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JENNIFER WISE, 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 RIVERSIDE**
12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18 vs.

20 SPRINGS CHARTER SCHOOLS, INC., a
California corporation; RIVER SPRINGS
21 CHARTER SCHOOL, INC., a California
corporation; and DOES 1-50, inclusive,

22 *Defendant(s).*

Case No. RIC2002359

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

Hearing Date: December 14, 2022
Hearing Time: 8:30 a.m.
Reservation ID: 590106029795
Hearing Dept.: 1, The Honorable Craig
Rierner
Action filed: July 01, 2020



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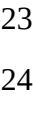
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Code §§ 226.7, 512 and 1198); (4) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (5) Waiting Time Penalties (Lab. Code §§ 201-203); and (6) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On July 16, 2020, Plaintiff filed her First Amended Complaint adding a claim under the PAGA. On November 03, 2021, Plaintiff added salaried employees to the class definition. On September 25, 2020, Defendants filed an answer to Plaintiff's First Amended 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 First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendants' Answer is attached hereto as **Exhibit 5**. A true and correct copy of Plaintiff's Second Amended Complaint is attached hereto as **Exhibit 6**. A true and correct copy of Defendant's Answer to Plaintiff's Second Amended Complaint is attached hereto as **Exhibit 7**.

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

8. On June 09, 2021, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Michael J. Loeb, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide



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1 settlement during the second mediation session. During the mediation sessions, each side,
2 represented by her/their respective counsel, recognized the risk of an adverse result in the Action
3 and agreed to settle the Action and all other matters covered by this Agreement pursuant to the
4 terms and conditions of this Agreement.

5 9. At the mediation, it became clear that that Defendants had insufficient resources
6 to cover the full extent of Plaintiff's estimated liability. Therefore, as part of the settlement
7 negotiations, Defendants River Springs Charter School disclosed its 2019 through 2021 budgets,
8 which included a breakdown of its revenue and expenses for the last two years and information
9 relating to employee layoffs in 2020 due to its financial condition resulting from State budget
10 freezes. Defendants have confirmed that this financial information as mentioned in the release
11 provisions pertains to both Defendants River Springs Charter School and all of the other five
12 schools that it is affiliated with. The information provided was sufficient to demonstrate the
13 financial condition of the company and its owners. Based on such information, Plaintiff, on her
14 own behalf and on behalf of the Settlement Class Members, has agreed to settle the lawsuit on
15 the terms set forth in the Settlement.

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19 ***Class Size and Average Individual Shares***

20 10. With a current total of 1,176 Class Members, the average Individual Settlement
21 Award per Class Member is \$272.39.

22 ***Ascertainable and Numerous Class***

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

2 12. The Settlement Class has sufficiently numerous members to render joinder
3 impractical. No set number is required as a matter of law to maintain a class action. The California
4 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
5 approximately 1,176 Class Members. Plaintiff maintains that it would be impractical and
6 economically inefficient to require each Settlement Class Member to separately maintain an
7 individual action or be joined as a named plaintiff in this action. In light of these considerations,
8 the Settlement Class's membership is sufficiently numerous.

9
10 ***Predominant Common Questions***

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



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1 class with accurate wage statements; (5) Whether Defendants willfully failed to provide the class
2 with timely final wages; and (6) Whether Defendants engaged in unfair competition within the
3 meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class.

4 ***Typicality***

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

15 ***Adequacy***

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

21 16. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
22 with the absent Settlement Class Members. Plaintiff contends that she is an adequate class
23 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
24 litigation because they all worked for Defendants during the relevant time period, allegedly
25 suffered the same alleged injuries from the same alleged course of conduct, and there is no
26



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evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated her commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative.

Background of Class Counsel

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

18. 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.

19. 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.

20. 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).

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



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

10 b. *Jorge Guzman v. Department of Justice*, United States District Court,
11 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
12 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
13 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
14 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
15 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
16 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
17 1999.

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



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

8
9 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
10 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
11 Customs Agent, followed by an award of Attorneys' fees and costs.

12
13 f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
14 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
15 wrongful termination against his former employer. The Neutral Arbitrator awarded
16 compensatory and liquidated damages. The claims for damages, attorney's fees and costs were
17 resolved shortly thereafter by means of a confidential settlement.

18
19 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
20 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
21 first and only case to be successfully prosecuted through trial under the Labor Code Private
22 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
23 aggrieved employees against someone other than an employer for civil penalties including unpaid
24 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
25 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
26 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.



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

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

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

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

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

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

d. *Deckard v. MSL Community Management LLC*, Riverside County



1 Superior Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of
2 class action settlement on behalf of caregivers and medical technicians).

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

7
8 f. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058
9 (appointed Class Counsel and granted final approval by this Court of class action settlement on
10 behalf of personal trainer employees).

11 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
12 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
13 action settlement on behalf of medical devices employees).

14
15 h. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
16 BC480808 (appointed Class Counsel and granted final approval of class action settlement on
17 behalf of hourly employees).

18
19 i. *La Fleur v. Medical Management International, Inc.*, United States
20 District Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class
21 Counsel and granted final approval of class action settlement on behalf of practice managers).

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

25
26 k. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court,
27 Case No. BC462681 (appointed Class Counsel and granted final approval of class action
28



1 settlement on behalf of security guard employees).

2 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
3 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
4 on behalf of dairy and agricultural laborers).

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

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

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

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

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



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

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

7
8 t. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
9 No. BC421485 (granted class certification through contested motion and appointed Class
10 Counsel in case on behalf of former security workers based on late final wage payments in
11 violation of Labor Code §§ 201–203).

12
13 u. *Vang v. Burlington Coat Factory Corporation*, United States District
14 Court Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel
15 and granted final approval of class action settlement by the court on behalf of assistant store
16 manager employees).

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

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

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25 ***Class Action Treatment Is Superior***

26 25. A class action is also superior to other means adjudicating the issues in this action.
27 The predominance of common legal and factual questions shows that this Court could fairly
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1 adjudicate the claims of Class Members through a single class action. In view of the *theoretical*
2 alternatives that proposed class members could potentially utilize—representative PAGA action
3 (where there is less relief available), individual civil lawsuits or wage claims through the Division
4 of Labor Standards Enforcement (where there would be relatively little money at stake, but the
5 claims would be time-consuming to litigate)—a class action is plainly superior to all of them.
6 Thus, this consideration supports conditional class action treatment for purposes of this
7 Settlement only.
8

9 ***The Settlement is Presumptively Fair***

10 26. The class settlement here satisfies all of the *Kullar* factors. The Settlement
11 resulted from thorough, arms' length, negotiations between experienced counsel with the
12 assistance of a respected mediator after sufficient discovery was exchanged to assess the relative
13 strengths and weaknesses of their respective cases and Defendants' estimated exposure. Both
14 defense counsel and I are particularly experienced in employment law and wage and hour class
15 actions. We are experienced and qualified to evaluate the class claims, the viability of the
16 defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have
17 negotiated many wage and hour class settlements, including many involving the same issues
18 presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable
19 settlement in light of the complexities of the case and uncertainties of class certification and
20 litigation, and a fair result for the Class Members.
21
22

23 ***Exposure & Risk Analysis***

24 27. At issue in this class and private attorney general action are the alleged unlawful
25 practices of established operators of more than a dozen charter schools that deny their new hires
26 minimum wages, rest breaks, meal periods, and expense reimbursement for a variety of activities
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1 including health examinations and a lengthy employee orientation. Defendants employed other
2 non-exempt individuals in California, including but not limited to human resources staff,
3 administrative staff, teachers, and employees in comparable positions during the period of July
4 1, 2016, to the present (many of whom fall within the Class definition of Plaintiff's lawsuit). The
5 human resources representatives identified above allegedly directed new hires to engage in
6 several onboarding activities without pay, meal breaks, or rest breaks. The human resources
7 manager emailed Plaintiff and several other new hires on December 10, 2018, to attend in a "Pre-
8 Employment meeting which will be scheduled at the completion of the onboarding process. The
9 onboarding process includes ... 5 steps[:].". Plaintiff prepared "damages" estimates in advance
10 of the mediation. **Exhibit 8.** In advance of the mediation, Plaintiff estimated Defendants'
11 maximum exposure for restitution and penalties to be approximately \$1,468,352.71 (consisting
12 of \$125,718.52 in unpaid wages, \$20,779.92 in missed meal period premium wages, \$20,779.92
13 in missed rest break premium wages, \$6,550.00 for wage statement penalties, \$1,077,605.83 for
14 waiting time penalties, and \$91,200.00 for civil penalties). True and correct copies of the
15 spreadsheets I prepared for mediation of this Action are collectively attached to this declaration
16 as Exhibit 8. The estimates are in essence "home run" projections that omit data points that will
17 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
18 involved in litigating this Action. Plaintiff calculated the damages based on the number of
19 workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample data. *Id.*
20 Plaintiff also considered the possibility that Defendants could launch a *Pick-Up Stix* campaign
21 and pursue individual release agreements from the Class Members. Defendants also represented
22 that they had interviewed all of Defendants' current employees regarding Plaintiff's claims, all
23 of whom would provide declarations, under penalty of perjury, that were favorable to Defendants
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1 with respect to the relevant factual issues at issue in Plaintiff's action. Plaintiff's Counsel applied
2 discounts to the maximum exposure to account for all other risks discussed below. While it is
3 difficult to assign precise percentages of risk to any of the claims when discounting their values,
4 the risk that a *Pick Up Stix* campaign would preclude recovery for many employees is substantial
5 and alone justifies a significant discount to the maximum exposure estimate because Defendants
6 would likely have gathered releases from the majority of the Class Members before trial. A
7 settlement for approximately 36.09% of the potential recovery is a proportion substantially in
8 excess of recovery proportions sanctioned by existing case law.⁹

10 28. Plaintiff's initial estimates do not realistically account for the risks outlined below
11 or the risk that a class will not be certified. Therefore, Plaintiff believes a class settlement for
12 \$530,000.00 is fair and reasonable.

14 29. **Risks Associated with Defendants' Financial Condition.** At the mediation, it
15 became clear that that Defendants had insufficient resources to cover the full extent of liability.
16 The information provided was sufficient to demonstrate the financial condition of the Defendants
17 and their owners. Based on such records, Plaintiff, on her own behalf and on behalf of the Class
18 Members, has agreed to settle the lawsuit on the terms set forth in the Settlement.

20 30. This is not a case against a major or mid-sized corporation with free-flowing cash
21 reserves, highly paid executives, and creative accounting abilities to cover a settlement in the
22

23
24 ⁹ 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.”).



1 amount demanded by Plaintiff. As discussed during mediation:

2 a. River Springs is a charter school, funded almost entirely by government
3 dollars and is required to present a yearly accountability plan to the State ensuring that it will use
4 its funding for educational purposes. While Defendants are willing to settle this case for a
5 reasonable amount, the funds available to it for this purpose are extremely limited.

6 b. The vast majority of River Springs' funding (nearly 83%) comes from
7 Local Control Funding Formula (LCFF) which allows funds to be spent for any educational
8 purpose but requires districts to develop Local Control and Accountability Plans (LCAPs) that
9 detail district goals and document how districts plan to measure their progress toward those goals.
10

11 c. The remaining funding comes from federal, state, and local revenues, but
12 even so, to access any funding, River Springs (like all charter schools) needs to present an annual
13 LCAP, a planning tool to support student outcomes, and is required to address all state
14 educational priorities.
15

16 d. Further, LCAPs require that funds apportioned on the basis of the number
17 and concentration of unduplicated pupils be used to increase services (grow services in quantity)
18 or improve services (grow services in quality) for unduplicated pupils.
19

20 In other words, River Springs is not able to simply re-allocate its funding, and it is unclear
21 whether River Springs will have any discretion to allocate certain funds toward a settlement. To
22 the extent it is able to do so, those funds will necessarily be diverted from educational services,
23 including employee salaries.
24

25 31. Defendants' financial condition was the key factor in reaching this Settlement.
26 Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, her may
27 never recover the damages due to the risk of insolvency. A very large class action judgment
28



1 would almost certainly put the company out of business and/or would interfere with the
2 Defendants' ability to carry out their contractual obligations.

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

19 33. The difficulty inherent in proving that off-the-clock work occurred poses a
20 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
21 this claim. Generally, a court will not certify a class unless it can determine an appropriate
22 classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
23 Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially
24

1 given the lack of records indicating when such off-the-clock work may have taken place.
2 Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine
3 if an individual in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there
4 is a significant risk that the Court would consider this evidentiary showing insufficient as a
5 classwide methodology.

6
7 34. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
8 meal period claim. The amount of unpaid meal break premium wages is extremely small and
9 may not be recoverable at all given the fact that California law permits waiver of the meal period
10 in the event the total work. It is six or less hours. If the Court credits Defendants’ argument that
11 the period of time in question regarding the new-hire orientation and related activities does not
12 amount to employment, Plaintiff will not be able to recover missed meal break premium wages
13 for herself and the Class. Defendants contend that, to establish a violation for missed meal
14 periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th
15 at 1004. So long as an employer provides employees with a “reasonable opportunity” to take a
16 duty-free meal period, it has no further duty to “police meal breaks and ensure no work thereafter
17 is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded,
18 discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release
19 the employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
20 reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*
21 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

22
23
24
25 35. Defendants contend they did not impede or discourage Plaintiff, or any other
26 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
27 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
28



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1 of their meal breaks each day on their time records. The time records that comprise the random
2 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were
3 taken the vast majority of the time. Of the time records that show a late, short or no lunch,
4 individualized evidence may be necessary to determine whether they occurred due to conduct of
5 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
6 the value of Plaintiff's meal period claim would be substantially reduced at trial.
7

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

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Defendants make a compelling argument that statutory wage statement and waiting time penalties do not attach when there is a good faith dispute over whether wages are due. It appears Plaintiff’s demand is driven by the mistaken belief that a “good faith dispute” argument is only viable if River Springs can affirmatively identify authority that the Pre-Employment Meeting was not compensable time or “hours worked.” However, case law defines a “good faith dispute” differently. River Springs need not point to authority that this time was not compensable—it merely needs to show that a dispute over whether it was compensable existed at the time. In other words, so long as River Springs can demonstrate that it did not believe this time was compensable at the time final wages were due, those wages are considered “contested,” and waiting time penalties do not attach. For example, in *Sanford v. Landmark Prot. Inc.* (Cal. Ct. App. Sept. 27, 2011), Case No. A130836, the court affirmed the trial court’s finding at final judgment that Landmark had the following policy in place regarding compensating employees for meetings: “employees are entitled to be compensated for attending a meeting only if the meeting is directly related to the employee’s job and his or her attendance is required.” (*Id.* at *5- 6.) “[T]he trial court found that, although plaintiff was indeed working for Landmark when she attended the August 17, 2010 meeting, and was thus entitled to compensation, a good faith dispute existed regarding the wages plaintiff earned for that meeting, excusing Landmark from liability for waiting time penalties.” (*Id.* at *4 (emphasis added).) Because there was a good faith dispute at the time over whether plaintiff was entitled to compensation for this meeting, the employer was not liable for waiting time penalties. In *Sanford*, despite finding that the time the employee spent at the meeting was compensable, the court found that plaintiff was not entitled



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1 to waiting time penalties because a dispute over whether this meeting was compensable time
2 existed at the time final wages were due. Like in *Sanford*, River Springs had a policy that
3 prospective employees were not compensated for the Pre-Employment Meeting. Prospective
4 employees that participated in the Pre-Employment Meeting had no expectation of
5 compensation, evidenced by the fact that they did not clock in or clock out or otherwise account
6 for time spent. Thus, even if a court found Plaintiff and putative class members were entitled to
7 compensation for this time, because River Springs did not believe this time was compensable at
8 the time final wages were due, a good faith dispute existed.

10 38. Another example is *Kao v. Holiday* (Cal. Ct. App. 2017) 12 Cal. App. 5th 947.
11 Kao involved two claims for waiting time penalties—one claim for waiting time penalties
12 because the employer improperly waited until its next regular pay day to pay Kao his final wages,
13 and another claim for waiting time penalties for overtime wages that he claimed he were due
14 after the fact. The court found that Kao was only entitled to the waiting time penalties for the
15 wages that were indisputably due on the day of his termination: “There was no dispute” that those
16 wages were due—“the employer simply delayed payment until its regular payday.” However,
17 Kao further argued that additional waiting time penalties should be imposed because his
18 employer “mischaracterized him as an exempt employee and, in doing so, failed to pay earned
19 overtime wages.” The court denied plaintiff’s request for waiting time penalties based on the
20 overtime wages because it was contested whether plaintiff was actually entitled to those overtime
21 wages at the time of his separation. “Waiting time penalties are properly limited to the
22 uncontested wages due at the time of Kao’s termination.” (*Id.* at 963 (emphasis added).)

23 39. **Risks Associated with The Waiting Time Penalties Claim.** Plaintiff’s claim for
24 untimely wages is predicated on Labor Code section 201 to 203. I address the primary arguments
25



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1 Defendants can raise against the waiting time penalties claim in the prior paragraphs on statutory
2 paystub penalties.

3 40. Plaintiff's claims for untimely wages is predicated on Labor Code §§ 201, 202,
4 and 203. In addition to the other arguments listed above, based on *Naranjo v. Spectrum Security*
5 *Services, Inc.* (2022) 13 Cal.5th 93, a remaining risk is that Defendant denies this was
6 employment at all and therefore, Defendants had no obligation to provide a meal period. (see
7 *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, holding (1) because premium
8 pay for missed meal and rest breaks under Lab. Code, § 226.7, compensated employees for the
9 work performed during a break period and therefore constituted wages within the meaning
10 of Lab. Code, §§ 200, subd. (a), 203, 226, penalties could be available for an employer's alleged
11 failure to timely pay or report such payments pursuant to Lab. Code, §§ 201, 202, to employees
12 who were terminated or who resigned; (2) The rate of prejudgment interest applicable to amounts
13 due for failure to provide meal and rest breaks was the default rate of 7 percent under Cal. Const.,
14 art. XV, § 1, because Lab. Code, § 218.6, incorporating the contract claim interest rate in Civ.
15 Code, § 3289, subd. (b), was inapplicable and the contract rate could not be directly applied on
16 the basis of an argument that contracts of employment incorporated mandatory statutory duties.)

17 41. **Risks Associated With the PAGA Claim.** For the same reasons stated above
18 with regard to waiting time penalties and statutory paystub penalties, there are serious risks that
19 a good faith defense would preclude entirely the claim for civil penalties that Plaintiff makes on
20 behalf of herself and the class. Regarding PAGA, a court has discretion to award a lesser amount
21 than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management,*
22 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants
23 have posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations.



1 Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
2 consider the maximum civil penalty available to be confiscatory. Moreover, the current COVID-
3 19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may
4 consider a confiscatory taking.

5 42. This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and
6 required a significant discount for settlement purposes. For mediation purposes, Plaintiff’s
7 counsel estimated a maximum exposure of approximately \$91,200.00 in civil penalties. This
8 estimate did not take into account any of the risks discussed above and assumed a violation for
9 every single pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for the same pay
10 period for the same alleged violations of different Labor Code provisions and derivative
11 violations. Although two federal district court decisions held that “stacking” PAGA penalties in
12 this fashion may be appropriate to determine the amount in controversy for purposes of removal
13 jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs
14 multiple PAGA penalties for the same violation for the same pay period under different Labor
15 Code provisions. This may be because the PAGA does not provide for what many employers
16 characterize as claim splitting and not merely stacking.

17 43. I am aware of only two significant awards under the PAGA in a contested
18 proceeding, both issued by federal district courts.¹¹ PAGA penalty awards are often small even
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¹¹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from plaintiff’s claim for approximately \$33 million. *Bernstein* represents a unique set of circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein* suffered a particularly sizeable injury – the court found that the defendant’s policies caused damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in *Bernstein*, who the court noted had received “millions of dollars from the state of California” to train their flight attendants, engaged in glaring violations of the labor code, such as failing to compensate its flight attendants for work performed outside of “block time” (time during which



for egregious, intentional violations of the Labor Code.¹²

44. 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.

45. The United States Supreme Court announced on December 15, 2021 that, in the near future, it will hear the matter of *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, and decide (likely no later than the end of summer 2022) whether or not to overrule the California Supreme Court's decision in *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348 that a private arbitration agreement cannot deprive an employee of his right to sue under PAGA in a court of law. If the Supreme Court sides with the Petitioner, Plaintiff's PAGA claim may be subject to an arbitration agreement allowing only bilateral arbitration and, consequently, inhibiting the claim

the aircraft is moving), including time spent participating in pre-flight briefings, boarding passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049, 1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253.

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

¹² In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the complaint is attached as **Exhibit 9**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the statement of decision is attached as **Exhibit 10**, 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.



altogether. While such an outcome would conflict squarely with *EEOC v. Waffle House* (2002) 534 US 279 (private settlement agreements do not preclude government prosecutions on behalf of employee signatories to such agreements), this potential outcome is a risk.

46. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 1176 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.

47. While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and her 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.*, *Torrison 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

48. The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) 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.

49. The nature of the alleged PAGA violations: Defendants employed Plaintiff and other Class Members to work in their California charter schools and required all newly hired workers, including Plaintiff and Class Members, to attend a full day of orientation without pay. Defendants required them to complete various onboarding tasks, such as obtaining background checks and tuberculosis tests, and completing various paperwork, such as IRS Forms I-9 and E-4, outside of their scheduled working hours. Defendants also required Plaintiff and the Class Members to attend the new-hire orientation while clocked out from work. Defendants failed to compensate Plaintiff and the Class Members for this work performed off the clock. The waiting time penalties included \$91,200 in civil penalties recoverable under PAGA. *See* Exhibit 8 (Damages spreadsheet).

50. The number of alleged individual violations, including both the length of the relevant employment period and the number of employees allegedly employed during that period: There was one day of unpaid work for every employee and one pay period per employee, because each employee was required to attend one full day of orientation, for which they were not compensated.



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1 51. The total amount of penalties for which the defendant is potentially liable if all
2 allegations are proven: \$91, 200. *See* Exhibit 8 (Damages spreadsheet). Defendant showed they
3 made a good faith error in not paying the newly hired Plaintiff and Class Members for their time
4 attending the orientation, which is why this is a case for unpaid wages and not for waiting time
5 penalties or other applicable penalties.

6 52. The total amount of penalties defendant is likely to be found liable at trial,
7 considering the weight of the evidence, the clarity of the applicable law, and the strength of any
8 factual or legal defense likely to be asserted by the defendant: $\$100 \times 1,176 = \$176,000$ (\$100
9 multiplied by 1,176, the total number of employees) *See* Exhibit 8 (Damages spreadsheet). The
10 unpaid wages total is \$125,718. If the Class Members are given the \$125,718 that they're owed,
11 I find it highly unlikely that civil or waiting time penalties would be awarded, if Defendants acted
12 in good faith and have limited resources.

13 53. The likelihood that any violations would be proven to have been knowing and
14 intentional: There is a risk that the jury could decide that forcing Defendants to pay wages owed
15 is punishment enough. Additionally, it is also possible that a jury could decide that the Class
16 Members weren't in fact employees, which is an important risk factor that I have taken into
17 account.

18 54. Facts that tend to suggest that the imposition of the total amount of statutory
19 penalties for which the defendant would be likely to be found liable at trial would be unjust,
20 arbitrary and oppressive, or confiscatory: Here, Defendants argue that Plaintiff and the Class
21 Members were never employees to begin with, and if a jury believes that Plaintiff would not be
22 able to recover for anything. Additionally, Defendants are a public institution serving and
23 important public function for children and low-income communities, and schools like these allow
24 Members were never employees to begin with, and if a jury believes that Plaintiff would not be
25 able to recover for anything. Additionally, Defendants are a public institution serving and
26 important public function for children and low-income communities, and schools like these allow
27 Members were never employees to begin with, and if a jury believes that Plaintiff would not be
28 able to recover for anything. Additionally, Defendants are a public institution serving and
29 important public function for children and low-income communities, and schools like these allow



1 these children to obtain a quality education regardless of where they live and their family's
2 economic status and we do not want to oppress a school with such a positive community benefit,
3 which could have a negative impact on the valuable service they provide to the community.
4 Furthermore, Defendants have a good-faith defense to both civil and statutory penalties and if
5 they can show that they changed their policies immediately after they were sued by Plaintiff and
6 received our PAGA letter, by paying orientation attendees, this would prove their good faith
7 intentions.
8

9 55. How the amount of the agreed-upon penalties was calculated or otherwise arrived
10 at: I used formulas that the law allows waiting time penalties, factoring in that each employee
11 gets 30 day's pay, for all 1,176 employees, with a total of \$125,718.52 for unpaid wages (5.50
12 total new-hire hours x 17.67 regular hourly rate x 1,176 class members x 110% interest rate). The
13 waiting time penalties are calculated at \$1,077,605.83 (241 former employees x \$149.05 wages
14 per day x 30 waiting time days). Exhibit 8 also explains exactly how these calculations were
15 made, reflecting that the agreed-upon penalties is fair. See Exhibit 8, (Damages spreadsheet).
16

17 *Attorneys' Fees and Costs*

18 56. I intend to request Class Counsel Attorneys' Fees of \$176,666.67 (one-third of
19 the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I
20 currently estimate to be approximately \$15,000.00 and will be no more than \$15,000.00 at the
21 conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this
22 case these amounts are well within the range of reasonableness and thus warrant this Court's
23 preliminary approval. In addition, based on my experience in wage and hour class action matters,
24 fee awards of approximately one-third of the settlement fund are routinely approved as
25 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in
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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



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

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

26 58. Class Counsel have borne all the risks and costs of litigation and will receive no
27 compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour
28



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1 class action litigation and used that experience to obtain a fair result for the Class. Considering
2 the amount of the attorney fees requested, the work performed, and the risks incurred, the
3 requested fees and costs are reasonable and should be awarded.

4 ***Class Representative General Release Payment***

5 59. The Settlement provides that Plaintiff may seek a Class Representative General
6 Release Payment of \$5,000.00. This amount is entirely reasonable given Plaintiff's efforts in this
7 Action and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many
8 hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other
9 things, retaining experienced counsel, providing them with information about her work history
10 with Defendants and Defendants' policies and practices with respect to the wage and hour claims
11 at issue, assisting counsel in identifying witnesses, traveling to and participating in mediation,
12 and being actively involved in the settlement process to ensure a fair result for the Settlement
13 Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk
14 of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See*
15 Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the
16 Settlement Class shows that the proposed Class Representative General Release Payment is fair,
17 adequate, and reasonable, and thus warrant preliminary approval.

21 ***Discovery and Other Factual Investigation***

22 60. The Parties have actively litigated the cases since the *Wise* Action was
23 commenced on July 1, 2020. Plaintiffs propounded extensive formal discovery requests in
24 various forms onto Defendants. The Parties have conducted significant formal and informal
25 discovery and investigation into the claims. The Parties engaged in extensive discussions about
26 the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses thereto, to try to



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1 resolve the lawsuits. On June 09, 2021, following much of the foregoing informal discovery and
2 exchange of information, the Parties participated in a mediation session presided over by Michael
3 J. Loeb, Esq., an experienced class action mediator. During the mediation, the Parties had a full
4 day of productive negotiations and reached agreement on a class-wide settlement during the
5 second mediation session. During the mediation sessions, each side, represented by her/their
6 respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the
7 Action and all other matters covered by this Agreement pursuant to the terms and conditions of
8 this Agreement. Parties determined the size of the class and strength of the claims through
9 extensive discovery requests and mediation. The Parties were unable to reach a Settlement
10 described to resolve the case in their entirety, and thus discovery continued. On November 10,
11 2021, Mediator Michael J. Loeb, Esq., contacted me regarding Defendants' offer to settle. Shortly
12 thereafter, the case settled early during an informal exchange between the Parties. At the
13 mediation, it became clear that that Defendants had insufficient resources to cover full extent of
14 the Plaintiff's estimated liability. The information provided was sufficient to demonstrate the
15 financial condition of the Defendants and their owners. Based on such records, Plaintiff, on her
16 own behalf and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set
17 forth in the Settlement. Both Parties are now in agreement with the terms of this Class Action
18 Settlement.

19
20
21
22 Following a diligent inquiry in response to the Court's ruling, I am unaware of any class,
23 representative or other collective action in this court or in any other jurisdiction that asserts claims
24 similar to those asserted in this action on behalf of a class or group of individuals, some or all of
25 whom would also be members of the class defined in this action. I also asked Counsel for
26 Defendants if there are any such cases, and they responded that there are not.
27
28



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Individual Settlement Shares

61. The Individual Settlement Shares will be paid to each Class Member based on his or her participation in a pre-employment meeting. Settlement ¶ III.F.1.a. 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)

62. This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ EE. Although there are current employee Class Members, it is uncertain whether defendants’ records of their contact information include email addresses and Class Members. As such, notice by mail alone is fair, adequate, and reasonable.

63. With respect to its content, “[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152. The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides



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1 Class Members with all pertinent information that they need to fully evaluate their options and
2 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
3 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
4 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
5 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
6 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
7 individual Settlement Class Member's estimated payment. Accordingly, the Notice should be
8 approved because it describes the Settlement with sufficient clarity and specificity to explain to
9 Class Members what this action is about, their rights under the Settlement, and how to exercise
10 those rights.
11

12 *Uncashed Checks*

13
14 64. In accordance with Code of Civil Procedure section 384, subdivision (b), the
15 Parties selected Legal Aid at Work over other potential recipients considered because it is a non-
16 profit organization which has provided high-quality civil legal services to the indigent for more
17 than four decades and has devoted its resources to protecting the rights of California low-wage
18 workers.
19

20 65. To the best of my knowledge, there exists no relationship between the proposed
21 recipient and (1) any class representative or other party, (2) any officer, director, or manager of
22 any party, or (3) any attorney or law firm for any party. I conducted my due diligence in
23 determining whether there is any such relationship through having my office verify with Legal
24 Aid at Work and with Defense Counsel, in determining whether any such relationship exists. See
25 also Joan Graff Declaration ("Graff Decl.")
26



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Settlement Administration Duties

66. The duties of the Settlement Administrator are spelled out in section III(C) of the Settlement and in the bid provided by Phoenix Settlement Administrators, a true and correct copy of which is attached hereto as **Exhibit 11**.

Settlement Administration Costs

67. With regard to the settlement administration costs provision (Settlement ¶ III.H), it is reasonable. Before agreeing to Phoenix Settlement Administrators, the Parties sought and reviewed bids from other reputable third-party administrators: (A) CPT Group, Inc. = \$16,000.00; (B) Phoenix Settlement Administrators = \$10,000.00; and C) ILYM Group, Inc. = \$17,790.00. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 12**. A true and correct copy of the bid from ILYM is attached hereto as **Exhibit 13**. The bid provided by Phoenix Settlement Administrators was comparable. Thus, settlement administration costs provision should be given preliminary approval.

Notice of Settlement to the LWDA

68. 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 14**.

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 Friday, September 30, 2022 at Los Angeles, California.



DAVID SPIVAK,
Declarant



EXHIBIT 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Jennifer Wise (“Plaintiff”), and Defendants River Springs Charter School, Inc. and Springs Charter School, Inc. (“Defendants”). Plaintiff and Defendants collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Action**: The lawsuit currently pending in the Riverside County Superior Court, entitled *Jennifer Wise v. River Springs Charter School, Inc. et al.*, case number RIC2002359.
- B. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount.
- C. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- D. **Attorney Fee Award**: The amount, not to exceed one-third (1/3) of the Gross Settlement Amount or One Hundred Seventy Six Thousand Six Hundred Sixty Six Dollars and Sixty Seven Cents (\$176,666.67), finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendants.
- E. **Class Counsel**: David G. Spivak of The Spivak Law Firm and Walter Haines of United Employees Law Group.
- F. **Class Notice or Notice**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- G. **Class Period**: July 1, 2016 through the date the Court grants preliminary approval of the Settlement.
- H. **Class Representative or Plaintiff**: Jennifer Wise.
- I. **Class Representative General Release Payment**: The amount the Court awards to Plaintiff for her execution of a broader general release of claims against Defendants than Participating Class Members’ release, which will not exceed Five Thousand Dollars (\$5,000.00). This payment shall be paid from the Gross Settlement Amount and will not be opposed by Defendants and is

being offered in consideration for the Plaintiff executing a general release of claims against Defendants, a release that is broader than any Participating Class Member will provide in consideration for a settlement share.

- J. **Cost Award:** The amount that the Court orders Defendants to pay Class Counsel for payment of actual litigation costs, which shall not exceed Fifteen Thousand Dollars (\$15,000.00). The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendants. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- K. **Counsel for Defendants:** Adrienne L. Conrad, Lara P. Besser, and Jaclyn M. Reinhart of Jackson Lewis P.C.
- L. **Defendants:** River Springs Charter School, Inc. and Springs Charter School, Inc.
- M. **Defendants' Affiliated or Related Entities:** Consist of Empire Springs Charter School, Inc. (located in Temecula, California); Harbor Springs Charter School, Inc. (located in Julian, California); Citrus Springs Charter School, Inc. (located in Santa Ana, California); Vista Springs Charter School, Inc. (located in Vista, California); and Pacific Springs Charter School, Inc. (located in Chula Vista, California).
- N. **Disbursement of the Settlement:** The date on which the Settlement Administrator shall disburse the Gross Settlement Amount as indicated herein. Under the terms of this Settlement Agreement, within ten (10) business days after receipt of the Settlement funds from Defendants, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative General Release Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court. Defendants shall separately pay their portion of payroll taxes as the Settlement Class Members' current or former employer.
- O. **Effective Final Settlement Date:** The effective date of this Settlement will be when the final approval of the settlement or judgment can no longer be appealed, or, if there are no objectors, no parties in intervention at the time the court grants final approval of the settlement, and no post judgment challenges to the judgment, ten (10) calendar days from the date the court enters judgment granting final approval of the settlement.

- P. **Funding of Settlement:** Defendants shall remit to the Settlement Administrator the Gross Settlement Amount within ten (10) calendar days of the Effective Final Settlement Date.
- Q. **Final Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement.
- R. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Five Hundred and Thirty Thousand Dollars and Zero Cents (\$530,000.00). This is the gross amount Defendants can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative General Release Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court. Defendants will pay their portion of payroll taxes as the Class Members' current or former employee separate and in addition to the GSA. No portion of the Gross Settlement Amount will revert to Defendants for any reason.
- S. **Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
- T. **LWDA:** California Labor and Workforce Development Agency.
- U. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative General Release Payment, the portion of the PAGA Payment paid to the LWDA, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the share.
- V. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- W. **PAGA Payment:** The PAGA Payment consists of Four Thousand Dollars and Zero Cents (\$4,000.00) of the Gross Settlement Amount allocated to satisfy the

PAGA penalties claim as alleged in the in the Complaint. Seventy-five percent (75%) of the PAGA Payment, or Three Thousand Dollars and Zero Cents (\$3,000.00) shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment, or One Thousand Dollars and Zero Cents (\$1,000.00) shall be part of the Net Settlement Amount distributed to Participating Class Members.

- X. **Participating Class Members:** All Settlement Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- Y. **Parties:** Plaintiff Jennifer Wise as an individual and as Class Representative, and Defendants River Springs Charter School, Inc. and Springs Charter School, Inc.
- Z. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- AA. **Qualified Settlement Fund or QSF:** The Parties agree that the GSA is intended to be a "Qualified Settlement Fund" or "QSF" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- BB. **Released Claims:** Putative class members who do not opt out of the settlement will release all claims under state, federal, and local law arising out of or related to the allegations made in the Complaint, the First Amended Complaint, and the Second Amended Complaint, and all other claims that could have been pleaded based on the facts asserted in the Action (the "Released Claims"). This includes but is not limited to: failure to pay straight and regular wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest periods; failure to pay wages due at termination; failure to provide itemized wage statements; failure to pay employees twice a month; violation of Business and Professions Code section 17200, *et seq.*; PAGA claims for civil penalties due to the alleged Labor Code violations and by Defendants during the Class Period including California Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198, and 2698 *et seq.*, IWC Wage Order 4-2001; Cal. Code of Regulations sections 11040(11) and (12); penalties that could have arisen out of the facts alleged in the Complaint, First Amended Complaint and Second Amended Complaint, including waiting time penalties and missed breaks; interest; attorneys' fees and costs; and any other claims arising out of or related to the Complaint, the First Amended Complaint and the Second Amended Complaint, from July 1, 2016 through the date of Preliminary Approval.

- CC. Released Parties:** Defendants, any of Defendants’ successors, present and former parents, subsidiaries and affiliated companies or entities, which consist of Defendants’ Affiliated or Related Entities, their respective officers, directors, employees, partners, shareholders and agents, as well as any other successors, assigns and legal representatives and their related persons and entities, and any individual or entity that could be liable for any of the Released Claims, and Defendants’ counsel of record in the Action. Empire Springs Charter School, Inc; Harbor Springs Charter School, Inc.; Citrus Springs Charter School, Inc.; Vista Springs Charter School, Inc.; and Pacific Springs Charter School, Inc. are affiliated or related entities with Springs Charter School, Inc., and each such entity conducted the alleged “pre-employment” meetings that are the subject of this action during the relevant time period.
- DD. Response Deadline:** Sixty (60) calendar days from the initial mailing of the Notice.
- EE. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Settlement Administrator will mail the Notice by first class U.S. mail to all Class Members at the address Defendants have on file for those Class Members and to all former employee Class Members at the address resulting from the skip trace. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
- FF. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Settlement Administrators.
- GG. Settlement Class:** All persons who either applied for employment with Defendants and related or affiliated entities in California, were prospective employees of Defendants or related or affiliated entities in California, or who were employed by Defendants or Defendants’ Affiliated or Related Entities, and attended one of Defendants’ (or Defendants’ Affiliated or Related Entities) alleged “pre-employment” meetings, at any time between July 1, 2016 through the date of Preliminary Approval. (The Class will not include any person who previously settled or released any of the claims covered by this Settlement, or any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement).
- HH. Settlement Class Member:** Each person eligible to participate in this Settlement who is a member of the Settlement Class as defined above.
- II. Superior Court:** San Diego County Superior Court.

II. RECITALS

- A. The Action was filed by Plaintiff Jennifer Wise in the Riverside County Superior Court on July 1, 2020. The Complaint alleged causes of action on behalf of Plaintiff and the putative class members for violations of the California Labor Code for failure to pay minimum and overtime wages, failure to provide accurate itemized wage statements, and failure to pay for all wages owed at the time of termination, and a cause of action pursuant to California's Business & Professions Code §§ 17200, et. seq.
- B. Before Defendants Answered the Complaint, Plaintiff filed and served a First Amended Complaint on July 16, 2020. The First Amended Complaint added a cause of action on behalf of Plaintiff and aggrieved employees pursuant to the Private Attorney General Act of 2004 ("PAGA") seeking civil penalties for violations of the California Labor Code alleged in the Complaint.
- C. Defendants Answered the First Amended Complaint on September 25, 2020. In its answer Defendants affirmatively denied generally and specifically all claims raised in the complaint.
- D. The parties attended mediation with Michael Loeb, Esq. of JAMS on June 9, 2021. In advance of mediation Defendants produced records to Plaintiff in preparation for mediation, including: the Plaintiff's personnel file and payroll records, Defendants' employee handbooks in effect during the class period, detailed data regarding a sub-set of the putative class members, including their dates of employment, dates of attendance of an alleged "pre-employment meeting," total hours attended and rates of pay. During mediation Defendant also shared confidential documents related to its financial situation as well. This substantial amount of data and information permitted Plaintiff to evaluate all of the class-wide claims prior to mediation.
- E. After the matter did not resolve following a full day of arm's-length mediation, the parties continued to negotiate in good faith and came to an agreement as to a settlement amount on or about December 16, 2021, and subsequently agreed to the principal terms of the Settlement, the terms of which are reflected herein.
- F. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement

is a fair, adequate, and reasonable settlement, and is in the best interests of the Settlement Class Members.

- G. Defendants' Reasons for Settlement.** Defendants recognize that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- H. Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class treatment. Defendants assert a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants or as to whether a class or classes should be certified, other than for settlement purposes only.
- I. Plaintiff's Claims.** Plaintiff asserts that Defendants' defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Settlement Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Settlement Class Members, and Class Counsel will not oppose Defendants' efforts to use this Agreement to prove that Plaintiff and Settlement Class Members have resolved and are forever barred from re-litigating the Released Claims. Final approval of this Settlement operates as full satisfaction of the Released Claims and will have preclusive effect as to those claims in any subsequent proceeding.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, including all payroll taxes, that Defendants are obligated to pay under this Settlement Agreement is Five Hundred Thirty Thousand Dollars and Zero Cents (\$530,000.00).

- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Settlement Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Settlement Class as defined in this Agreement.
- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Settlement Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendants reserve the right to contest any issues relating to class certification and liability.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Jennifer Wise shall be appointed as representative for the Settlement Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Settlement Class.
- F. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive an equal share of the Net Settlement Amount. The value of each Class Member's Individual Settlement Share ties directly to the one day they attended an alleged "pre-employment" meeting.
- 2. Tax Withholdings.** Each putative class member's gross settlement award will be apportioned as follows: Twenty percent (20%) as wages and Eighty percent (80%) as interest and penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

Only the employee share of payroll tax withholdings shall be taken from each Class Member's Individual Settlement Share.

G. Constituents of GSA Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the GSA as directed later on herein to the following:

- 1. To the Named Plaintiff:** In addition to her Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Jennifer Wise, will receive up to Five Thousand and Zero Cents (\$5,000.00) in consideration for providing Defendants a General Release, a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Enhancement/General Release Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative General Release Payment. An IRS Form 1099 will be issued to the Plaintiff with respect to her General Release Payment.
- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendants agree not to oppose, a total Attorney Fee Award not to exceed one-third (1/3 or \$176,666.67) of the GSA and a Cost Award not to exceed Fifteen Thousand Dollars (\$15,000.00). The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. Out of each Individual Settlement Share, the Settlement Administrator shall also pay the Defendants' portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) to the appropriate local, state, and federal taxing authorities. The Settlement Administrator will calculate the amount of the

Participating Class Members' and Defendants' portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities.

4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
5. **To the LWDA.** The Settlement Administrator will allocate Four Thousand Dollars and Zero Cents (\$4,000.00) of the Gross Settlement Amount to satisfy the PAGA penalties claim as alleged in the First Amended Complaint. Seventy-five percent (75% or \$3,000.00) of the PAGA Payment shall be paid to the LWDA, and twenty-five percent (25% or \$1,000.00) of the PAGA Payment shall be part of the Net Settlement Amount distributed to Participating Class Members.
6. **To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.

H. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix Settlement Administrators shall be retained to serve as Settlement Administrator. The Parties each represent that they do not have any financial interest in Phoenix Settlement Administrators or otherwise have a relationship with Phoenix Settlement Administrators that could create a conflict of interest.

I. Duties of the Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the Settlement Class Members; keeping track of any objections or requests for exclusion from Settlement Class Members; performing skip traces and re-mailing Notices and Individual Settlement Shares to Settlement Class Members; calculating any and all payroll tax deductions as required by law; calculating each Settlement Class Member's Individual Settlement Share; providing weekly status reports to Defendants' Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing Defendants' Counsel and Class Counsel with a settlement timeline of events (i.e. expected dates for receiving class data, notice mailing, response deadline, funding of settlement, disbursement of settlement, uncashed check expiration date, and deposit of uncashed funds to the state Controller's Office – Unclaimed Property Fund; providing updates to Defendants' Counsel and Class Counsel regarding the funding and disbursement of

the GSA; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the PAGA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to Legal Aid at Work; and for such other tasks as the Parties mutually agree.

J. Procedure for Approving Settlement.

1. Discovery Stay Pending Approval of the Settlement.

- a. To effectuate the terms of the Settlement, the Parties agree all formal and informal discovery and other proceedings shall be stayed pending Court approval of the Settlement. Class Counsel further agrees not to initiate communication (oral and written) with the Released Parties' current employees pending the Court's preliminary approval of the Settlement.

2. Motion for Preliminary Approval and Conditional Certification.

- a. The Parties will file a Notice of Proposed Class Action Settlement with the Court and contact the Court clerk to secure the earliest available date that is convenient to the Parties as the preliminary approval hearing date. If for any reason that date is not available for the preliminary approval hearing date, the Parties agree to approach the Court *ex parte* to specially set the hearing on Plaintiff's motion for preliminary approval.
- b. Plaintiff will circulate to Defendants' Counsel a draft motion for preliminary approval and order thereon prior to filing them with the Court. Upon receiving and incorporating input from the Defendants' Counsel, Plaintiff's Counsel will then file that motion for preliminary approval and order.
- c. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice.
- d. Plaintiff's draft of the Preliminary Approval Order will include a provision enjoining Settlement Class Members from filing claims before the California Division of Labor Standards Enforcement ("DLSE"), or from initiating other proceedings regarding the

Released Claims against the Released Parties until they opt-out of Settlement Class. This provision is intended to provide all Settlement Class Members the opportunity to participate in or opt-out of the Settlement, and to ensure finality of the Settlement and the Released Claims to the fullest extent permitted by law.

- e. At the Preliminary Approval hearing, the Parties will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- f. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative General Release Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative General Release Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and Class Representative General Release Payment.
- g. Plaintiff shall be responsible for the timely service and electronic submission of the Settlement Agreement and related filings in the Action.

3. Notice to Settlement Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- a. **Class Data to Settlement Administrator.** Within ten (10) calendar days after entry of the Preliminary Approval Order, Defendants shall deliver to the Settlement Administrator an electronic database, which will list for each Settlement Class

Member: (1) first and last name; (2) last known mailing address; (3) last known telephone numbers; and (4) social security number (collectively "Database"). If any or all of this information is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all former employee Class Members. The Database shall be based on Defendants' payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential. The Parties agree the Settlement Class Members' contact information and Social Security numbers will be used only by the Settlement Administrator for the sole purpose of effectuating the Settlement, and will not be provided to Class Counsel at any time or in any form.

- b. Notice Mailing.** Within fifteen (15) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendants and the results of the skip trace performed on all former employee Class Members.
- c. Returned Notices and Re-mailing Efforts.** If a Class Notice is returned because of an incorrect address, within three (3) business days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. The Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing.
- d. Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly

status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.

- e. Response Deadline.** The Settlement Class Members will have Sixty (60) days from the date of the mailing in which to object to the Settlement or to postmark requests for exclusion from the Settlement.
 - f. Settlement Administrator's Declaration.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement, including the number of requests for exclusion and objections received, the estimated average and high Individual Settlement Shares to Participating Class Members, as well as any other additional information requested by the Parties. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration. The Settlement Administrator will provide any additional declarations needed for the Court approval and disbursement of the Settlement.
- 4. Objections to Settlement.** The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.
- a. Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
 - b. Notice of Intent to Appear.** Class Members who timely file valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through

the objector's own counsel, provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than the Response Deadline.

5. **Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

- a. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

- b. **Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Settlement Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Settlement Class Members, the number of re-mailed Notices returned as undeliverable, the number of Settlement Class Members who objected to the Settlement and copies of their submitted objections, the number of Settlement Class Members who returned valid requests for exclusion, and the number of Settlement Class Members who returned invalid requests for exclusion. This report can be in the form of a declaration by the Settlement Administrator to be filed with Plaintiff's motion for final approval.

6. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

7. Defendants' Option to Void Settlement. Defendants may void the Settlement if the number of requests for exclusion exceeds ten percent (10%) of the Settlement Class. However, Defendants shall not be required to void the Settlement. Defendants agree to notify Class Counsel of any such decision no later than fourteen (14) calendar days following the Response Deadline.

8. Motion for Final Approval.

a. Motion Drafting and Filing. Class Counsel will draft and file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative General Release Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Class Members who do not opt out of the Settlement.

b. Final Approval Not Granted. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed, vacated, or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative General Release Payment, Attorney Fee Award, or Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.

c. Final Approval Order and Judgment. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for

purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law. Prior to filing the Final Approval Order and Judgment, Class Counsel will circulate it to Defendants for review and approval.

- 9. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Settlement Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
- 10. Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.
- 11. Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendants can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. Plaintiff shall be responsible for any attorneys' liens related to this Action or the Maximum Settlement Amount. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendants Counsel and Class Counsel. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.
 - a. Funding the Settlement:** Defendants shall wire to the Settlement Administrator the Gross Settlement Amount and employer-side

payroll taxes within ten (10) calendar days of the Effective Final Settlement Date.

- b. Disbursement:** Within ten (10) calendar days after receipt of the Settlement funds from Defendants, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative General Release Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court; and (6) Defendants' portion of payroll taxes as the Settlement Class Members' current or former employer.

12. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining uncashed, shall be distributed by the Settlement Administrator, to Legal Aid at Work.

13. Final Report by Settlement Administrator. Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

14. Defendants' Legal Fees. Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Fund.

K. Release of Claims. As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion release the Released Parties from the Released Claims. Participating Class Members agree not to sue or otherwise make a claim in any forum against any of the Released Parties for any of the Released Claims.

L. Plaintiff's Release of Claims and General Release. As of the Effective Final Settlement Date, and in exchange for the Class Representative General Release Payment to the named Plaintiff in an amount not to exceed Five Thousand Dollars (\$5,000.00), Plaintiff shall give the following general release of claims for herself and her respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of her signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to her employment with Defendants or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

This release excludes any release of any claims not permitted to be released by law and any and all claims subject to the separate settlement agreement and release of Plaintiff's individual claims. This release also excludes Plaintiff's claims and prayers for relief stemming from the exercise of her rights under Labor Code sections 1030, 1031, and 1033, which are subject to a separate confidential settlement agreement between Plaintiff and the Defendants.

M. Miscellaneous Terms

- 1. No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. This Settlement and Plaintiff's and Defendants' willingness to settle the Action will have no bearing on, and will not be admissible in

connection with, any litigation (other than solely in connection with this Settlement).

- 2. No Effect on Employee Benefits.** The Class Representative General Release Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members. The Parties agree that any Class Representative General Release Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants. Further, any Class Representative General Release Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
- 3. Publicity.** Plaintiff and Class Counsel agree that the terms of this Settlement (including but not limited to the GSA), the negotiations leading to this Settlement, and all documents related to the Settlement, shall not be discussed with, publicized, or promoted to the public prior to the Court preliminarily approving this Settlement, except as necessary to enforce the terms of the Settlement. Notwithstanding the foregoing, Plaintiff and Class Counsel may tell the public in general only that certain claims "have been resolved by the parties." This does not limit Class Counsel from referencing this Settlement, as needed, to any Court in support of their adequacy as Class Counsel.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendants' Counsel warrant 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 under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the

implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Superior Court.
- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 10. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 12. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

- 13. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Settlement Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Settlement Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Settlement Class Member, such Settlement Class Member assumes all responsibility for the payment of such taxes.
- 14. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 15. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 16. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 17. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

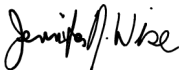
[Signatures on Next Page]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: May 13, 2022

PLAINTIFF JENNIFER WISE



Jennifer Wise

Dated: June 27, 2022

DEFENDANT RIVER SPRINGS CHARTER SCHOOL, INC and SPRINGS CHARTER SCHOOL, INC.



Tanya Rodgers
Assistant Superintendent of Business

Dated: May 17, 2022

THE SPIVAK LAW FIRM



David G. Spivak
Attorneys for Plaintiff, on behalf of herself and all others similarly situated

Dated: April 18, 2022

UNITED EMPLOYEES LAW GROUP



Walter Haines
Attorneys for Plaintiff, on behalf of herself and all others similarly situated

Dated: June 27, 2022

JACKSON LEWIS, PC



Adrienne L. Conrad
Lara P. Besser
Jaclyn M. Reinhart
Attorneys for Defendants

EXHIBIT A

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

Jennifer Wise v. Springs Charter Schools, Inc., et al., Case No. RIC2002359

As a person who applied for employment and attended a preemployment meeting of

CPT ID: <<CPT ID>>

Please provide current address (if different) here:

<<Name>>

<<Address1>>

<<Address2>>

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

Springs Charter Schools, Inc., or any “Related or Affiliated Entities (defined below) in California, including River Springs Charter School, Inc., you may be entitled to receive money from a class action settlement.

The Riverside County Superior Court has authorized this Class Notice.

This is not a solicitation from a lawyer.

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT IF YOU ARE A PERSON WHO APPLIED FOR EMPLOYMENT AND ATTENDED A “PREEMPLOYMENT MEETING” OF SPRINGS CHARTER SCHOOLS, INC. OR ANY RELATED OR AFFILIATED ENTITIES IN CALIFORNIA, INCLUDING RIVER SPRINGS CHARTER SCHOOL, INC., BETWEEN JULY 21, 2016 AND <<THE DATE THE COURT GRANTS PRELIMINARY APPROVAL OF THE SETTLEMENT>>.

- A proposed settlement of \$530,000.00 (the “Gross Settlement Amount”) will be used to pay claims to: All persons who either applied for employment with Defendants and related or affiliated entities in California, were prospective employees of Defendants or related or affiliated entities in California, or who were employed by Defendants or Related or Affiliated entities in California, and attended one of Defendants’ (or Defendants’ Affiliated or Related Entities’) alleged pre-employment meetings during the “Class Period” of July 21, 2016 to <<the date the Court grants preliminary approval of the Settlement>> (the “Class Members”). “Defendants’ Affiliated or Related Entities” consist of Empire Springs Charter School, Inc. (located in Temecula, California; Harbor Springs Charter School, Inc. (located in Julian, California); Citrus Springs Charter School, Inc. (located in Santa Ana, California); Vista Springs Charter School, Inc. (located in Vista, California); and Pacific Springs Charter School, Inc. (located in Chula Vista, California). The Gross Settlement Amount includes (a) expenses and fees of the Settlement Administrator up to \$10,000.00; (b) a Class Representative Payment of \$5,000.00 to the Plaintiff Jennifer Wise as the class representative; (c) attorneys’ fees of up to \$176,666.67 and litigation expenses of up to \$15,000.00 to Class Counsel; and (d) \$4,000.00 allocated to settle claims brought pursuant to the Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (“PAGA”)

(75% of which will go to the California Labor & Workforce Development Agency (“LWDA”) and 25% of which will go to Class Members). The Court must approve these payments at the Final Approval Hearing.

- Defendants estimated for purposes of mediation that there are 1,176 Class Members for the period of July 21, 2016 through December 31, 2021.
- The settlement resolves a lawsuit entitled *Jennifer Wise v. Springs Charter Schools, Inc., et al.*, Case No. RIC2002359 (the “Action”) for Defendants’ alleged failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to reimburse for preemployment testing, failure to maintain required payroll records, and other legal consequences that would follow from these failures, including claims under California’s Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendants from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action. Defendants deny any and all liability arising from any of the claims and contend that they are not responsible for a failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to reimburse for preemployment testing, failure to timely pay wages, failure to maintain required payroll records, or related wrongs, and fully complied with all applicable laws.
- Each Participating Class Member will receive an equal share of the Net Settlement Amount. The value of each Class Member’s Individual Settlement Share ties directly to the one day they attended an alleged “pre-employment” meeting.

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

HOW MUCH WILL I GET?

It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement. The average Individual Settlement Award per Class Member is \$____. A Class Member who worked at least one qualified week during the Class Period, will receive a minimum of \$____. The lowest estimated Individual Settlement Award is \$____) and the highest number is approximately _____ workweeks, resulting in the highest estimated Individual Settlement Award of \$_____.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
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OPT OUT	Receive no payment and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Action. However, you may not opt out of the PAGA Released Claims.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
DISPUTE THE CALCULATION	If you feel that you deserve a higher individual settlement amount under the settlement agreement, you may dispute the Settlement Administrator's calculation by writing to the Settlement Administrator.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, Phoenix Settlement Administrators, providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

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

The Court in charge of this case is the Riverside County Superior Court. The person who sued is called "Plaintiff" and the organizations sued are called "Defendants."

2. What is the Action about?

In the Action, Jennifer Wise ("Plaintiff") alleged multiple violations of the California Labor Code, the California Business & Professions Code, and PAGA, including causes of action for: failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to reimburse for preemployment testing, failure to timely pay wages, failure to maintain required payroll records, unfair competition under California's Business & Professions Code, and claims for civil penalties for violations of the PAGA.

3. Why is there a settlement?

1 The parties disagree on the probable outcome of the case with respect to liability, damages, and
2 how much money could be recovered if the Plaintiff won at trial. Defendants believe the Plaintiff
3 would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
4 Defendants. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
5 and disruption associated with continued litigation and they have therefore chosen to resolve
6 their differences by entering into a settlement. By doing so, the parties can avoid the cost of a
7 trial, yet Class Members are still entitled to receive payments if they comply with the instructions
8 in this Class Notice. The parties entered into this settlement after arms-length negotiations while
9 using the services of an experienced and neutral mediator. Plaintiff has also, in addition to this
10 Class Action settlement, reached her own individual settlement regarding claims or retaliation
11 for exercising her right to express breastmilk in the workplace, pursuant to Labor Code §§ 1030,
12 1031 and 1034. The Plaintiff and Class Counsel believe that the proposed settlement is fair and
13 reasonable and is in the best interest of the Class Members.

14 The Court has determined that there is sufficient evidence to suggest that the proposed settlement
15 is fair, adequate, and reasonable, and that any final determination of any possible issues will be
16 made at the final hearing.

17 4. What is a class action settlement?

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

23 5. What should I do?

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

6. How much will my payment be?

After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is
available for review), the remainder will be used to pay Class Members an equal payment based
on the number of Class Members (“Pro-Rata Share”).

The Settlement Administrator shall determine by how many Class Members there are, though
Defendants estimate there to be 1,176 Class Members.

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

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

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

15 7. When would I get my payment?

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

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

27 8. What am I releasing?

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

As of the Effective Final Settlement Date, Class Members who do not submit a timely
and valid request for exclusion release the Released Parties from the Released Claims.
Participating Class Members agree not to sue or otherwise make a claim in any forum
against any of the Released Parties for any of the Released Claims.

Class members who do not opt out of the settlement will release all claims under state,
federal, and local law arising out of or related to the allegations made in the
Complaint, the First Amended Complaint, and the Second Amended Complaint, and
all other claims that could have been pleaded based on the facts asserted in the Action
(the "Released Claims"). This includes but is not limited to: failure to pay straight and

regular wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest periods; failure to pay wages due at termination; failure to reimburse for preemployment testing; failure to provide itemized wage statements; failure to pay employees twice a month; violation of Business and Professions Code section 17200, et seq.; PAGA claims for civil penalties due to the alleged Labor Code violations and by Defendants during the Class Period including California Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198, and 2698 et seq., IWC Wage Order 4-2001; Cal. Code of Regulations sections 11040(11) and (12); penalties that could have arisen out of the facts alleged in the Complaint, First Amended Complaint and Second Amended Complaint, including waiting time penalties and missed breaks; interest; attorneys' fees and costs; and any other claims arising out of or related to the Complaint, the First Amended Complaint and the Second Amended Complaint, from July 1, 2016 through <<the date of Preliminary Approval>>.

The Released Parties are Defendants, any of Defendants' successors, present and former parents, subsidiaries and affiliated companies which consist of Empire Springs Charter School, Inc. (located in Temecula, California; Harbor Springs Charter School, Inc. (located in Julian, California); Citrus Springs Charter School, Inc. (located in Santa Ana, California); Vista Springs Charter School, Inc. (located in Vista, California); and Pacific Springs Charter School, Inc. (located in Chula Vista, California), their respective officers, directors, employees, partners, shareholders and agents, as well as any other successors, assigns and legal representatives and their related persons and entities, and any individual or entity that could be liable for any of the Released Claims, and Defendants' counsel of record in the Action. Empire Springs Charter School, Inc; Harbor Springs Charter School, Inc.; Citrus Springs Charter School, Inc.; Vista Springs Charter School, Inc.; and Pacific Springs Charter School, Inc. are affiliated or related entities with Springs Charter School, Inc., and each such entity conducted the alleged "pre-employment" meetings that are the subject of this action during the relevant time period.

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

Under the Settlement, Plaintiff Jennifer Wise separately releases all claims she has against the Defendant including claims and prayers for relief stemming from the exercise of her rights under Labor Code sections 1030, 1031, and 1033, which are subject to a separate confidential settlement agreement between Plaintiff and the Defendants which the Parties will make available upon request of the Court.

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail to the Settlement Administrator with the following sentence, or something similar, stating: "I request to be excluded from the class action proceedings in the matter of *Jennifer Wise v. Springs Charter Schools, Inc.*, Case No. RIC2002359." You may use the enclosed "Election not to

Participate in Settlement Form” for this purpose. You will have **60 days** from the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and mailed to the Settlement Administrator, Phoenix Settlement Administrators, <<settlement administrator mailing address>> and be postmarked no later than <<response deadline>>, or it will not be considered and you will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to opt out. You must include your full name (and former names, if any) and address in your request and you must sign the written request. However, you cannot opt-out of the PAGA Released Claims and will receive your pro rate share of the PAGA Penalties whether or not you opt out of the settlement.

10. Do I have a lawyer in this case?

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

11. How will the lawyers be paid?

Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third) of the Gross Settlement Amount, estimated to be \$176,666.67. Class Counsel will also ask the Court to award them costs of not more than \$15,000.00 incurred in connection with the Action. The Court may choose to award less than the amount requested by Class Counsel.

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

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

You may object to the proposed settlement in writing or in person. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers should (a) clearly identify the case name and number (*Jennifer Wise v. Springs Charter Schools, Inc.*, Case No. RIC2002359), (b) be submitted to the Settlement Administrator by mailing them to the Settlement Administrator, Phoenix Settlement Administrators, <<settlement administrator mailing address>>, and (c) be filed or postmarked on or before <<response deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to object. Class Members may appear at the final approval hearing to be heard on their objections, even if they have not previously served a written objection.

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

2 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
3 hearing time>> in Department 6 at the Riverside County Superior Court, Riverside Historic
4 Courthouse, 4050 Main Street, Riverside, CA 92501 (The Honorable Sunshine Sykes presiding).
5 At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate.
6 If there are objections that were properly made, the Court will consider them. The Court will
7 listen to people who have asked to speak at the hearing. The Court may also decide how much
8 to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the
9 settlement. We do not know how long this decision will take.

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

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

15 **15. May I speak at the hearing?**

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

18 **16. What happens if I do nothing at all?**

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

21 **GETTING MORE INFORMATION**

22 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
23 or the Settlement Administrator if you would like more information about the case. You may
24 call <<settlement administrator phone number>> or write the Settlement Administrator, Phoenix
25 Settlement Administrators, located at <<settlement administrator mailing address>>.

26 You can find the settlement agreement with this information: (i) Plaintiff Jennifer Wise's Notice
27 Of Motion For Preliminary Approval Of Class Action Settlement, filed [REDACTED], 2022 (ii)
28 visiting the Riverside County Superior Court, located at Riverside Historic Courthouse, 4050
Main Street, Riverside, CA 92501; or (iii) accessing the Riverside County Superior Court's
website at <https://www.riverside.courts.ca.gov/>.

You can also access the Riverside County Superior Court's Online Services at
<https://www.>, or by visiting the Clerk's Office at the Riverside County
Superior Court, Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501),
between _:_0 a.m. and _:_0 p.m., Monday through Friday, excluding Court holidays.

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

EXHIBIT A

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

Jennifer Wise v. Springs Charter Schools, Inc., et al., Case No. RIC2002359

As a person who applied for employment and attended a preemployment meeting of

CPT ID: <<CPT ID>>

Please provide current address (if different) here:

<<Name>>

<<Address1>>

<<Address2>>

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

Springs Charter Schools, Inc., or any “Related or Affiliated Entities (defined below) in California, including River Springs Charter School, Inc., you may be entitled to receive money from a class action settlement.

The Riverside County Superior Court has authorized this Class Notice.

This is not a solicitation from a lawyer.

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT IF YOU ARE A PERSON WHO APPLIED FOR EMPLOYMENT AND ATTENDED A “PREEMPLOYMENT MEETING” OF SPRINGS CHARTER SCHOOLS, INC. OR ANY RELATED OR AFFILIATED ENTITIES IN CALIFORNIA, INCLUDING RIVER SPRINGS CHARTER SCHOOL, INC., BETWEEN JULY 21, 2016 AND <<THE DATE THE COURT GRANTS PRELIMINARY APPROVAL OF THE SETTLEMENT>>.

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As of the Effective Final Settlement Date, Class Members who do not submit a timely
and valid request for exclusion release the Released Parties from the Released Claims.
Participating Class Members agree not to sue or otherwise make a claim in any forum
against any of the Released Parties for any of the Released Claims.

Class members who do not opt out of the settlement will release all claims under state,
federal, and local law arising out of or related to the allegations made in the
Complaint, the First Amended Complaint, and the Second Amended Complaint, and
all other claims that could have been pleaded based on the facts asserted in the Action
(the "Released Claims"). This includes but is not limited to: failure to pay straight and

regular wages; failure to pay overtime wages; failure to provide meal periods; failure to provide rest periods; failure to pay wages due at termination; failure to reimburse for preemployment testing; failure to provide itemized wage statements; failure to pay employees twice a month; violation of Business and Professions Code section 17200, et seq.; PAGA claims for civil penalties due to the alleged Labor Code violations and by Defendants during the Class Period including California Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198, and 2698 et seq., IWC Wage Order 4-2001; Cal. Code of Regulations sections 11040(11) and (12); penalties that could have arisen out of the facts alleged in the Complaint, First Amended Complaint and Second Amended Complaint, including waiting time penalties and missed breaks; interest; attorneys' fees and costs; and any other claims arising out of or related to the Complaint, the First Amended Complaint and the Second Amended Complaint, from July 1, 2016 through <<the date of Preliminary Approval>>.

The Released Parties are Defendants, any of Defendants' successors, present and former parents, subsidiaries and affiliated companies which consist of Empire Springs Charter School, Inc. (located in Temecula, California; Harbor Springs Charter School, Inc. (located in Julian, California); Citrus Springs Charter School, Inc. (located in Santa Ana, California); Vista Springs Charter School, Inc. (located in Vista, California); and Pacific Springs Charter School, Inc. (located in Chula Vista, California), their respective officers, directors, employees, partners, shareholders and agents, as well as any other successors, assigns and legal representatives and their related persons and entities, and any individual or entity that could be liable for any of the Released Claims, and Defendants' counsel of record in the Action. Empire Springs Charter School, Inc; Harbor Springs Charter School, Inc.; Citrus Springs Charter School, Inc.; Vista Springs Charter School, Inc.; and Pacific Springs Charter School, Inc. are affiliated or related entities with Springs Charter School, Inc., and each such entity conducted the alleged "pre-employment" meetings that are the subject of this action during the relevant time period.

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

Under the Settlement, Plaintiff Jennifer Wise separately releases all claims she has against the Defendant including claims and prayers for relief stemming from the exercise of her rights under Labor Code sections 1030, 1031, and 1033, which are subject to a separate confidential settlement agreement between Plaintiff and the Defendants which the Parties will make available upon request of the Court.

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail to the Settlement Administrator with the following sentence, or something similar, stating: "I request to be excluded from the class action proceedings in the matter of *Jennifer Wise v. Springs Charter Schools, Inc.*, Case No. RIC2002359." You may use the enclosed "Election not to

Participate in Settlement Form” for this purpose. You will have **60 days** from the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and mailed to the Settlement Administrator, Phoenix Settlement Administrators, <<settlement administrator mailing address>> and be postmarked no later than <<response deadline>>, or it will not be considered and you will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to opt out. You must include your full name (and former names, if any) and address in your request and you must sign the written request. However, you cannot opt-out of the PAGA Released Claims and will receive your pro rate share of the PAGA Penalties whether or not you opt out of the settlement.

10. Do I have a lawyer in this case?

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

11. How will the lawyers be paid?

Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third) of the Gross Settlement Amount, estimated to be \$176,666.67. Class Counsel will also ask the Court to award them costs of not more than \$15,000.00 incurred in connection with the Action. The Court may choose to award less than the amount requested by Class Counsel.

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

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

You may object to the proposed settlement in writing or in person. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers should (a) clearly identify the case name and number (*Jennifer Wise v. Springs Charter Schools, Inc.*, Case No. RIC2002359), (b) be submitted to the Settlement Administrator by mailing them to the Settlement Administrator, Phoenix Settlement Administrators, <<settlement administrator mailing address>>, and (c) be filed or postmarked on or before <<response deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to object. Class Members may appear at the final approval hearing to be heard on their objections, even if they have not previously served a written objection.

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

2 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
3 hearing time>> in Department 6 at the Riverside County Superior Court, Riverside Historic
4 Courthouse, 4050 Main Street, Riverside, CA 92501 (The Honorable Sunshine Sykes presiding).
5 At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate.
6 If there are objections that were properly made, the Court will consider them. The Court will
7 listen to people who have asked to speak at the hearing. The Court may also decide how much
8 to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the
9 settlement. We do not know how long this decision will take.

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

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

15 **15. May I speak at the hearing?**

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

18 **16. What happens if I do nothing at all?**

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

21 **GETTING MORE INFORMATION**

22 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
23 or the Settlement Administrator if you would like more information about the case. You may
24 call <<settlement administrator phone number>> or write the Settlement Administrator, Phoenix
25 Settlement Administrators, located at <<settlement administrator mailing address>>.

26 You can find the settlement agreement with this information: (i) Plaintiff Jennifer Wise's Notice
27 Of Motion For Preliminary Approval Of Class Action Settlement, filed [REDACTED], 2022 (ii)
28 visiting the Riverside County Superior Court, located at Riverside Historic Courthouse, 4050
Main Street, Riverside, CA 92501; or (iii) accessing the Riverside County Superior Court's
website at <https://www.riverside.courts.ca.gov/>.

You can also access the Riverside County Superior Court's Online Services at
<https://www.>, or by visiting the Clerk's Office at the Riverside County
Superior Court, Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501),
between _:_0 a.m. and _:_0 p.m., Monday through Friday, excluding Court holidays.

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

EXHIBIT 2



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION, AND CERTIFIED U.S. MAIL ***

April 29, 2020

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

RE: *Jennifer Wise / Springs Charter Schools, Inc.*

To whom it may concern:

This notice concerns the following employers:

1. Springs Charter Schools, Inc., a California corporation; and
2. River Springs Charter School, Inc., a California corporation

Collectively, the aforementioned employers are herein referred to as "Springs Charter."

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jennifer Wise (hereafter "Wise") provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to human resources staff, administrative staff, teachers, and other hourly employees in comparable positions (hereafter referred to collectively as "Aggrieved Employees") by Springs Charter, of violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 1174, 1174.5, 1194, 1197, and 1198.

At all relevant times, Springs Charter has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Wise and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter "the Wage Order")

or “Wage Order 4”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Springs Charter began to employ Wise in approximately January of 2019 as a non-exempt hourly human resources generalist at its charter school located in Temecula, California. Wise continuously worked for Springs Charter in this capacity from the time of her hire until on or about May 10, 2019, when her employment ended.

At all relevant times, Springs Charter employed Wise and the other Aggrieved Employees and issued their paychecks on either a bi-weekly or semimonthly basis. At the inception of Wise’s employment, Springs Charter issued her and the Aggrieved Employees their paychecks on a bi-weekly basis. In approximately March of 2019, Springs Charter began issuing paychecks to Wise and the Aggrieved Employees on a semimonthly basis. At all relevant times, Springs Charter classified Wise and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

Springs Charter required Wise and the Aggrieved Employees to perform work while clocked out. At the inception of their employment, Springs Charter required Wise and the Aggrieved Employees to complete onboarding tasks, such as obtaining background checks and tuberculosis tests, and completing various paperwork such as IRS forms I-9 and W-4, outside of their scheduled working hours. Springs Charter also required Wise and the Aggrieved Employees to attend a new-hire orientation while clocked out from work. Springs Charter failed to compensate Wise and the Aggrieved Employees for this work performed off-the-clock.

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

- a) Springs Charter failed to pay Wise and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work while completing preliminary onboarding tasks and while attending training and orientation sessions;
- b) Springs Charter failed to provide Wise and the Aggrieved Employees with accurate wage statements;
- c) Springs Charter failed to timely pay Wise and the Aggrieved Employees all earned and unpaid wages during employment; and
- d) Springs Charter failed to timely pay Wise and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations[.]" Wage Order § 1. The phrase "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes "professional, semiprofessional, managerial, supervisory, . . . , clerical, office work, and mechanical occupations" including "teachers." *Id.* § 2 (O).

At all relevant times during the applicable limitations period, Springs Charter employed Wise and the other Aggrieved Employees as human resources generalists, administrative staff, teachers, and employees in comparable positions. Accordingly, Wise and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay**
(Lab Code §§ 510, 1194, 1197, and 1198)

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

(A) Daily Overtime - General Provisions

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

hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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

In relevant part, California Labor Code § 510 states,

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

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05.

Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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

Springs Charter knowingly failed to pay Wise and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

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

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

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

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

- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Springs Charter violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Springs Charter failed to state in the wage statements it issued to Wise and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

Failure to Timely Pay Wages 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, Springs Charter failed to timely pay all wages to Wise and the Aggrieved Employees. Springs Charter failed to provide Wise and the other Aggrieved Employees all wages owed, including, but not limited to, all regular and overtime wages for work they performed off the clock.

As a result, Springs Charter failed to pay Wise and the other Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Springs Charter has violated California Labor Code § 204. Because of Springs Charter's failure to fully pay Wise and the other Aggrieved Employees within the time periods set by California Labor Code § 204, Springs Charter failed to timely pay all wages due during employment.

Accordingly, Wise seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

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

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

address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

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

As alleged herein, Springs Charter failed to provide Wise and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock. As a result, Springs Charter failed to pay Wise and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Springs Charter has violated California Labor Code §§ 201, 202 and 203.

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

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.

Springs Charter has willfully failed to maintain the records required by § 1174 and the Wage Order, including but not limited to, all regular and overtime wages for time they worked that they performed off-the-clock while completing preliminary onboarding tasks and while attending training and orientation sessions. Accordingly, Wise seeks civil penalties from Springs Charter on behalf of herself and the 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)).

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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,



David Spivak, Esq.
david@spivaklaw.com

cc: Jennifer Wise
Walter Haines, Esq.

Springs Charter Schools, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

River Springs Charter School, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

EXHIBIT 3

FILED
Superior Court of California
County of Riverside

7/1/2020

C. Mundo

Electronically Filed

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Facsimile: (562) 256-1006

Attorneys for Plaintiff,

JENNIFER WISE, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

(UNLIMITED JURISDICTION)

JENNIFER WISE, on behalf of herself and all
others similarly situated,

Plaintiff(s),

vs.

SPRINGS CHARTER SCHOOLS, INC., a
California corporation; RIVER SPRINGS
CHARTER SCHOOL, INC., a California
corporation; and DOES 1-50, inclusive,

Defendant(s).

Case No.: **RIC2002359**

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights
Attorneys
16530 Ventura Blvd.,
Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 Plaintiff JENNIFER WISE (hereafter “Plaintiff”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) and the
6 Business and Professions Code against defendants SPRINGS CHARTER SCHOOLS, INC., a
7 California corporation; RIVER SPRINGS CHARTER SCHOOL, INC., a California corporation;
8 and DOES 1 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated current and former employees who worked in California as hourly
11 employees, including, but not limited to human resources staff, administrative staff, teachers, and
12 persons in similar positions, at any time during the period beginning four years prior to the filing
13 of this action to the present, for unpaid wages and other related relief. These claims are based on
14 Defendants’ alleged failures to (1) compensate Plaintiff and the below-described Class for all
15 hours worked at the correct rates of pay; (2) provide accurate written wage statements, (3) timely
16 pay wages upon termination of employment, and (4) fairly compete. Accordingly, Plaintiff now
17 seeks to recover unpaid wages and related 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 the 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 herself and the 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 Riverside County pursuant to California Code of Civil
26 Procedure § 395(a) and § 395.5 in that liability arose in Riverside County because at least some
27 of the transactions that are the subject matter of this Complaint occurred therein and/or because
28 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

29 **PARTIES**

30 7. Plaintiff JENNIFER WISE is a resident of California.

31 8. Defendant SPRINGS CHARTER SCHOOLS, INC. is a corporation organized



and existing under the laws of California based on Plaintiff's information and belief.

9. Defendant RIVER SPRINGS CHARTER SCHOOL, INC. is a corporation organized and existing under the laws of California based on Plaintiff's information and belief.

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

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

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

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

CLASS ALLEGATIONS

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

15. **Class Definition:** The Class is defined as follows: all persons Defendants employed in California and paid on an hourly basis, including but not limited to human resources



1 staff, administrative staff, teachers, and persons in comparable positions, at any time during the
2 period beginning four years prior to the filing of this action and ending on the date that final
3 judgment is rendered in this action.

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

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

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

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

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

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

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

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

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

25 G. Are the Class Members entitled to attorneys' fees?

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

20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent



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1 class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff
2 will fairly and adequately represent and protect the interests of the Class.

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

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

17 **STATEMENT OF FACTS**

18 23. In or about January of 2019, Defendants first employed Plaintiff to work in
19 California as a non-exempt hourly human resources generalist at their charter school located in
20 Temecula, California. Defendants continuously employed Plaintiff in this capacity from the time
21 of her hire until on or about May 10, 2019, when her employment ended.

22 24. Plaintiff and the Class Members earned their wages at an hourly rate and
23 Defendants provided them with paychecks on either a bi-weekly or semimonthly basis. At the
24 inception of Plaintiff's employment, Defendants issued her and the Class Members their
25 paychecks on a bi-weekly basis. In approximately March of 2019, Defendants began issuing
26 paychecks to Plaintiff and the Class on a semimonthly basis.

27 25. At relevant times within the applicable limitations period, Defendants required
28 Plaintiff and the Aggrieved Employees to perform work while clocked out. At the inception of
Plaintiff's and the Class Members' employment, Defendants required them to complete various
onboarding tasks, such as obtaining background checks and tuberculosis tests, and completing
various paperwork, such as IRS Forms I-9 and W-4, outside of their scheduled working hours.



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1 Defendants also required Plaintiff and the Class Members to attend a new-hire orientation while
2 clocked out from work. Defendants failed to compensate Plaintiff and the Class for this work
3 performed off-the-clock.

4 26. Defendants failed to maintain accurate written employee records pertaining to
5 Plaintiff and the other Class Members, including accurate wage statements itemizing each Class
6 Member's gross wages earned, net wages earned, total hours worked, corresponding number of
7 hours worked at each rate by the Class Member, and other requirements of California Labor Code
8 § 226.

9 27. At all relevant times, upon resignation or termination, Defendants failed to pay
10 final wages in a timely manner as a result of their failure to pay employees for all work performed
11 off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages,
12 including, but not limited to, regular time and overtime wages for hours they worked while
13 completing preliminary onboarding tasks and while attending training and orientation sessions
14 while off-the-clock.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

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

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

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

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

25 31. Section 3 of the Wage Order states:

26 **(A) Daily Overtime - General Provisions**

27 (1) The following overtime provisions are applicable to employees
28 18 years of age or over and to employees 16 or 17 years of age who
are not required by law to attend school and are not otherwise
prohibited by law from engaging in the subject work. Such
employees shall not be employed more than eight (8) hours in any
workday or more than 40 hours in any workweek unless the
employee receives one and one-half (1 ½) times such employee's



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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; and

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

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

33. Labor Code section 510 states:

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

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



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Order.

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

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

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

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

39. At all relevant times, Defendants paid Plaintiff and the Class Members at an hourly rate on either a bi-weekly or semimonthly basis.

40. At all relevant times, Defendants failed to pay Plaintiff and the Class Members for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime wages for all hours they worked while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

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

43. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of herself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including



1 interest thereon, as permitted by law, all in amounts subject to proof.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

4 **(Lab. Code § 226)**

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

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

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

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

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

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

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

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

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



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1 to other documents or information.

2 48. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
3 all wages owed, including but not limited to, all regular and overtime wages owed at the correct
4 rates. As a result, Defendants have failed to properly and accurately itemize each employee's
5 gross wages earned, net wages earned, the total hours worked, the corresponding number of hours
6 worked by employees, and other requirements of California Labor Code § 226. As a result,
7 Defendants have violated California Labor Code § 226.

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

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

22 51. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to
23 recover the greater of actual damages, or penalties of fifty dollars (\$50.00) for the initial pay
24 period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars
25 (\$100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not
26 to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per Class Member, and are
27 also entitled to an award of costs and reasonable attorneys' fees.

28 **THIRD CAUSE OF ACTION**

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)



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

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

UNFAIR COMPETITION

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



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(By Plaintiff and the Class against all Defendants)

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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



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- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages;
- E. Actual damages;
- F. Statutory damages;
- G. Liquidated damages;
- H. Restitution;
- I. Declaratory relief;
- J. Equitable relief;
- K. Statutory penalties;
- L. Pre-judgment and post-judgment interest;
- M. Costs of suit;
- N. Interest;
- O. Reasonable attorneys' fees; and
- P. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 6, 2020

By: 

DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, JENNIFER WISE and
all others similarly situated

EXHIBIT 4

DAVID G. SPIVAK (SBN 179684)
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Attorneys for Plaintiff,
JENNIFER WISE, and all others similarly situated

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

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

Plaintiff(s),

vs.

SPRINGS CHARTER SCHOOLS, INC., a
California corporation; RIVER SPRINGS
CHARTER SCHOOL, INC., a California
corporation; and DOES 1-50, inclusive,

Defendant(s).

Case No.: RIC2002359

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

JURY TRIAL DEMANDED



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1 Plaintiff JENNIFER WISE (hereafter “Plaintiff”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class 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 SPRINGS CHARTER
7 SCHOOLS, INC., a California corporation; RIVER SPRINGS CHARTER SCHOOL, INC., a
8 California corporation; and DOES 1 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated current and former employees who worked in California as hourly
11 employees, including, but not limited to human resources staff, administrative staff, teachers, and
12 persons in similar positions, at any time during the period beginning four years prior to the filing
13 of this action to the present, for unpaid wages and other related relief. These claims are based on
14 Defendants’ alleged failures to (1) compensate Plaintiff and the below-described Class for all
15 hours worked at the correct rates of pay; (2) provide accurate written wage statements, (3) timely
16 pay wages upon termination of employment, and (4) fairly compete. Additionally, Plaintiff seeks
17 civil penalties under the California Labor Code Private Attorneys General Act, Labor Code §§
18 2698, *et seq.* (“PAGA”). Accordingly, Plaintiff now seeks to recover civil penalties, unpaid
19 wages, and related relief through this class action.

20 **JURISDICTION AND VENUE**

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

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

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

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

///



PARTIES

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

8. Defendant SPRINGS CHARTER SCHOOLS, INC. is a corporation organized and existing under the laws of California based on Plaintiff’s information and belief.

9. Defendant RIVER SPRINGS CHARTER SCHOOL, INC. is a corporation organized and existing under the laws of California based on Plaintiff’s information and belief.

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

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

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

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

CLASS ALLEGATIONS

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



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

15. **Class Definition:** The Class is defined as follows: all persons Defendants employed in California and paid on an hourly basis, including but not limited to human resources staff, administrative staff, teachers, and persons in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is rendered in this action.

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

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

18. **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 at the correct rates of pay;

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

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

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

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

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

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

19. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.



1 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or
2 a lack of a policy which resulted in Defendants failing to comply with the California Labor Code
3 and the Business and Professions Code as alleged herein.

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

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

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

22 **STATEMENT OF FACTS**

23 23. In or about January of 2019, Defendants first employed Plaintiff to work in
24 California as a non-exempt hourly human resources generalist at their charter school located in
25 Temecula, California. Defendants continuously employed Plaintiff in this capacity from the time
26 of her hire until on or about May 10, 2019, when her employment ended.

27 24. Plaintiff and the Class Members earned their wages at an hourly rate and
28 Defendants provided them with paychecks on either a bi-weekly or semimonthly basis. At the
inception of Plaintiff's employment, Defendants issued her and the Class Members their
paychecks on a bi-weekly basis. In approximately March of 2019, Defendants began issuing
paychecks to Plaintiff and the Class on a semimonthly basis.



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25. At relevant times within the applicable limitations period, Defendants required Plaintiff and the Aggrieved Employees to perform work while clocked out. At the inception of Plaintiff's and the Class Members' employment, Defendants required them to complete various onboarding tasks, such as obtaining background checks and tuberculosis tests, and completing various paperwork, such as IRS Forms I-9 and W-4, outside of their scheduled working hours. Defendants also required Plaintiff and the Class Members to attend a new-hire orientation while clocked out from work. Defendants failed to compensate Plaintiff and the Class for this work performed off-the-clock.

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

27. At all relevant times, upon resignation or termination, Defendants failed to pay final wages in a timely manner as a result of their failure to pay employees for all work performed off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for hours they worked while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

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

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

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

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

31. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions



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(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; and

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

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

33. Labor Code section 510 states:

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



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of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

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

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

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

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

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

39. At all relevant times, Defendants paid Plaintiff and the Class Members at an hourly rate on either a bi-weekly or semimonthly basis.

40. At all relevant times, Defendants failed to pay Plaintiff and the Class Members for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime wages for all hours they worked while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

42. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent that they were not paid the



1 full amount of wages earned during each pay period during the applicable limitations period,
2 including minimum, overtime, and double-time wages.

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

7 **SECOND CAUSE OF ACTION**

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

9 **(Lab. Code § 226)**

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

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

12 45. 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, among other items, 1) gross wages earned; 2) total hours worked, except for
15 any employee whose compensation is solely based on a salary and who is exempt from payment
16 of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
17 Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

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

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



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1 and

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

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

7 48. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
8 all wages owed, including but not limited to, all regular and overtime wages owed at the correct
9 rates. As a result, Defendants have failed to properly and accurately itemize each employee’s
10 gross wages earned, net wages earned, the total hours worked, the corresponding number of hours
11 worked by employees, and other requirements of California Labor Code § 226. As a result,
12 Defendants have violated California Labor Code § 226.

13 49. Defendants’ failure to provide Plaintiff and the Class Members with accurate
14 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
15 the Class with accurate wage statements but intentionally provided wage statements that
16 Defendants knew were not accurate.

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

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



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also entitled to an award of costs and reasonable attorneys' fees.

THIRD CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

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

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

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

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

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

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

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

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

60. Pursuant to California Labor Code § 203, Plaintiff seeks waiting time penalties



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on behalf of herself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

FOURTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff and the Class against all Defendants)

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

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

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

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

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

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

67. Accordingly, with respect to this cause of action, on behalf of herself and the Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and



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attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

FIFTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

69. The "Aggrieved Employees" are all members of the above-defined Class whom Defendants employed during the period beginning April 29, 2019 and ending on the date that final judgment is entered in this action.

70. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and last day, inclusive, of any calendar month, shall be paid between the 1st and 10th day of the following month. . . .

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

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

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

71. Defendants paid wages on to employees on either bi-weekly or semimonthly intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked, including but not limited to all regular and overtime wages for hours she worked while



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1 completing onboarding tasks and while attending training and orientation sessions while off-the-
2 clock. On information and belief, Plaintiff alleges that Defendants also failed to pay the
3 Aggrieved Employees on such intervals for all wages earned and all hours worked.

4 72. During the applicable time period, Defendants violated California Labor Code §§
5 201, 202, 203, 204, 226, 510, 512, 1174, 1194, 1197, and 1198.

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

9 74. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
10 entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§
11 201, 202, 203, 204, 226, 510, 512, 1174, 1194, 1197, and 1198 during the applicable limitations
12 period in the following amounts:

13 A. For violations of California Labor Code § 204, one hundred dollars
14 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
15 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
16 (penalty amounts established by California Labor Code § 210).

17 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
18 (\$250.00) for each aggrieved employee for initial violations and one thousand dollars (\$1,000.00)
19 for each aggrieved employee for each subsequent violation (penalty amounts established by
20 California Labor Code § 226.3).

21 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
22 (\$50.00) for each aggrieved employee for initial violations and one hundred dollars (\$100.00)
23 for each aggrieved employee for each subsequent violation, per pay period (penalty amounts
24 established by California Labor Code § 558).

25 D. For violations of California Labor Code § 1174, five hundred dollars
26 (\$500.00) for each aggrieved employee for each violation (penalty amounts established by
27 California Labor Code § 1174.5).

28 E. For violations of California Labor Code § 1197, one hundred dollars
(\$100.00) for each aggrieved employee per pay period for each initial and intentional violation
and two hundred fifty dollars (\$250.00) for each aggrieved employee per pay period for each
subsequent violation (regardless of whether the initial violations were intentionally committed)



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(penalty amounts established by California Labor Code § 1197.1).

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

75. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letters dated April 29, 2020 and May 6, 2020, Plaintiff gave written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories in support of the alleged violations. Plaintiff accompanied her LWDA notices with fees in the amount of \$75.00. True and correct copies of Plaintiff’s written notice to the LWDA dated April 29, 2020 and May 6, 2020 are collectively attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letters.

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

PRAYER FOR RELIEF

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

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages;
- E. Actual damages;
- F. Statutory damages;
- G. Liquidated damages;
- H. Restitution;
- I. Declaratory relief;
- J. Equitable relief;
- K. Statutory penalties;
- L. Civil Penalties



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- 1 M. Pre-judgment and post-judgment interest;
2 N. Costs of suit;
3 O. Interest;
4 P. Reasonable attorneys' fees; and
5 Q. Such other relief as the Court deems just and proper.

6 **DEMAND FOR JURY TRIAL**

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

9 Respectfully submitted,

10 THE SPIVAK LAW FIRM

11
12 Dated: July 16, 2020

13 By: 
14 DAVID SPIVAK
15 CARL KAPLAN
16 Attorneys for Plaintiff, JENNIFER WISE and
17 all others similarly situated
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

May 6, 2020

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

RE: *Jennifer Wise/ Springs Charter Schools, Inc.*

To Whom It May Concern:

This notice concerns the following employers:

1. Springs Charter Schools, Inc., a California corporation; and
2. River Springs Charter Schools, Inc., a California corporation

Collectively, the aforementioned employers are herein referred to as "Springs Charter."

This is a supplemental notice to Jennifer Wise's original notice, dated April 29, 2020 (enclosed). The original notice mistakenly referenced the Industrial Welfare Commission Order No. 4-2001, rather than Industrial Welfare Commission Order No. 5-2001 (hereafter the "Wage Order" or "Wage Order 5"). The original notice is incorporated by reference herein.

At all relevant times, Springs Charter has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Wise and the Aggrieved Employees are "employees" within the meaning of the

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Wage Order, paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]” § 1. “Public Housekeeping Industry” means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to, the following:

(5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition *[sic]* to educational facilities.

§ 2(P). At all relevant times during the applicable limitations period, Wise was employed by Springs Charter as a human resources generalist at an independent charter school. Accordingly, Wise and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Jennifer Wise
Walter Haines, Esq.

Springs Charter Schools, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

River Springs Charter School, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION, AND CERTIFIED U.S. MAIL ***

April 29, 2020

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

RE: *Jennifer Wise / Springs Charter Schools, Inc.*

To whom it may concern:

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2. River Springs Charter School, Inc., a California corporation

Collectively, the aforementioned employers are herein referred to as "Springs Charter."

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jennifer Wise (hereafter "Wise") provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to human resources staff, administrative staff, teachers, and other hourly employees in comparable positions (hereafter referred to collectively as "Aggrieved Employees") by Springs Charter, of violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 1174, 1174.5, 1194, 1197, and 1198.

At all relevant times, Springs Charter has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Wise and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter "the Wage Order")

or “Wage Order 4”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Springs Charter began to employ Wise in approximately January of 2019 as a non-exempt hourly human resources generalist at its charter school located in Temecula, California. Wise continuously worked for Springs Charter in this capacity from the time of her hire until on or about May 10, 2019, when her employment ended.

At all relevant times, Springs Charter employed Wise and the other Aggrieved Employees and issued their paychecks on either a bi-weekly or semimonthly basis. At the inception of Wise’s employment, Springs Charter issued her and the Aggrieved Employees their paychecks on a bi-weekly basis. In approximately March of 2019, Springs Charter began issuing paychecks to Wise and the Aggrieved Employees on a semimonthly basis. At all relevant times, Springs Charter classified Wise and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

Springs Charter required Wise and the Aggrieved Employees to perform work while clocked out. At the inception of their employment, Springs Charter required Wise and the Aggrieved Employees to complete onboarding tasks, such as obtaining background checks and tuberculosis tests, and completing various paperwork such as IRS forms I-9 and W-4, outside of their scheduled working hours. Springs Charter also required Wise and the Aggrieved Employees to attend a new-hire orientation while clocked out from work. Springs Charter failed to compensate Wise and the Aggrieved Employees for this work performed off-the-clock.

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

- a) Springs Charter failed to pay Wise and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work while completing preliminary onboarding tasks and while attending training and orientation sessions;
- b) Springs Charter failed to provide Wise and the Aggrieved Employees with accurate wage statements;
- c) Springs Charter failed to timely pay Wise and the Aggrieved Employees all earned and unpaid wages during employment; and
- d) Springs Charter failed to timely pay Wise and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations[.]" Wage Order § 1. The phrase "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes "professional, semiprofessional, managerial, supervisory, . . . , clerical, office work, and mechanical occupations" including "teachers." *Id.* § 2 (O).

At all relevant times during the applicable limitations period, Springs Charter employed Wise and the other Aggrieved Employees as human resources generalists, administrative staff, teachers, and employees in comparable positions. Accordingly, Wise and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay**
(Lab Code §§ 510, 1194, 1197, and 1198)

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 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 ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05.

Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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

Springs Charter knowingly failed to pay Wise and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

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

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

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

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

- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Springs Charter violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Springs Charter failed to state in the wage statements it issued to Wise and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

Failure to Timely Pay Wages 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, Springs Charter failed to timely pay all wages to Wise and the Aggrieved Employees. Springs Charter failed to provide Wise and the other Aggrieved Employees all wages owed, including, but not limited to, all regular and overtime wages for work they performed off the clock.

As a result, Springs Charter failed to pay Wise and the other Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Springs Charter has violated California Labor Code § 204. Because of Springs Charter's failure to fully pay Wise and the other Aggrieved Employees within the time periods set by California Labor Code § 204, Springs Charter failed to timely pay all wages due during employment.

Accordingly, Wise seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

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

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

address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

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

As alleged herein, Springs Charter failed to provide Wise and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock. As a result, Springs Charter failed to pay Wise and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Springs Charter has violated California Labor Code §§ 201, 202 and 203.

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

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.

Springs Charter has willfully failed to maintain the records required by § 1174 and the Wage Order, including but not limited to, all regular and overtime wages for time they worked that they performed off-the-clock while completing preliminary onboarding tasks and while attending training and orientation sessions. Accordingly, Wise seeks civil penalties from Springs Charter on behalf of herself and the 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)).

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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,



David Spivak, Esq.
david@spivaklaw.com

cc: Jennifer Wise
Walter Haines, Esq.

Springs Charter Schools, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

River Springs Charter School, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

EXHIBIT 5

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Attorneys for Defendants
SPRINGS CHARTER SCHOOLS, INC.;
RIVER SPRINGS CHARTER SCHOOL, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

JENNIFER WISE, on behalf of herself and all
other 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.

SPRINGS CHARTER SCHOOLS, INC., a
California corporation; RIVER SPRINGS
CHARTER SCHOOL, INC., a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: RIC2002359

[Assigned for all purposes to Hon. Sunshine S.
Sykes, Dept. 6]

CLASS ACTION

**DEFENDANTS SPRINGS CHARTER
SCHOOLS, INC.; RIVER SPRINGS
CHARTER SCHOOL, INC.’S ANSWER TO
PLAINTIFF JENNIFER WISE’S FIRST
AMENDED COMPLAINT**

Complaint Filed: July 01, 2020
FAC Filed: July 16, 2020
Trial Date: Not Assigned

Defendant SPRINGS CHARTER SCHOOLS, INC. (“Defendant”) on behalf of itself and for no
other defendant, and Defendant RIVER SPRINGS CHARTER SCHOOL, INC. on behalf of itself and for
no other defendant (hereinafter collectively referred to as “Defendants”, hereby respond to the First
Amended Complaint for Damages (“Complaint”) filed by Plaintiff JENNIFER WISE (“Plaintiff”)
 (“Action”) and admits, denies and otherwise pleads as follows:

GENERAL DENIAL

Pursuant to the California Code of Civil Procedure section 431.30(d), Defendants deny, generally
and specifically, each and every allegation and cause of action in Plaintiff’s First Amended Complaint;

1 denies that Plaintiff, and any current or former employees she seeks to represent, were injured or damaged
2 in the amount or manner alleged, or otherwise; and further denies that Plaintiff, and any current or former
3 employees she seeks to represent, are entitled to the relief claimed, or to any relief, upon the grounds
4 alleged, or otherwise.

5 **AFFIRMATIVE DEFENSES**

6 As separate and distinct affirmative defenses to Plaintiff's First Amended Complaint and the
7 causes of action alleged therein, and to each of them, Defendants allege as follows:

8 **FIRST AFFIRMATIVE DEFENSE**

9 1. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
10 is barred, in whole or in part, as it fails to state facts sufficient to constitute a cause of action against
11 Defendants upon which relief may be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 2. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
14 is barred, in whole or in part, by the applicable statute of limitations, including, but not limited to, Cal.
15 Civ. Proc. Code §§ 338(a), 340(a); Cal. Lab. Code §§ 203, 210, 2699.3; and Cal. Bus. & Prof. Code §
16 17208.

17 **THIRD AFFIRMATIVE DEFENSE**

18 3. Plaintiff's First Amended Complaint and each purported cause of action alleged therein, is
19 barred, in whole or in part, by the safe harbor provisions of California Labor Code section 226.2.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 4. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
22 is barred, in whole or in part, because any duty or obligation by Defendants to pay wages, whether
23 contractual or otherwise, which Plaintiff claims are owed to her and/or any putative aggrieved employee,
24 has been fully performed, satisfied, and/or discharged.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 5. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
27 is barred, in whole or in part, because Plaintiff and/or putative aggrieved employees remain employed by
28 Defendants, so her and/or their claims, including, but not limited to, the claim for waiting-time penalties

1 under Labor Code section 203, are barred, in whole or in part, and/or recovery is precluded because
2 Defendants' conduct was not willful.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 6. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
5 is barred, in whole or in part, because Plaintiff and any putative aggrieved employees have been provided
6 all income, compensation, and pay to which she and/or they are entitled.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 7. To the extent Plaintiff and the putative aggrieved employees request equitable or injunctive
9 relief, Plaintiff's First Amended Complaint, and each purported cause of action alleged therein, is barred,
10 in whole or in part, because Plaintiff and the putative aggrieved employees are not entitled to any equitable
11 or injunctive relief given that Plaintiff and the putative aggrieved employees have not suffered any
12 irreparable injury based on any alleged conduct of Defendants, and Plaintiff and the putative aggrieved
13 employees have an adequate remedy at law for any such conduct.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 8. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
16 is barred, in whole or in part, because Plaintiff lacks standing.

17 **NINTH AFFIRMATIVE DEFENSE**

18 9. Defendants are informed and believe, and thereon allege, that any recovery on Plaintiff's
19 First Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in
20 part, by California Labor Code sections 2854 and 2856 in that Plaintiff and members of the putative
21 aggrieved employees failed to use ordinary care and diligence in the performance of her and/or their duties
22 and failed to comply substantially with the reasonable directions of Defendants.

23 **TENTH AFFIRMATIVE DEFENSE**

24 10. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
25 is barred, in whole or in part, because Defendants are entitled to a set-off for amounts Plaintiff and/or the
26 putative aggrieved employees owe Defendants for receipt of any wages and other benefits to which she
27 and/or they were not entitled and/or did not earn.

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1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 11. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
3 is barred, in whole or in part, because Defendants are informed and believes that a reasonable opportunity
4 for investigation and discovery will reveal that, and, on that basis, Defendants allege that, some or all
5 certain hours claimed by Plaintiff and the putative aggrieved employees are not "hours worked" within
6 the meaning of any Wage Order(s) of the California Industrial Welfare Commission and/or under
7 applicable California law; thus, compensation need not be paid for those hours.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 12. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
10 is barred, in whole or in part, because the operative Industrial Welfare Commission Wage Order upon
11 which Plaintiff relies is invalid or unenforceable under applicable law.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 13. Plaintiff's allegations of failure to provide rest periods and meal periods are barred, in
14 whole or in part, because Plaintiff and the putative aggrieved employees were informed of their right to
15 take meal periods and rest breaks and have never been denied the right to take a meal or rest period to
16 which they were entitled.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 14. Plaintiff's allegations of failure to provide meal periods and rest breaks are barred, in whole
19 or in part, because Plaintiff and the putative aggrieved employees have been provided meal periods and
20 rest breaks to which they were entitled.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 15. Although Defendants deny that it has committed, or has responsibility for, any act that
23 could support the recovery against Defendants in this Action, such recovery, if any, is barred because, to
24 the extent any such act is found, such recovery against Defendants are unconstitutional under numerous
25 provisions of the United States Constitution and the California Constitution, including the Excessive Fines
26 Clause of the Eighth Amendment, the Due Process clauses of the Fifth Amendment and Section 1 of the
27 Fourteenth Amendment, and other provisions of the United States Constitution, and the Excessive Fines

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1 Clause of Section 17 of Article I, the Due Process Clause of Section 7 of Article I, and other provisions
2 of the California Constitution.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 16. Defendants have engaged attorneys to represent it in defense of Plaintiff's frivolous,
5 unfounded, and unreasonable Action, and Defendants are thereby entitled to an award of reasonable
6 attorneys' fees and costs pursuant to California Code of Civil Procedure section 1021.5 upon judgment in
7 its favor.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 17. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
10 is barred, in whole or in part, because, assuming *arguendo* that Plaintiff and/or putative aggrieved
11 employees were not provided with a proper itemized statement of wages and deductions, Plaintiff and the
12 putative aggrieved employees are not entitled to recover damages because Defendants' alleged failure to
13 comply with California Labor Code section 226(a) was not a "knowing and intentional failure" under
14 California Labor Code section 226(e).

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 18. Defendants allege that, to the extent that Plaintiff and putative aggrieved employees seek
17 to recover waiting time and other statutory penalties, Plaintiff and putative aggrieved employees have
18 failed to state a claim for such penalties because, even assuming *arguendo* that Plaintiff and putative
19 aggrieved employees are entitled to additional compensation, Defendants have not willfully or
20 intentionally failed to pay any such additional compensation to Plaintiff and/or putative aggrieved
21 employees and they never made a demand for such additional compensation.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 19. Plaintiff's claim(s) and/or cause(s) of action seeking "waiting time" penalties pursuant to
24 Labor Code section 203 are barred in whole or in part because an award of "waiting time" penalties
25 pursuant to Labor Code section 203 would violate Defendants' due process rights protected by the United
26 States Constitution and/or by the California Constitution in the same manner or in a similar manner as
27 awards of punitive damages in excess of constitutionally permissible limits violate such rights.

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1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 20. To the extent discovery may disclose a factual basis for this defense, any recovery on
3 Plaintiff's First Amended Complaint as a whole, and each purported cause of action alleged therein, is
4 barred in whole or in part to the extent Plaintiff or any putative aggrieved employees previously pursued
5 any claim before the California Department of Industrial Relations, Division of Labor Standards
6 Enforcement or the United States Department of Labor.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 21. Plaintiff is not an adequate representative of the alleged putative aggrieved employees
9 identified in the First Amended Complaint, as she did not suffer any Labor Code violations.

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 22. Defendants deny that any Labor Code violations occurred. However, Defendants allege
12 that assuming, *arguendo*, that any Labor Code violations occurred, Plaintiff is the only individual who
13 suffered such violations and cannot maintain a representative action on her sole behalf.

14 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

15 23. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
16 is barred, in whole or in part, because PAGA, as enacted, is unconstitutional by allowing a private attorney
17 general, such as Plaintiff, to prosecute a state law enforcement action without active supervision by a
18 neutral state attorney, and deprives Defendants of its due process protections.

19 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

20 24. Plaintiff's purported PAGA claim is barred pursuant to the United States Constitution and
21 the California Constitution to the extent Labor Code section 2698 *et seq.* imposes double penalties and
22 violates the due process rights of Defendants.

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 25. Plaintiff's First Amended Complaint, and the purported PAGA cause of action alleged
25 therein, is barred, in whole or in part, because Labor Code section 2699 *et seq.* is violative of the principles
26 of substantive due process under the Fourteenth Amendment to the United States Constitution and Article
27 I, Section 7 of the California Constitution.

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1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 26. Assuming *arguendo* that any PAGA recovery is permissible, said recovery is limited to a
3 maximum of the first-time violation amount per claim.

4 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

5 27. Plaintiff's First Amended Complaint, and the purported PAGA cause of action alleged
6 therein, is barred, in whole or in part, because the California Labor and Workforce Development Agency
7 and its departments, divisions, commissions, boards, agencies, or employees cannot assess civil penalties
8 on any claim for which penalties are not recoverable.

9 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

10 28. Plaintiff's First Amended Complaint, and the purported PAGA cause of action alleged
11 therein, is barred, in whole or in part, because she is not an aggrieved employee as that term is defined in
12 Labor Code section 2699(c).

13 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

14 29. Plaintiff's First Amended Complaint, and the purported cause of action therein, is barred,
15 in whole or in part, because, assuming *arguendo* that Plaintiff and/or putative aggrieved employees were
16 not provided with a proper itemized statement of wages and deductions, Plaintiff and the putative
17 aggrieved employees are not entitled to recover damages because they did not suffer any injury.

18 **THIRTIETH AFFIRMATIVE DEFENSE**

19 30. Plaintiff is not entitled to the recovery of attorneys' fees for any common law claims, or
20 any statutory claims under which attorneys' fees are not specifically provided for.

21 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

22 31. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
23 is barred, in whole or in part, to the extent that Plaintiff and/or any aggrieved employee(s) entered into an
24 accord and satisfaction of any claim asserted in this Action.

25 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

26 32. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
27 is barred, in whole or in part, to the extent that Plaintiff and/or any aggrieved employee(s) previously
28 released the claims asserted in this Action.

1 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

2 33. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
3 is barred, in whole or in part, by the equitable doctrines of laches, estoppel, waiver, and unclean hands.

4 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

5 34. Plaintiff's First Amended Complaint, and each purported cause of action alleged therein,
6 is barred, in whole or in part, because, to the extent that alleged violations of any provision of the
7 California Labor Code occurred, if any, Defendant's conduct was not knowing, willful, purposeful,
8 malicious, reckless, or negligent, and good faith disputes exist concerning any alleged violations.

9 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

10 35. Defendants allege that Plaintiff's First Amended Complaint does not describe the claims
11 or facts being alleged with sufficient particularity to permit Defendants to ascertain what other defenses
12 may exist. Defendants will rely on any and all further defenses that become available or appear during
13 discovery in this Action and specifically reserves the right to amend this Answer for purposes of asserting
14 such additional affirmative defenses.

15 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

16 36. Plaintiff's claims regarding meal periods and rest breaks are barred in whole or in part, to
17 the extent Defendants provided Plaintiff and putative class members and/or allegedly aggrieved
18 employees required meal and rest breaks in compliance with California law and Plaintiff and the putative
19 class members and/or allegedly aggrieved employees voluntarily waived the right to take the meal or rest
20 breaks provided.

21 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

22 37. Plaintiff's claims regarding meal periods and rest breaks are barred in whole or in part, to
23 the extent Defendants provided Plaintiff and putative class members and/or allegedly aggrieved
24 employees required meal and rest breaks in compliance with California law and Plaintiff and putative
25 class members and/or allegedly aggrieved employees did not take the opportunity to take a work-free
26 break by voluntarily refusing as described in *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004,
27 1053 (2012).

28 ///

1 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

2 38. Plaintiff's wage statement claim and the claims of the putative class members are barred
3 by the doctrine of avoidable consequences, to the extent Plaintiff and/or putative class members and/or
4 allegedly aggrieved employees could have corrected errors in wage payment by reporting them so that
5 Defendants could correct them promptly.

6 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

7 39. Defendants deny that it acted unlawfully or improperly toward Plaintiff and putative class
8 members and/or allegedly aggrieved employees. However, with regard to any potential award of damages
9 to Plaintiff and putative class members and/or allegedly aggrieved employees, Defendants are entitled
10 under the equitable doctrine of setoff and recoupment to offset all overpayments to and obligations of
11 Plaintiff and/or putative class members and/or allegedly aggrieved employees owed to Defendants against
12 any judgment that may be entered against Defendants.

13 **FORTIETH AFFIRMATIVE DEFENSE**

14 40. Without admitting that Plaintiff is entitled to any recovery, Defendants allege that any
15 recovery to which Plaintiff and putative class members and/or allegedly aggrieved employees might be
16 entitled must be reduced by reason of their own fault and/or negligence.

17 **FORTY-FIRST AFFIRMATIVE DEFENSE**

18 41. Plaintiff's claims and the claims of the allegedly aggrieved employees she purports to
19 represent are barred, in whole or in part, because Plaintiff failed to exhaust appropriate administrative and
20 internal remedies and prerequisites. Defendants further allege that Plaintiff failed to give timely and
21 sufficient notice of the alleged statutory violations to the California Labor and Workforce Development
22 Agency and to Defendants, as required by California Labor Code § 2699.

23 **FORTY-SECOND AFFIRMATIVE DEFENSE**

24 42. Plaintiff's claims under PAGA are not susceptible to common proof, are fact intensive, and
25 require highly individualized inquiries to determine if Plaintiff or any other person is an aggrieved
26 employee. As such, adjudicating these claims on a representative basis would present intractable
27 management issues that would deprive Defendants of its right to a fair trial on the merits. Accordingly,

28 ///

1 these claims cannot be fairly tried on a representative basis without impairing Defendants' right to assert
2 individualized defenses to those claims as they pertain to individual California employees of Defendants.

3 **FORTY-THIRD AFFIRMATIVE DEFENSE**

4 43. Plaintiff and the allegedly aggrieved employees she purports to represent are not entitled
5 to recover any civil penalties because, under the circumstances of this case, any such recovery would be
6 unjust, arbitrary, oppressive, and confiscatory.

7 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

8 44. Defendants asserts that to the extent Plaintiff seeks civil penalties under California Labor
9 Code section 2698, *et seq.*, she is not entitled to a jury trial, and instead must adjudicate those claims by
10 way of a bench trial. *See, Espinosa v. Bodycote Thermal Processing, Inc.*, BC501617, Los Angeles
11 Superior Court (2017).

12 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

13 45. Defendants are unable to pay the penalties sought in the FAC, and any award of penalties
14 should therefore be reduced. *See e.g., Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th
15 1112, 1136 (2012) (overruled on other grounds by *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 196 (2019)).

16 WHEREFORE, Defendants pray for judgment as follows:

- 17 1. That Plaintiff and the putative class take nothing by the First Amended Complaint;
18 2. That the First Amended Complaint be dismissed in its entirety with prejudice;
19 3. That Plaintiff and the putative class be denied each and every demand and prayer for relief
20 contained in the First Amended Complaint;
21 4. For cost of suits incurred herein, including reasonable attorneys' fees; and
22 5. For such other and further relief as the Court deems just and proper.

23
24 DATED: September 25, 2020

JACKSON LEWIS P.C.

25
26 By: Adrienne L. Conrad
27 Adrienne L. Conrad
28 Attorneys for Defendants
SPRINGS CHARTER SCHOOLS, INC.;
RIVER SPRINGS CHARTER SCHOOL, INC.

4831-5061-1147, v. 1

SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE		COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Adrienne L. Conrad (SBN 318776) JACKSON LEWIS P.C. 225 Broadway, Suite 2000 San Diego, California 92101 adrienne.conrad@jacksonlewis.com		Telephone No. Tel: 619.573.4900 Fax: 619.573.4901
SHORT CASE TITLE JENNIFER WISE, <i>et al.</i> vs. SPRINGS CHARTER SCHOOLS, INC., <i>et al.</i>		JUDGE: Hon. Sunshine S. Sykes DEPT.: 6
ATTORNEYS FOR DEFENDANTS SPRINGS CHARTER SCHOOLS, INC.; and RIVER SPRINGS CHARTER SCHOOL, INC.		Case No.: RIC2002359

PROOF OF SERVICE

I, the undersigned, am over 18 years of age, employed in the County of San Diego, California, in which the within-mentioned service occurred; and that I am not a party to the subject cause of action. My business address is 225 Broadway, Suite 2000, San Diego, California 92101. On September 25, 2020, I served the following documents:

DEFENDANTS SPRINGS CHARTER SCHOOLS, INC.; RIVER SPRINGS CHARTER SCHOOL, INC.'S ANSWER TO PLAINTIFF JENNIFER WISE'S FIRST AMENDED COMPLAINT

Counsel for Plaintiff

David G. Spivak, Esq.
Carl J. Kaplan, Esq.
THE SPIVAK LAW FIRM
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Counsel for Plaintiff

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Tel: (562) 256-1047
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Email: whaines@uelglaw.com

- ☐ by transmitting via facsimile or electronic notification the document(s) listed above to the fax number or electronic address set forth above on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, addressed as set forth above.
- ☐ **BY PERSONAL SERVICE.** I caused said document(s) to be hand-delivered to the addressee on September 25, 2020, via First Legal Services, pursuant to Code of Civil Procedure §1011.
- ☐ **BY OVERNIGHT MAIL.** I deposited said document(s) in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure §1013(c).

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

Executed on September 25, 2020

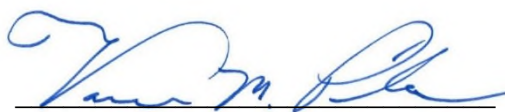

Vanessa M. Preciado

EXHIBIT 6

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15 Telephone: (562) 256-1047
16 Facsimile: (562) 256-1006

17 Attorneys for Plaintiff,
18 JENNIFER WISE, and all others similarly situated

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

JENNIFER WISE, on behalf of herself and all
others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

SPRINGS CHARTER SCHOOLS, INC., a
California corporation; RIVER SPRINGS
CHARTER SCHOOL, INC., a California
corporation; and DOES 1-50, inclusive,

Defendant(s).

Case No.: RIC2002359

CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR:**

1. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to authorize and permit rest breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203);



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FILED
Superior Court of California
County of Riverside
11/9/2021
J. Hendrickson
Electronically Filed

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6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED

6 Plaintiff JENNIFER WISE (hereafter “Plaintiff”), on behalf of herself and all others

7 similarly situated, complains and alleges as follows:

8 **INTRODUCTION**

9 1. Plaintiff brings this class and representative action based on alleged violations of

10 the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the

11 Wage Order”) and the Business and Professions Code against defendants SPRINGS CHARTER

12 SCHOOLS, INC., a California corporation; RIVER SPRINGS CHARTER SCHOOL, INC., a

13 California corporation; and DOES 1 through 50, inclusive (collectively “Defendants”).

14 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her

15 and other similarly situated applicants for employment and prospective, current and former

16 employees who worked in California, including, but not limited to human resources staff,

17 administrative staff, teachers, and persons in similar positions, at any time during the period

18 beginning four years prior to the filing of this action to the present, for unpaid wages and other

19 related relief. These claims are based on Defendants’ alleged failures to (1) compensate Plaintiff

20 and the below-described Class for all hours worked at the correct rates of pay; (2) provide meal

21 periods; (3) authorize and permit rest breaks; (4) provide accurate written wage statements, (5)

22 timely pay wages upon termination of employment, and (6) fairly compete. Additionally, Plaintiff

23 seeks civil penalties under the California Labor Code Private Attorneys General Act, Labor Code

24 §§ 2698, *et seq.* (“PAGA”). Accordingly, Plaintiff now seeks to recover civil penalties, unpaid

25 wages, and related relief through this class action.

26 **JURISDICTION AND VENUE**

27 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff

28 and the Class Members, inclusive of all relief, place more than \$25,000 in controversy.

4. There is no basis for federal question subject matter jurisdiction in this case.

Specifically, Plaintiff asserts claims on behalf of herself and the Class Members that solely arise



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under California law, rather than federal law.

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

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

PARTIES

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

8. Defendant SPRINGS CHARTER SCHOOLS, INC. is a corporation organized and existing under the laws of California based on Plaintiff’s information and belief.

9. Defendant RIVER SPRINGS CHARTER SCHOOL, INC. is a corporation organized and existing under the laws of California based on Plaintiff’s information and belief.

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

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

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

13. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to, all



Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

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

15. **Class Definition:** The Class is defined as follows: all persons who applied for employment with Defendants in California, were prospective employees of Defendants in California, and/or who Defendants employed in California, including but not limited to human resources staff, administrative staff, teachers, and persons in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is rendered in this action.

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

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

18. **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 at the correct rates of pay;

B. Whether Defendants failed to provide meal periods to Class Members;

C. Whether Defendants failed to authorize and permit rest breaks for Class Members;

D. Whether Defendants knowingly and intentionally failed to provide the



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1 Class Members with accurate and complete wage statements;

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

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

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

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

9 I. Are the Class Members entitled to attorneys' fees?

10 19. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
11 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or
12 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.

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

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

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



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STATEMENT OF FACTS

23. In or about January of 2019, Defendants first employed Plaintiff to work in California as a non-exempt hourly human resources generalist at their charter school located in Temecula, California. Defendants continuously employed Plaintiff in this capacity from the time of her hire until on or about May 10, 2019, when her employment ended.

24. Plaintiff and the Class Members earned their wages at an hourly rate or salary and Defendants provided them with paychecks on either a bi-weekly or semimonthly basis. At the inception of Plaintiff's employment, Defendants issued her and the Class Members their paychecks on a bi-weekly basis. In approximately March of 2019, Defendants began issuing paychecks to Plaintiff and the Class on a semimonthly basis.

25. At relevant times within the applicable limitations period, Defendants required Plaintiff and the Class Members to perform work while clocked out. At the inception of Plaintiff's and the Class Members' employment, Defendants required them to complete various onboarding tasks, such as obtaining background checks and tuberculosis tests, and completing various paperwork, such as IRS Forms I-9 and W-4, worksite and school tours, outside of their scheduled working hours. Defendants also required Plaintiff and the Class Members to attend a new-hire orientation while clocked out from work. Defendants failed to compensate Plaintiff and the Class for this work performed off-the-clock. Though these activities exceeded five hours in a day, Defendants did not authorize and permit Plaintiff and the Class Members to take rest periods or provide them with meal periods.

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

27. At all relevant times, upon resignation or termination, Defendants failed to pay final wages in a timely manner as a result of their failure to pay employees for all work performed off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for hours they worked while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.



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FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

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

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

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

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

31. 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; and

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

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one-fortieth (1/40) of the employee’s weekly salary.



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

4 33. Labor Code section 510 states:

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

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

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

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

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

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



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

2 Rest Periods:

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

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

17 48. "[I]n the context of an eight-hour shift, '[a]s a general matter,' one rest break
18 should fall on either side of the meal break. (*Ibid.*)" *Brinker Rest. Corp. v. Superior Court* (2012)
19 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

20 49. In addition, Labor Code Section 226.7 states

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

26 c. If an employer fails to provide an employee a meal or rest or recovery
27 period in accordance with a state law, including, but not limited to, an
28 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.

 50. 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.



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1 51. Defendants failed to provide Plaintiff with all required rest breaks in accordance
2 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
3 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
4 which resulted in Defendants not providing the Class Members with all rest breaks required by
5 California law. Defendants failed to pay Plaintiff the additional wages required by California
6 Labor Code § 226.7 for all rest breaks not provided to her. 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. As a result of Defendants' unlawful conduct, Plaintiff and the
11 Class Members have suffered damages in amounts subject to proof to the extent they were not
12 paid additional wages owed for all rest breaks not provided to them. By reason of the above,
13 Plaintiff and the Class Members are entitled to premium wages for workdays in which one or
14 more rest breaks were not provided to them pursuant to California Labor Code § 226.7.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

23 54. Labor Code § 1198 states,

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

55. 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



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1 mutual consent of both the employer and employee. An employer may not
2 employ an employee for a work period of more than 10 hours per day
3 without providing the employee with a second meal period of not less than
4 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.”

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

6 Meal Periods:

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

11 (B) An employer may not employ an employee for a work period
12 of more than ten (10) hours per day without providing the employee with
13 a second meal period of not less than 30 minutes, except that if the total
14 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.

15 (C) Unless the employee is relieved of all duty during a 30
16 minute meal period, the meal period shall be considered an “on duty” meal
17 period and counted as time worked. An “on duty” meal period shall be
18 permitted only when the nature of the work prevents an employee from
19 being relieved of all duty and when by written agreement between the
20 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.

21 (D) If an employer fails to provide an employee a meal period in
22 accordance with the applicable provisions of this order, the employer shall
23 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.

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



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

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

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

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

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

24 **(Lab. Code § 226)**

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

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

27 63. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
28 entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized
statement showing, among other items, 1) gross wages earned; 2) total hours worked, except for
any employee whose compensation is solely based on a salary and who is exempt from payment
of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare



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

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

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

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

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

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

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

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

67. Defendants’ failure to provide Plaintiff and the Class Members with accurate and complete wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Class with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate, or did not provide wage statements at all.



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

11 69. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to
12 recover the greater of actual damages, or penalties of fifty dollars (\$50.00) for the initial pay
13 period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars
14 (\$100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not
15 to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per Class Member, and are
16 also entitled to an award of costs and reasonable attorneys' fees.

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

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

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

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

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

27 73. California Labor Code § 202 provides that all earned and unpaid wages of an
28 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.

 74. By failing to pay earned regular and overtime wages to Plaintiff and the Class



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

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

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

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

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(By Plaintiff and the Class against all Defendants)

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

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

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



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

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

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

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

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

87. The “Aggrieved Employees” are all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to human resources staff, administrative staff, teacher, and other hourly employees in comparable positions during the period beginning April 29, 2019 and ending on the date that final judgment is entered in this action.

88. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and



last day, inclusive, of any calendar month, shall be paid between the 1st and 10th day of the following month. . . .

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

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

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

89. Defendants paid wages on to employees on either bi-weekly or semimonthly intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked, including but not limited to all regular and overtime wages for hours she worked while completing onboarding tasks and while attending training and orientation sessions while off-the-clock. 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.

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

91. 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.

92. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 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



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1 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
2 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
3 (penalty amounts established by California Labor Code § 210).

4 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
5 (\$250.00) for each aggrieved employee for initial violations and one thousand dollars (\$1,000.00)
6 for each aggrieved employee for each subsequent violation (penalty amounts established by
7 California Labor Code § 226.3).

8 C. For violations of California Labor Code § 510 fifty dollars (\$50.00) for
9 each aggrieved employee for initial violations and one hundred dollars (\$100.00) for each
10 aggrieved employee for each subsequent violation, per pay period (penalty amounts established
11 by California Labor Code § 558).

12 D. For violations of California Labor Code § 1174, five hundred dollars
13 (\$500.00) for each aggrieved employee for each violation (penalty amounts established by
14 California Labor Code § 1174.5).

15 E. For violations of California Labor Code § 1197, one hundred dollars
16 (\$100.00) for each aggrieved employee per pay period for each initial and intentional violation
17 and two hundred fifty dollars (\$250.00) for each aggrieved employee per pay period for each
18 subsequent violation (regardless of whether the initial violations were intentionally committed)
19 (penalty amounts established by California Labor Code § 1197.1).

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

24 93. Plaintiff has complied with the procedures for bringing suit specified in California
25 Labor Code § 2699.3. By letters dated April 29, 2020 and May 6, 2020, Plaintiff gave written
26 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written
27 notice by certified mail to Defendants of the specific provisions of the California Labor Code
28 alleged to have been violated, including the facts and theories in support of the alleged violations.
Plaintiff accompanied her LWDA notices with fees in the amount of \$75.00. True and correct
copies of Plaintiff’s written notice to the LWDA dated April 29, 2020 and May 6, 2020 are
collectively attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letters.



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1 94. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
2 Employees are entitled to an award of civil penalties, reasonable attorneys' fees, and costs in
3 connection with their claims for civil penalties.

4 **PRAYER FOR RELIEF**

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

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

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DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 29, 2021

By: /s/ David Spivak
DAVID SPIVAK
MAYA CHEAITANI
Attorneys for Plaintiff, JENNIFER WISE and
all others similarly situated



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EXHIBIT A



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***SENT BY ELECTRONIC SUBMISSION, AND CERTIFIED U.S. MAIL ***

April 29, 2020

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

RE: *Jennifer Wise / Springs Charter Schools, Inc.*

To whom it may concern:

This notice concerns the following employers:

1. Springs Charter Schools, Inc., a California corporation; and
2. River Springs Charter School, Inc., a California corporation

Collectively, the aforementioned employers are herein referred to as "Springs Charter."

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jennifer Wise (hereafter "Wise") provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to human resources staff, administrative staff, teachers, and other hourly employees in comparable positions (hereafter referred to collectively as "Aggrieved Employees") by Springs Charter, of violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 1174, 1174.5, 1194, 1197, and 1198.

At all relevant times, Springs Charter has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Wise and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter "the Wage Order")

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or “Wage Order 4”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Springs Charter began to employ Wise in approximately January of 2019 as a non-exempt hourly human resources generalist at its charter school located in Temecula, California. Wise continuously worked for Springs Charter in this capacity from the time of her hire until on or about May 10, 2019, when her employment ended.

At all relevant times, Springs Charter employed Wise and the other Aggrieved Employees and issued their paychecks on either a bi-weekly or semimonthly basis. At the inception of Wise’s employment, Springs Charter issued her and the Aggrieved Employees their paychecks on a bi-weekly basis. In approximately March of 2019, Springs Charter began issuing paychecks to Wise and the Aggrieved Employees on a semimonthly basis. At all relevant times, Springs Charter classified Wise and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

Springs Charter required Wise and the Aggrieved Employees to perform work while clocked out. At the inception of their employment, Springs Charter required Wise and the Aggrieved Employees to complete onboarding tasks, such as obtaining background checks and tuberculosis tests, and completing various paperwork such as IRS forms I-9 and W-4, outside of their scheduled working hours. Springs Charter also required Wise and the Aggrieved Employees to attend a new-hire orientation while clocked out from work. Springs Charter failed to compensate Wise and the Aggrieved Employees for this work performed off-the-clock.

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

- a) Springs Charter failed to pay Wise and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work while completing preliminary onboarding tasks and while attending training and orientation sessions;
- b) Springs Charter failed to provide Wise and the Aggrieved Employees with accurate wage statements;
- c) Springs Charter failed to timely pay Wise and the Aggrieved Employees all earned and unpaid wages during employment; and
- d) Springs Charter failed to timely pay Wise and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations[.]" Wage Order § 1. The phrase "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes "professional, semiprofessional, managerial, supervisory, . . . , clerical, office work, and mechanical occupations" including "teachers." *Id.* § 2 (O).

At all relevant times during the applicable limitations period, Springs Charter employed Wise and the other Aggrieved Employees as human resources generalists, administrative staff, teachers, and employees in comparable positions. Accordingly, Wise and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay**
(Lab Code §§ 510, 1194, 1197, and 1198)

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

(A) Daily Overtime - General Provisions

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

hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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

In relevant part, California Labor Code § 510 states,

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

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05.

Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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

Springs Charter knowingly failed to pay Wise and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

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

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

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

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

- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Springs Charter violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Springs Charter failed to state in the wage statements it issued to Wise and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

Failure to Timely Pay Wages 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, Springs Charter failed to timely pay all wages to Wise and the Aggrieved Employees. Springs Charter failed to provide Wise and the other Aggrieved Employees all wages owed, including, but not limited to, all regular and overtime wages for work they performed off the clock.

As a result, Springs Charter failed to pay Wise and the other Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Springs Charter has violated California Labor Code § 204. Because of Springs Charter's failure to fully pay Wise and the other Aggrieved Employees within the time periods set by California Labor Code § 204, Springs Charter failed to timely pay all wages due during employment.

Accordingly, Wise seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

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

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

address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

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

As alleged herein, Springs Charter failed to provide Wise and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock. As a result, Springs Charter failed to pay Wise and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Springs Charter has violated California Labor Code §§ 201, 202 and 203.

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

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.

Springs Charter has willfully failed to maintain the records required by § 1174 and the Wage Order, including but not limited to, all regular and overtime wages for time they worked that they performed off-the-clock while completing preliminary onboarding tasks and while attending training and orientation sessions. Accordingly, Wise seeks civil penalties from Springs Charter on behalf of herself and the 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)).

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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,



David Spivak, Esq.
david@spivaklaw.com

cc: Jennifer Wise
Walter Haines, Esq.

Springs Charter Schools, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

River Springs Charter School, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

May 6, 2020

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

RE: *Jennifer Wise/ Springs Charter Schools, Inc.*

To Whom It May Concern:

This notice concerns the following employers:

1. Springs Charter Schools, Inc., a California corporation; and
2. River Springs Charter Schools, Inc., a California corporation

Collectively, the aforementioned employers are herein referred to as "Springs Charter."

This is a supplemental notice to Jennifer Wise's original notice, dated April 29, 2020 (enclosed). The original notice mistakenly referenced the Industrial Welfare Commission Order No. 4-2001, rather than Industrial Welfare Commission Order No. 5-2001 (hereafter the "Wage Order" or "Wage Order 5"). The original notice is incorporated by reference herein.

At all relevant times, Springs Charter has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Wise and the Aggrieved Employees are "employees" within the meaning of the

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Wage Order, paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]” § 1. “Public Housekeeping Industry” means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to, the following:

(5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition *[sic]* to educational facilities.

§ 2(P). At all relevant times during the applicable limitations period, Wise was employed by Springs Charter as a human resources generalist at an independent charter school. Accordingly, Wise and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Jennifer Wise
Walter Haines, Esq.

Springs Charter Schools, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

River Springs Charter School, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION, AND CERTIFIED U.S. MAIL ***

April 29, 2020

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

RE: *Jennifer Wise / Springs Charter Schools, Inc.*

To whom it may concern:

This notice concerns the following employers:

1. Springs Charter Schools, Inc., a California corporation; and
2. River Springs Charter School, Inc., a California corporation

Collectively, the aforementioned employers are herein referred to as "Springs Charter."

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jennifer Wise (hereafter "Wise") provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to human resources staff, administrative staff, teachers, and other hourly employees in comparable positions (hereafter referred to collectively as "Aggrieved Employees") by Springs Charter, of violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 1174, 1174.5, 1194, 1197, and 1198.

At all relevant times, Springs Charter has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Wise and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter "the Wage Order")

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or “Wage Order 4”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Springs Charter began to employ Wise in approximately January of 2019 as a non-exempt hourly human resources generalist at its charter school located in Temecula, California. Wise continuously worked for Springs Charter in this capacity from the time of her hire until on or about May 10, 2019, when her employment ended.

At all relevant times, Springs Charter employed Wise and the other Aggrieved Employees and issued their paychecks on either a bi-weekly or semimonthly basis. At the inception of Wise’s employment, Springs Charter issued her and the Aggrieved Employees their paychecks on a bi-weekly basis. In approximately March of 2019, Springs Charter began issuing paychecks to Wise and the Aggrieved Employees on a semimonthly basis. At all relevant times, Springs Charter classified Wise and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

Springs Charter required Wise and the Aggrieved Employees to perform work while clocked out. At the inception of their employment, Springs Charter required Wise and the Aggrieved Employees to complete onboarding tasks, such as obtaining background checks and tuberculosis tests, and completing various paperwork such as IRS forms I-9 and W-4, outside of their scheduled working hours. Springs Charter also required Wise and the Aggrieved Employees to attend a new-hire orientation while clocked out from work. Springs Charter failed to compensate Wise and the Aggrieved Employees for this work performed off-the-clock.

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

- a) Springs Charter failed to pay Wise and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work while completing preliminary onboarding tasks and while attending training and orientation sessions;
- b) Springs Charter failed to provide Wise and the Aggrieved Employees with accurate wage statements;
- c) Springs Charter failed to timely pay Wise and the Aggrieved Employees all earned and unpaid wages during employment; and
- d) Springs Charter failed to timely pay Wise and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations[.]" Wage Order § 1. The phrase "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes "professional, semiprofessional, managerial, supervisory, . . . , clerical, office work, and mechanical occupations" including "teachers." *Id.* § 2 (O).

At all relevant times during the applicable limitations period, Springs Charter employed Wise and the other Aggrieved Employees as human resources generalists, administrative staff, teachers, and employees in comparable positions. Accordingly, Wise and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay**
(Lab Code §§ 510, 1194, 1197, and 1198)

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 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 ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05.

Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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

Springs Charter knowingly failed to pay Wise and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

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

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

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

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

- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Springs Charter violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Springs Charter failed to state in the wage statements it issued to Wise and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed while completing preliminary onboarding tasks and while attending training and orientation sessions while off-the-clock.

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

Failure to Timely Pay Wages 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, Springs Charter failed to timely pay all wages to Wise and the Aggrieved Employees. Springs Charter failed to provide Wise and the other Aggrieved Employees all wages owed, including, but not limited to, all regular and overtime wages for work they performed off the clock.

As a result, Springs Charter failed to pay Wise and the other Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Springs Charter has violated California Labor Code § 204. Because of Springs Charter's failure to fully pay Wise and the other Aggrieved Employees within the time periods set by California Labor Code § 204, Springs Charter failed to timely pay all wages due during employment.

Accordingly, Wise seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

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

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

address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

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

As alleged herein, Springs Charter failed to provide Wise and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock. As a result, Springs Charter failed to pay Wise and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Springs Charter has violated California Labor Code §§ 201, 202 and 203.

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

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(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.

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

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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)).

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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,



David Spivak, Esq.
david@spivaklaw.com

cc: Jennifer Wise
Walter Haines, Esq.

Springs Charter Schools, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

River Springs Charter School, Inc.
c/o Agent for Service of Process
Tanya Rogers
27740 Jefferson Avenue
Temecula, CA 92590

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

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

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 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.

10 On Tuesday, November 09, 2021, I served the foregoing document
11 described as **PLAINTIFF'S SECOND AMENDED COMPLAINT** on interested parties by
12 placing a true and correct copy thereof enclosed in a sealed envelope, with
postage fully prepaid, addressed as follows:

13 **Lara P. Besser, Esq.**
14 **Adrienne L. Conrad, Esq.**
15 **Jaclyn Reinhart, Esq.**
16 **JACKSON LEWIS P.C.**
17 **225 Broadway, Suite 2000**
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18 ____ (BY MAIL) I caused such an envelope to be mailed by placing it for
19 collection and mailing, in the course of ordinary business practice, with
other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203,
Encino, California 91436.

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

22 EXECUTED on Tuesday, November 09, 2021, at Los Angeles, California.

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

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

27 
28 JESSICA BENCOMO

EXHIBIT 7

Adrienne L. Conrad (SBN 318776)
Lara P. Besser (SBN 282289)
Jaclyn M. Reinhart (SBN 317622)
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Attorneys for Defendants
SPRINGS CHARTER SCHOOLS, INC.;
RIVER SPRINGS CHARTER SCHOOL, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

JENNIFER WISE, on behalf of herself and all
other 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.

SPRINGS CHARTER SCHOOLS, INC., a
California corporation; RIVER SPRINGS
CHARTER SCHOOL, INC., a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: RIC2002359

[Assigned for all purposes to Hon. Sunshine S.
Sykes, Dept. 6]

CLASS ACTION

**DEFENDANTS SPRINGS CHARTER
SCHOOLS, INC.; RIVER SPRINGS
CHARTER SCHOOL, INC.’S ANSWER TO
PLAINTIFF JENNIFER WISE’S SECOND
AMENDED COMPLAINT**

Complaint Filed: July 01, 2020
FAC Filed: July 16, 2020
SAC Filed: November 9, 2021
Trial Date: Not Assigned

Defendant SPRINGS CHARTER SCHOOLS, INC. on behalf of itself and for no other defendant,
and Defendant RIVER SPRINGS CHARTER SCHOOL, INC. on behalf of itself and for no other
defendant (hereinafter collectively referred to as “Defendants”), hereby respond to the Second Amended
Complaint filed by Plaintiff JENNIFER WISE (“Plaintiff”) (“Action”) and admits, denies and otherwise
pleads as follows:

GENERAL DENIAL

Pursuant to the California Code of Civil Procedure section 431.30(d), Defendants deny, generally
and specifically, each and every allegation and cause of action in Plaintiff’s Second Amended Complaint;

denies that Plaintiff, and any current or former employees she seeks to represent, were injured or damaged in the amount or manner alleged, or otherwise; and further denies that Plaintiff, and any current or former employees she seeks to represent, are entitled to the relief claimed, or to any relief, upon the grounds alleged, or otherwise.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to Plaintiff's Second Amended Complaint and the causes of action alleged therein, and to each of them, Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

1. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, as it fails to state facts sufficient to constitute a cause of action against Defendants upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, by the applicable statute of limitations, including, but not limited to, Cal. Civ. Proc. Code §§ 338(a), 340(a); Cal. Lab. Code §§ 203, 210, 2699.3; and Cal. Bus. & Prof. Code § 17208.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's Second Amended Complaint and each purported cause of action alleged therein, is barred, in whole or in part, by the safe harbor provisions of California Labor Code section 226.2.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because any duty or obligation by Defendants to pay wages, whether contractual or otherwise, which Plaintiff claims are owed to her and/or any putative aggrieved employee, has been fully performed, satisfied, and/or discharged.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because Plaintiff and/or putative aggrieved employees remain employed by Defendants, so her and/or their claims, including, but not limited to, the claim for waiting-time penalties

1 under Labor Code section 203, are barred, in whole or in part, and/or recovery is precluded because
2 Defendants' conduct was not willful.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 6. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
5 is barred, in whole or in part, because Plaintiff and any putative aggrieved employees have been provided
6 all income, compensation, and pay to which she and/or they are entitled.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 7. To the extent Plaintiff and the putative aggrieved employees request equitable or injunctive
9 relief, Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein, is
10 barred, in whole or in part, because Plaintiff and the putative aggrieved employees are not entitled to any
11 equitable or injunctive relief given that Plaintiff and the putative aggrieved employees have not suffered
12 any irreparable injury based on any alleged conduct of Defendants, and Plaintiff and the putative aggrieved
13 employees have an adequate remedy at law for any such conduct.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 8. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
16 is barred, in whole or in part, because Plaintiff lacks standing.

17 **NINTH AFFIRMATIVE DEFENSE**

18 9. Defendants are informed and believe, and thereon allege, that any recovery on Plaintiff's
19 Second Amended Complaint, and each purported cause of action alleged therein, is barred, in whole or in
20 part, by California Labor Code sections 2854 and 2856 in that Plaintiff and members of the putative
21 aggrieved employees failed to use ordinary care and diligence in the performance of her and/or their duties
22 and failed to comply substantially with the reasonable directions of Defendants.

23 **TENTH AFFIRMATIVE DEFENSE**

24 10. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
25 is barred, in whole or in part, because Defendants are entitled to a set-off for amounts Plaintiff and/or the
26 putative aggrieved employees owe Defendants for receipt of any wages and other benefits to which she
27 and/or they were not entitled and/or did not earn.

28 ///

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 11. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
3 is barred, in whole or in part, because Defendants are informed and believe that a reasonable opportunity
4 for investigation and discovery will reveal that, and, on that basis, Defendants allege that, some or all
5 certain hours claimed by Plaintiff and the putative aggrieved employees are not "hours worked" within
6 the meaning of any Wage Order(s) of the California Industrial Welfare Commission and/or under
7 applicable California law; thus, compensation need not be paid for those hours.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 12. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
10 is barred, in whole or in part, because the operative Industrial Welfare Commission Wage Order upon
11 which Plaintiff relies is invalid or unenforceable under applicable law.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 13. Plaintiff's allegations of failure to provide rest periods and meal periods are barred, in
14 whole or in part, because Plaintiff and the putative aggrieved employees were informed of their right to
15 take meal periods and rest breaks and have never been denied the right to take a meal or rest period to
16 which they were entitled.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 14. Plaintiff's allegations of failure to provide meal periods and rest breaks are barred, in whole
19 or in part, because Plaintiff and the putative aggrieved employees have been provided meal periods and
20 rest breaks to which they were entitled.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 15. Although Defendants deny that they have committed, or have responsibility for, any act
23 that could support the recovery against Defendants in this Action, such recovery, if any, is barred because,
24 to the extent any such act is found, such recovery against Defendants are unconstitutional under numerous
25 provisions of the United States Constitution and the California Constitution, including the Excessive Fines
26 Clause of the Eighth Amendment, the Due Process clauses of the Fifth Amendment and Section 1 of the
27 Fourteenth Amendment, and other provisions of the United States Constitution, and the Excessive Fines
28 Clause of Section 17 of Article I, the Due Process Clause of Section 7 of Article I, and other provisions

1 of the California Constitution.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 16. Defendants have engaged attorneys to represent it in defense of Plaintiff's frivolous,
4 unfounded, and unreasonable Action, and Defendants are thereby entitled to an award of reasonable
5 attorneys' fees and costs pursuant to California Code of Civil Procedure section 1021.5 upon judgment in
6 its favor.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 17. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
9 is barred, in whole or in part, because, assuming *arguendo* that Plaintiff and/or putative aggrieved
10 employees were not provided with a proper itemized statement of wages and deductions, Plaintiff and the
11 putative aggrieved employees are not entitled to recover damages because Defendants' alleged failure to
12 comply with California Labor Code section 226(a) was not a "knowing and intentional failure" under
13 California Labor Code section 226(e).

14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 18. Defendants allege that, to the extent Plaintiff and putative aggrieved employees seek to
16 recover waiting time and other statutory penalties, Plaintiff and putative aggrieved employees have failed
17 to state a claim for such penalties because, even assuming *arguendo* that Plaintiff and putative aggrieved
18 employees are entitled to additional compensation, Defendants have not willfully or intentionally failed
19 to pay any such additional compensation to Plaintiff and/or putative aggrieved employees and they never
20 made a demand for such additional compensation.

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 19. Plaintiff's claims seeking "waiting time" penalties pursuant to Labor Code section 203 are
23 barred in whole or in part because an award of "waiting time" penalties pursuant to Labor Code section
24 203 would violate Defendants' due process rights protected by the United States Constitution and/or by
25 the California Constitution in the same manner or in a similar manner as awards of punitive damages in
26 excess of constitutionally permissible limits violate such rights.

27 ///

28 ///

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 20. To the extent discovery may disclose a factual basis for this defense, any recovery on
3 Plaintiff's Second Amended Complaint as a whole, and each purported cause of action alleged therein, is
4 barred in whole or in part to the extent Plaintiff or any putative aggrieved employees previously pursued
5 any claim before the California Department of Industrial Relations, Division of Labor Standards
6 Enforcement or the United States Department of Labor.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 21. Plaintiff is not an adequate representative of the alleged putative aggrieved employees
9 identified in the Second Amended Complaint, as she did not suffer any Labor Code violations.

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 22. Defendants deny that any Labor Code violations occurred. However, Defendants allege
12 that assuming, *arguendo*, that any Labor Code violations occurred, Plaintiff is the only individual who
13 suffered such violations and cannot maintain a representative action on her sole behalf.

14 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

15 23. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
16 is barred, in whole or in part, because PAGA, as enacted, is unconstitutional by allowing a private attorney
17 general, such as Plaintiff, to prosecute a state law enforcement action without active supervision by a
18 neutral state attorney, and deprives Defendants of their due process protections.

19 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

20 24. Plaintiff's purported PAGA claim is barred pursuant to the United States Constitution and
21 the California Constitution to the extent Labor Code section 2698 *et seq.* imposes double penalties and
22 violates the due process rights of Defendants.

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 25. Plaintiff's Second Amended Complaint, and the purported PAGA cause of action alleged
25 therein, is barred, in whole or in part, because Labor Code section 2699 *et seq.* is violative of the principles
26 of substantive due process under the Fourteenth Amendment to the United States Constitution and Article
27 I, Section 7 of the California Constitution.

28 ///

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 26. Assuming *arguendo* that any PAGA recovery is permissible, said recovery is limited to a
3 maximum of the first-time violation amount per claim.

4 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

5 27. Plaintiff's Second Amended Complaint, and the purported PAGA cause of action alleged
6 therein, is barred, in whole or in part, because the California Labor and Workforce Development Agency
7 and its departments, divisions, commissions, boards, agencies, or employees cannot assess civil penalties
8 on any claim for which penalties are not recoverable.

9 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

10 28. Plaintiff's Second Amended Complaint, and the purported PAGA cause of action alleged
11 therein, is barred, in whole or in part, because she is not an aggrieved employee as that term is defined in
12 Labor Code section 2699(c).

13 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

14 29. Plaintiff's Second Amended Complaint, and the purported cause of action therein, is
15 barred, in whole or in part, because, assuming *arguendo* that Plaintiff and/or putative aggrieved employees
16 were not provided with a proper itemized statement of wages and deductions, Plaintiff and the putative
17 aggrieved employees are not entitled to recover damages because they did not suffer any injury.

18 **THIRTIETH AFFIRMATIVE DEFENSE**

19 30. Plaintiff is not entitled to the recovery of attorneys' fees for any common law claims, or
20 any statutory claims under which attorneys' fees are not specifically provided for.

21 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

22 31. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
23 is barred, in whole or in part, to the extent that Plaintiff and/or any aggrieved employee(s) entered into an
24 accord and satisfaction of any claim asserted in this Action.

25 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

26 32. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
27 is barred, in whole or in part, to the extent that Plaintiff and/or any aggrieved employee(s) previously
28 released the claims asserted in this Action.

1 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

2 33. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
3 is barred, in whole or in part, by the equitable doctrines of laches, estoppel, waiver, and unclean hands.

4 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

5 34. Plaintiff's Second Amended Complaint, and each purported cause of action alleged therein,
6 is barred, in whole or in part, because, to the extent that alleged violations of any provision of the
7 California Labor Code occurred, if any, Defendant's conduct was not knowing, willful, purposeful,
8 malicious, reckless, or negligent, and good faith disputes exist concerning any alleged violations.

9 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

10 35. Defendants allege that Plaintiff's Second Amended Complaint does not describe the claims
11 or facts being alleged with sufficient particularity to permit Defendants to ascertain what other defenses
12 may exist. Defendants will rely on any and all further defenses that become available or appear during
13 discovery in this Action and specifically reserves the right to amend this Answer for purposes of asserting
14 such additional affirmative defenses.

15 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

16 36. Plaintiff's claims regarding meal periods and rest breaks are barred in whole or in part, to
17 the extent Defendants provided Plaintiff and putative class members and/or allegedly aggrieved
18 employees required meal and rest breaks in compliance with California law and Plaintiff and the putative
19 class members and/or allegedly aggrieved employees voluntarily waived the right to take the meal or rest
20 breaks provided.

21 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

22 37. Plaintiff's claims regarding meal periods and rest breaks are barred in whole or in part, to
23 the extent Defendants provided Plaintiff and putative class members and/or allegedly aggrieved
24 employees required meal and rest breaks in compliance with California law and Plaintiff and putative
25 class members and/or allegedly aggrieved employees did not take the opportunity to take a work-free
26 break by voluntarily refusing as described in *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004,
27 1053 (2012).

28 ///

1 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

2 38. Plaintiff's wage statement claim and the claims of the putative class members are barred
3 by the doctrine of avoidable consequences, to the extent Plaintiff and/or putative class members and/or
4 allegedly aggrieved employees could have corrected errors in wage payment by reporting them so that
5 Defendants could correct them promptly.

6 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

7 39. Defendants deny that they acted unlawfully or improperly toward Plaintiff and putative
8 class members and/or allegedly aggrieved employees. However, with regard to any potential award of
9 damages to Plaintiff and putative class members and/or allegedly aggrieved employees, Defendants are
10 entitled under the equitable doctrine of setoff and recoupment to offset all overpayments to and obligations
11 of Plaintiff and/or putative class members and/or allegedly aggrieved employees owed to Defendants
12 against any judgment that may be entered against Defendants.

13 **FORTIETH AFFIRMATIVE DEFENSE**

14 40. Without admitting that Plaintiff is entitled to any recovery, Defendants allege that any
15 recovery to which Plaintiff and putative class members and/or allegedly aggrieved employees might be
16 entitled must be reduced by reason of their own fault and/or negligence.

17 **FORTY-FIRST AFFIRMATIVE DEFENSE**

18 41. Plaintiff's claims and the claims of the allegedly aggrieved employees she purports to
19 represent are barred, in whole or in part, because Plaintiff failed to exhaust appropriate administrative and
20 internal remedies and prerequisites. Defendants further allege that Plaintiff failed to give timely and
21 sufficient notice of the alleged statutory violations to the California Labor and Workforce Development
22 Agency and to Defendants, as required by California Labor Code § 2699.

23 **FORTY-SECOND AFFIRMATIVE DEFENSE**

24 42. Plaintiff's claims under PAGA are not susceptible to common proof, are fact intensive, and
25 require highly individualized inquiries to determine if Plaintiff or any other person is an aggrieved
26 employee. As such, adjudicating these claims on a representative basis would present intractable
27 management issues that would deprive Defendants of its right to a fair trial on the merits. Accordingly,
28 these claims cannot be fairly tried on a representative basis without impairing Defendants' right to assert

individualized defenses to those claims as they pertain to individual California employees of Defendants.

FORTY-THIRD AFFIRMATIVE DEFENSE

43. Plaintiff and the allegedly aggrieved employees she purports to represent are not entitled to recover any civil penalties because, under the circumstances of this case, any such recovery would be unjust, arbitrary, oppressive, and confiscatory.

FORTY-FOURTH AFFIRMATIVE DEFENSE

44. Defendants assert that to the extent Plaintiff seeks civil penalties under California Labor Code section 2698, *et seq.*, she is not entitled to a jury trial, and instead must adjudicate those claims by way of a bench trial. *See Espinosa v. Bodycote Thermal Processing, Inc.*, BC501617, Los Angeles Superior Court (2017).

FORTY-FIFTH AFFIRMATIVE DEFENSE

45. Defendants are unable to pay the penalties sought in Plaintiff's Second Amended Complaint, and any award of penalties should therefore be reduced. *See, e.g., Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1136 (2012) (overruled on other grounds by *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 196 (2019)).

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff and the putative class take nothing by the Second Amended Complaint;
2. That the Second Amended Complaint be dismissed in its entirety with prejudice;
3. That Plaintiff and the putative class be denied each and every demand and prayer for relief contained in the Second Amended Complaint;
4. For cost of suits incurred herein, including reasonable attorneys' fees; and
5. For such other and further relief as the Court deems just and proper.

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///

1 DATED: December 6, 2021

JACKSON LEWIS P.C.

2
3 By: Adrienne L. Conrad

4 Adrienne L. Conrad

Lara P. Besser

Jaclyn M. Reinhart

5 Attorneys for Defendants

6 SPRINGS CHARTER SCHOOLS, INC.;

RIVER SPRINGS CHARTER SCHOOL, INC.

1 **PROOF OF SERVICE**

2 I, the undersigned, am over 18 years of age, employed in the County of San Diego, California, in
3 which the within-mentioned service occurred; and that I am not a party to the subject cause of action. My
4 business address is 225 Broadway, Suite 2000, San Diego, California 92101. On December 6, 2021, I
served the following documents:

5 **DEFENDANTS SPRINGS CHARTER SCHOOLS, INC.; RIVER SPRINGS**
6 **CHARTER SCHOOL, INC.'S ANSWER TO PLAINTIFF JENNIFER WISE'S**
7 **SECOND AMENDED COMPLAINT**

8 **Counsel for Plaintiff**

9 David G. Spivak, Esq.
10 THE SPIVAK LAW FIRM
11 16530 Ventura Blvd., Suite 203
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14 Fax: (818) 582-2561
15 Email: david@spivaklaw.com
16 jessica@spivaklaw.com

17 **Counsel for Plaintiff**

18 Walter Haines, Esq.
19 UNITED EMPLOYEES LAW GROUP
20 5500 Bolsa Ave., Suite 201
21 Huntington Beach, CA 92649
22 Tel: (562) 256-1047
23 Fax: (562) 256-1006
24 Email: whaines@uelglaw.com

- 25 ☒ by transmitting via electronic notification the document(s) listed above to the electronic
26 address(es) set forth above on this date. I did not receive, within a reasonable time after the
27 transmission, any electronic message or other indication that the transmission was unsuccessful.
- 28 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid,
in United States mail in the State of California at San Diego, addressed as set forth above.
- ☐ **BY PERSONAL SERVICE.** I caused said document(s) to be hand-delivered to the addressee
on December 6, 2021, via First Legal Services, pursuant to Code of Civil Procedure §1011.
- ☐ **BY OVERNIGHT MAIL.** I deposited said document(s) in a box or other facility regularly
maintained by the express service carrier providing overnight delivery pursuant to Code of Civil
Procedure §1013(c).

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

Executed on December 6, 2021



Kristine Hammett

EXHIBIT 8

Class "Damages" Estimates

Case name: Jennifer Wise v. Springs Charter School

Case #: RIC2002359

Court(s): Riverside County Superior Court

Subject: Background data

Relevant statutes: various

Green cells	>> assumptions from available records and disclosures
Orange cells	>> information provided by Defendants

LWDA notice date: 04/29/20

Lawsuit filing date: 07/01/20

UCL SOL begin: 07/02/16

Lab.Code § 203: 07/02/17

Lab.Code § 2698 (PAGA) SOL begin: 04/30/19

Lab.Code § 226 begin: 07/02/19

Today 06/04/21

	<u>LC §226</u>		<u>PAGA</u>		<u>LC § 203</u>		<u>UCL</u>
Class size:	173		173		241		1,176
Average hourly rate (from Defendant's sample records):	\$	17.67	\$	17.67	\$	17.67	\$ 17.67

Class "Damages" Estimates

Case name:	Jennifer Wise v. Springs Charter School
Case #:	RIC2002359
Court(s):	Riverside County Superior Court
Subject:	Unpaid wages
Relevant statutes:	Lab.Code § 1194

New-Hire Activities		Hours
Orientation:		5.50
Total New-Hire Hours:		5.50
Regular Rate/Hour:	\$	17.67
Class members:		1,176
interest rate:		110%
Unpaid wages:	\$	125,718.52

CONFIDENTIAL
MEDIATION-RELATED
SETTLEMENT
COMMUNICATION

Class "Damages" Estimates

Case name: *Jennifer Wise v. Springs Charter School*
Case #: RIC2002359
Court(s): Riverside County Superior Court
Subject: **Rest Periods**
Relevant statutes: Lab.Code §§ 226.7, 1198

Workdays:		1,176
% Workdays > 3.5 hours:		100.00%
hourly rate:	\$	17.67
Unpaid rest period premium wages:	\$	20,779.92

CONFIDENTIAL
MEDIATION-RELATED
SETTLEMENT
COMMUNICATION

Class "Damages" Estimates

Case name: Jennifer Wise v. Springs Charter School
Case #: RIC2002359
Court(s): Riverside County Superior Court
Subject: Meal Periods
Relevant statutes: Lab.Code §§ 226.7, 512

Workdays: 1,176
% of shifts >5 hrs with no, late, or short meal period: 100.0% stated meals were uncompliant about 250/365 days
hourly rate: \$ 17.67

Unpaid meal period premium wages: \$ 20,779.92

CONFIDENTIAL
MEDIATION-RELATED
SETTLEMENT
COMMUNICATION

Class "Damages" Estimates

Case name:	<i>Jennifer Wise v. Springs Charter School</i>	
Case #:	RIC2002359	
Court(s):	Riverside County Superior Court	
Subject:	Unreimbursed Expenses	
statutory penalty/paycheck:	Lab.Code §§ 222.5, 2802	
TB Test:	\$	-
interest rate:		110%
Number of UCL Class Members:		1,176
Total unreimbursed expenses:	\$	-

CONFIDENTIAL

MEDIATION-RELATED

SETTLEMENT

COMMUNICATION

Class "Damages" Estimates

Case name: *Jennifer Wise v. Springs Charter School*
Case #: RIC2002359
Court(s): Riverside County Superior Court
Subject: **Wage Statement Penalties**
Relevant statutes: Lab.Code § 226

total number of paychecks issued (226):		152
statutory penalty/paycheck: (less \$50/1st paycheck/class member)	\$	100.00
Wage statement penalties:	\$	6,550.00

CONFIDENTIAL
MEDIATION-RELATED
SETTLEMENT
COMMUNICATION

Class "Damages" Estimates

Case name: Jennifer Wise v. Springs Charter School
Case #: RIC2002359
Court(s): Riverside County Superior Court
Subject: **Waiting time penalties**
Relevant statutes: Lab.Code § 203

Former employees		241
Average regular hours/day		8.00
Average overtime hours/day		0.29
Hourly rate	\$	17.67
wages/day	\$	149.05
waiting time days		30
waiting time penalties:	\$	1,077,605.83

CONFIDENTIAL
MEDIATION-RELATED
SETTLEMENT
COMMUNICATION

Class "Damages" Estimates

Case name: Jennifer Wise v. Springs Charter School
Case #: RIC2002359
Court(s): Riverside County Superior Court
Subject: Civil Penalties (Private Attorneys General Act)
Relevant statutes: Lab.Code §§ 2698, et seq.

Claim	Lab.Code § violated/Civil Penalty Statute	Initial penalty amount/pay period	Pay periods	Civil penalties
Unpaid Minimum Wages:	1197/1197.1	\$ 100.00	152 \$	15,200.00
Unprovided meal periods:	512/558	\$ 50.00	152 \$	7,600.00
Unprovided rest periods:	1198/2699(f)(2)	\$ 100.00	152 \$	15,200.00
Unreimbursed Expenses	222.5/2802	\$ 100.00	152 \$	15,200.00
Inaccurate Wage Statements:	226/226.3	\$ 250.00	152 \$	38,000
CA civil penalties:			\$	91,200.00

Class "Damages" Estimates

Case name: Jennifer Wise v. Springs Charter School
Case #: RIC2002359
Court(s): Riverside County Superior Court
Subject: Totals
Relevant statutes: various

Restitution/Wages

Wage underpayments:	\$	125,718.52
Liquidated damages:	\$	125,718.52
Unreimbursed Expenses	\$	-
Rest periods:	\$	20,779.92
Meal Periods:	\$	20,779.92

Total:	\$	292,996.87
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Penalties

Wage Statement Penalties:	\$	6,550.00
Waiting time penalties:	\$	1,077,605.83
Civil Penalties:	\$	91,200.00
Total:	\$	1,175,355.83

GRAND TOTAL:	\$	1,468,352.71	530000	36.09%
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EXHIBIT 9

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

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,*

FIRST AMENDED COMPLAINT FOR:

14 vs.

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

15
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

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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.

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

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

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

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

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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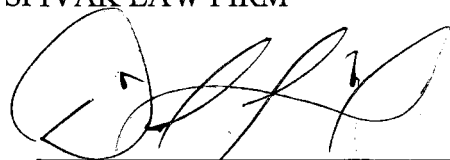
- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



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

EXHIBIT 10

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLERED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. SABZEVAR: NO, YOUR HONOR.

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

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

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

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

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

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

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

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

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

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

6 THE COURT: FORTY-FIVE DAYS.

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

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

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

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

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

17 MR. SPIVAK: YES, YOUR HONOR.

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

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

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

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

1 FOUR WEEKS. HERE'S OUR SITUATION.

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

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

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

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

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

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

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

$$\left. \begin{array}{l}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array} \right\}$$

CERTIFIED COPY

MONDAY, APRIL 23, 2012

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

EXHIBIT 11



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

January 28, 2022

CASE ASSUMPTIONS

Class Members	1,176
Opt Out Rate	1%
Opt Outs Received	12
Total Class Claimants	1,164
Subtotal Admin Only	\$13,740.20

Not-to-Exceed Total \$10,000.00

For 1,176 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Case: Wise v. Springs, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Houny Ly
Firm: The Spivak Law Firm
Contact Number: (818) 205-9033
Email: emily@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **1,176** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$150.00	1	\$150.00
Call Center & Long Distance	\$2.00	294	\$588.00
NCOA (USPS)	\$294.00	1	\$294.00
Total			\$1,432.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.10	1,176	\$117.60
Notice Packet & Opt-Out Form	\$1.20	1,176	\$1,411.20
Estimated Postage (up to 2 oz.)*	\$0.51	1,176	\$599.76
Static Website	\$100.00	1	Included
Check Cashing Reminder Postcard	\$0.60	244	\$146.66
Postage Included			
Total			\$2,475.22

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	294		\$249.90
Remail Notice Packets	\$0.75	291		\$218.25
Estimated Postage	\$0.53	291		\$154.23
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$892.38

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	18		\$180.00
Case Manager	\$85.00	3		\$255.00
Total				\$1,155.00

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	2		\$190.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	7		\$945.00
Mail Class Checks *	\$0.85	1,164		\$989.40
Estimated Postage	\$0.53	1,164		\$616.92
Total				\$3,551.32

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	4		\$460.00
Remail Undeliverable Checks (Postage Included)	\$1.35	233		\$314.28
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	8		\$680.00
Conclusion Reports	\$115.00	4		\$460.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Contolers Office	\$300.00	1		\$300.00
Estimated <u>89</u> Total Class Members				
Total				\$4,234.28

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$13,740.20



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 12



Class Action Administrators

www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Wise v Springs

Date: January 13, 2022

All-In Settlement

Requesting Attorney: **Emily Houg Ly**

* Class Members: **1,176**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **The Spivak Law Firm**

Opt-Outs Received: **18**

Telephone: **(818) 582-3086**

Postage Total: **\$2,052.05**

Email: emily@spivaklaw.com

Grand Total: **\$23,229.41**

***** DISCOUNTED FLAT FEE: \$16,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 18 opt-out's filed. Any additional opt-out's filed above 18 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Spanish Translation / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	7	\$665.00
System Programming/Data Base Setup	\$150.00	7	\$1,050.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Total			\$3,715.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form in English & Spanish / Postage (up to 2 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.50	1,176	\$588.00
Mailing of Notice Pack	\$1.50	1,176	\$1,764.00
Estimated Postage (up to 2 oz.)*	\$0.78	1,176	\$917.28
Total			\$3,609.28

*Additional charges will apply if the postage exceeds 2 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	118	\$59.00
Skip Traces	\$1.25	101	\$126.25
Remail Packs	\$2.00	89	\$178.00
Estimated Postage (up to 2 oz.)	\$0.78	89	\$69.42
Clerical Staff	\$60.00	2	\$120.00
Total			\$552.67

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$10.00	18	\$180.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.58	1	\$0.58
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	236	\$708.00
Total			\$1,663.58

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	1,158	\$231.60
Total			\$666.60

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2 / Check Reminder Postcard

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	4	\$600.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	1,158	\$2,895.00
Estimated Postage (up to 1 oz.)	\$0.58	1,158	\$671.64
Check Reminder Postcard	\$0.30	753	\$225.81
Postage for Reminder Postcard	\$0.40	753	\$301.08
Total			\$6,233.53

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	12	\$60.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	93	\$116.25
Remail Undeliverable Checks	\$2.50	93	\$232.50
Estimated Postage (up to 1 oz.)	\$0.58	105	\$60.90
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$4,519.65

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/ Order / parties require(s) multiple state tax filings.

Escheat Processing

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
UPEnterprise Reporting Services	\$0.15	243	\$36.45
Project Manager - Fall Reporting	\$95.00	2	\$190.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues - Winter/Spring QTR	\$5.00	24	\$121.50
Estimated Postage (up to 1 oz.) for Reissue	\$0.58	24	\$14.09
Project Manager - June Remittance	\$95.00	2	\$190.00
Project Supervisor- June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$2,269.10
Grand Total:			\$23,229.41

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. **Mutual Obligations.**
- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

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 13

Case Name: Wise v. Springs

Friday, January 28, 2022

Requesting Law Firm

Contact

E-Mail

ILYM Contact

E-Mail

Contact Number

The Spivak Law Firm

Emily Hough Ly

emily@spivaklaw.com

Sean Hartranft

Sean@ilymgrouppclassaction.com

949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	1,176
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
One-Page Notice Posted to ILYM Group Website	Yes
Certified Spanish Translations	No

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	4	\$600.00
Programming of Class Database	Hourly	\$175.00	4	\$700.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$1,300.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	8	\$960.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	4	\$280.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	6	\$420.00
NCOA	Per Piece	\$173.64	1	\$173.64
Toll-Free Call Center	Flat Fee	\$250.00	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 \$2,973.64

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING

Fulfillment Notice	Per Piece	\$1.25	1,176	\$1,470.00
USPS First Class Postage	Per Piece	\$0.55	1,176	\$646.80
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$1.80	235	\$423.36
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$2,840.16

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	7	\$1,050.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	7	\$875.00
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	\$1.50	1,176	\$1,764.00
USPS First Class Postage	Per Piece	\$0.55	1,176	\$646.80
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	235	\$470.40
Preparation of Taxes	Hourly	\$120.00	15	\$1,800.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$8,106.20

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	6	\$600.00
Project Manager Final Reporting	Hourly	\$120.00	6	\$720.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	4	\$500.00

Subtotal \$2,570.00

Total Case Estimate: \$17,790.00

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 14