individual Class
15 Payments by (a) dividing the Net Settlement Amount by the total number of Pay Periods worked
16 by all Participating Class Members, and (b) multiplying the result by the number of Pay Periods
worked by each individual Participating Class Member.

17 2. Individual PAGA Payments. The Administrator will calculate Individual PAGA
18 Payments by (a) dividing \$25,000.00 by the total number of PAGA Pay Periods worked by all
19 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
worked by each individual Aggrieved Employee.

20 3. Pay Period Challenges. The number of Class Pay Periods you worked during the
21 Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as
22 recorded in Defendants' records, are stated in the first page of this Notice. You have until ____ to
23 challenge the number of Pay Periods and/or Pay Periods credited to you. You can submit your
challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of
this Notice has the Administrator's contact information.

24 You need to support your challenge by sending copies of pay stubs or other records. The
25 Administrator will accept Defendants' calculation of Pay Periods and/or Pay Periods based on
26 Defendants' records as accurate unless you send copies of records containing contrary
27 information. You should send copies rather than originals because the documents will not be
returned to you. The Administrator will resolve Pay Period challenges based on your submission
and on input from Class Counsel (who will advocate on behalf of Participating Class Members)

1 and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise
2 challenge its final decision.

3 **5. HOW WILL I GET PAID?**

4 As describe above, there will be multiple distributions of the Gross Settlement Amount.

5 1. Participating Class Members. After the First Payment and after the final
6 Instalment Payment by Defendants, the Administrator will send, by U.S. mail, a pro rata check to
7 every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those
8 who also qualify as Aggrieved Employees. The single check will combine the Individual Class
9 Payment and the Individual PAGA Payment.

10 2. Non-Participating Class Members. After the First Payment and after the final
11 Instalment Payment by Defendants, the Administrator will send, by U.S. mail, a pro rata
12 Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class
13 Settlement (i.e., every Non-Participating Class Member).

14 **Your checks will be sent to the same address as this Notice. If you change your
15 address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has
16 the Administrator's contact information.**

17 **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

18 Submit a written and signed letter with your name, present address, telephone number,
19 and a simple statement that you do not want to participate in the Settlement. The Administrator
20 will exclude you based on any writing communicating your request be excluded. Be sure to
21 personally sign your request, identify the Action as *Anthony Sikes vs. Wing Dhaba, Inc.*, Solano
22 County Superior Court Case No. FCS054490, and include your identifying information (full name,
23 address, telephone number, approximate dates of employment, and social security number for
24 verification purposes). You must make the request yourself. If someone else makes the request
25 for you, it will not be valid. **The Administrator must be sent your request to be excluded by
26 ___, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

27 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

28 Only Participating Class Members have the right to object to the Settlement. Before deciding
whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to
approve. At least ___ days before the ___ Final Approval Hearing, Class Counsel and/or Plaintiff
will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons
why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service
Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation
expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award.
Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice)
will send you copies of these documents at no cost to you. You can also view them on the
Administrator's Website ([url](#)) or the Court's website ([url](#)).

1 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
2 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
3 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
4 Counsel or Plaintiff is too high or too low. **The deadline for sending written objections to the**
5 **Administrator is ____**. Be sure to tell the Administrator what you object to, why you object, and
6 any facts that support your objection. Make sure you identify the Action, *Anthony Sikes, et al. vs.*
7 *Wing Dhaba, Inc.*, Solano County Superior Court case no. FCS054490, and include your name,
8 current address, telephone number, and approximate dates of employment for Defendants and
9 sign the objection. Section 9 of this Notice has the Administrator's contact information.

10 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at
11 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready
12 to tell the Court what you object to, why you object, and any facts that support your objection.
13 See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval
14 Hearing.

15 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

16 You can, but don't have to, attend the Final Approval Hearing on ____ at (time) in Department 3
17 of the Solano County Superior Court, located at the Old Solano Courthouse, 580 Texas St.,
18 Fairfield, California 94533, the Honorable Judge Stephen Gizzi presiding. At the Hearing, the
19 judge will decide whether to grant Final Approval of the Settlement and how much of the Gross
20 Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite
21 comment from objectors, Class Counsel and Defense Counsel before making a decision. You can
22 attend (or hire a lawyer to attend) either personally or virtually via  (https://www. ____). Check
23 the Court's website for the most current information.

24 It's possible the Court will reschedule the Final Approval Hearing. You should check the
25 Administrator's website ____ beforehand or contact Class Counsel to verify the date and time of
26 the Final Approval Hearing.

27 **9. HOW CAN I GET MORE INFORMATION?**

28 The Agreement sets forth everything Defendants and Plaintiff has promised to do under the
proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send
an email to Class Counsel or the Administrator using the contact information listed below, or
consult the Superior Court website by going to (http://www. ____ .aspx) and entering the Case
Number for the Action, Case No. FCS054490. You can also make an appointment to personally
review court documents in the Clerk's Office at the Solano Superior Court - Old Solano
Courthouse by calling ____.

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
ABOUT THE SETTLEMENT.**

Class Counsel:

DAVID G. SPIVAK
david@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

WALTER L. HAINES
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Administrator:

Name of Company: _____
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

February 5, 2020

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

RE: *Anthony Sikes / Wing Dhaba, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Anthony Sikes (hereafter "Sikes") provides notice on behalf of himself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to crew members, cooks, preps, prep cooks, kitchen help, servers, line cooks, restaurant team members, restaurant workers, cashiers, shift leads, and similar positions (hereafter referred to as "Aggrieved Employees") by Wing Dhaba, Inc. doing business as Wingstop (hereafter, "Wingstop") of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, and 1198.

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

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

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

SPIVAKLAW.COM

Statement of Facts

Wingstop began to employ Sikes on February 27, 2017 as a non-exempt hourly cook at its restaurant in Vacaville, California. Sikes worked at Wingstop on and off (on one occasion resigning and later returning to work at Wingstop) from the time of his hire until August 28, 2019 when Sikes ended his employment. Additionally, within the 365-day period preceding this letter, Wingstop employed Sikes at the Wingstop in Fairfield (Solano County).

At the end of his most recent term of employment, Wingstop paid Sikes at an hourly rate of \$13.00. Wingstop issued wages to Sikes and the Aggrieved Employees on a biweekly basis. Wingstop ordinarily scheduled Sikes to work shifts of five to eight hours, five to six days per week.

At all relevant times, Wingstop failed to consistently provide Sikes and the Aggrieved Employees with a daily 30-minute off-duty meal period within the first five hours of work on shifts over five hours or a second daily meal period within the first ten hours of work on shifts over ten hours. Wingstop compelled Sikes and the Aggrieved Employees to work during their meal periods without pay performing tasks such as cooking food, prepping food, and serving food. While Sikes and the Aggrieved Employees were clocked out for meal periods, Wingstop required them to continue working because it had insufficient staff to operate its restaurants if one or more employees took duty free meal or rest periods. Furthermore, if Sikes and the Aggrieved Employees did not clock out for meal periods, the general managers, including Jimmy Moore, edited their time sheets to falsely show periods off the clock for at least 30 minutes. Wingstop also failed to pay Sikes and the Aggrieved Employees premium wages for those workdays it failed to provide them with one or more meal periods in compliance with California law.

At all relevant times, Wingstop failed to provide Sikes and the Aggrieved Employees with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major portion thereof. Wingstop compelled Sikes and the Aggrieved Employees to work during their rest breaks performing tasks such as cooking food, prepping food, and serving food. Wingstop also failed to

provide Sikes and the other Aggrieved Employees with a third rest period when they worked in excess of ten hours in a workday. Wingstop failed to pay Sikes and the Aggrieved Employees premium wages for days in which it failed to provide them with one or more rest periods under Labor Code § 226.7 and Wage Order No. 5.

Wingstop failed to pay Sikes and the Aggrieved Employees overtime for all hours over eight in a day and forty in a week. Instead, Wingstop paid Sikes and the Aggrieved Employees straight-time for all hours worked. Additionally, Sikes and the Aggrieved Employees incurred uncompensated overtime when Wingstop failed to provide them with an uninterrupted 30-minute meal period and required them to engage in work while off the clock. For instance, before Sikes and the Aggrieved Employees clocked in or after they clocked out, Wingstop required Sikes and the Aggrieved Employees to paint, power-wash the patio floor, and help on the floor with tasks such as food prep and getting orders out on-time. Moore and other managers instructed Sikes and the Aggrieved Employees to perform work before clocking in. Additionally, Moore instructed Sikes and other Aggrieved Employees to work entire shifts on their days off without clocking in. Wingstop failed to pay Sikes and the Aggrieved Employees for time worked off-the-clock.

Wingstop did not credit Sikes and the Aggrieved Employees with the hours worked off-the-clock or edited from their time sheets as described above. In connection with this, Wingstop failed to provide Sikes and the Aggrieved Employees with accurate wage statements because Wingstop did not state on the wage statements all hours Sikes and the Aggrieved Employees worked and all wages they earned, including, but not limited to minimum and overtime wages.

At all relevant times, upon resignation or termination, Wingstop failed to pay the wages earned and hours worked off-the-clock or edited from time sheets as described above.

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

- a) Wingstop failed to provide Sikes and other Aggrieved Employees with all rest breaks and meal periods;
- b) Wingstop failed to compensate Sikes and other Aggrieved Employees at one hour's pay for each day in which it failed to provide them with one or more meal periods required by law;
- c) Wingstop failed to compensate Sikes and other Aggrieved Employees at one hour's pay for each day in which it failed to provide them with one or more rest breaks required by law;
- d) Wingstop failed to compensate Sikes and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum wages and overtime wages;
- e) Wingstop failed to provide Sikes and the Aggrieved Employees with accurate wage statements;
- f) Wingstop failed to timely pay Sikes and the Aggrieved Employees all earned and unpaid wages during their employment at Wingstop and at the time such employment ended; and
- g) Wingstop failed to properly maintain payroll records showing the actual hours worked by Sikes and Aggrieved Employees.

Accordingly, Sikes now seeks civil penalties on behalf of himself and the Aggrieved Employees based on Wingstop's violations of the California Labor Code and the Wage Order.

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The Wage Order

“Wage Order 5” or “The Wage Order” applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order 5, § 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;

Wage Order 5, § 2(P) (emphasis added). At all relevant times during the applicable limitations period, Wingstop employed Sikes and the other Aggrieved Employees as crew members, cooks, preps, prep cooks, kitchen help, servers, line cooks, restaurant team members, restaurant workers, cashiers, shift leads, and comparable positions. Accordingly, Sikes and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

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

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

Meal Periods:

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

...

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

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

Rest Periods:

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

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Wingstop has intentionally and improperly failed to provide all duty-free rest breaks and/or meal periods to Sikes and the other Aggrieved Employees as required by law, including but not limited to, second meal periods on days they worked more than ten hours in a workday. Wingstop did not pay premium wages to Sikes and Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by law. Wingstop required Sikes and the Aggrieved Employees to work through their meal or rest periods due to insufficient staffing. In failing to do so, Wingstop violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Sikes seeks civil penalties on behalf of himself and other 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; and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

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

Under Labor Code § 1197, “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so

fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

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.

At all relevant times during the applicable limitations period, Wingstop

knowingly failed to compensate Sikes and the other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all hours in excess of 40 in a week, all in excess of eight in a day, and all for the 7th day worked in a workweek. Sikes and the Aggrieved Employees incurred uncompensated time at minimum wage or overtime when Wingstop permitted them to work without pay during periods clocked out for meals. Furthermore, if Sikes and the Aggrieved Employees did not clock out for meal periods because they were required to work through them, the general manager, Jimmy Moore, would edit their time sheets at the end of the pay period to show that Sikes and the Aggrieved Employees received their meal periods. Wingstop required Sikes and the Aggrieved Employees to work entire shifts off-the-clock as well as perform tasks such as paint, power-wash the patio floor, and help on the floor with tasks such as food prep and getting orders out on-time before clocking in and after clocking out. Wingstop failed to compensate Sikes and the Aggrieved Employees at one and one-half times their regular rate of pay for all hours over 8 in a day and 40 in a week.

Accordingly, Sikes seeks civil penalties on behalf of himself and other Aggrieved Employees 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;
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, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203, including “waiting time” penalties of up to thirty (30) days’ wages (penalties set by California Labor Code § 1197.1).

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the employee identification number or last four digits of his or her social security,
- 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.

As alleged herein, Wingstop failed to provide Sikes and the Aggrieved Employees all wages owed, including, but not limited to, all minimum and overtime wages at the legal rates of pay for all regular and overtime hours worked. As a result, Wingstop failed to properly itemize each employee's gross wages earned, net wages earned, and other requirements of California Labor Code § 226. As a result, Wingstop has violated California Labor Code § 226.

Accordingly, Sikes seeks civil penalties on behalf of himself 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).

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

California Labor Code §204 states that 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.

As alleged herein, Wingstop failed to provide Sikes and the Aggrieved Employees all wages owed, including, but not limited to, all minimum and overtime wages at the legal rates of pay for all regular and overtime hours worked. As a result, Wingstop failed to pay Sikes and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Wingstop has violated California Labor Code § 204. Because of Wingstop's failures to fully pay Sikes and the Aggrieved Employees within the

time periods set by California Labor Code § 204, Wingstop failed to timely pay all wages due during employment.

Accordingly, Sikes seeks civil penalties on behalf of himself 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.

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

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* 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. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By willfully failing to pay wages to Sikes and other Aggrieved Employees as set forth above, at the time of termination of employment, Wingstop is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of

himself and other Aggrieved Employees, Sikes seeks civil penalties from Wingstop as follows:

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

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid

to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

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

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

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

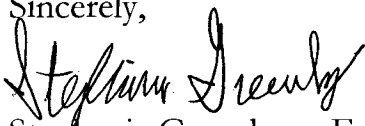
Wingstop has willfully failed to maintain the records required by § 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, all overtime hours worked, and all regular hours worked described above. Accordingly, Sikes seeks civil penalties from Wingstop on behalf of himself and other Aggrieved Employee as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



Stephanie Greenberg, Esq.
stephanie@spivaklaw.com

LWDA / Wing Dhaba, Inc.

2/5/2020

Page 18 of 18

cc: Anthony Sikes
David Spivak, Esq.
Walter Haines, Esq.

Wing Dhaba, Inc.
c/o Bikram Singh Randhawa
5287 Coach Drive
El Sobrante, CA 94803

EXHIBIT 3

ENDORSED FILED
Clerk of the Superior Court

MAR 5 2020

J. Abuog

By _____
DEPUTY CLERK

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ASSIGNED TO
Wendy G. Getty
JUDGE _____
FOR ALL PURPOSES

Attorney for Plaintiff,
ANTHONY SIKES, and all others similarly situated
(additional attorney listed on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO
(UNLIMITED JURISDICTION)

ANTHONY SIKES, on behalf of himself, and
all others similarly situated,

Case No.: **EC054490**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Compensate For All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*).

JURY TRIAL DEMANDED

Plaintiff(s),

vs.

WING DHABA, INC., a California corporation
doing business as WINGSTOP; and DOES 1
through 50, inclusive,

Defendant(s).



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff ANTHONY SIKES (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) and the
6 Business and Professions Code against defendants WING DHABA, INC., a California
7 corporation doing business as WINGSTOP; and DOES 1 through 50, inclusive (“Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him and other similarly situated current and former employees in California for unpaid wages and
10 other related relief. These claims are based on Defendants’ alleged failures to (1) provide all meal
11 periods, (2) provide all rest periods, (3) pay all wages for all hours worked, (4) issue accurate and
12 complete itemized wage statements, (5) timely pay final wages upon termination of employment,
13 and (6) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related
14 relief through this class action.

15 **JURISDICTION AND VENUE**

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

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

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

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

26 **PARTIES**

27 7. Plaintiff is an individual and a resident of Lake County, California.

28 8. Defendant WING DHABA, INC., doing business as WINGSTOP, is a corporation
organized under the laws of California and also a citizen of California based on Plaintiff’s
information and belief.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of



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

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

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

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

18 **CLASS ACTION ALLEGATIONS**

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

23 14. **Class Definition:** The class is defined as follows: All persons Defendants
24 employed in California as hourly employees including, but not limited to, crew members, cooks,
25 preps, prep cooks, kitchen help, servers, line cooks, restaurant team members, restaurant workers,
26 cashiers, shift leads, and comparable positions at any time during the period beginning four years
27 prior to the filing of this action and ending on the date that final judgment is entered in this action.

28 15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the



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right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

16. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical.

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

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked?

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

C. Whether Defendants failed to provide the Class Members with all meal periods as required by section 11 of the Wage Order?

D. Whether Defendants willfully failed to provide the class with timely final wages?

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

F. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate wage statements?

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

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

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



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1 behalf of Plaintiff and absent Class Members.

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

12 **STATEMENT OF FACTS**

13 22. Defendants began to employ Plaintiff on February 27, 2017 as a non-exempt
14 hourly cook at its restaurant in Vacaville, California. Plaintiff worked for Defendants from the
15 time of his hire until August 28, 2019 when Plaintiff ended his employment. During his
16 employment, Plaintiff resigned from his position with Defendants, but later returned to work for
17 Defendants. Defendants also employed Plaintiff at one of their locations in Fairfield (Solano
18 County).

19 23. At the end of his most recent term of employment, Defendants paid Plaintiff at an
20 hourly rate of \$13.00. At all relevant times, Defendants issued wages to Plaintiff and the Class
21 Members on a biweekly basis. Defendants ordinarily scheduled Plaintiff to work shifts of five to
22 eight hours, five to six days per week.

23 24. At all relevant times, Defendants failed to consistently provide Plaintiff and the
24 Class Members with a daily 30-minute off-duty meal period within the first five hours of work
25 on shifts over five hours or a second daily meal period within the first ten hours of work on shifts
26 over ten hours. Defendants compelled Plaintiff and the Class Members to work during their meal
27 periods without pay performing tasks such as cooking food, preparing food, and serving food.
28 While Plaintiff and the Class Members were clocked out for meal periods, Defendants required
them to continue working because they had insufficient staff to operate their restaurants if one or
more employees took duty free meal or rest periods. Furthermore, if Plaintiff and the Class
Members did not clock out for meal periods, the general managers, including Jimmy Moore,



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1 edited their time sheets to falsely show periods off-the-clock for at least 30 minutes. Defendants
2 also failed to pay Plaintiff and the Class Members premium wages for those workdays it failed to
3 provide them with one or more meal periods in compliance with California law.

4 25. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
5 with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major
6 portion thereof. Defendants compelled Plaintiff and the Class Members to work during their rest
7 breaks performing tasks such as cooking food, preparing food, and serving food. Defendants also
8 failed to provide Plaintiff and the Class Members with a third rest period when they worked in
9 excess of ten hours in a workday. Defendants failed to pay Plaintiff and the Class Members
10 premium wages for days in which it failed to provide them with one or more rest periods under
Labor Code § 226.7 and Wage Order No. 5.

11 26. Defendants failed to pay Plaintiff and the Class Members overtime for all hours
12 over eight in a day and forty in a week. Instead, Defendants paid Plaintiff and the Class Members
13 straight-time for all hours worked. Additionally, Plaintiff and the Class Members incurred
14 uncompensated overtime when Defendants failed to provide them with an uninterrupted 30-
15 minute meal period and required them to engage in work while off the clock. For instance, before
16 Plaintiff and the Class Members clocked in or after they clocked out, Defendants required Plaintiff
17 and the Class Members to paint, power-wash the patio floor, and assist coworkers with tasks such
as timely food preparation and orders.

18 27. Moore and other managers instructed Plaintiff and the Class Members to perform
19 work before clocking in. Additionally, Moore instructed Plaintiff and the Class Members to work
20 entire shifts on their days off without clocking in. Defendants failed to pay Plaintiff and the Class
21 Members for time worked off-the-clock.

22 28. Defendants did not credit Plaintiff and the Class Members with the hours worked
23 off-the-clock or edited their time sheets as described above. In connection with this, Defendants
24 failed to provide Plaintiff and the Class Members with accurate wage statements because
25 Defendants did not state on the wage statements all hours Plaintiff and the Class Members worked
and all wages they earned, including, but not limited to minimum and overtime wages.

26 29. At all relevant times, upon resignation or termination, Defendants failed to pay
27 unpaid wages in a timely manner. Defendants willfully failed and refused to pay timely
28 compensation and wages, for among other things, off-the-clock work and for the circumstances



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described above. Defendants willfully failed and refused to pay timely compensation and wages, for among other things, unpaid overtime and unpaid meal periods.

30. For the reasons stated herein, Plaintiff alleges the following violations of the California Labor Code and the Wage Order 5 on behalf of himself and the Class Members:

A. Defendants failed to provide Plaintiff and the Class Members with all rest breaks and meal periods;

B. Defendants failed to pay Plaintiff and the Class Members one hour's pay for each workday in which they failed to provide them with one or more rest breaks;

C. Defendants failed to pay Plaintiff and the Class Members one hour's pay for each workday in which they failed to provide them with one or more meal periods;

D. Defendants failed to pay Plaintiff and the Class for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;

E. Defendants also failed to timely pay Plaintiff and the Class Members all earned wages during employment and at the time of separation from employment; and

F. Defendants failed to provide Plaintiff and the Class Members with accurate wage statements.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class Members against all Defendants)

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

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

33. 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.



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

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

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

13 **Meal Period**

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

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

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

34 37. During the relevant time period, Defendants failed to provide Plaintiff with all
35 required meal periods in accordance with California Labor Code § 512 and the Wage Order,
36 including, but not limited to, a 30-minute uninterrupted meal periods on workdays he worked



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1 more than five hours in a workday. Plaintiff is informed and believes and thereon alleges that, at
2 relevant times within the applicable limitations period, Defendants maintained a policy, practice,
3 or a lack of a policy which resulted in Defendants not providing the Class Members with all meal
4 periods required by California Labor Code § 512 and the Wage Order, including, but not limited
5 to, a 30-minute uninterrupted meal period on workdays they worked more than five hours in a
workday.

6 38. At all relevant times, Defendants failed to consistently provide Plaintiff and the
7 Class Members with a daily 30-minute off-duty meal period within the first five hours of work
8 on shifts over five hours or a second daily meal period within the first ten hours of work on shifts
9 over ten hours. Defendants compelled Plaintiff and the Class Members to work during their meal
10 periods without pay performing tasks such as cooking food, preparing food, and serving food.
11 While Plaintiff and the Class Members were clocked out for meal periods, Defendants required
12 them to continue working because they had insufficient staff to operate their restaurants if one or
13 more employees took duty free meal or rest periods. Furthermore, if Plaintiff and the Class
14 Members did not clock out for meal periods, the general managers, including Jimmy Moore,
edited their time sheets to falsely show periods off-the-clock for at least 30 minutes.

15 39. Defendants failed to pay Plaintiff the additional wages required by California
16 Labor Code § 226.7 for all meal periods not provided to him. Plaintiff is informed and believes
17 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
18 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
19 providing the Class Members with additional wages for all meal periods not provided to them as
20 required by California Labor Code § 226.7.

21 40. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
22 suffered damages in amounts subject to proof to the extent they were not paid additional wages
23 owed for all meal periods not provided to them.

24 41. By reason of the above, Plaintiff and the Class Members are entitled to premium
25 wages for workdays in which one or more meal periods were not provided to them pursuant to
California Labor Code § 226.7.

26 ///

27 ///

28 ///



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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS
(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class Members against all Defendants)

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

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

44. 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.

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

Rest Period

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 (3½) 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.

46. “[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.

47. In addition, Labor Code Section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or



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1 applicable regulation, standard, or order of the Industrial Welfare
2 Commission, the Occupational Safety and Health Standards Board, or the
Division of Occupational Safety and Health.

3 (c) If an employer fails to provide an employee a meal or rest or
4 recovery period in accordance with a state law, including, but not limited
5 to, an applicable statute or applicable regulation, standard, or order of the
6 Industrial Welfare Commission, the Occupational Safety and Health
7 Standards Board, or the Division of Occupational Safety and Health, the
8 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.

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

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

16 50. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
17 with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major
18 portion thereof. Defendants compelled Plaintiff and the Class Members to work during their rest
19 breaks performing tasks such as cooking food, preparing food, and serving food. Defendants also
20 failed to provide Plaintiff and the Class Members with a third rest period when they worked in
excess of ten hours in a workday.

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

27 52. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
28 suffered damages in amounts subject to proof to the extent they were not paid additional wages



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owed for all rest breaks not provided to them.

53. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more rest breaks were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1194.2, 1197, and 1198)

(By Plaintiff and the Class Members against all Defendants)

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

55. At all relevant times during the applicable limitations period, Plaintiff and the Class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 1194, 1197, and 1198, and the Wage Order.

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

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

58. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

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

60. Labor Code § 1197 makes it unlawful for an employer to pay an employee less



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

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

5 62. In relevant part, Section 4 of the Wage Order states:

6 **Minimum Wage**

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

9 (1) Any employer who employs 26 or more employees shall pay to
10 each employee wages not less than the following:

11 (a) Ten dollars and fifty cents (\$10.50) per hour for all hours worked,
12 effective January 1, 2017; and

13 (b) Eleven dollars (\$11.00) per hour for all hours worked, effective
14 January 1, 2018.

15 (2) Any employer who employs 25 or fewer employees shall pay to
16 each employee wages not less than the following:

17 (a) Ten dollars (\$10.00) per hour for all hours worked, effective January
18 1, 2016 through December 31, 2017; and

19 (b) Ten dollars and fifty cents (\$10.50) per hour for all hours worked,
20 effective January 1, 2018.

21 ...

22 (B) Every employer shall pay to each employee, on the established
23 payday for the period involved, not less than the applicable minimum
24 wage for all hours worked in the payroll period, whether the remuneration
25 is measured by time, piece, commission, or otherwise.”

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

64. At all relevant times, Defendants compensated Plaintiff and the other Class
Members with an hourly rate of pay on a biweekly basis.

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

66. At all relevant times, Defendants failed to compensate Plaintiff and the other Class
Members at premium overtime rates of one and one-half times (1½ x) their regular rates of pay



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1 for hours they worked in excess of eight in a day, 40 hours in a week, and on the 7th day of the
2 workweek.

3 67. Defendants failed to pay Plaintiff and the Class Members overtime for all hours
4 over eight in a day and forty in a week. Instead, Defendants paid Plaintiff and the Class Members
5 straight-time for all hours worked. Additionally, Plaintiff and the Class Members incurred
6 uncompensated overtime when Defendants failed to provide them with an uninterrupted 30-
7 minute meal period and required them to engage in work while off the clock. For instance, before
8 Plaintiff and the Class Members clocked in or after they clocked out, Defendants required Plaintiff
9 and the Class Members to paint, power-wash the patio floor, and help on the floor with tasks such
10 as food preparation and getting orders out on-time. Moore and other managers instructed Plaintiff
11 and the Class Members to perform work before clocking in. Additionally, Moore instructed
12 Plaintiff and the Class Members to work entire shifts on their days off without clocking in.
13 Defendants failed to pay Plaintiff and the Class Members for time worked off-the-clock.
14 Defendants did not credit Plaintiff and the Class Members with the hours worked off-the-clock
15 or edited their time sheets as described above.

16 68. Defendants did not pay Plaintiff and the other Class Members minimum, regular
17 or overtime wages for the work they required or permitted them to perform during off-the-clock
18 meal periods, before clocking in, and after clocking out. At all relevant times, Defendants failed
19 to pay all overtime compensation to Plaintiff and the other Class Members for hours worked in
20 excess of eight hours per day. Defendants also failed to pay all overtime compensation to Plaintiff
21 and the other Class Members for hours worked in excess of 40 hours per week.

22 69. Plaintiff is informed and believes and thereon alleges that, at relevant times,
23 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
24 failure to compensate the Plaintiff and the other Class Members for all hours worked.

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

28 71. As a result of Defendants' conduct, Plaintiff, on behalf of himself and the Class,
seeks damages and/or restitution for all earned wages which Defendants failed to pay them at the
correct rates of pay, interest thereon, costs of suit and reasonable attorney's fees pursuant to
California Labor Code § 1194.



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72. In addition, pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and the Class, seeks to recover unpaid hourly and minimum wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class Members against all Defendants)

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

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

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

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

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

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



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

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

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

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

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

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

22 81. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate wage
24 statements were violated and they were misled about the amount of wages they had actually
25 earned and were owed. In addition, the absence of accurate information on their wage statements
26 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
27 and mathematical computations to determine the amounts of wages owed, has caused difficulty
28 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
inaccurate information about wages to state and federal government agencies. Further, Plaintiff
and the Class Members were not able to ascertain from the wage statements whether Defendants
complied with their obligations under California Labor Code § 226(a).



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

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

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

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

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

86. Labor Code section 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.

87. By failing to pay all earned minimum, regular, and overtime wages to Plaintiff and the Class as described above, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code section 201 or 202.

88. Labor Code section 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code section 201 or 202. Defendants willfully failed and refused to pay timely compensation and wages, for among other things, off-the-clock work and for the circumstances described above. Defendants willfully failed and refused to pay timely compensation and wages, for among other things, unpaid overtime and unpaid meal periods.

89. Plaintiff is informed and believes that Defendants' failures to timely pay



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1 Plaintiff and the class all of their earned and unpaid wages have been willful in that, at all
2 relevant times, Defendants have deliberately maintained policies and practices that violate the
3 requirements of the Labor Code and the Wage Order even though, at all relevant times, they
4 have had the ability to comply with those legal requirements.

5 90. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on
6 behalf of himself and the Class Members, in amounts subject to proof not to exceed 30 days of
7 waiting time penalties for each class member.

8 **SIXTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

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

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

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

13 92. At all relevant times during the applicable limitations period, Plaintiff and the
14 Class Members have been employees of Defendants and entitled to the benefits and protections
15 of the Business and Professions Code §§ 17200, *et seq.*

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

21 94. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
22 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
23 Members were deprived of wages for all hours worked and for all rest and meal periods not
24 provided to them and unpaid wages.

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

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



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PRAYER FOR RELIEF

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

- A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages, including overtime and double-time wages;
- E. Premium wages;
- F. Statutory penalties;
- G. Declaratory relief;
- H. Actual damages;
- I. Restitution;
- J. Pre-judgment interest;
- K. Costs of suit;
- L. Reasonable attorneys' fees; and
- M. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 5, 2020

By

DAVID SPIVAK

CAROLINE TAHMASSIAN

Attorneys for Plaintiff, ANTHONY SIKES, and
all others similarly situated



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EXHIBIT 4

COPY

ENDORSED FILED
Clerk of the Superior Court

MAR 09 2022

J. SAPP-CHUN

By _____
DEPUTY CLERK

*received
2/24/22*

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
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4 8605 Santa Monica Blvd., PMB 42554
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5 Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorney for Plaintiff,
8 ANTHONY SIKES, and all others similarly situated
(additional attorneys listed on next page)

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

11 **COUNTY OF SOLANO**
12 **(UNLIMITED JURISDICTION)**

13 ANTHONY SIKES, on behalf of himself, and
14 all others similarly situated, and as an
15 "aggrieved employee" on behalf of other
"aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

16
17 *Plaintiff(s),*

18 vs.

19 WING DHABA, INC., a California corporation
20 doing business as WINGSTOP; 2 SINGHS
21 HAVE WINGS, INC., a California corporation;
22 DAD'S SAPNA INC., a California corporation;
23 PKA CORPORATION, a California
corporation; WINGS FOR 2 SINGHS INC, a
24 California corporation; BIKRAMJIT SINGH
RANDHAWA, an individual, and DOES 6
through 50, inclusive,

25 *Defendant(s).*

Case No.: FCS054490

CLASS ACTION

**[PROPOSED] THIRD AMENDED
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 558.1, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7, 558.1, 1198);
3. Failure to Compensate For All Hours Worked (Lab. Code §§ 510, 558.1, 1194, 1197, and 1198);
4. Wage Statement Penalties (Lab. Code § 226 and 558.1);
5. Waiting Time Penalties (Lab. Code §§ 201-203 and 558.1);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED

BY FAX

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
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1 Plaintiff ANTHONY SIKES (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendants WING DHABA, INC.,
7 a California corporation doing business as WINGSTOP; 2 SINGHS HAVE WINGS, INC., a
8 California corporation; DAD’S SAPNA INC., a California corporation; PKA CORPORATION,
9 a California corporation; WINGS FOR 2 SINGHS INC, a California corporation; BIKRAMJIT
10 SINGH RANDHAWA, an individual; and DOES 6 through 50, inclusive (“Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 him and other similarly situated current and former employees in California for unpaid wages and
13 other related relief. These claims are based on Defendants’ alleged failures to (1) provide all meal
14 periods, (2) provide all rest periods, (3) pay all wages for all hours worked, (4) issue accurate and
15 complete itemized wage statements, (5) timely pay final wages upon termination of employment,
16 and (6) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related
17 relief through this class action.

18 JURISDICTION AND VENUE

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

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

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

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



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PARTIES

7. Plaintiff is an individual and a resident of Lake County, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

8. Defendant WING DHABA, INC., doing business as WINGSTOP, is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

9. Defendant 2 SINGHS HAVE WINGS, INC. is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

10. Defendant DAD’S SAPNA INC. is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

11. Defendant PKA CORPORATION is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

12. Defendant WINGS FOR 2 SINGHS INC is a corporation organized under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

13. Defendant BIKRAMJIT SINGH RANDHAWA, an individual doing business as WING DHABA, INC. doing business as WINGSTOP, 2 SINGHS HAVE WINGS, INC., DAD’S SAPNA INC., PKA CORPORATION, and WINGS FOR 2 SINGHS INC, is a natural person and also a citizen of California and a resident of El Sobrante (Contra Costa County) based on Plaintiff’s information and belief.

14. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 6-50, 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.

15. 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



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1 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
2 and scope of such agency or employment, and with the approval and ratification of each of the
3 other Defendants.

4 16. At all relevant times, in perpetrating the acts and omissions alleged herein,
5 defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
6 of a practice which resulted in Defendants not paying Plaintiff and other members of the below-
7 described class in accordance with applicable California labor laws as alleged herein.

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

13 **CLASS ACTION ALLEGATIONS**

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

19 19. **Class Definition:** The class is defined as follows: All persons Defendants
20 employed in California as non-exempt, hourly employees including, but not limited to, crew
21 members, cooks, preps, prep cooks, kitchen help, servers, line cooks, restaurant team members,
22 restaurant workers, cashiers, shift leads, and comparable positions at any time during the period
23 beginning four years prior to the filing of this action and ending on the date that final judgment
24 is entered in this action.

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

28 21. **Numerosity:** The Class Members are so numerous that the individual joinder of



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each individual Class Member is impractical.

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

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked?

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

C. Whether Defendants failed to provide the Class Members with all meal periods as required by section 11 of the Wage Order?

D. Whether Defendants willfully failed to provide the class with timely final wages?

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

F. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate wage statements?

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

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

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



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1 them to continue working because they had insufficient staff to operate their restaurants if one or
2 more employees took duty free meal or rest periods. Furthermore, if Plaintiff and the Class
3 Members did not clock out for meal periods, the general managers, including Jimmy Moore,
4 edited their time sheets to falsely show periods off-the-clock for at least 30 minutes. Defendants
5 also failed to pay Plaintiff and the Class Members premium wages for those workdays it failed to
6 provide them with one or more meal periods in compliance with California law.

7 30. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
8 with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major
9 portion thereof. Defendants compelled Plaintiff and the Class Members to work during their rest
10 breaks performing tasks such as cooking food, preparing food, and serving food. Defendants also
11 failed to provide Plaintiff and the Class Members with a third rest period when they worked in
12 excess of ten hours in a workday. Defendants failed to pay Plaintiff and the Class Members
13 premium wages for days in which it failed to provide them with one or more rest periods under
14 Labor Code § 226.7 and Wage Order No. 5.

15 31. Defendants failed to pay Plaintiff and the Class Members overtime for all hours
16 over eight in a day and forty in a week. Instead, Defendants paid Plaintiff and the Class Members
17 straight-time for all hours worked. Additionally, Plaintiff and the Class Members incurred
18 uncompensated overtime when Defendants failed to provide them with an uninterrupted 30-
19 minute meal period and required them to engage in work while off the clock. For instance, before
20 Plaintiff and the Class Members clocked in or after they clocked out, Defendants required Plaintiff
21 and the Class Members to paint, power-wash the patio floor, and assist coworkers with tasks such
22 as timely food preparation and orders.

23 32. Moore and other managers instructed Plaintiff and the Class Members to perform
24 work before clocking in. Additionally, Moore instructed Plaintiff and the Class Members to work
25 entire shifts on their days off without clocking in. Defendants failed to pay Plaintiff and the Class
26 Members for time worked off-the-clock.

27 33. Defendants did not credit Plaintiff and the Class Members with the hours worked
28 off-the-clock or edited their time sheets as described above. In connection with this, Defendants



1 failed to provide Plaintiff and the Class Members with accurate wage statements because
2 Defendants did not state on the wage statements all hours Plaintiff and the Class Members worked
3 and all wages they earned, including, but not limited to minimum and overtime wages.

4 34. At all relevant times, upon resignation or termination, Defendants failed to pay
5 unpaid wages in a timely manner. Defendants willfully failed and refused to pay timely
6 compensation and wages, for among other things, off-the-clock work and for the circumstances
7 described above. Defendants willfully failed and refused to pay timely compensation and wages,
8 for among other things, unpaid overtime and unpaid meal periods.

9 35. In relevant part, Labor Code section 558.1 states:

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

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

22 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
23 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
24 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
25 directly or indirectly, or through an agent or other person, employed and exercised control over
26 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
27 the Labor Code and the Wage Order described above. Therefore, he is liable to Plaintiff and the
28 Class for his violations of, or causing Defendants to violate the Labor Code and the Wage Order
pursuant to Labor Code section 558.1. On behalf of himself and all of the other Class Members,
Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated



1 damages, attorneys' fees, costs, and related relief against Defendant Bikramjit Singh Randhawa
2 that is the same as the award of against the other Defendants on the same grounds for which
3 Plaintiff seeks against the Defendants.

4 36. or the reasons stated herein, Plaintiff alleges the following violations of the
5 California Labor Code and the Wage Order 5 on behalf of himself and the Class Members:

6 A. Defendants failed to provide Plaintiff and the Class Members with all rest
7 breaks and meal periods;

8 B. Defendants failed to pay Plaintiff and the Class Members one hour's pay
9 for each workday in which they failed to provide them with one or more rest breaks;

10 C. Defendants failed to pay Plaintiff and the Class Members one hour's pay
11 for each workday in which they failed to provide them with one or more meal periods;

12 D. Defendants failed to pay Plaintiff and the Class for all hours worked at the
13 correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock
14 work;

15 E. Defendants also failed to timely pay Plaintiff and the Class Members all
16 earned wages during employment and at the time of separation from employment; and

17 F. Defendants failed to provide Plaintiff and the Class Members with accurate
18 wage statements.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

27 39. Labor Code § 1198 states:



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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.

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

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

Meal Period

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

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

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



1 also entitled to a second 30-minute meal period when they worked more than 10 hours in a
2 workday.

3 43. During the relevant time period, Defendants failed to provide Plaintiff with all
4 required meal periods in accordance with California Labor Code § 512 and the Wage Order,
5 including, but not limited to, a 30-minute uninterrupted meal periods on workdays he worked
6 more than five hours in a workday. Plaintiff is informed and believes and thereon alleges that, at
7 relevant times within the applicable limitations period, Defendants maintained a policy, practice,
8 or a lack of a policy which resulted in Defendants not providing the Class Members with all meal
9 periods required by California Labor Code § 512 and the Wage Order, including, but not limited
10 to, a 30-minute uninterrupted meal period on workdays they worked more than five hours in a
11 workday.

12 44. At all relevant times, Defendants failed to consistently provide Plaintiff and the
13 Class Members with a daily 30-minute off-duty meal period within the first five hours of work
14 on shifts over five hours or a second daily meal period within the first ten hours of work on shifts
15 over ten hours. Defendants compelled Plaintiff and the Class Members to work during their meal
16 periods without pay performing tasks such as cooking food, preparing food, and serving food.
17 While Plaintiff and the Class Members were clocked out for meal periods, Defendants required
18 them to continue working because they had insufficient staff to operate their restaurants if one or
19 more employees took duty free meal or rest periods. Furthermore, if Plaintiff and the Class
20 Members did not clock out for meal periods, the general managers, including Jimmy Moore,
21 edited their time sheets to falsely show periods off-the-clock for at least 30 minutes.

22 45. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for all meal periods not provided to him. Plaintiff is informed and believes
24 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
25 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
26 providing the Class Members with additional wages for all meal periods not provided to them as
27 required by California Labor Code § 226.7.

28 46. In relevant part, Labor Code section 558.1 states:



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

12 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
13 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
14 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
15 directly or indirectly, or through an agent or other person, employed and exercised control over
16 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
17 the Labor Code and the Wage Order described above.

18 47. At all relevant times, Plaintiff and the Class Members were employees of
19 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and
20 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
21 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
22 prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
23 the Class Members’ wages, hours, and working conditions. Further, Bikramjit Singh Randhawa
24 had the right to control and exercised such control over the manner in which Plaintiff and the
25 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
26 willfully failed to provide Plaintiff and Class Members all their meal periods and failed to pay
27 them for all premium wages. Bikramjit Singh Randhawa engaged in a pattern and/or practice of
28 doing so. Therefore, he is liable to Plaintiff and the Class for his violations of, or causing
29 Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.
30 On behalf of himself and all of the other Class Members, Plaintiff seeks an award of unpaid



1 wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and
2 related relief against Defendant Bikramjit Singh Randhawa that is the same as the award of against
3 the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

4 48. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
5 suffered damages in amounts subject to proof to the extent they were not paid additional wages
6 owed for all meal periods not provided to them.

7 49. By reason of the above, Plaintiff and the Class Members are entitled to premium
8 wages for workdays in which one or more meal periods were not provided to them pursuant to
9 California Labor Code § 226.7.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

18 52. Labor Code § 1198 states:

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

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

24 **Rest Period**

25 A) Every employer shall authorize and permit all employees to take
26 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 (3½) hours. Authorized rest period time shall be counted as hours



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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.

54. "[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.

55. In addition, Labor Code Section 226.7 states:

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

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

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

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

58. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major



1 portion thereof. Defendants compelled Plaintiff and the Class Members to work during their rest
2 breaks performing tasks such as cooking food, preparing food, and serving food. Defendants also
3 failed to provide Plaintiff and the Class Members with a third rest period when they worked in
4 excess of ten hours in a workday.

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

11 60. In relevant part, Labor Code section 558.1 states:

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

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

23 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
24 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
25 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
26 directly or indirectly, or through an agent or other person, employed and exercised control over
27 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
28 the Labor Code and the Wage Order described above.

29 61. At all relevant times, Plaintiff and the Class Members were employees of
30 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and



1 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
2 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
3 prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
4 the Class Members' wages, hours, and working conditions. Further, Bikramjit Singh Randhawa
5 had the right to control and exercised such control over the manner in which Plaintiff and the
6 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
7 willfully failed to permit or authorize Plaintiff and Class Members all their rest breaks and failed
8 to pay them for all premium wages. Bikramjit Singh Randhawa engaged in a pattern and/or
9 practice of doing so. Therefore, he is liable to Plaintiff and the Class for his violations of, or
10 causing Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section
11 558.1. On behalf of himself and all of the other Class Members, Plaintiff seeks an award of unpaid
12 wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and
13 related relief against Defendant Bikramjit Singh Randhawa that is the same as the award of against
14 the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

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

18 63. By reason of the above, Plaintiff and the Class Members are entitled to premium
19 wages for workdays in which one or more rest breaks were not provided to them pursuant to
20 California Labor Code § 226.7.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED**

23 **(Lab. Code §§ 510, 558.1, 1194, 1194.2, 1197, and 1198)**

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

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

26 65. At all relevant times during the applicable limitations period, Plaintiff and the
27 Class have been employees of Defendants and entitled to the benefits and protections of California
28 Labor Code §§ 1194, 1197, and 1198, and the Wage Order.



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

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

7 68. Labor Code section 510 states:

8 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
9 in one workday and any work in excess of 40 hours in any one workweek and the
10 first eight hours worked on the seventh day of work in any one workweek shall be
11 compensated at the rate of no less than one and one-half times the regular rate of
12 pay for an employee. Any work in excess of 12 hours in one day shall be
13 compensated at the rate of no less than twice the regular rate of pay for an
14 employee. In addition, any work in excess of eight hours on any seventh day of a
15 workweek shall be compensated at the rate of no less than twice the regular rate of
16 pay of an employee. Nothing in this section requires an employer to combine more
17 than one rate of overtime compensation in order to calculate the amount to be paid
18 to an employee for any hour of overtime work.

19 69. Labor Code section 1194 invalidates any agreement between an employer and an
20 employee to work for less than the minimum wage required under the applicable Wage Order.

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

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

26 72. In relevant part, Section 4 of the Wage Order states:

27 **Minimum Wage**

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

(1) Any employer who employs 26 or more employees shall pay to
each employee wages not less than the following:

(a) Ten dollars and fifty cents (\$10.50) per hour for all hours worked,
effective January 1, 2017; and



(b) Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018.

(2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following:

(a) Ten dollars (\$10.00) per hour for all hours worked, effective January 1, 2016 through December 31, 2017; and

(b) Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2018.

...

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

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

74. At all relevant times, Defendants compensated Plaintiff and the other Class Members with an hourly rate of pay on a biweekly basis.

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

76. At all relevant times, Defendants failed to compensate Plaintiff and the other Class Members at premium overtime rates of one and one-half times (1½ x) their regular rates of pay for hours they worked in excess of eight in a day, 40 hours in a week, and on the 7th day of the workweek.

77. Defendants failed to pay Plaintiff and the Class Members overtime for all hours over eight in a day and forty in a week. Instead, Defendants paid Plaintiff and the Class Members straight-time for all hours worked. Additionally, Plaintiff and the Class Members incurred uncompensated overtime when Defendants failed to provide them with an uninterrupted 30-minute meal period and required them to engage in work while off the clock. For instance, before Plaintiff and the Class Members clocked in or after they clocked out, Defendants required Plaintiff



1 and the Class Members to paint, power-wash the patio floor, and help on the floor with tasks such
2 as food preparation and getting orders out on-time. Moore and other managers instructed Plaintiff
3 and the Class Members to perform work before clocking in. Additionally, Moore instructed
4 Plaintiff and the Class Members to work entire shifts on their days off without clocking in.
5 Defendants failed to pay Plaintiff and the Class Members for time worked off-the-clock.
6 Defendants did not credit Plaintiff and the Class Members with the hours worked off-the-clock
7 or edited their time sheets as described above.

8 78. Defendants did not pay Plaintiff and the other Class Members minimum, regular
9 or overtime wages for the work they required or permitted them to perform during off-the-clock
10 meal periods, before clocking in, and after clocking out. At all relevant times, Defendants failed
11 to pay all overtime compensation to Plaintiff and the other Class Members for hours worked in
12 excess of eight hours per day. Defendants also failed to pay all overtime compensation to Plaintiff
13 and the other Class Members for hours worked in excess of 40 hours per week.

14 79. Plaintiff is informed and believes and thereon alleges that, at relevant times,
15 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
16 failure to compensate the Plaintiff and the other Class Members for all hours worked.

17 80. In relevant part, Labor Code section 558.1 states:

18 d. Any employer or other person acting on behalf of an employer,
19 who violates, or causes to be violated, any provision regulating
20 minimum wages or hours and days of work in any order of the
21 Industrial Welfare Commission, or violates, or causes to be
22 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
23 held liable as the employer for such violation.

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

26 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
27 of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the



1 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
2 directly or indirectly, or through an agent or other person, employed and exercised control over
3 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
4 the Labor Code and the Wage Order described above.

5 81. At all relevant times, Plaintiff and the Class Members were employees of
6 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and
7 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
8 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
9 prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
10 the Class Members' wages, hours, and working conditions. Further, Bikramjit Singh Randhawa
11 had the right to control and exercised such control over the manner in which Plaintiff and the
12 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
13 willfully failed to pay Plaintiff and Class Members for all hours worked at the correct rates of
14 pay. Bikramjit Singh Randhawa engaged in a pattern and/or practice of doing so. Therefore, he is
15 liable to Plaintiff and the Class for his violations of, or causing Defendants to violate the Labor
16 Code and the Wage Order pursuant to Labor Code section 558.1. On behalf of himself and all of
17 the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory
18 penalties, liquidated damages, attorneys' fees, costs, and related relief against Defendant
19 Bikramjit Singh Randhawa that is the same as the award of against the other Defendants on the
20 same grounds for which Plaintiff seeks against the Defendants.

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

24 83. As a result of Defendants' conduct, Plaintiff, on behalf of himself and the Class,
25 seeks damages and/or restitution for all earned wages which Defendants failed to pay them at the
26 correct rates of pay, interest thereon, costs of suit and reasonable attorney's fees pursuant to
27 California Labor Code § 1194.

28 84. In addition, pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and the



1 Class, seeks to recover unpaid hourly and minimum wages, liquidated damages in amounts equal
2 to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys'
3 fees, all in amounts subject to proof.

4 **FOURTH CAUSE OF ACTION**

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

6 **(Lab. Code §§ 226 and 558.1)**

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

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

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

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

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

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

28 A. The amount of the gross wages or net wages paid to the employee during



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1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226(a);

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

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

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

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

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

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

24 93. As a result of being provided with inaccurate wage statements by Defendants,
25 Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate wage
26 statements were violated and they were misled about the amount of wages they had actually
27 earned and were owed. In addition, the absence of accurate information on their wage statements
28 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery



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

6 94. In relevant part, Labor Code section 558.1 states:

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

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

19 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
20 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
21 Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
22 directly or indirectly, or through an agent or other person, employed and exercised control over
23 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
24 the Labor Code and the Wage Order described above.

25 95. At all relevant times, Plaintiff and the Class Members were employees of
26 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and
27 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
28 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
the Class Members’ wages, hours, and working conditions. Further, Bikramjit Singh Randhawa



1 had the right to control and exercised such control over the manner in which Plaintiff and the
2 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
3 willfully failed to provide Plaintiff and Class Members all their meal periods, failed to pay them
4 for all premium wages, and failed to pay them for all hours worked at the correct rates of pay.
5 Bikramjit Singh Randhawa engaged in a pattern and/or practice of doing so. Therefore, he is liable
6 to Plaintiff and the Class for his violations of, or causing Defendants to violate the Labor Code
7 and the Wage Order pursuant to Labor Code section 558.1. On behalf of himself and all of the
8 other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory
9 penalties, liquidated damages, attorneys' fees, costs, and related relief against Defendant
10 Bikramjit Singh Randhawa that is the same as the award of against the other Defendants on the
11 same grounds for which Plaintiff seeks against the Defendants.

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

18 **FIFTH CAUSE OF ACTION**

19 **WAITING TIME PENALTIES**

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

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

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

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

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

28 100. Labor Code section 202 provides that all earned and unpaid wages of an



1 employee who quits after providing at least 72-hours notice before quitting are due and payable
2 at the time of quitting and that all earned and unpaid wages of an employee who quits without
3 providing at least 72-hours notice before quitting are due and payable within 72 hours.

4 101. By failing to pay all earned minimum, regular, and overtime wages to Plaintiff
5 and the Class as described above, Defendants failed to timely pay them all earned and unpaid
6 wages in violation of Labor Code section 201 or 202.

7 102. Labor Code section 203 provides that the wages of an employee continue on a
8 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
9 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.
10 Defendants willfully failed and refused to pay timely compensation and wages, for among other
11 things, off-the-clock work and for the circumstances described above. Defendants willfully failed
12 and refused to pay timely compensation and wages, for among other things, unpaid overtime and
13 unpaid meal periods.

14 103. In relevant part, Labor Code section 558.1 states:

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

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

27 At all relevant times, Defendant Bikramjit Singh Randhawa was an employer of Plaintiff and all
28 of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
Defendants and the other employers identified above. Defendant Bikramjit Singh Randhawa
directly or indirectly, or through an agent or other person, employed and exercised control over



1 the wages, hours, and/or working conditions of the Class Members, and caused the violations to
2 the Labor Code and the Wage Order described above.

3 104. At all relevant times, Plaintiff and the Class Members were employees of
4 Defendant Bikramjit Singh Randhawa. Defendant Bikramjit Singh Randhawa engaged, and
5 suffered and permitted, Plaintiff and the Class Members to work. Bikramjit Singh Randhawa was
6 clearly aware that Plaintiff and the Class Members worked for the company and had the power to
7 prevent them from working. Bikramjit Singh Randhawa also exercised control over Plaintiff and
8 the Class Members' wages, hours, and working conditions. Further, Bikramjit Singh Randhawa
9 had the right to control and exercised such control over the manner in which Plaintiff and the
10 Class Members performed their work for Bikramjit Singh Randhawa. Bikramjit Singh Randhawa
11 willfully failed to provide Plaintiff and Class Members all their meal periods, failed to pay them
12 for all premium wages, and failed to pay them for all hours worked at the correct rates of pay.
13 Bikramjit Singh Randhawa engaged in a pattern and/or practice of doing so. Therefore, he is liable
14 to Plaintiff and the Class for his violations of, or causing Defendants to violate the Labor Code
15 and the Wage Order pursuant to Labor Code section 558.1. On behalf of himself and all of the
16 other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory
17 penalties, liquidated damages, attorneys' fees, costs, and related relief against Defendant
18 Bikramjit Singh Randhawa that is the same as the award of against the other Defendants on the
19 same grounds for which Plaintiff seeks against the Defendants.

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

25 106. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on
26 behalf of himself and the Class Members, in amounts subject to proof not to exceed 30 days of
27 waiting time penalties for each class member.

28 ///



1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

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

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

6 108. At all relevant times during the applicable limitations period, Plaintiff and the
7 Class Members have been employees of Defendants and entitled to the benefits and protections
8 of the Business and Professions Code §§ 17200, *et seq.*

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

14 110. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
15 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
16 Members were deprived of wages for all hours worked and for all rest and meal periods not
17 provided to them and unpaid wages.

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

22 112. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
23 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
24 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

25 **SEVENTH CAUSE OF ACTION**

26 **CIVIL PENALTIES**

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

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



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114. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning February 5, 2019 and ending on the date that final judgment is entered in this action.

115. Labor Code § 204 states

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

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

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

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

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

116. Defendants paid wages to employees on regular intervals. Defendants, however, 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.

117. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, and 1198.



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

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

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

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

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

D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

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

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and



1 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
2 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
3 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

4 120. Plaintiff has complied with the procedures for bringing suit specified in California
5 Labor Code § 2699.3. By letter dated February 5, 2020, Plaintiff filed written notice online with
6 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
7 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violations. A true and correct copy
9 of the notice to the LWDA dated February 5, 2020 is attached as Exhibit A. Plaintiff accompanied
10 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
11 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the
12 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
13 these allegations.

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

17 **PRAYER FOR RELIEF**

18 122. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
19 relief and judgment against Defendants as follows:

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

22 B. An order that Plaintiff be appointed class representative;

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

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

25 E. Premium wages;

26 F. Statutory penalties;

27 G. Civil penalties;

28 H. Declaratory relief;



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- I. Actual damages;
- J. Restitution;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 24, 2022

By 

DAVID SPIVAK
CAROLINE TAHMASSIAN
Attorneys for Plaintiff, ANTHONY SIKES, and
all others similarly situated



SPIVAK LAW
Employee Rights Attorneys

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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

February 5, 2020

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

RE: *Anthony Sikes / Wing Dhaba, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Anthony Sikes (hereafter "Sikes") provides notice on behalf of himself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to crew members, cooks, preps, prep cooks, kitchen help, servers, line cooks, restaurant team members, restaurant workers, cashiers, shift leads, and similar positions (hereafter referred to as "Aggrieved Employees") by Wing Dhaba, Inc. doing business as Wingstop (hereafter, "Wingstop") of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, and 1198.

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

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

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

SPIVAKLAW.COM

Statement of Facts

Wingstop began to employ Sikes on February 27, 2017 as a non-exempt hourly cook at its restaurant in Vacaville, California. Sikes worked at Wingstop on and off (on one occasion resigning and later returning to work at Wingstop) from the time of his hire until August 28, 2019 when Sikes ended his employment. Additionally, within the 365-day period preceding this letter, Wingstop employed Sikes at the Wingstop in Fairfield (Solano County).

At the end of his most recent term of employment, Wingstop paid Sikes at an hourly rate of \$13.00. Wingstop issued wages to Sikes and the Aggrieved Employees on a biweekly basis. Wingstop ordinarily scheduled Sikes to work shifts of five to eight hours, five to six days per week.

At all relevant times, Wingstop failed to consistently provide Sikes and the Aggrieved Employees with a daily 30-minute off-duty meal period within the first five hours of work on shifts over five hours or a second daily meal period within the first ten hours of work on shifts over ten hours. Wingstop compelled Sikes and the Aggrieved Employees to work during their meal periods without pay performing tasks such as cooking food, prepping food, and serving food. While Sikes and the Aggrieved Employees were clocked out for meal periods, Wingstop required them to continue working because it had insufficient staff to operate its restaurants if one or more employees took duty free meal or rest periods. Furthermore, if Sikes and the Aggrieved Employees did not clock out for meal periods, the general managers, including Jimmy Moore, edited their time sheets to falsely show periods off the clock for at least 30 minutes. Wingstop also failed to pay Sikes and the Aggrieved Employees premium wages for those workdays it failed to provide them with one or more meal periods in compliance with California law.

At all relevant times, Wingstop failed to provide Sikes and the Aggrieved Employees with paid, uninterrupted, duty-free 10-minute rest periods every four hours worked or major portion thereof. Wingstop compelled Sikes and the Aggrieved Employees to work during their rest breaks performing tasks such as cooking food, prepping food, and serving food. Wingstop also failed to

provide Sikes and the other Aggrieved Employees with a third rest period when they worked in excess of ten hours in a workday. Wingstop failed to pay Sikes and the Aggrieved Employees premium wages for days in which it failed to provide them with one or more rest periods under Labor Code § 226.7 and Wage Order No. 5.

Wingstop failed to pay Sikes and the Aggrieved Employees overtime for all hours over eight in a day and forty in a week. Instead, Wingstop paid Sikes and the Aggrieved Employees straight-time for all hours worked. Additionally, Sikes and the Aggrieved Employees incurred uncompensated overtime when Wingstop failed to provide them with an uninterrupted 30-minute meal period and required them to engage in work while off the clock. For instance, before Sikes and the Aggrieved Employees clocked in or after they clocked out, Wingstop required Sikes and the Aggrieved Employees to paint, power-wash the patio floor, and help on the floor with tasks such as food prep and getting orders out on-time. Moore and other managers instructed Sikes and the Aggrieved Employees to perform work before clocking in. Additionally, Moore instructed Sikes and other Aggrieved Employees to work entire shifts on their days off without clocking in. Wingstop failed to pay Sikes and the Aggrieved Employees for time worked off-the-clock.

Wingstop did not credit Sikes and the Aggrieved Employees with the hours worked off-the-clock or edited from their time sheets as described above. In connection with this, Wingstop failed to provide Sikes and the Aggrieved Employees with accurate wage statements because Wingstop did not state on the wage statements all hours Sikes and the Aggrieved Employees worked and all wages they earned, including, but not limited to minimum and overtime wages.

At all relevant times, upon resignation or termination, Wingstop failed to pay the wages earned and hours worked off-the-clock or edited from time sheets as described above.

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

- a) Wingstop failed to provide Sikes and other Aggrieved Employees with all rest breaks and meal periods;
- b) Wingstop failed to compensate Sikes and other Aggrieved Employees at one hour's pay for each day in which it failed to provide them with one or more meal periods required by law;
- c) Wingstop failed to compensate Sikes and other Aggrieved Employees at one hour's pay for each day in which it failed to provide them with one or more rest breaks required by law;
- d) Wingstop failed to compensate Sikes and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum wages and overtime wages;
- e) Wingstop failed to provide Sikes and the Aggrieved Employees with accurate wage statements;
- f) Wingstop failed to timely pay Sikes and the Aggrieved Employees all earned and unpaid wages during their employment at Wingstop and at the time such employment ended; and
- g) Wingstop failed to properly maintain payroll records showing the actual hours worked by Sikes and Aggrieved Employees.

Accordingly, Sikes now seeks civil penalties on behalf of himself and the Aggrieved Employees based on Wingstop's violations of the California Labor Code and the Wage Order.

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The Wage Order

“Wage Order 5” or “The Wage Order” applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order 5, § 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;

Wage Order 5, § 2(P) (emphasis added). At all relevant times during the applicable limitations period, Wingstop employed Sikes and the other Aggrieved Employees as crew members, cooks, preps, prep cooks, kitchen help, servers, line cooks, restaurant team members, restaurant workers, cashiers, shift leads, and comparable positions. Accordingly, Sikes and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

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

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

Meal Periods:

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

...

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

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

Rest Periods:

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

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Wingstop has intentionally and improperly failed to provide all duty-free rest breaks and/or meal periods to Sikes and the other Aggrieved Employees as required by law, including but not limited to, second meal periods on days they worked more than ten hours in a workday. Wingstop did not pay premium wages to Sikes and Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by law. Wingstop required Sikes and the Aggrieved Employees to work through their meal or rest periods due to insufficient staffing. In failing to do so, Wingstop violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Sikes seeks civil penalties on behalf of himself and other 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; and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

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

Under Labor Code § 1197, “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so

fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

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.

At all relevant times during the applicable limitations period, Wingstop

knowingly failed to compensate Sikes and the other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all hours in excess of 40 in a week, all in excess of eight in a day, and all for the 7th day worked in a workweek. Sikes and the Aggrieved Employees incurred uncompensated time at minimum wage or overtime when Wingstop permitted them to work without pay during periods clocked out for meals. Furthermore, if Sikes and the Aggrieved Employees did not clock out for meal periods because they were required to work through them, the general manager, Jimmy Moore, would edit their time sheets at the end of the pay period to show that Sikes and the Aggrieved Employees received their meal periods. Wingstop required Sikes and the Aggrieved Employees to work entire shifts off-the-clock as well as perform tasks such as paint, power-wash the patio floor, and help on the floor with tasks such as food prep and getting orders out on-time before clocking in and after clocking out. Wingstop failed to compensate Sikes and the Aggrieved Employees at one and one-half times their regular rate of pay for all hours over 8 in a day and 40 in a week.

Accordingly, Sikes seeks civil penalties on behalf of himself and other Aggrieved Employees 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;
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, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203, including “waiting time” penalties of up to thirty (30) days’ wages (penalties set by California Labor Code § 1197.1).

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the employee identification number or last four digits of his or her social security,
- 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.

As alleged herein, Wingstop failed to provide Sikes and the Aggrieved Employees all wages owed, including, but not limited to, all minimum and overtime wages at the legal rates of pay for all regular and overtime hours worked. As a result, Wingstop failed to properly itemize each employee's gross wages earned, net wages earned, and other requirements of California Labor Code § 226. As a result, Wingstop has violated California Labor Code § 226.

Accordingly, Sikes seeks civil penalties on behalf of himself 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).

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

California Labor Code §204 states that 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.

As alleged herein, Wingstop failed to provide Sikes and the Aggrieved Employees all wages owed, including, but not limited to, all minimum and overtime wages at the legal rates of pay for all regular and overtime hours worked. As a result, Wingstop failed to pay Sikes and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Wingstop has violated California Labor Code § 204. Because of Wingstop's failures to fully pay Sikes and the Aggrieved Employees within the

time periods set by California Labor Code § 204, Wingstop failed to timely pay all wages due during employment.

Accordingly, Sikes seeks civil penalties on behalf of himself 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.

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

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* 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. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By willfully failing to pay wages to Sikes and other Aggrieved Employees as set forth above, at the time of termination of employment, Wingstop is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of

himself and other Aggrieved Employees, Sikes seeks civil penalties from Wingstop as follows:

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

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid

to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

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

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

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

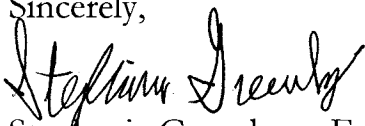
Wingstop has willfully failed to maintain the records required by § 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, all overtime hours worked, and all regular hours worked described above. Accordingly, Sikes seeks civil penalties from Wingstop on behalf of himself and other Aggrieved Employee as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



Stephanie Greenberg, Esq.
stephanie@spivaklaw.com

LWDA / Wing Dhaba, Inc.

2/5/2020

Page 18 of 18

cc: Anthony Sikes
David Spivak, Esq.
Walter Haines, Esq.

Wing Dhaba, Inc.
c/o Bikram Singh Randhawa
5287 Coach Drive
El Sobrante, CA 94803

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 15303 Ventura Blvd., Ste 900, Sherman Oaks, CA 91403.

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

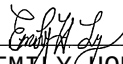
On Thursday, February 24, 2022, I served the foregoing document described as **[PROPOSED] THIRD AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Steven H. Bovarnick
Leland, Parachini, Steinberg, Matzger & Melnick LLP
199 Fremont Street, 21st Floor
San Francisco, CA 94105
SBovarnick@lpslaw.com
Rsahae@lpslaw.com

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

EXECUTED on Thursday, February 24, 2022, at Los Angeles, California.

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



EMILY HOUNG LY

EXHIBIT 5

STEVEN H. BOVARNICK (State Bar # 99361)
Sbovarnick@lpslaw.com

RAVI D. SAHAE (State Bar #276113)
Rsahae@lpslaw.com

LELAND, PARACHINI, STEINBERG,
MATZGER & MELNICK, LLP

199 Fremont Street - 21st Floor
San Francisco, California 94105

Telephone: (415) 957-1800
Facsimile: (415) 974-1520

Attorneys for Wing Dhaba, Inc.,
a California corporation doing
business as Wingstop

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

ANTHONY SIKES, on behalf of himself, and
all others similarly situated, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiffs,

vs.

WING DHABA, INC., a California
corporation doing business as WINGSTOP;
and DOES 1 through 50, inclusive,

Defendants.

Case No. FCS054490

**DEFENDANT WING DHABA INC. DBA
WINGSTOP'S ANSWER TO PLAINTIFF
ANTHONY SIKES' UNVERIFIED
SECOND AMENDED COMPLAINT FOR
CERTIFICATION OF CLASS, UNPAID
WAGES, PENALTIES, DECLARATORY
RELIEF, RESTITUTION AND CIVIL
PENALTIES**

Defendant WING DHABA, INC., a California corporation doing business as WINGSTOP,
("Wing Dhaba") hereby answers the unverified Second Amended Complaint for Certification of
Class, Unpaid Wages, Statutory Penalties, Declaratory Relief and Restitution ("Complaint") filed
by ANTHONY SIKES on behalf of himself and all others similarly situated ("Plaintiffs") as
follows:

GENERAL DENIAL

Pursuant to section 431.30(d) of the California Code of Civil Procedure, Wing Dhaba
denies, generally and specifically, each and every allegation in Plaintiffs' Complaint and each and

{RANDBI/0002/ANSW/01609542.DOCX}

DEFENDANT WING DHABA INC.'S ANSWER TO
PLAINTIFFS' UNVERIFIED SECOND AMENDED
COMPLAINT

every purported cause of action contained in the complaint. Wing Dhaba further denies that Plaintiffs have stated a cause or causes of action for legal or equitable relief of any nature whatsoever by reason of the allegations of Plaintiffs' Complaint. Wing Dhaba further denies that Plaintiffs are entitled to any legal and/or equitable relief whatsoever. Wing Dhaba further denies that Plaintiffs have suffered any damages, whatsoever, or entitled to statutory penalties or other forms of relief in any amount, whatsoever.

AFFIRMATIVE DEFENSES

Defendant asserts the following defenses to each and every cause of action alleged by Plaintiffs in their Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint and each of its causes of action, fails to allege facts sufficient to constitute a cause of action upon which relief may be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations, including, but not limited to, California Code of Civil Procedure sections 337, 338, 339, 340, 342 and 343, California Labor Code section 203(b), and California Business and Professions Code section 17203.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs lack standing to assert the claims for relief alleged in the complaint in this action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of laches due to the fact that Plaintiffs have unreasonably delayed bringing this action.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands because Plaintiffs' alleged bases for seeking legal and/or equitable relief were the result of Plaintiffs' own actions and/or inaction or the actions or inactions of others.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have waived any rights to relief asserted by the Complaint by their own conduct or inaction. Plaintiffs have waived the right, if any, to pursue the claims in the Complaint, and each of its causes of action, by reason of Plaintiffs own actions and course of conduct.

SEVENTH AFFIRMATIVE DEFENSE

Defendant's conduct was a just and proper exercise of managerial discretion, undertaken for fair and honest reasons, comporting with good faith under the circumstances then existing, and was privileged and justified. The Complaint, and each of its causes of action, is barred in whole or in part because Defendant had an honest, good-faith belief that all decisions with respect to Plaintiffs were made solely for legitimate, business-related reasons and were reasonably based upon the facts as Defendant understood them.

EIGHTH AFFIRMATIVE DEFENSE

Defendant alleges that its actions are justified by the doctrines of managerial prerogative and/or business necessity. This includes, but is not limited to, a managerial prerogative to establish work schedules for employees.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' monetary claims (backpay) are barred in whole or in part because Plaintiffs have neither appropriately nor adequately mitigated their damages.

TENTH AFFIRMATIVE DEFENSE

The Complaint, and each of its causes of action, is barred in whole or in part by the doctrine of avoidable consequences.

ELEVENTH AFFIRMATIVE DEFENSE

The Complaint, and each of its causes of action, is barred in whole or in part by the doctrine of estoppel.

TWELFTH AFFIRMATIVE DEFENSE

The Complaint, and each of its causes of action, is barred in whole or in part by the doctrines of *res judicata* and collateral estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint, and each of its causes of action, is barred in whole or in part because Plaintiffs did not satisfy or breached their statutory obligations as provided in the California Labor Code, including but not limited to California Labor Code sections 2854, 2856-2859, 2922, and 2924.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims based upon Defendant's alleged failure to provide meal or rest periods or pay the meal or rest period premiums are barred because Plaintiffs were provided meal and rest periods in accordance with the law; Plaintiffs were not required to work during any meal or rest period; and any failure by Plaintiffs to take a meal or rest period was due to their own election and not any act or omission by Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims based upon Defendant's alleged failure to provide meal or rest periods or pay the meal and rest period premiums are barred to the extent that Plaintiffs consented to the waiver of the meal or rest periods.

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs' claims based upon Defendant's alleged failure to pay overtime wages are, in turn, based upon Defendant's alleged failure to provide meal or rest periods or pay the meal or rest period premiums, Defendant incorporates its defenses to Plaintiffs' claims for failure to pay overtime wages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims based upon Defendant's alleged failure to pay overtime wages are barred because Plaintiffs were paid all wages owed to them, including overtime wages, in accordance with the law.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims based upon Defendant's alleged failure to pay overtime wages are barred because any work Plaintiffs performed over eight hours a day, forty hours a week, or on the

seventh consecutive day of work was *de minimis*.

NINETEENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs' claims based upon Defendant's alleged failure to render properly itemized wage statements are, in turn, based upon Defendant's alleged failure to provide meal or rest periods or pay the meal or rest period premiums; or Defendant's alleged failure to pay overtime wages; Defendant incorporates its defenses to Plaintiffs' claims for failure to render properly itemized wage statements.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims based upon Defendant's alleged failure to render properly itemized wage statements are barred because Defendant did not knowingly or intentionally fail to render properly itemized wage statements; and its failure, if any, to provide such wage statements was inadvertent or due to clerical error.

TWENTY-FIRST AFFIRMATIVE DEFENSE

To the extent plaintiff's claims based upon Defendant's alleged failure to pay wages on termination are, in turn, based upon Defendant's alleged failure to provide meal or rest periods or pay meal or rest period premiums; Defendant's alleged failure to pay overtime wages, or Defendant's alleged failure to render properly itemized wage statements, Defendant incorporates its defenses to Plaintiffs' claims for failure to pay wages upon termination.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims based upon Defendant's alleged failure to pay wages upon termination are barred because Defendant did not willfully fail to pay all final wages due upon termination.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims based upon Defendant's alleged failure to pay wages upon termination are barred because Defendant has a good-faith belief, based in fact and law, that no wages are due to Plaintiffs.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims based upon Defendant's alleged failure to pay wages upon termination are

1 barred because Plaintiffs secreted or absented themselves to avoid payment, or refused payment
2 when fully tendered.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 To the extent plaintiffs' claims for unfair business practices are, in turn, based on
5 Defendant's alleged failure to provide meal or rest periods or pay meal or rest period premiums;
6 Defendant's alleged failure to pay overtime wages; Defendant's alleged failure to render properly
7 itemized wage statements; or Defendant's alleged failure to pay wages on termination; Defendant
8 incorporates its defenses to these claims to Plaintiffs' claims for unfair business practices.

9 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

10 Plaintiffs are barred from recovering civil or statutory penalties based upon Defendant's
11 alleged failure to provide meal or rest periods or pay meal or rest premiums, Defendant's alleged
12 failure to pay overtime wages, failure to render properly itemized wage statements, or failure to
13 pay final wages on termination, because the unfair competition law, Cal. Bus. & Prof. Code
14 §17200 *et seq.* ("section 17200"), will not support an award of penalties.

15 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

16 Plaintiffs' claims for unfair business practices are barred because Plaintiffs cannot show an
17 injury to competition, as distinguished from injury to themselves, the existence of which
18 Defendant expressly denies.

19 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

20 Plaintiffs' claims for unfair business practices are barred because Plaintiffs cannot show a
21 deception to the public.

22 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims for unfair business practices are barred because Plaintiffs, as private
24 litigants, lack standing to bring a cause of action for damages under section 17200 on behalf of
25 themselves or similarly situated individuals.

26 **THIRTIETH AFFIRMATIVE DEFENSE**

27 Plaintiffs' claims for unfair business practices are barred because section 17200, as stated

1 and sought to be applied by Plaintiffs, violates Defendant's rights under the Constitution of the
2 United States of America and the Constitution of the State of California in that, among other
3 things, it is void for vagueness, violates equal protection and due process, poses an undue burden
4 upon interstate commerce, and infringes the freedom of contract.

5 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

6 Plaintiffs' claims for unfair business practices are barred because section 17200, as stated
7 and sought to be applied by Plaintiffs, violates Defendant's rights to due process under the
8 Constitution of the United States of America and the Constitution of the State of California to the
9 extent that the cause of action does not afford Hartmann the protections against multiple suits and
10 duplicative liability.

11 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

12 Plaintiffs' claims for unfair business practices are barred because Plaintiffs have failed to
13 plead with sufficient particularity their claims of false, unfair, or fraudulent conduct.

14 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

15 Plaintiffs' claims for unfair business practices are barred because Plaintiffs are not seeking
16 recovery of a quantifiable sum owed by Defendant to Plaintiffs.

17 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

18 Plaintiffs' claims for unfair business practices are barred because Plaintiffs have adequate
19 remedies at law for the alleged violations, and the requirements for equitable relief have not been
20 met.

21 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

22 Plaintiffs are not entitled to any penalty award because there is a good-faith dispute as to
23 Defendant's obligation to pay any wages or penalties that may be found to be due.

24 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

25 Plaintiffs are not entitled to any penalty award because, at all times relevant to the
26 Complaint, Defendant did not willfully fail to comply with the compensation provisions of the
27 California Labor Code or the applicable Wage Order, but rather acted in good faith and had

1 reasonable grounds for believing that it did not violate the compensation provisions of the
2 California Labor Code or the applicable Wage Order.

3 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

4 Recovery of penalties is barred to the extent that the accumulation of penalties would be so
5 disproportionate to the harm alleged to violate due process under the Constitutions of the United
6 States and the State of California.

7 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

8 Plaintiffs are not entitled to any penalty award under the California Labor Code because
9 Plaintiffs have failed to exhaust their administrative remedies.

10 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

11 The Complaint, and each of its causes of action, is barred because any recovery from
12 Defendant would result in Plaintiffs' unjust enrichment.

13 **FORTIETH AFFIRMATIVE DEFENSE**

14 The Complaint, and each of its causes of action, is barred in whole or in part because
15 recovery from Defendant, if any, would be *de minimis*.

16 **FORTY-FIRST AFFIRMATIVE DEFENSE**

17 Plaintiffs have failed to mitigate or reasonably attempt to mitigate their damages, if any, as
18 required by law, and any recovery to which Plaintiffs otherwise would be entitled should be
19 precluded or reduced accordingly.

20 **FORTY-SECOND AFFIRMATIVE DEFENSE**

21 Recovery of interest, attorneys' fees, or costs is barred to the extent that such amounts are
22 based on the recovery of penalties.

23 **FORTY-THIRD AFFIRMATIVE DEFENSE**

24 Plaintiff was not a whistleblower for the purposes of Labor Code section 1102.5

25 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

26 Defendant alleges that Plaintiff's claims are barred by her own breaches of duty owed to
27 Defendants including but not limited to, those set forth in California Labor Code sections 2854,

2856-2859.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that the Private Attorney General Act ("PAGA") imposes excessive fines in violation of Amendment 8 of the California Constitution.

FORTY-SIXTH AFFIRMATIVE DEFENSE

Defendant alleges that the purported cause of action under the PAGA is barred to the extent Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, seek penalties beyond the "initial" violation as described in California Labor Code section 2699(f)(2).

FORTY-SEVENTH AFFIRMATIVE DEFENSE

The purported cause of action under the PAGA is barred to the extent it seeks to recover penalties on behalf of individuals who are not "aggrieved employees."

FORTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant alleges that the fines imposed by PAGA violate substantive due process guaranteed by Article I, section 7 of the California Constitution and the Fourteenth Amendment of the United States Constitution.

FORTY-NINTH AFFIRMATIVE DEFENSE

Defendant alleges that the Complaint and each and every purported cause of action contained therein is barred to the extent Plaintiff, and any person on whose behalf relief is sought, failed to satisfy the notice and exhaustion requirements under PAGA, and to the extent that Plaintiff otherwise have failed to exhaust administrative remedies.

FIFTIETH AFFIRMATIVE DEFENSE

Defendant alleges that the purported cause of action under the PAGA is barred to the extent private actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

FIFTY-FIRST AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, are not entitled to recovery of penalties under PAGA to the extent that such penalties are sought in

1 addition to penalties for the same claims and such duplicative recovery is barred and constitutes
2 unjust enrichment.

3 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

4 Defendant presently has insufficient knowledge or information on which to form a belief
5 as to whether it may have additional, but as yet unstated, affirmative defenses available, and
6 accordingly, reserves the right to assert additional defenses in the event discovery indicates the
7 same would be appropriate.

8 WHEREFORE, Defendant prays as follows:

- 9 1. That judgment be entered in Defendant's favor and Plaintiffs take nothing by way
10 of this action;
11 2. That Defendant be awarded its costs of suit, including reasonable attorney's fees;
12 3. For such other and further relief as the Court deems just and proper.

13 DATED: September 1, 2020

LELAND, PARACHINI, STEINBERG,
MATZGER & MELNICK, LLP

14
15
16 By: 

Steven H. Bovarnick
Attorneys for Wing Dhaba, Inc., a California
corporation doing business as Wingstop

PROOF OF SERVICE

Anthony Sikes v. Wing Dhaba, Inc., et al.
Solano County Superior Court Case No. FCS054490

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 199 Fremont Street - 21st Floor, San Francisco, CA 94105.

On September 1, 2020, I served true copies of the following document(s) described as **Defendant Wing Dhaba, Inc. dba Wingstop's Answer to Plaintiff Anthony Sikes' Unverified Second Amended Complaint for Certification of Class, Unpaid Wages, Penalties, Declaratory Relief, Restitution and Civil Penalties** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Kobrien@lpslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 1, 2020, at Albany, California.

Kelly O'Brien

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SERVICE LIST
Anthony Sikes v. Wing Dhaba, Inc.
Solano County Superior Court Case No. FCS054490

David G. Spivak
Caroline Tahmassian
The Spivak Law Firm
16530 Ventura Boulevard, Suite 203
Encino, CA 91436
Telephone: (818) 582-3086
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United Employees Law Group
5500 Bolsa Avenue, Suite 201
Huntington Beach, CA 92649
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Facsimile: (562) 256-1006
Email: whaines@uelglaw.com

EXHIBIT 6



February 1, 2023

CASE ASSUMPTIONS

Class Members	2,822
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	2,822
Subtotal Admin Only	\$18,867.37

Flat Fee Total \$17,000.00

For 2,822 Class Members

Pricing Good for Scope of Estimate Only

Two Installments & Two Disbursements

Spanish Translation, Printing & Mailing Included

Case: Sikes v. Wing Dhaba, Inc, PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Nora Greer
Firm: The Spivak Law Firm
Contact Number: (818) 582-3073
Email: nora@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 2,822 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	89		\$222.50
NCOA (USPS)	\$705.50	1		\$705.50
Total				\$1,328.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Spanish Translation	\$150.00	1		\$150.00
Data Merge & Duplication Scrub	\$0.09	2,822		\$253.98
Notice and Check Packet (x 2)	\$1.00	2,822		\$5,644.00
Estimated Postage (up to 1 oz.) (x 2)*	\$0.61	2,822		\$3,442.84
Total				\$9,590.82

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	706		\$529.13
Remail Notice Packets	\$0.65	703		\$456.63
Estimated Postage	\$0.61	703		\$428.53
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$1,629.28

Database Programming

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	8		\$440.00
Case Manager	\$85.00	6		\$510.00
			Total	\$1,100.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	4		\$380.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	8		\$1,080.00
			Total	\$2,135.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Undeliverable Checks (Postage Included)	\$1.50	536		\$804.27
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	6		\$510.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	4		\$460.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$400.00	1		\$400.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated <u>10</u> Total Class Members	\$300.00	1		N/A
Total				\$3,084.27

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$18,867.37



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 7

CASE NAME: SIKES v WING DHABA, INC.

Date: February 8, 2023
Requesting Paralegal: Nora Greer
Plaintiff or Defense: Plaintiff
Firm Name: The Spivak Law Firm
Telephone: (818) 582-3073
Email: nora@spivaklaw.com

All-In Settlement
Class Size: 2,822
Opt-Out Rate: 1.5%
No. of Checks Issued: 2,780
Postage Total: \$6,737.62
Grand Total: \$47,505.56

DISCOUNTED FLAT FEE: \$33,500.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. Notice will be Translated to Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	7	\$665.00
Programming: Data Base Setup	\$150.00	7	\$1,050.00
Spanish Translation	\$1,200.00	1	\$1,200.00
TOTAL			\$2,915.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA. CPT will Mail a Full-Length Notice & 1-Page Exclusion Form in English and Spanish in a 9x12 Envelope.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$250.00	1	\$250.00
Mailing of 9x12 Envelope	\$2.00	2,822	\$5,644.00
First-Class Postage (up to 3 oz.)*	\$1.15	2,822	\$3,245.30
TOTAL			\$9,329.30

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 6% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 91% of the Notice Packets are Remailled.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	3	\$180.00
Update Undeliverable Mail Database	\$0.50	169	\$84.50
Skip Trace for Best Address	\$1.00	145	\$145.00
Print & Remail Notice Packets	\$2.00	132	\$264.00
First-Class Postage (up to 1 oz.)	\$1.15	132	\$151.80
TOTAL			\$825.30

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	42	\$84.66
Print & Mail Deficiency/Dispute Notices	\$1.50	3	\$4.50
First-Class Postage (up to 1 oz.)	\$0.60	3	\$1.80
Review & Process Deficiency Responses	\$10.00	2	\$20.00
		TOTAL	\$415.96

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	565	\$1,695.00
		TOTAL	\$1,995.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	2,780	\$277.97
		TOTAL	\$712.97

DISTRIBUTION SERVICES - YEAR 1

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cash and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	6	\$900.00
Project Manager: Correspondence w/Parties	\$95.00	3	\$285.00
Programming: Setup & Printing of Checks	\$150.00	4	\$600.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.00	2,780	\$5,559.34
First-Class Postage (up to 1 oz.)	\$0.52	2,780	\$1,445.43
		TOTAL	\$9,689.77

POST-DISTRIBUTION & TAX REPORTING - YEAR 1

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. CPT will Prepare and Send the Parties Weekly Reports Until the Conclusion of the Settlement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$100.00	12	\$1,200.00
Update Undeliverable Checks Database	\$0.50	222	\$111.19
Skip Trace for Best Address	\$1.00	222	\$222.37
Remail Undeliverable Checks	\$2.50	202	\$505.00
First-Class Postage (up to 1 oz.)	\$0.60	202	\$121.20
Re-Issue Checks as Required	\$5.00	139	\$695.00
First-Class Postage (up to 1 oz.)	\$0.60	56	\$33.60
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly Reports	\$150.00	1	\$150.00
Project Manager: Account Files Sent to Atty	\$95.00	1	\$95.00
CA Tax Preparation*	\$350.00	1	\$350.00
Annual Tax Reporting to IRS*	\$500.00	1	\$500.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
TOTAL			\$4,483.36

*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.

DISTRIBUTION SERVICES - YEAR 2

Upon Approval From the Parties, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	6	\$900.00
Project Manager: Correspondence w/Parties	\$95.00	3	\$285.00
Programming: Setup & Printing of Checks	\$150.00	4	\$600.00
Print & Mail Notice, Checks & W2/1099	\$2.00	2,780	\$5,559.34
First-Class Postage (up to 1 oz.)	\$0.52	2,780	\$1,445.43
TOTAL			\$9,239.77

POST-DISTRIBUTION & TAX REPORTING - YEAR 2/FINAL

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$100.00	12	\$1,200.00
Update Undeliverable Checks Database	\$0.50	139	\$69.49
Skip Trace for Best Address	\$1.00	139	\$138.98
Remail Undeliverable Checks	\$2.50	126	\$315.00
First-Class Postage (up to 1 oz.)	\$0.60	126	\$75.60
Re-Issue Checks as Required	\$5.00	56	\$280.00
First-Class Postage (up to 1 oz.)	\$0.60	56	\$33.60
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	1	\$95.00
CA Tax Preparation	\$350.00	1	\$350.00
Annual Tax Reporting to IRS	\$500.00	1	\$500.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
TOTAL			\$4,157.68

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	584	\$87.60
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	278	\$1,390.00
First-Class Postage (up to 1 oz.)	\$0.60	278	\$166.80
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
		TOTAL	\$3,741.46
			GRAND TOTAL
			\$47,505.56

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

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, and objections, 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 products 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 8

Case Name: Sikes v. Wing Dhaba, Inc.

Tuesday, January 31, 2023

Requesting Law Firm:	The Spivak Law Firm
Law Firm Contact:	Nora Greer
E-Mail Address:	nora@spivaklaw.com
ILYM Contact:	Sean Hartranft
E-Mail Address:	Sean@ilymgroup
Contact Number:	949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out & PAGA Class

ASSUMPTIONS	
Total Number of Class Members	2,822
Estimated Percentage of Undeliverable Mail	20%
Reminder Postcard	Yes
Static Website	Yes
Certified Spanish Translations	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	5	\$750.00
Programming of Class Database	Hourly	\$175.00	5	\$875.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$1,625.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	10	\$1,200.00
Staff Hours for Processing Opt-Outs, Disputes & Objections via Mail and Email	Hourly	\$70.00	4	\$280.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	6	\$420.00
Report Processing	Hourly	\$70.00	8	\$560.00
NCOA	Flat Fee	\$295.00	1	\$295.00
Toll-Free Call Center	Flat Fee	\$375.00	1	\$375.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$5,130.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.50	2,822	\$4,233.00
USPS First Class Postage	Per Piece	\$0.55	2,822	\$1,552.10
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	564	\$1,128.80
Storage, Photocopies, Deliveries	Flat Fee	\$287.10	1	\$287.10

Subtotal \$7,201.00

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	8	\$1,200.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	8	\$1,000.00
Check, Print & Mail (Including W2/1099)	Per Check	\$1.25	2,822	\$3,527.50
USPS First Class Postage	Per Piece	\$0.55	2,822	\$1,552.10
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	282	\$564.40
Preparation of Taxes	Hourly	\$120.00	14	\$1,680.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$11,024.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	8	\$800.00
Project Manager Final Reporting	Hourly	\$120.00	8	\$960.00
Process Unclaimed Funds to Government Recipient	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	4	\$500.00

Subtotal \$3,010.00

Will Not Exceed: \$27,990.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 9

EXHIBIT 10

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

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

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

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

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

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

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

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

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

19 *Defendants.*

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

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

THE
SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

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

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

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

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

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

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

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

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

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

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

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

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

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

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

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

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



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

EXHIBIT 11

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

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)
12

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. SABZEVAR: NO, YOUR HONOR.

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

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

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

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

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

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

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

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

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

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

6 THE COURT: FORTY-FIVE DAYS.

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

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

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

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

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

17 MR. SPIVAK: YES, YOUR HONOR.

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

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

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

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

1 FOUR WEEKS. HERE'S OUR SITUATION.

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

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

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

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

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

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

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

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