

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 8605 Santa Monica Bl
PMB 42554
6 West Hollywood, CA 90069
7 Telephone: (213) 725-9094
Facsimile: (213) 634-2485

8 Attorneys for Plaintiff(s),
9 ANDREW BURDICK, and all others similarly situated
10 (Additional attorneys for Plaintiff(s) on following page)

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**
13 **(UNLIMITED JURISDICTION)**
14

15 ANDREW BURDICK, on behalf of himself, and
all others similarly situated, and as an
16 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
17 Private Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 PEACH STATE ROOFING, INC., a Georgia
21 corporation; MARTIN KELLY, an individual;
22 CHRIS KELLY, and individual; and DOES 1
through 50, inclusive,

23 *Defendant(s).*
24

Case No. 20STCV20397

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

Hearing Date: October 18, 2022
Hearing Time: 10:00 a.m.
Hearing Dept.: 14, The Honorable
Kenneth R. Freeman

Action filed: May 28, 2020



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)

walter@uelglaw.com

UNITED EMPLOYEES LAW GROUP

4276 Katella Ave

Suite 301

Los Alamitos, CA 90720

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),

ANDREW BURDICK, and all others similarly situated



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Andrew Burdick (“Plaintiff”) in his lawsuit against Defendants Peach State Roofing, Inc., Martin Kelly, and Chris Kelly (collectively “Defendants”). Plaintiff and Defendants are collectively referred to as the “Parties.”

7
89
10

11

12
13
14
15

16
17
18
19
20

21
22
23
24
25
26
27
28



Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). A true and correct copy
2 of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff’s First
3 Amended Complaint is attached hereto as **Exhibit 4**.

4 7. The Parties thereafter engaged in an informal, voluntary exchange of information
5 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
6 produced Plaintiff’s entire personnel file (including policies and agreements he signed and
7 acknowledged), copies of their relevant company written policies and more detailed time and
8 payroll.

9 8. On April 15, 2021, following much of the foregoing informal discovery and
10 exchange of information, the Parties participated in a mediation session presided over by
11 Mediator Francis J. Ortman, an experienced class action mediator. During the mediation, the
12 Parties had a full day of productive negotiations and reached agreement on a class-wide
13 settlement during the second mediation session. During the mediation sessions, each side,
14 represented by his/their respective counsel, recognized the risk of an adverse result in the Action
15 and agreed to settle the Action and all other matters covered by this Agreement pursuant to the
16 terms and conditions of this Agreement.

17 ***Ascertainable and Numerous Class***

18 9. A class is ascertainable when it may be readily identified without unreasonable
19 expense or time by reference to official records. Here, Plaintiff maintains that the above-defined
20 Class is ascertainable because its members may be identified by reference to Defendants’ records
21 and Defendants have agreed to share the relevant information from their records to facilitate the
22 settlement process. Therefore, the Settlement Class is ascertainable.

23 10. The Settlement Class has sufficiently numerous members to render joinder
24 impractical. No set number is required as a matter of law to maintain a class action. The California
25 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
26 approximately 90 Class Members. Plaintiff maintains that it would be impractical and
27 economically inefficient to require each Settlement Class Member to separately maintain an
28 individual action or be joined as a named plaintiff in this action. In light of these considerations,
the Settlement Class’ membership is sufficiently numerous.

///

///



Predominant Common Questions

11. In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay wages, 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, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class.

Typicality

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



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

Adequacy

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

14. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiff contends that he is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendants during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated his 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 himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative.

Background of Class Counsel

15. 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.

16. 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.

17. 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.



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

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

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

13 b. *Jorge Guzman v. Department of Justice*, United States District Court,
14 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
15 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
16 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
17 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
18 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
19 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
20 1999.

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

28 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
Plaintiff, who I represented pro bono sought the return of \$45,000.00 he paid to an attorney



Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 escrow officer who subsequently absconded with the money. The jury awarded compensatory
2 damages. The Judgment with interest is now far in excess of that amount. Soon after this case
3 was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono
4 Legal Services.

5 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
6 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
7 Customs Agent, followed by an award of Attorneys' fees and costs.

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

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

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

21. 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.



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

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

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

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

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

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



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

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

7 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
8 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
9 on behalf of dairy and agricultural laborers).

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

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

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

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

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

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



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

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

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

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

20 ***Class Action Treatment Is Superior***

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

///



Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

The Settlement is Presumptively Fair

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

Exposure & Risk Analysis

25. Plaintiff contends that Defendants failed to compensate him and the putative class members ("PCMs") for all hours worked at the correct rates of pay. He also contends Defendants required him and the PCMs to perform certain duties off the clock without compensation. Plaintiff further contends that Defendants failed to provide him with timely meal periods or any rest breaks. Plaintiff contends that Defendants made him and the PCMs use their personal cellphone for work purposes and purchase their own tools without reimbursement. Finally, he contends Defendants provided him with wage statements that were false and misleading. Plaintiff prepared "damages" estimates in advance of the mediation. In advance of the mediation, Plaintiff determined Defendants' maximum exposure for restitution and penalties to be approximately \$2,102,345.72 (consisting of \$734,428.33 in unpaid wages, \$232,645.00 in missed meal period premium wages, \$218,686.30 in missed rest break premium wages, \$100,263.75 in unreimbursed expenses, \$66,000.00 for wage statement penalties, \$280,500.00 for waiting time penalties, and \$341,220.00 for civil penalties). True and correct copies of the spreadsheets I prepared for mediation of this Action are collectively attached to this declaration as **Exhibit 5**. The estimates are in essence "home run" projections that omit data points that will undoubtedly reduce the maximum possible damages award and do not factor in any of the risks involved in litigating this Action. Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample data. *Id.* Plaintiff also considered the



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Defendants also represented that they had interviewed all of Defendants' current employees regarding Plaintiff's claims, all of whom would provide declarations, under penalty of perjury, that were favorable to Defendants with respect to the relevant factual issues at issue in Plaintiff's action. Plaintiff's Counsel applied discounts to the maximum exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendants would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 26.00% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.¹

26. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for \$550,000.00 is fair and reasonable.

27. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. See *Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time spent off

¹ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018)
2 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a
3 *de minimis* defense even if compensable. (Stating that “We do not decide whether there are
4 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
5 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine
6 may apply here because the time spent off the clock were minute and insignificant. Accordingly,
7 a large award of penalties seems unlikely with respect to this claim.

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

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

28 30. Defendants contend they did not impede or discourage Plaintiff, or any other
employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
of their meal breaks each day on their time records. The time records that comprise the random



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

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

20 32. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
21 Court may consider Plaintiff's claims as to Defendants' alleged failure to indemnify for business
22 expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that
23 Defendants required Plaintiff and the Class Members to use their personal items including
24 cellular phones and tools, and failed to indemnify them for these business expenses. Defendants
25 presented evidence that they have supplied their employees with tools, equipment, and other
26 supplies and had an expense reimbursement policy. As such, there is a risk that the Court may
27 consider Plaintiff's claims to be individual in nature and unfit for class wide resolution.

28 33. **Risks Associated with the Statutory "Wage Statement" Penalty Claims.**
Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA
penalties. Under Labor Code section 226, wage statements must include various information,
including the applicable rates of pay, corresponding hours worked, and gross pay. Here,



1 Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is
2 derivative of them. On their face, the wage statements issued by Defendants comply with the
3 requirements of Labor Code section 226. Further, to the extent that Plaintiff claims Defendants'
4 wage statements were inaccurate because they did not include wages or premium payments that
5 they contend Defendants should have paid, Plaintiff's claims were subject to additional risk, as
6 case law suggested that such premium payments are not to be considered wages, and therefore
7 do not give rise to claims under section 203. *See Jones v. Spherion Staffing, LLC*, 2012 U.S. Dist.
8 LEXIS 112396 at * 26 (C.D. Cal. Aug. 7, 2012) (no claim for Labor Code section 203 penalties
9 based on meal period claims because "the underlying violation that gives rise to a section 226.7
10 [meal period] claim is not the nonpayment of wages"); *Nguyen v. Baxter Healthcare Corp.* 2011
11 U.S. Dist. LEXIS 141135 at * 24 (C.D. Cal. Nov. 28, 2011) (holding that Section 226(a) does
12 not even cover meal period premium pay). Accordingly, the *Jones* and *Nguyen* decisions will
13 likely foreclose this claim. Moreover, the Court of Appeal's decision in *Naranjo v. Spectrum*
14 *Security Services, Inc.* (2019) 40 Cal.App.5th 444, holding that a defendant's failure to pay meal
15 premiums does not give rise to violations of Labor Code sections 226 or 203, was pending before
16 the California Supreme Court when the Parties negotiated this Settlement. *Naranjo v. Spectrum*
17 *Security Services, Inc.* 2020 Cal. LEXIS 167. On May 23, 2022, the California Supreme Court
18 ultimately issued their decision in *Naranjo* and reversed in part the judgement of the Court of
19 Appeal, insofar as it held that premium pay did not support relief under Labor Code sections 203
20 and 226.

21 34. **Risks Associated with The Waiting Time Penalties Claim.** Plaintiff's claims
22 for untimely wages is predicated on Labor Code section 201 to 203. Defendants could argue
23 based on the *Jones* and *Nguyen* decisions, *supra*, that meal or rest premium pay is not a "wage"
24 for purposes of Labor Code section 203 penalties. Further, in the recent decision *Ferra v. Loews*
25 *Hollywood Hotel, LLC* (2019) 40 Cal.App. 5th 1239, the Court of Appeal held that unlawful meal
26 and rest periods under section 226.7 cannot serve as a basis for recovery of penalties under
27 section 203. *Id.* at 1252 ("We conclude that the administrative and legislative history of the
28 statute indicates that . . . the Legislature intended section 226.7 first and foremost to *compensate*
employeesSection 226.7's additional hour of pay is a premium wage . . .not a
penalty.")(internal citations and quotation marks omitted). Under the *Loews* decision, it is highly



Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 unlikely that the Court will permit untimely wage penalties for Defendants' alleged failure to
2 provide meal and rest period penalties.

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

11 36. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
12 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
13 counsel estimated a maximum exposure of approximately \$687,720.00 in civil penalties. This
14 estimate did not take into account any of the risks discussed above and assumed a violation for
15 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
16 period for the same alleged violations of different Labor Code provisions and derivative
17 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
18 this fashion may be appropriate to determine the amount in controversy for purposes of removal
19 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
20 multiple PAGA penalties for the same violation for the same pay period under different Labor
21 Code provisions. This may be because the PAGA does not provide for what many employers
22 characterize as claim splitting and not merely stacking.
23
24
25
26
27
28



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 37. I am aware of only two significant awards under the PAGA in a contested
2 proceeding, both issued by federal district courts.² PAGA penalty awards are often small even
3 for egregious, intentional violations of the Labor Code.³

4 38. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a
5 prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only
6 \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828.
7 Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal
8 affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the
9 defendant's meal period violations. A similar result could occur here.

10 39. At the time the Parties settled the case, the United States Supreme Court had
11 announced that, in the near future, it would hear the matter of *Viking River Cruises, Inc. v.*
12 *Moriana*, No. 20-1573, and decide whether or not to overrule the California Supreme Court's

13 ² In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
14 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
15 plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
16 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
17 suffered a particularly sizeable injury – the court found that the defendant's policies caused
18 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
19 *Bernstein*, who the court noted had received “millions of dollars from the state of California” to
20 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
21 compensate its flight attendants for work performed outside of “block time” (time during which
the aircraft is moving), including time spent participating in pre-flight briefings, boarding
passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved
on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019)
U.S. Dist. LEXIS 13253.

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

24 ³ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
25 BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
26 correct copy of the complaint is attached as **Exhibit 6**. The plaintiff sought in excess of \$9
27 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M.
28 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 7**, 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.



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 decision in *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348 that a private arbitration
2 agreement cannot deprive an employee of his right to sue under PAGA in a court of law. The
3 Supreme Court in *Moriana* ultimately held that the employer could enforce the arbitration
4 agreement as to the employee's individual PAGA claim and that the employee lacked standing
5 to maintain her representative PAGA claims. *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct.
1906 (2022), reh'g denied, No. 20-1573, 2022 WL 3580311 (U.S. Aug. 22, 2022).⁴

6 40. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the
7 right to settle a putative class member's disputed wage claims individually, without the consent
8 or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796
9 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue
10 individual release agreements from the Class Members, thereby potentially narrowing the size of
11 the Settlement Class – 90 members - until it is no longer numerous enough for class certification.
12 *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a
13 significant reduction of claim value in settlement negotiations.

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

26 ⁴ The California Supreme Court recently granted review and ordered briefing in *Adolph v. Uber*
27 *Technologies, Inc.* (Cal. Sup. Ct. Case No. S274671) on the question whether a plaintiff continues
28 to have standing to pursue the remedies available to the LWDA even if compelled to arbitrate his
individual PAGA claim.



Allocation of the PAGA Payment

42. 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.

Attorneys' Fees and Costs

43. I intend to request Class Counsel Attorneys' Fees of \$183,333.00 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately and will be no more than \$15,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

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

45. Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. Considering



1 the amount of the attorney fees requested, the work performed, and the risks incurred, the
2 requested fees and costs are reasonable and should be awarded.

3 ***Class Representative Payment***

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

17 ***Settlement Share***

18 47. The Settlement Share will be paid to each Class Member based on his or her
19 eligible Work Weeks compared to the total Work Weeks. Settlement § III.D. Because this method
20 compensates Class Members based on the extent of their potential injuries, in that Class Members
21 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
22 adequate, and reasonable.

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

24 48. The Settlement requires distribution of the Notice by First Class U.S. mail only.
25 Settlement, §IV.B.2. Although there are current employee Class Members, it is uncertain whether
26 Defendants' records of their contact information include email addresses and Class Members,
27 who perform all of their work away from a desk, are not in a position to check their emails. As
28 such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as
Exhibits A and B to the Settlement) provides Class Members with all pertinent information that
they need to fully evaluate their options and exercise their rights under the Settlement.
Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to
2 submit an exclusion request not to be bound by the Settlement; (5) how to object to the
3 Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will
4 be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement
5 Payment for each Class Member. Additionally, the Notice will include the number of Eligible
6 Workweeks a Class Member had during the Class Period. Accordingly, the Notice should be
7 approved because it describes the Settlement with sufficient clarity and specificity to explain to
8 Class Members what this action is about, their rights under the Settlement, and how to exercise
9 those rights. As such, the parties' proposed Notice fully complies with California Rules of Court
10 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed
11 settlement.

12 ***Settlement Administration Duties***

13 49. The duties of the Settlement Administrator are spelled out in section III(C) of the
14 Settlement and in the bid provided by ILYM Group, Inc., a true and correct copy of which is
15 attached hereto as **Exhibit 8**.

16 ***Settlement Administration Costs***

17 50. With regard to the settlement administration costs provision (Settlement §IV.D.3),
18 it is reasonable. Before agreeing to ILYM Group, Inc. the Parties sought and reviewed bids from
19 other reputable third-party administrators: (A) CPT Group, Inc. = \$7,500.00; (B) ILYM Group,
20 Inc. = \$4,989.00; and C) Phoenix Class Action Administration Solutions = \$7,658.36. A true and
21 correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 9**. A true and correct
22 copy of the bid from Phoenix Class Action Administration Solutions is attached hereto as **Exhibit**
23 **10**. The bid provided by ILYM Group, Inc. was comparable. Thus, settlement administration
24 costs provision should be given preliminary approval.

25 ///

26 ///

27 ///

28 ///

///

///

///

///

///

///

///



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

Notice of Settlement to the LWDA

51. 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 11**.

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 16, 2022 at Los Angeles, California.



DAVID SPIVAK,
Declarant



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

EXHIBIT 1

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 CAROLINE TAHMASSIAN (SBN 285680)
4 caroline@spivaklaw.com
5 THE SPIVAK LAW FIRM
6 8605 Santa Monica Blvd.
7 PMB 42554
8 West Hollywood, CA 90069
9 Telephone: (213) 725-9094
10 Facsimile: (213) 634-2485

11 Attorneys for Plaintiff,
12 ANDREW BURDICK, and all others similarly situated
13 (Additional attorneys for parties on following page)

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**
16 **(UNLIMITED JURISDICTION)**

17 ANDREW BURDICK, on behalf of himself and
18 all others similarly situated, and as an “aggrieved
19 employee” on behalf of other “aggrieved
20 employees” under the Labor Code Private
21 Attorneys General Act of 2004,

22 *Plaintiff,*

23 vs.

24 PEACH STATE ROOFING, INC., a Georgia
25 corporation; MARTIN KELLY, a natural person;
26 CHRIS KELLY, a natural person; and DOES 1–
27 50, inclusive,

28 *Defendant(s).*

Case No. 20STCV20397

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

Action filed: 5/28/2020
Department: SSC-14, The Honorable
Kenneth R. Freeman

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

ADDITIONAL ATTORNEY FOR PLAINTIFF

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

ATTORNEYS FOR DEFENDANT

MICHAEL A. HOOD (SBN 71258)
michael.hood@jacksonlewis.com
JONATHAN D. KENT (SBN 292415)
jonathan.kent@jacksonlewis.com
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Telephone: 949-885-1360
Facsimile: Fax: 949-885-1380

Attorneys for Defendants PEACH STATE ROOFING, INC., MARTIN KELLY, and CHRIS KELLY

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Andrew Burdick
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 on the one hand, and Defendants Peach State Roofing, Inc. and Martin Kelly (collectively
5 “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Parties.”
6

7 **I. DEFINITIONS.**

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

10 **A. “Action”** shall mean: (1) the civil action commenced on May 28, 2020, by
11 Plaintiff against Defendants in the Superior Court of California, County of LOS ANGELES,
12 Case No. 20STCV20397, entitled: “Andrew Burdick, on behalf of himself, and all others
13 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’
14 under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Peach State
15 Roofing, Inc., a Georgia corporation; Martin Kelly, a natural person; Chris Kelly, a natural
16 person; and DOES 1 through 50, inclusive, *Defendant(s)*.”
17

18 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons who
19 Defendants employed on a non-exempt, hourly basis in California during the Class Period.
20

21 **C. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
22 David G. Spivak of THE SPIVAK LAW FIRM and Walter L. Haines of UNITED EMPLOYEES
23 LAW GROUP.

24 **D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
25 **Payment”** shall mean the amounts awarded to Class Counsel by the Court to compensate them
26 for, respectively, their fees and expenses in connection with the Action, including their pre-filing
27
28

1 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
2 post-Settlement compliance procedures.

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

5 **F.** “**Class Period**” shall mean the period of time from May 28, 2016 through April
6 15, 2021.

7
8 **G.** “Class Representative Payment” shall mean the special payment made to Plaintiff
9 in his capacity as Class Representative to compensate him for initiating the Action, performing
10 work in support of the Action, and undertaking the risk of liability for attorneys’ fees and
11 expenses in the event he was unsuccessful in the prosecution of the Action.

12 **H.** “**Court**” shall mean the Superior Court for the County of Los Angeles, 312 North
13 Spring Street, Spring Street Courthouse, Los Angeles, CA 90012.

14
15 **I.** “**Defense Counsel**” shall mean the attorneys representing Defendants in the
16 Action: Michael A. Hood of Jackson Lewis P.C.

17 **J.** “**Effective Date**” is defined as follows: If no objection to this Settlement or to any
18 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
19 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
20 the Court enters an order of final approval of this Settlement; however, if any objection to this
21 Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the
22 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
23 expiration of the time for the filing any appeal of the order of final approval of this Settlement.
24 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
25 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
26
27
28

1 the appeal or the dissolution of the writ.

2 **K. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court
3 to determine whether to approve finally and implement the terms of this Agreement.

4 **L. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of
5 Five Hundred and Fifty Thousand Dollars and No Cents (\$550,000.00) payable by Defendants
6 as provided by this Agreement, plus Defendants’ employer-side payroll taxes. Defendants
7 estimated for purposes of mediation that there were approximately 2,737 total qualifying Work
8 Weeks and 90 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers
9 would be expected to increase proportionately for the passage of time between that date and the
10 time of preliminary approval. At least 10 days before the Settlement Administrator send out
11 notice of the Settlement to Class Members, the Settlement Administrator will advise Class
12 Counsel of Defendants’ report of the total number of qualifying Work Weeks and Class Members
13 between May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members
14 exceeds the above referenced qualifying Work Weeks and/or Class Members reported by
15 Defendants by more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class
16 Members (“Escalator Threshold”), the Maximum Settlement Amount will increase by the
17 difference between the Escalator Threshold and the additional qualifying Work Weeks or Class
18 Members over the Escalator Threshold. No other payment will be owed by Defendants.
19

20
21 **M. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
22 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
23 this Action.
24

25 **N. “Net Settlement Amount”** shall mean Five Hundred and Fifty Thousand Dollars
26 and No Cents (\$550,000.00) payable by Defendants pursuant to this Settlement, less:
27
28

- 1 1. the Class Representative Payment approved by the Court;
- 2 2. the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
- 3 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
- 4 \$15,000.00) approved by the Court;
- 5 3. the Settlement Administrator's reasonable fees and expenses approved by
- 6 the Court (not to exceed \$12,000.00);
- 7
- 8 4. the amount of \$3,000.00 paid to the Labor Workforce Development
- 9 Agency of California for the PAGA claim;
- 10 5. any other fees or expenses (other than attorneys' fees and expenses)
- 11 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
- 12 the Court.

13 **O. "Participating Class" or "Participating Class Members"** shall mean all

14 Settlement Class members who do not submit a valid letter requesting to be excluded from the

15 Settlement, consistent with the terms set forth in this Settlement Agreement.

16

17 **P. "Preliminary Approval of the Settlement"** shall mean the Court's preliminary

18 approval of the Settlement without material change.

19 **Q. "Settlement"** shall mean the disposition of the Action and all related claims

20 effectuated by this Agreement.

21 **R. "Settlement Administrator"** shall mean ILYM Group, Inc. or another

22 administrator proposed by the Parties and appointed by the Court to administer the Settlement.

23

24 **S. "Settlement Share"** shall mean each Class Member's allocated share of the Net

25 Settlement Amount as provided by this Agreement.

26 **II. RECITALS**

27

28

1 **A.** On or about October 21, 2019, Plaintiff, through his attorneys, sent a letter to the
2 Labor Workforce Development Agency (“LWDA”) alleging the following against Defendants:
3 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
4 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
5 timely pay wages and related allegations (the “PAGA letter”). Plaintiff asserted these
6 representative claims on behalf of all Class Members who are or were employed during the
7 applicable statutory period.
8

9 **B.** On May 28, 2020, Plaintiff filed a class action complaint in the Los Angeles
10 Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter
11 and adding a cause of action for unfair competition. On June 15, 2020, Plaintiff filed a first
12 amended class action complaint in the Los Angeles County Superior Court, adding a cause of
13 action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The first
14 amended complaint is the “Operative Complaint.”
15

16 **C.** On August 24, 2020, Defendants answered Plaintiff’s First Amended Complaint
17 and denied, and continue to deny, all of Plaintiff’s material allegations. Specifically, Defendants
18 deny that Plaintiff and putative class members are entitled to additional wages and overtime pay.
19 Defendants contend they paid the putative class members for all hours worked as required by
20 law, including all vacation and sick days. Defendants deny the Class Members were deprived of
21 meal and rest periods, allege that they had meal and rest break policies and procedures in place
22 to ensure compliance with California law, and alleges that employees were allowed to take their
23 rest and meal periods. Defendants further allege that the unpaid wage, improper wage statement,
24 and rest and meal period claims are not amenable to class treatment because common issues do
25 not predominate. Defendants assert that the waiting time penalties claim will fail as to former
26
27
28

1 Class Members who cannot prevail on the claims described above. Defendants deny that they
2 failed to issue accurate itemized wage statements, or otherwise failed to keep accurate and
3 complete employment records. Defendants deny that they failed to reimburse for business
4 expenses.

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

11 **E.** On April 15, 2021, following much of the foregoing informal discovery and
12 exchange of information, the Parties participated in a mediation session presided over by
13 Mediator Tripper Ortman, an experienced class action mediator. During the mediation, the
14 Parties had a full day of productive negotiations and reached agreement on a class-wide
15 settlement during the second mediation session. During the mediation sessions, each side,
16 represented by its respective counsel, recognized the risk of an adverse result in the Action and
17 agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms
18 and conditions of this Agreement.

19 **F.** Based on their own thorough, independent investigation and evaluation of this
20 case, Class Counsel are of the opinion that the settlement with Defendants for the consideration
21 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
22 of the Settlement Class in light of all known facts and circumstances, including the risk of
23 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
24
25
26
27
28

1 Defendant, the risks of adverse determinations on the merits, and numerous potential appellate
2 issues. Although Defendants contend they have no liability in this case, Defendants' counsel
3 shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given
4 the respective risks associated with the case.

5 **G.** This Agreement represents a compromise and settlement of highly disputed
6 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants
7 that Plaintiff's claims in the Action have merit or that they have any liability to Plaintiff or the
8 Class on those claims or to the State, or as an admission by Plaintiff that Defendants' defenses
9 raised in the Action have merit. This Agreement is intended to fully, finally, and forever
10 compromise, release, resolve, discharge, and settle the released claims subject to the terms and
11 conditions set forth in this Agreement.

12 Based on the foregoing Recitals, the Parties agree as follows:

13
14
15 **III. SETTLEMENT TERMS AND CONDITIONS**

16 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
17 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
18 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
19 preliminarily and finally approved, the conditional certification of the Settlement Class will be
20 of no force or effect, does not constitute an admission by Defendants that class certification is
21 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
22 will litigate the issue of class certification.

23
24 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
25 Agreement, the Gross Settlement Amount of Five Hundred Fifty Thousand Dollars and No Cents
26 (\$550,000.00), plus Defendants' employer share of employer-side payroll taxes, is the maximum
27
28

1 amount payable by Defendants. In no event will Defendants be required to pay more than the
2 Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class Members,
3 LWDA, and Settlement Administrator. However, Defendants estimated for purposes of
4 mediation that there were approximately 2,737 total qualifying Work Weeks and 90 Class
5 Members for the period of June 15, 2016 to March 24, 2021. These numbers would be expected
6 to increase proportionately for the passage of time between that date and the time of preliminary
7 approval. At least 10 days before the Settlement Administrator send out notice of the Settlement
8 to Class Members, the Settlement Administrator will advise Class Counsel of Defendants' report
9 of the total number of qualifying Work Weeks and Class Members between May 28, 2016 and
10 April 15, 2021. If the qualifying Work Weeks and/or Class Members exceeds the above
11 referenced qualifying Work Weeks and/or Class Members reported by Defendants by more than
12 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members ("Escalator
13 Threshold"), the Maximum Settlement Amount will increase by the difference between the
14 Escalator Threshold and the additional qualifying Work Weeks or Class Members over the
15 Escalator Threshold. No other payment will be owed by Defendants.
16
17

18 **C. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
19 conditions of this Agreement, the Settlement Administrator will make the following payments
20 out of the Gross Settlement Amount as follows:
21

22 **1. To Plaintiff.**

23 **(a) Class Representative Payment.** In addition to his Settlement Share,
24 Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars and No
25 Cents (\$15,000.00) as his Class Representative Payment. Defendants will not oppose a Class
26 Representative Payment of not more than \$15,000.00. Plaintiff will receive no other payment
27
28

1 other than his Settlement Share and Class Representative Payment, and acknowledges that he is
2 aware of no other facts or circumstances related to his employment with Defendants that could
3 give rise to any additional entitlement to any further payments. The Settlement Administrator
4 will pay the Class Representative Payment approved by the Court out of the Gross Settlement
5 Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
6 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
7 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
8 on the Class Representative Payment. Any portion of the Class Representative Payment not
9 awarded to Plaintiff will not revert to Defendant, but instead shall be returned to the Net
10 Settlement Amount.
11

12 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
13 not more than One Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and
14 No Cents (\$183,333.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class
15 Counsel Fees Payment and an amount not more than Fifteen Thousand Dollars and No Cents
16 (\$15,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not
17 oppose this request. The Settlement Administrator will pay the amount approved by the Court
18 (but not more than One Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars
19 and No Cents (\$183,333.00) in fees and not more than Fifteen Thousand Dollars and No Cents
20 (\$15,000.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will
21 not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more
22 Forms 1099 will be issued to Class Counsel with respect to those payments.
23
24

25 **3. To the Settlement Administrator.** The Settlement Administrator will be
26 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
27
28

1 Court in an amount currently estimated to not exceed Twelve Thousand Dollars and No Cents
2 (\$12,000.00).

3 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
4 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
5 section 2698, *et seq.*, for Four Thousand Dollars and No Cents (\$4,000.00), of which, payment
6 from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand
7 Dollars and No Cents (\$3,000.00), which is 75% of the PAGA settlement. One Thousand Dollars
8 and No Cents (\$1,000.00), 25% of the PAGA settlement, will remain in the Net Settlement
9 Amount for distribution.
10

11 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**
12 Subject to the terms and conditions of this Agreement, the Settlement Administrator will
13 distribute a payment from the Net Settlement Amount to each Participating Class Member. The
14 Settlement Share for each Participating Class Member will be calculated as follows,
15 understanding that the formulas below do not constitute an admission by either party, and are
16 intended only to provide a practical means to simplify and administer the claims process:
17

18 **(a) Participating Class Members’ Settlement Shares.** The
19 settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted
20 and W-2s issued) and 66.66% to penalties (for which 1099s will be issued).
21

22 **(b) Settlement Ratio Calculation.** The Settlement Administrator
23 shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional number
24 comprised of (a) that Class Member’s Individual Work Weeks as the numerator, and (b) the
25 aggregate total of all Class Members’ Individual Work Weeks as the denominator. The
26 Settlement Administrator shall assign to each Class Member the “Settlement Share” which shall
27
28

1 be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class
2 Members from the Net Settlement Amount.

3 **2. Settlement Share Worksheet.** Upon calculation of the Class Members'
4 Settlement Share, the Settlement Administrator shall furnish to Class Counsel and Defense
5 counsel a worksheet containing a list unique identifying numbers for each of the Class Members
6 with their corresponding Individual Work Weeks and Settlement Shares.

7
8 **E. Taxes and Withholdings.** Each Settlement Share is intended, in part, to settle the
9 Class Members' claims for unpaid wages. Each Class Member shall be individually responsible
10 for the employee's share of applicable payroll tax withholdings and deductions. Accordingly,
11 each Settlement Share allocated to wages will be reduced by applicable employee-side payroll
12 tax withholdings and deductions, and the Settlement Administrator will issue a Form W-2 to each
13 Participating Class Member. Defendants will be responsible for the normal employer's share of
14 any payroll tax attributable to the wage portion of the Settlement Share payments. Defendants'
15 payment of the normal employer's share of payroll taxes attributable to the wage portion of the
16 Settlement Share payments will be in addition to the Gross Settlement Amount or Net Settlement
17 Amount.
18

19 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
20 appoint ILYM Group, Inc., a qualified administrator, to serve as the Settlement Administrator,
21 which, as a condition of appointment, will agree to be bound by this Agreement with respect to
22 the performance of its duties and its compensation. The Settlement Administrator's duties will
23 include preparing, printing, and mailing the Class Notice to all Class Members; and using
24 reasonable measures to contact all Class Members, including conducting a National Change of
25 Address search on all Class Members before mailing the Class Notice to each Class Member's
26
27
28

1 address. The Settlement Administrator's duties will also include re-mailing the Class Notice to
2 the Class Member's new address for those Class Members whose address has changed; providing
3 the Parties with weekly status reports about the delivery of Class Notice; calculating Settlement
4 Shares; issuing and distributing checks to effectuate the payments due under the Settlement;
5 reporting to the Court as required; and otherwise administering the Settlement pursuant to this
6 Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of
7 printing and mailing the Class Notice, will be paid out of the Gross Settlement Amount, as set
8 forth herein, subject to Court approval. Any portion of the of the Settlement Administrator's fees
9 and expenses that are not used or which are not awarded by the Court will not revert to Defendant,
10 but instead will be part of the Net Settlement Amount for distribution to Participating Class
11 Members. If the Settlement Administrator's fees and expenses exceed Twelve Thousand Dollars
12 and No Cents (\$12,000.00), such cost will be deducted from the Net Settlement Amount.
13
14

15 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

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

24 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
25 anticipate that they will appear and support the granting of the motion, and that Class Counsel
26 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
27
28

1 and Setting Hearing for Final Approval of Settlement.

2 2. Should the Court decline to approve the Settlement, the Settlement will be
3 null and void and the Parties will have no further obligations under it.

4 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
5 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

6 1. **List of Class Members.** Within fourteen (14) days after the Court grants
7 Preliminary Approval of the Settlement, Defendants shall provide to the Settlement
8 Administrator:

9 (a) An electronic database of all Class Members, last known mailing
10 address, Social Security number, and Defendants’ employee identification number (“Class
11 Members’ Data”).

12 (b) Corresponding to each Class Member’s name, Defendants shall
13 provide a figure indicating the total number of Work Weeks during the Class Period in which
14 that Class Member was employed by Defendants as a Class Member. That number of Work
15 Weeks shall be referred to as that Class Member’s “Individual Work Weeks.”

16 (c) If any of the Class Members’ Data are unavailable to Defendant,
17 Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct
18 or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the
19 Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not
20 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
21 Defendants’ express written authorization or by order of the Court.

22 2. **Mailing of Class Notice.** Within fourteen (14) days after receiving the
23 Class Members’ Data, or as soon thereafter as it can do so, the Settlement Administrator will
24

1 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
2 address information provided by Defendant, unless modified by any updated address information
3 that the Settlement Administrator obtains in the course of administration of the Settlement.

4 **3. Returned Class Notice.** If a Class Notice is returned because of an
5 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
6 from receipt of the returned Class Notice, search for a more current address for the Class Member
7 and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the
8 Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find
9 a more current address. The Settlement Administrator will be responsible for taking reasonable
10 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
11 address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S.
12 Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
13 performing address searches for all mail returned without a forwarding address; and promptly re-
14 mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed,
15 the Settlement Administrator will note for its own records and notify Class Counsel and
16 Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status
17 report provided to the Parties.

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

1 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
2 estimated Settlement Share, the Class Member may produce evidence to the Settlement
3 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
4 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
5 must be postmarked by the date specified in the Class Notice (no less than 60 days from the initial
6 mailing of the Class Notice by the Settlement Administrator). A Class Member may use the Work
7 Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to
8 do so to request exclusion from the Settlement.
9

10 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
11 Members may submit requests to be excluded from the effect of the Settlement, or objections to
12 the Settlement, pursuant to the following procedures:
13

14 **1. Request for Exclusion from Settlement.** A Class Member may request
15 to be excluded from the effect of this Agreement, and any payment of amounts under this
16 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
17 Member wants to be excluded from this Action. This letter must include the Class Member's
18 name, address, telephone number, and signature. To be valid and timely, the request to be
19 excluded must be postmarked by the date specified in the Class Notice (no less than 60 days from
20 the initial mailing of the Class Notice by the Settlement Administrator). A Class Member may
21 use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is not
22 obligated to do so to request exclusion from the Settlement. A Class Member who properly
23 submits a valid and timely request to be excluded from the Action shall not receive any payment
24 of any kind in connection with this Agreement or this Action, shall not be bound by or receive
25 any benefit of this Agreement, and shall have no standing to object to the Settlement. A request
26
27
28

1 for exclusion must be mailed to the Settlement Administrator at the address provided on the Class
2 Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the
3 Parties as follows:

4
5 *To Class Counsel:*

6 David G. Spivak, Esq.
7 The Spivak Law Firm
8 8605 Santa Monica Blvd.
9 PMB 42554
10 West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

11 **2. Objections to Settlement.** The Class Notice will provide that any Class
12 Member who does not request exclusion from the Action and who wishes to object to the
13 Settlement should submit an objection in writing to the Settlement Administrator not later than
14 60 days after the Settlement Administrator mails the Class Notice. The written objection to the
15 Settlement should set forth the grounds for the objection and the other information required by
16 this paragraph. The objection should be mailed to the Settlement Administrator at the address
17 provided on the Class Notice. The Settlement Administrator shall transmit the objections to
18 counsel for the Parties as follows:

19
20 *To Class Counsel:*

21 David G. Spivak, Esq.
22 The Spivak Law Firm
23 8605 Santa Monica Blvd.
24 PMB 42554
25 West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

26 Counsel will promptly file such objection with the Court.

27 The written objection should state the objecting Class Member's full name, address, and
28

1 the approximate dates of his or her employment with Defendants. The written objection should
2 state the basis for each specific objection and any legal support in clear and concise terms. The
3 written objection also should state whether the Class Member intends to formally intervene and
4 become a party of record in the action, and upon formally intervening, appear and argue at the
5 Final Approval Hearing.

6
7 Regardless of whether an objecting Class Member complies with the objection procedure
8 encouraged above, the Court will provide a Class Member with the opportunity to speak at the
9 final approval hearing regardless of whether he or she has filed an appearance or submitted a
10 written opposition beforehand. If the objecting Class Member does not formally intervene in the
11 action and/or the Court rejects the Class Member's objection, the Class Member will still be
12 bound by the terms of this Agreement.

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

17
18 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
19 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
20 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
21 If Class Members accounting for 5.00% or more of the Class submit valid requests to be excluded
22 from the Settlement, then Defendants shall have the unilateral right to void this Settlement.
23 Defendants may do so by giving notice to Class Counsel and the Court of their election to void
24 the Settlement not later than seven (7) days before the Final Approval Hearing. No sums shall be
25 payable by Defendants if this Agreement is voided as provided for herein with one exception:
26
27
28

1 Defendants agree to pay any fees owing to the Settlement Administrator for services rendered in
2 the event Defendants exercise their right to void the Settlement.

3 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
4 motion for final approval of the Settlement and payment of the Settlement Administrator's
5 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
6 Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class
7 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
8 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.
9

10 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
11 response to any Class Member's objection to the Settlement and/or reply in support of their
12 motion for final approval of the Settlement, and payment of the Settlement Administrator's
13 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
14 and Class Counsel may file replies in support of their motions for the Class Representative
15 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
16

17 If the Court ultimately does not grant final approval of the Settlement or grants final
18 approval conditioned on any material change to the Settlement, then either Party will have the
19 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
20 obligations under the Settlement, including any obligation by Defendants to pay the Gross
21 Settlement Amount or any amounts that otherwise would have been payable under this
22 Agreement, except that Defendants and Plaintiff will jointly and equally pay the Settlement
23 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
24 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
25 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
26
27
28

1 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
2 constitute a material modification to the Settlement within the meaning of this Paragraph and
3 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
4 appeal awards of attorneys' fees and costs less than requested.

5 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
6 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
7 The Final Order and Judgment shall permanently bar all Participating Class Members from
8 prosecuting against Defendants any claims within the scope of the Releases contained in this
9 Agreement.

10
11 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
12 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
13 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
14 under court rules or applicable law.

15
16 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
17 terms and conditions of this Agreement, and that no Class Member timely objects to the
18 Settlement and formally intervenes into the action as required under the California Supreme
19 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
20 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendants, and their
21 respective counsel hereby waive, except as provided for in this Agreement or prohibited by law,
22 any and all rights to appeal from the Judgment, including all rights to any post-judgment
23 proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new
24 trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-
25 appealable at the time it is entered. The waiver of appeal does not include any waiver of the right
26
27
28

1 to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken
2 from the Judgment, the time for consummation of the Settlement (including making any
3 payments under the Settlement) will be suspended until the appeal is fully and finally resolved
4 and the Judgment, consistent with the terms of this Agreement, becomes Final.

5 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
6 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
7 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
8 the Judgment such that there is a material modification to the Settlement, and that court's decision
9 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
10 then either Plaintiff or Defendants will have the unilateral right to void the Settlement, which the
11 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
12 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
13 materially modifying the Judgment becomes final. The Party exercising its right to unilaterally
14 void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement
15 Administrator for services rendered. An order vacating, reversing or modifying the Court's award
16 of the Class Representative Payment, or the Class Counsel Fees Payment and/or Class Counsel
17 Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of
18 the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.

19 **J. Establishment of Settlement Account.** The Settlement Administrator shall
20 establish a Settlement Account for distributing Settlement Shares and Payments identified in this
21 Agreement. Within ten (10) calendar days of the Effective Date, Defendants shall pay the Gross
22 Settlement Amount into the Settlement Account.

23 **K. Payment of Settlement Shares.** Within ten (10) calendar days of receipt of the
24
25
26
27
28

1 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the
2 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
3 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check
4 in the appropriate amount to the Class Member at the address indicated in the list of Class
5 Member names and addresses provided by Defendants, or as subsequently determined by the
6 Settlement Administrator to be the correct address.
7

8 **L. Uncashed Settlement Share Checks.** Any check issued by the Settlement
9 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
10 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
11 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
12 (collectively, “Voided Settlement Checks”), plus any interest that has accrued on those funds,
13 will be paid to the California Unclaimed Property Fund.
14

15 **M.** The Settlement Administrator will mail or wire all required payments no later than
16 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
17 from Defendants. Proof of payment will be filed with the Court.

18 **N. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
19 days after final disbursement of all funds from the Settlement Account, the Settlement
20 Administrator will serve on the Parties for filing with the Court a declaration providing a final
21 summary report on the disbursements of all funds from the Settlement Account.
22

23 **V. RELEASE OF CLAIMS**

24 **A. Plaintiff and Class Members.** The Parties agree that it is their intent that the
25 resolution set forth in this Settlement will release any further attempt, by lawsuit, administrative
26 claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement
27
28

1 Class Members (including participation to any extent in any representative or collective action),
2 against Defendants and all of their present and former parent companies, subsidiaries, divisions,
3 concepts, related or affiliated companies and its shareholders, officers, directors, employees,
4 agents, attorneys, insurers, successors and assigns, and any individual or entity that could be
5 liable for any of the Released Claims, and Defendants' counsel of record in these Action
6 ("Released Parties"), arising during the period May 28, 2016 through April 15, 2021, are limited
7 to any and all claims under state, federal, or local law, whether statutory or common law arising
8 out of the claims expressly pleaded the Actions and all other claims, such as those under the
9 California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have
10 been pleaded based on the facts pleaded in the Action for: (i) failure to provide rest breaks; (ii)
11 failure to provide meal periods; (iii) failure to pay all wages earned for hours worked at the
12 correct rates of pay; (iv) failure to indemnify; (v) wage statement penalties; (vi) waiting time
13 penalties; (vii) unfair competition; and (viii) civil penalties under PAGA ("Released Claims").
14 This release will not take effect until Defendants have paid the Gross Settlement Amount in full
15 per this Settlement Agreement.

16
17
18 **B. Class Counsel.** As of the date the Judgment becomes Final, and except as
19 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
20 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
21 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
22 and expenses against Defendants or the Releasees arising from or related to the Action, except
23 those incurred to enforce this Agreement and collect the Judgment, including but not limited to
24 claims based on the California Labor Code, the California Civil Code, the California Code of
25 Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class Counsel
26
27
28

Released Claims”).

VI. NON-PUBLICITY PROVISION

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement of this case in any manner that identifies the Defendants, including but not limited to any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3) other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or conditions of this Settlement in any manner that identifies the Defendants.

VII. MISCELLANEOUS TERMS

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

B. No Admission of Liability. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted 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 of liability or wrongdoing by Defendants, or an admission by

1 Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was
2 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
3 Action will have no bearing on, and will not be admissible in connection with, any litigation
4 (other than solely in connection with the Settlement).

5
6 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
7 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
8 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
9 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
10 Defendants or any other Releasees, including, but not limited to, evidence of a presumption,
11 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,
12 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any
13 of the Releasees, in any further proceeding in the Action, or any other civil, criminal or
14 administrative action or proceeding except for purposes of effectuating the Settlement pursuant
15 to this Agreement.
16

17 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
18 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
19 between the Parties relating to the Settlement, and it will then be deemed that no oral
20 representations, warranties, covenants, or inducements have been made to any Party concerning
21 this Agreement or its exhibits other than the representations, warranties, covenants, and
22 inducements expressly stated in this Agreement and its exhibits.
23

24 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
25 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
26 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
27
28

1 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
2 The Parties and their counsel will cooperate with each other and use their best efforts to effect
3 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
4 the form or content of any document needed to implement the Agreement, or on any supplemental
5 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
6 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
7 and assistance of the court will be consistent with this Agreement.
8

9 **F. Modification of Agreement.** This Agreement, and all parts of it, may be
10 amended, modified, changed, or waived only by an express written instrument signed by all
11 Parties or their successors-in-interest.

12 **G. Agreement Binding on Successors.** This Agreement will be binding upon, and
13 inure to the benefit of, the successors of each of the Parties.
14

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

18 **I. Cooperation in Drafting.** The Parties have cooperated in the drafting and
19 preparation of this Agreement. This Agreement will not be construed against any Party on the
20 basis that the Party was the drafter or participated in the drafting.

21 **J. Fair Settlement.** The Parties and their respective counsel believe and warrant that
22 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
23 at this Agreement through arms-length negotiations, considering all relevant factors, current and
24 potential.
25

26 **K. Headings.** The descriptive heading of any section or paragraph of this Agreement
27
28

1 is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

5 *To Class Counsel:*
6 David G. Spivak, Esq.
7 The Spivak Law Firm
8 8605 Santa Monica Blvd.
9 PMB 42554
10 West Hollywood, CA 90069

To Defense Counsel:
Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

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

17
18
19 Dated: 04 / 06 / 2022

By: 

ANDREW BURDICK

20
21
22 Dated:

By: _____

MARTIN KELLY, President and CEO
of
PEACH STATE ROOFING, INC.

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

Dated:

By:

MARTIN KELLY

THE SPIVAK LAW FIRM

Dated: 03 / 16 / 2022

By:



DAVID G. SPIVAK, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated:

By:

WALTER L. HAINES, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

JACKSON LEWIS P.C.

Dated:

By:

MICHAEL A. HOOD
JONATHAN D. KENT
Attorneys for Defendant, PEACH
STATE ROOFING, INC., MARTIN
KELLY, and CHRIS KELLY

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

Dated:

By: _____
MARTIN KELLY

THE SPIVAK LAW FIRM

Dated:

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

UNITED EMPLOYEES LAW GROUP

Dated: March 17, 2022

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

JACKSON LEWIS P.C.

Dated:

By: _____
MICHAEL A. HOOD
JONATHAN D. KENT
Attorneys for Defendant, PEACH
STATE ROOFING, INC., MARTIN
KELLY, and CHRIS KELLY

1 is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

5 *To Class Counsel:*
6 David G. Spivak, Esq.
7 The Spivak Law Firm
8 8605 Santa Monica Blvd.
9 PMB 42554
10 West Hollywood, CA 90069

To Defense Counsel:
Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

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

17
18
19 Dated:

By:

ANDREW BURDICK

20
21
22 Dated: 4/18/22

By:

MARTIN KELLY, President and CEO
of
PEACH STATE ROOFING, INC.

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

MARTIN KELLY

- 2
- 3
- 4

DAVID G. SPIVAK, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

6
7
8
9

WALTER L. HAINES, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

10
11
12
13
14


MICHAEL A. HOOD
JONATHAN D. KENT
Attorneys for Defendant, PEACH
STATE ROOFING, INC., MARTIN
KELLY, and CHRIS KELLY

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

EXHIBIT A

1 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF LOS ANGELES**
3 **(UNLIMITED JURISDICTION)**

4 ANDREW BURDICK, on behalf of himself and all others
5 similarly situated, and as an “aggrieved employee” on
6 behalf of other “aggrieved employees” under the Labor
7 Code Private Attorneys General Act of 2004,

8 *Plaintiff,*

9 vs.

10 PEACH STATE ROOFING, INC., a Georgia corporation;
11 MARTIN KELLY, A NATURAL PERSON; CHRIS
12 KELLY, A NATURAL PERSON; and DOES 1–50,
13 inclusive,

14 *Defendant(s).*

Case No. 20STCV20397

Action filed: 5/28/2020

Department: SSC-14, The Honorable Kenneth R.
Freeman

15 **NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

16 **I. WHY DID I GET THIS NOTICE?**

17 The records of Peach State Roofing, Inc. and Martin Kelly (collectively “Defendants”) indicate that you
18 worked for Defendants in California at some time between May 28, 2016 and April 15, 2021 (the “Class Period”)
19 as a non-exempt employee. This Notice explains that for settlement purposes only, the Court has granted preliminary
20 approval of this class action settlement that may affect you. You have legal rights and options that you may exercise
21 at this time.

22 **II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?**

23 Plaintiff, who Defendants formerly employed as a non-exempt employee, filed a class action lawsuit on
24 behalf of himself and similar employees claiming that Defendants violated California labor laws by: failure to pay
25 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business
26 expenses, failure to issue proper wage statements, failure to timely pay wages and related allegations.

27 Defendants deny any wrongdoing, deny Plaintiff’s allegations, and contend they were in full compliance
28 with all California labor laws.

29 The Court has not ruled on whether Plaintiff’s allegations have any merit. However, for the purpose of
30 avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair
31 and reasonable resolution of this legal dispute, Plaintiff and Defendants have negotiated a settlement whereby
32 Defendants have agreed to pay Five Hundred Fifty Thousand Dollars and No Cents (\$550,000.00) to resolve all of
33 the class claims listed above. The Settlement is not an admission by Defendants of any liability.

34 Defendants estimated for purposes of mediation that there were approximately 2,737 total qualifying Work
35 Weeks and 90 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers would be expected
36 to increase proportionately for the passage of time between that date and the time of preliminary approval. At least
37 10 days before the Settlement Administrator send out notice of the Settlement to Class Members, the Settlement
38 Administrator will advise Class Counsel of Defendants’ report of the total number of qualifying Work Weeks and
39 Class Members between May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members

exceeds the above referenced qualifying Work Weeks and/or Class Members reported by Defendants by more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members ("Escalator Threshold"), the Maximum Settlement Amount will increase by the difference between the Escalator Threshold and the additional qualifying Work Weeks or Class Members over the Escalator Threshold. No other payment will be owed by Defendants.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

The Class consists of all persons who Defendants employed on a non-exempt, hourly basis in California during the Class Period (collectively "Class Members"). The Class Period is May 28, 2016 to April 15, 2021.

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

A. Defendants will pay \$550,000.00, plus their employer-side payroll taxes, to settle the claims. A Settlement Administrator has been appointed to administer the settlement. The Settlement Administrator will pay from the \$550,000.00: (1) costs of administering the claims up to \$12,000.00; (2) attorneys' fees up to \$183,333.00 plus documented costs up to \$15,000.00; (3) an enhancement not to exceed \$15,000.00 to Plaintiff for his work on the class claims; and (4) \$3,000.00 to the California Labor & Workforce Development Agency ("LWDA"). If the number of Class Members increases by more than 10.00%, the Defendants will pay a pro rata increase in the Gross Settlement Amount, including pro rata increases in the Class Counsel Fees Payment, and the allocation to the Private Attorneys General Act claim.

B. Your individual share will be based on the number of Work Weeks you worked for Defendants during the Class Period. The amount of money you receive will be based on the size of your share in comparison to the size of all class members' shares combined. The Settlement Administrator will assign to each class member a "Settlement Ratio," which will be a fractional number comprised of (a) the number of Work Weeks that a class member worked for Defendants during the Class Period as the numerator, and (b) the aggregate total number of Work Weeks that all class members worked during the Class Period as the denominator. The Settlement Administrator will assign to each Class Member the "Settlement Share" which will be calculated by multiplying that class member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

C. If you do not exclude yourself from the settlement (according to the procedures explained below), you will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind (including participation to any extent in any representative or collective action), against Defendants and all of their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims, and Defendants' counsel of record in these Action ("Released Parties"), arising during the period May 28, 2016 through April 15, 2021, are limited to any and all claims under state, federal, or local law, whether statutory or common law arising out of the claims expressly pleaded the Actions and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the Action for: (i) failure to provide rest breaks; (ii) failure to provide meal periods; (iii) failure to pay all wages earned for hours worked at the correct rates of pay; (iv) failure to indemnify; (v) wage statement penalties; (vi) waiting time penalties; (vii) unfair competition; and (viii) civil penalties under PAGA ("Released Claims"). This release will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement.

V. WHAT ARE MY OPTIONS?

A. **You may accept your share of the \$550,000.00 settlement.** You will be deemed to have accepted your share of the \$550,000.00 settlement if you do not submit a timely and valid request to be excluded from the settlement as described in this Notice. In accepting your settlement share, you will waive all "Released Claims" as described above.

B. **You may accept your share of the \$550,000.00 settlement but dispute the number of your Work Weeks.** If you do not agree with the number of Work Weeks on this Class Notice, you should provide the corrected information to the Settlement Administrator. You may use the enclosed Work Weeks Dispute form for this purpose but you are not required to do so to dispute the number of your Work Weeks. Write down all dates that

1 you worked or the number of Work Weeks you worked during the Class Period. Send in any documents to support
2 your Work Weeks by mail to the Settlement Administrator, ILYM Group, Inc., at the following address:
3 _____, or by calling _____. The Settlement Administrator will
4 read the documents both you and Defendants provide and make the final determination of the amount of your
5 settlement award. Your supporting documentation must be postmarked by <<date>> to be valid. Once the dispute
6 is resolved by the Settlement Administrator, and if the Settlement is finally approved by the Court, you will be sent
7 a check for your Settlement Share and you will have released all "Released Claims" as described above.

8
9 C. **You may exclude yourself from the class action settlement.** If you exclude yourself from the
10 class action settlement, you will no longer be a member of the Class so you will not receive any class action
11 settlement money and you will not be bound by the class settlement Release. To be excluded from the class action
12 settlement, you must send by mail, postmarked by <<date>>, a written letter requesting that you be excluded from
13 the class action with your name, address, telephone number, and signature to the Settlement Administrator, ILYM
14 Group, Inc., at the following address: _____, or by calling
15 _____.

16 D. **You may object to the settlement.** If you want to object to the settlement because you find it
17 unfair, unreasonable, or inadequate, you may do so according to the procedures set forth below in paragraph IX
18 below. By objecting, you are not excluding yourself from the settlement. To do so, you should follow the procedures
19 below. If the Court approves the settlement despite your objection, and you do not submit a timely request to be
20 excluded from the settlement, you will be sent a check for your settlement share and you will be bound by the
21 Release described above. The Court will consider the merits of all timely objections, whether or not the objector
22 appears at the final fairness hearing.

23 E. **Timing of Payments of Settlement Shares.** The parties do not expect the distribution of
24 Settlement Shares to take place for several months, so please be patient and, if you change your address, advise the
25 Settlement Administrator immediately.

26 VI. **WHAT IS MY ESTIMATED SHARE?**

27 Your *estimated* share is [insert estimated share]. This amount was calculated based on Defendants' records,
28 which show that you worked approximately <<insert class member Work Weeks>> Work Weeks. This amount is
an estimate. The actual amount you receive may be more or less than the estimated amount shown, depending on a
number of factors including whether other class members request exclusion from the Settlement and how much the
Court approves in attorneys' fees, litigation expenses, and other costs.

29 VII. **WHAT ARE THE PROCEDURES FOR PAYMENT?**

30 A. The Settlement Administrator will calculate your share of the \$550,000.00 settlement and issue
31 you a check for your settlement share.

32 B. The settlement shares are allocated 33.33% to wages (for which employment taxes will be
33 deducted and W-2s issued) and 66.66% to penalties (for which 1099s will be issued).

34 C. You will have one hundred and eighty (180) calendar days from the date of the check's issuance
35 to cash your settlement check. After the expiration of the 180-day period, any amounts from settlement checks that
36 remain uncashed and otherwise unclaimed, plus any interest that has accrued on those funds, will be paid to the
37 California Unclaimed Property Fund.

38 D. It is important for the parties to have your current address in order to be able to send you other
mailings regarding this case. You should contact the Settlement Administrator to report any change of your address
after you receive this Notice. Failure to report a change of address may result in you not receiving money from the
settlement.

1 **VIII. HEARING ON PROPOSED SETTLEMENT**

2 A final fairness hearing will be held by the Court at <<time>> on <<date>>, in **the Superior Court for**
3 **the County of Los Angeles, 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012, Dept.**
4 **SSC-14 (The Honorable Kenneth R. Freeman)**, to decide whether or not the proposed settlement is fair, reasonable
and adequate. You do not have to attend the hearing. Class Counsel will answer any questions the Judge may have.
But, you are welcome to come at your own expense.

5 **IX. PROCEDURES FOR EXCLUSION FROM SETTLEMENT**

6 If you wish to exclude yourself settlement, and any payment of amounts under the Agreement, as described
7 above, you must mail a letter to the Settlement Administrator stating that you want to be excluded from the
Settlement. This letter must include your name, address, telephone number, and signature on or before 60 days from
the mailing of this Notice. The Exclusion Request must be mailed to the Settlement Administrator as follows:

8 *To Settlement Administrator:*

9 *Burdick v. Peach State Roofing, Inc.*

10 Settlement Administrator

c/o _____

12 You may use the enclosed Exclusion Request form for this purpose, though you are not required to request exclusion
13 from the Settlement.

14 **X. PROCEDURES FOR OBJECTING TO SETTLEMENT**

15 If you wish to object to the settlement as described above, you are strongly encouraged to do two things:
16 (1) submit an objection in writing to the Settlement Administrator stating why you object to the settlement on or
before 60 days from the mailing of this Notice; and (2) formally intervene into the court action as an aggrieved party
by filing separate paperwork with the Court through your own independent legal counsel or as a *pro per*.

17 The written objection should be mailed to the Settlement Administrator as follows:

18 *To Settlement Administrator*

19 *Burdick v. Peach State Roofing, Inc.*

20 Settlement Administrator

c/o _____

22 The written objection should state your full name, address, and the dates of your employment with
23 Defendants. The written objection should state the basis for each specific objection and any legal support in clear
and concise terms. The written objection also should state whether you or your lawyer plan to formally intervene in
24 the action and intend to appear and object at the Final Approval Hearing. Class Counsel will file any objections
received with the Court within 5 calendar days of receipt. Objectors will be provided with the opportunity to speak
25 at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition
beforehand.

26 **If you do not timely object to the Settlement and also formally intervene into the court action as set**
27 **forth above, you may waive your right to appeal and standing to appeal the class settlement judgment that**
28 **ultimately is entered by the Court over your objections.** If you send an objection and/or formally intervene in the

1 action, you may come to Court and be heard, but you do not have to come to Court to talk about it. As long as you
2 mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend the
3 Final Approval Hearing. The Court will also provide objectors the opportunity to speak at the final approval hearing
4 regardless of whether they have filed an appearance or submitted a written opposition beforehand.

5 **XI. EXAMINATION OF COURT PAPERS AND INQUIRIES**

6 This Notice summarizes the class action settlement. To obtain additional information regarding the
7 settlement you may: (1) call the Settlement Administrator at _____; (2) inspect the complete court
8 file at maintained by the Clerk of the Superior Court for the County of Los Angeles, Los Angeles County Courthouse,
9 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012, Department SSC-14 (The Honorable
10 Kenneth R. Freeman); (3) or access the court file via the Los Angeles County Superior Court's web site (information
11 about filed civil cases can be found on the Court's general website at https://www._____.com).

12 If you have any questions or comments regarding this Notice, the claims asserted in this class action and/or
13 your rights regarding the settlement, you may contact any of the attorneys for the Class listed below. You will not
14 be charged for speaking with these lawyers. If you want to be represented by your own lawyer, you may hire one at
15 your own expense. The attorneys approved by the Court to represent the class of employees are:

16 David G. Spivak, Esq.
17 The Spivak Law Firm
18 8605 Santa Monica Blvd.
19 PMB 42554
20 West Hollywood, CA 90069
21 Toll Free: (877) 203-9010
22 Fax: (213) 634-2485
23 david@spivaklaw.com

24 The Settlement Agreement and, ultimately, the order giving final approval to the Settlement will be posted on the
25 Settlement Administrator's website at www._____.com/

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

EXHIBIT B

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

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

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

10 *Burdick v. Peach State Roofing, Inc.* Class Action Settlement Administrator
11 c/o _____
12 _____
13 _____

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

17 _____
18 (Typed or Printed Name)

19 _____
20 (Address)

21 _____
22 (City, State, Zip Code)

23 _____
24 (Telephone Number, Including Area Code)

25 _____
26 (Identification Number)

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
28 correct and was executed on _____.

Dated: _____

(Signature)

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

EXHIBIT C

1 **WORK WEEKS DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Los Angeles
4 *Andrew Burdick v. Peach State Roofing, Inc., Case No. 20STCV20397*

5 Indicate Name/Address Changes, if any:

6 <<Name>> _____

7 <<Address>> _____

8 <<City>>, <<State>> <<Zip Code>> _____

9 XX - XX - _ _ _ _

10 TO ALL PERSONS WHO DEFENDANTS EMPLOYED ON A NON-EXEMPT, HOURLY BASIS IN THE
11 STATE OF CALIFORNIA FROM MAY 28, 2016 THROUGH APRIL 15, 2021.

12 The amount of your estimated Settlement Award is based upon the number of Eligible May 28, 2016 you worked
13 between May 28, 2016 and April 15, 2021. "Individual May 28, 2016" are defined as any May 28, 2016 in which
14 you worked at least one (1) day as an of Peach State Roofing, Inc. and Martin Kelly (collectively "Defendants") in
15 California during the calendar week. The number of Work Weeks applicable to your claim is set forth below.

16 **YOUR ELIGIBLE WORK WEEKS**

17 Defendants' records indicate that you worked <<number of Work Weeks>> Work Weeks between May 28, 2016
18 and April 15, 2021.

19 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

20 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the
21 approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable payroll and tax
22 deductions, after the Court approves the Settlement and it goes into effect. This process may take six months or
23 more. You will receive a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice
24 is only an estimate. The exact amount of the payment could vary, up or down.

25 If you wish to dispute the number of May 28, 2016 credited to you, or anything else about your employment
26 status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below
27 and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof
28 of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or
other information that you contend supports your belief that the information set forth above is incorrect. The
Settlement Administrator will resolve any dispute based upon Defendants' records and any information you
provide. Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless
the documents you submit are company records from Defendants.

24 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WEEKS, RECEIPT OF A
25 DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO
26 TAKE ANY ACTION**

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

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

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

Plaintiff,

vs.

PEACH STATE ROOFING, INC., a Georgia corporation; MARTIN KELLY, A NATURAL PERSON; CHRIS KELLY, A NATURAL PERSON; and DOES 1–50, inclusive,

Defendant(s).

Case No. 20STCV20397

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: 5/28/2020
Department: SSC-14, The Honorable
Kenneth R. Freeman

The Motion of Plaintiff Andrew Burdick (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, the Honorable The Honorable Kenneth R. Freeman presiding. The Court having considered the Motion, the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement”

1 or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

2 1. The Court grants preliminary approval of the Settlement and the Settlement Class
3 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
4 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
5 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
6 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
7 Settlement falls within the range of reasonableness and appears to be presumptively valid,
8 subject only to any objections that may be raised at the final hearing and final approval by this
9 Court. The Court will make a determination at the hearing on the motion for final approval of
10 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
11 adequate and reasonable to the Settlement Class.
12

13 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
14 all persons who Defendants employed on a non-exempt, hourly basis in California (collectively
15 “Class Members”), who worked anytime during the Class Period. The “Class Period” shall mean
16 the period of time from May 28, 2016, through April 15, 2021. Defendants estimated for
17 purposes of mediation that there were approximately 2,737 total qualifying Work Weeks and 90
18 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers would be
19 expected to increase proportionately for the passage of time between that date and the time of
20 preliminary approval. At least 10 days before the Settlement Administrator send out notice of
21 the Settlement to Class Members, the Settlement Administrator will advise Class Counsel of
22 Defendants’ report of the total number of qualifying Work Weeks and Class Members between
23 May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members exceeds
24 the above referenced qualifying Work Weeks and/or Class Members reported by Defendants by
25
26
27
28

1 more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members
2 (“Escalator Threshold”), the Maximum Settlement Amount will increase by the difference
3 between the Escalator Threshold and the additional qualifying Work Weeks or Class Members
4 over the Escalator Threshold. No other payment will be owed by Defendants. The “Effective
5 Date” means as follows: If no objection to this Settlement or to any of the terms and or conditions
6 of the Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor
7 to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final
8 approval of this Settlement; however, if any objection to this Settlement or to any of the terms
9 and or conditions of the Stipulation is filed by a member of the Settlement class, or any
10 intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the
11 filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any
12 writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ
13 dissolved and when there is no further time to appeal the dismissal of the appeal or the
14 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation
15 of Defendants to pay any funds into the Settlement Account.

16
17
18 3. This action is provisionally certified pursuant to section 382 of the California
19 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
20 for purposes of settlement only with respect to the proposed Settlement Class.

21
22 4. The Court hereby preliminarily finds that the Settlement was the product of
23 serious, informed, non-collusive negotiations conducted at arm’s length by the Parties. In
24 making this preliminary finding, the Court considered the nature of the claims set forth in the
25 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
26 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
27
28

1 represents a compromise of the Parties' respective positions. The Court further preliminarily
2 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
3 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
4 finds that the Settlement was entered into in good faith.

5
6 5. The Court finds that the dates set forth in the Settlement for mailing and
7 distribution of the Class Notice meet the requirements of due process and provide the best notice
8 practicable under the circumstances, and constitute due and sufficient notice to all persons
9 entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement
10 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
11 schedule for further proceedings:

- 12 a. By _____, Defendants shall provide
13 _____, the appointed Settlement Administrator,
14 with: (a) An electronic database of all Class Members, last known mailing
15 address, Social Security number and Defendants' employee identification
16 number ("Class Members' Data"); and (b) Corresponding to each Class
17 Member's name, Defendants shall provide a figure indicating the total
18 number of Work Weeks during the Class Period in which Defendants
19 employed the Class Member. That number of Work Weeks shall be referred
20 to as that Class Member's "Individual Work Weeks;" (c) If any of the Class
21 Members' Data are unavailable to Defendants, Defendants will so inform
22 Class Counsel and the Parties will make their best efforts to reconstruct or
23 otherwise agree upon the Class Members' Data prior to when it must be
24 submitted to the Settlement Administrator. Class Members' Data will
25
26
27
28

1 otherwise remain confidential and will not be disclosed to anyone, except as
2 necessary to applicable taxing authorities, or pursuant to Defendants' express
3 written authorization or by order of the Court.

4 b. **Mailing of Class Notice.** By _____, approximately
5 fourteen (14) days after receiving the Class Members' Data, or as soon
6 thereafter as it can do so, the Settlement Administrator will mail the Class
7 Notice to all identified Class Members via first-class U.S. mail using the
8 mailing address information provided by Defendants, unless modified by any
9 updated address information that the Settlement Administrator obtains in the
10 course of administration of the Settlement.

11 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
12 address, the Settlement Administrator will promptly, and not later than ten
13 (10) days from receipt of the returned Class Notice, search for a more current
14 address for the Class Member and re-mail the Class Notice to the Class
15 Member. The Settlement Administrator will use the Class Members' Data
16 and otherwise work with Defendants' Counsel and Class Counsel to find a
17 more current address. The Settlement Administrator will be responsible for
18 taking reasonable steps, consistent with its agreed-upon job parameters, court
19 orders, and fee, to trace the mailing address of any Class Member for whom
20 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
21 reasonable steps shall include the tracking of all undelivered mail;
22 performing address searches for all mail returned without a forwarding
23 address; and promptly re-mailing to Class Members for whom new addresses
24
25
26
27
28

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

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

13
14 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
15 Class Members may submit requests to be excluded from the effect of the
16 Settlement, or objections to the Settlement, pursuant to the following
17 procedures:

18 i. **Request for Exclusion from Settlement.** A Class Member may
19 request to be excluded from the effect of this Agreement, and any
20 payment of amounts under this Agreement, by timely mailing a letter
21 to the Settlement Administrator stating that the Class Member wants
22 to be excluded from this Action. This letter must include the Class
23 Member's name, address, telephone number, and signature. To be
24 valid and timely, the request to be excluded must be postmarked by
25 the date specified in the Class Notice (_____, or 60 days
26
27
28

1 from the initial mailing of the Class Notice by the Settlement
2 Administrator). A Class Member who properly submits a valid and
3 timely request to be excluded from the Action shall not receive any
4 payment of any kind in connection with this Agreement or this
5 Action, shall not be bound by or receive any benefit of this
6 Agreement, and shall have no standing to object to the Settlement. A
7 request for exclusion must be mailed to the Settlement Administrator
8 at the address provided on the Class Notice. The Settlement
9 Administrator shall transmit the request for exclusion to counsel for
10 the Parties as follows:
11

12
13 *To Class Counsel:*

14 David G. Spivak, Esq.
15 The Spivak Law Firm
16 8605 Santa Monica Blvd.
17 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618

- 18
19 ii. **Objections to Settlement.** The Class Notice will provide that any
20 Class Member who does not request exclusion from the Action and
21 who wishes to object to the Settlement should submit an objection in
22 writing to the Settlement Administrator by _____, or 60
23 days after the Settlement Administrator mails the Class Notice, a
24 written objection to the Settlement which sets forth the grounds for
25 the objection and the other information required by this paragraph.
26 The objection should be mailed to the Settlement Administrator at the
27
28

1 address provided on the Class Notice. The Settlement Administrator
2 shall transmit the objections to counsel for the Parties as follows:

3
4 *To Class Counsel:*

5 David G. Spivak, Esq.
6 The Spivak Law Firm
7 8605 Santa Monica Blvd.
8 PMB 42554
9 West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618

10 The written objection should state the objecting Class Member's full
11 name, address, and the approximate dates of his or her employment
12 with Defendants. The written objection should state the basis for each
13 specific objection and any legal support in clear and concise terms.
14 The written objection also should state whether the Class Member
15 intends to formally intervene and become a party of record in the
16 action, and upon formally intervening, appear and argue at the Final
17 Approval Hearing. However, the objectors will be provided with the
18 opportunity to speak at the final approval hearing regardless of
19 whether they have filed an appearance or submitted a written
20 opposition beforehand.

21
22 If the objecting Class Member does not formally intervene in the
23 action and/or the Court rejects the Class Member's objection, the
24 Class Member may still be bound by the terms of this Agreement.

25 f. **Report.** Not later than fourteen (14) days after the deadline for submission
26 of requests for exclusion, the Settlement Administrator will provide the
27
28

1 Parties with a complete and accurate list of all Class Members who sent
2 timely requests to be excluded from the Action and all Class Members who
3 objected to the settlement.

4 6. The Court approves, as to form and content, the Class Notice in substantially the
5 form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the
6 form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially
7 the form attached as Exhibit C to the Settlement.
8

9 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
10 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

11 8. The Court approves, for settlement purposes only, Andrew Burdick as the Class
12 Representative.
13

14 9. The Court approves ILYM Group, Inc. as the Settlement Administrator.

15 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
16 costs subject to final review by the Court.

17 11. The Court preliminarily approves the estimated Settlement Administrator costs
18 payable to the Settlement Administrator subject to final review by the Court.

19 12. The Court preliminarily approves Plaintiff's Class Representative Payment
20 subject to final review by the Court.
21

22 13. A Final Approval Hearing shall be held on _____ at _____.m. in
23 the Superior Court for the State of California, County of Los Angeles, located at the Los Angeles
24 Courthouse, 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012 to
25 consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily
26 approved by this Preliminary Approval Order, and to consider the application of Class Counsel
27
28

1 for attorneys' fees and costs and the Class Representative Payment to the Class Representative.
2 The notice of motion and all briefs and materials in support of the motion for final approval of
3 class action settlement and motion for attorneys' fees and litigation costs shall be served and
4 filed with this Court on or before _____.

5
6 14. If for any reason the Court does not execute and file a final approval order and
7 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
8 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
9 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to
10 the litigation, as more specifically set forth in the Settlement.

11 15. The Court expressly reserves the right to adjourn or continue the Final Approval
12 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
13 give prompt notice of any continuance to Settlement Class Members who object to the
14 Settlement.
15

16 **IT IS SO ORDERED.**

17
18 DATED: _____

THE HONORABLE KENNETH R. FREEMAN
JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11

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

12 ANDREW BURDICK, on behalf of himself and
13 all others similarly situated, and as an “aggrieved
14 employee” on behalf of other “aggrieved
Attorneys General Act of 2004,

15 *Plaintiff,*

16 vs.

17 PEACH STATE ROOFING, INC., a Georgia
18 corporation; MARTIN KELLY, A NATURAL
19 PERSON; CHRIS KELLY, A NATURAL
20 PERSON; and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. 20STCV20397

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: 5/28/2020
Department: SSC-14, The Honorable
Kenneth R. Freeman

22 This matter came on for hearing on _____ at _____.m. in
23 Department SSC-14 of the above-captioned court on Plaintiff’s Motion for Final Approval of a
24 Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the
25 Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed
26 herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$550,000.00 in
27
28

1 compromise of all disputed claims on behalf of all persons who Defendants employed on a non-
2 exempt, hourly basis in California at any time during the period of May 28, 2016 to April 15,
3 2021 (“Settlement Class Period”). All capitalized terms used herein shall have the same meaning
4 as defined in the Settlement.

5 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
6 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
7 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
8 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
9 and the evidence and argument received by the Court in conjunction with the motions for
10 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
11 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
12 DETERMINATIONS¹:
13

14 1. The Court has jurisdiction over the subject matter of the Action and over all
15 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
16 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
17 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
18 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
19 right to request exclusion, their right to comment upon or object to the Settlement, and their right
20 to appear in person or by counsel at the final approval hearing and be heard regarding final
21 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
22
23
24

25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 No member of the Settlement Class presented written objections to the proposed Settlement as
2 part of this notice process, stated an intention to appear, or actually appeared at the final approval
3 hearing.

4 2. For purposes of this Final Order and Judgment, the Class Members are all persons
5 who Defendants employed on a non-exempt, hourly basis in California during the Class Period.
6 at any time during the period of May 28, 2016 to April 15, 2021 (“Settlement Class Period”).
7

8 3. The Court finds and determines that the notice procedure afforded adequate
9 protections to Class Members and provides the basis for the Court to make an informed decision
10 regarding final approval of the Settlement based on the responses of Class Members. The Court
11 finds and determines that the notice provided in this case was the best notice practicable, which
12 satisfied the requirements of law and due process as to all persons entitled to such notice.
13

14 2. **Release by Plaintiff and Class Members.** The Settlement will release any further
15 attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any
16 kind by each and all of the Settlement Class Members (including participation to any extent in
17 any representative or collective action), against Defendants and all of their present and former
18 parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its
19 shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns,
20 and any individual or entity that could be liable for any of the Released Claims, and Defendants’
21 counsel of record in these Action (“Released Parties”), arising during the period May 28, 2016
22 through April 15, 2021, are limited to any and all claims under state, federal, or local law, whether
23 statutory or common law arising out of the claims expressly pleaded the Actions and all other
24 claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other
25 provisions of law, that could have been pleaded based on the facts pleaded in the Action for: (i)
26
27
28

1 failure to provide rest breaks; (ii) failure to provide meal periods; (iii) failure to pay all wages
2 earned for hours worked at the correct rates of pay; (iv) failure to indemnify; (v) wage statement
3 penalties; (vi) waiting time penalties; (vii) unfair competition; and (viii) civil penalties under
4 PAGA (“Released Claims”). This release will not take effect until Defendants have paid the
5 Gross Settlement Amount in full per this Settlement Agreement.
6

7 3. The Court further finds and determines that the terms of the Settlement are fair,
8 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
9 provisions of the Settlement, including the release of claims contained therein, should be and
10 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
11 according to its terms. As of the Effective Date of Settlement, and for the duration of the
12 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
13 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
14 against the Releasees as fully set forth in the Settlement. No objections were received by the
15 Parties or the Court through the date of this Final Order and Judgment. The Court finds _____
16 Class Member(s)—_____—submitted a request for exclusion from the Settlement
17 as determined by the Settlement Administrator and therefore is/are not in the Settlement Class.
18

19 4. The Court finds and determines that (a) the Settlement Shares to be paid to
20 Participating Class Members and (b) the LWDA payment as civil penalties under the California
21 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
22 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
23 final approval to, and orders the payment of, those amounts be made to the Participating Class
24 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
25 accordance with the terms of the Settlement.
26
27
28

1 5. The Court further grants final approval to and orders that the following payments
2 be made in accordance with the terms of the Settlement:

3 a. Class Counsel fees & costs of \$183,333.00 in attorneys' fees and
4 \$15,000.00 in litigation costs to Class Counsel;

5 b. \$15,000.00 as a Class Representative Payment award payable to Plaintiff
6 Andrew Burdick for his service as a Class Representative;

7 c. \$12,000.00 in costs of the Settlement Administrator payable to ILYM
8 Group, Inc. for its services as the Settlement Administrator; and

9 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
10 LWDA.
11

12 7. The settlement shall proceed as directed in the Settlement, and no payments
13 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement.
14 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
15 jurisdiction of all matters relating to the interpretation, administration, implementation,
16 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
17 California Rule of Court 3.769(h).
18

19 8. Within 10 calendar days of the Effective Date of Settlement, Defendants shall
20 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
21 total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved
22 Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the
23 Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.
24

25 9. Defendants' payment of such sums shall be the sole financial obligation of
26 Defendants under the Settlement, and shall be in full satisfaction of all claims released herein,
27
28

1 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
2 expenses.

3 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
4 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
5 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Settlement
6 Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed
7 (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of
8 the initial judgement to the California Unclaimed Property Fund.

9
10 11. The Parties shall file a final accounting report by _____. A non-
11 appearance case review re submission of a final report is scheduled for _____ at
12 _____.**.m. in Department SSC-14.** The Parties shall also prepare and file a stipulation and
13 proposed order and proposed Amended Final Order and Judgment by _____ which
14 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
15 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
16 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
17 If there are objections by any party or non-party, class counsel shall immediately notify the Court
18 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
19 stipulation and proposed order and separate amended judgment is scheduled for
20 _____ at _____.**.m. in Department SSC-14.**

21
22
23 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
24 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
25 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
26 accordance with the Settlement.

1 13. The Court hereby enters final judgment in this case in accordance with the terms
2 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
3 Final Order and Judgment.

4 14. The Parties are hereby ordered to comply with the terms of the Settlement.

5 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
6 provided by the Settlement and this Final Order and Judgment.
7

8 16. The Settlement is not an admission by Defendants nor is this Final Order and
9 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
10 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
11 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
12 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
13 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
14 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
15 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
16 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
17 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
18 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
19 and any other papers and records on file in the Action may be filed in this Court or in any other
20 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
21 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
22 the Released Claims.
23
24

25 ///

26 ///

17. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: _____

THE HONORABLE KENNETH R. FREEMAN
JUDGE OF THE SUPERIOR COURT

EXHIBIT 2



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL ***

April 2, 2020

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

RE: *Andrew Burdick / PSR*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Andrew Burdick (hereafter "Burdick") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including roofers, technicians, laborers, and in similar positions (hereafter referred to as "Aggrieved Employees,") by Peach State Roofing, Inc., a Georgia corporation, Martin Kelly, an individual, and Chris Kelly, an individual (hereafter collectively referred to as "PSR") of violations of California Labor Code §§ 98.6, 201, 202, 203, 204, 226, 510, 512, 1102.5, 1194, 1197, 1198, and 2802.

At all relevant times, PSR has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Burdick and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter "the Wage Order"), paragraph 2.H, and "aggrieved employees" within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

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

SPIVAKLAW.COM

Statement of Facts

In or about December of 2018, PSR first employed Burdick to work in California as a **hourly** roofer, technician and laborer. PSR terminated Burdick's employment in or about November 2019 after he complained about PSR's failure to provide him with timely meal periods and rest breaks.

At all relevant times, PSR issued Burdick and other Aggrieved Employees their wages on a biweekly basis. PSR paid Burdick and other Aggrieved Employees two different pay rates. For example, at the time of his termination, PSR compensated Burdick at a rate of \$9.00 dollars for his travel time (time spent traveling from PSR office to a job site and back from the job site to the office) and at a rate of \$16.50 for non-travel time

PSR failed to compensate Burdick and the Aggrieved Employees for all travel time. PSR did not compensate Burdick and the Aggrieved Employees for the first 30 minutes of their travel time from office to the job sites and for the first 30 minutes of their travel time from their job sites back to the office. PSR further compensated Burdick and the Aggrieved Employees with a rate less than the applicable minimum wage for their travel time. For example, for the period of 10/06/2019 to 10/19/2019, PSR reported 14.8 hours of regular "Travel Time" on Burdick's wage statement. PSR, however, paid Burdick only \$126.72 for these such travel time ($\$126.72 / 14.8 \text{ hours} = \9.00 per hour). In October of 2019, the applicable hourly minimum wage in California was \$12 for employers with 26 or more employees and \$11 for employers with 25 or fewer employees.

PSR also did not compensate Burdick or the other Aggrieved Employees for the work it required them to perform at its office before traveling to their job sites and after they returned from their job sites at the end of each workday. These duties included, but were not limited to, loading and unloading the company trucks and attending safety meetings. PSR further failed to compensate Burdick and other Aggrieved Employees with two (2) times the minimum wage even though it required them to provide their own tools as described below.

PSR required Burdick and other Aggrieved Employees to incur certain business expenses in the course of performing their duties, including use of a personal mobile telephone to communicate with co-workers, customers, and management for PSR. PSR also required Burdick and the Aggrieved Employees to purchase certain tools to perform their duties, including but not limited to, hammers and scissors. PSR further required Burdick and other Aggrieved Employees to use their personal vehicles to drive to their job sites. PSR, however, failed to reimburse them for mileage expenses that they incurred.

At all relevant times, PSR failed to provide Burdick and the Aggrieved Employees with all timely rest and meal periods. PSR failed to provide Burdick and the Aggrieved Employees with timely first meal periods. PSR often failed to authorize Burdick and the Aggrieved Employees to take their first meal periods until they had already worked more than five (5) hours in a workday. Further, PSR failed to provide them with a second meal period when they worked more than 10 hours in a workday. PSR also never provided Burdick and the Aggrieved Employees with their ten-minute rest breaks. PSR failed to pay premium wages for days on which it failed to provide Burdick and the Aggrieved Employees with their timely rest and/or meal periods.

Finally, PSR failed to provide Burdick and other Aggrieved Employees with accurate itemized wage statement that set forth all the information required by Labor Code section 226. PSR failed to state the “travel Time” hourly rates, travel time hours, travel times wages earned, and the correct name of the employer on Burdick and the Aggrieved Employees’ wage statements.

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

- a) PSR failed to provide Burdick and other Aggrieved Employees with all rest breaks and meal periods;
- b) PSR failed to compensate Burdick and other Aggrieved Employees at one hour’s pay for each day in which they were not provided the rest breaks required by law;

- c) PSR failed to compensate Burdick and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;
- d) PSR failed to compensate Burdick and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) PSR failed to indemnify Burdick and other Aggrieved Employees for all business expenses;
- f) PSR failed to provide Burdick and other Aggrieved Employees with accurate wage statements; and
- g) PSR failed to timely pay Burdick and other Aggrieved Employees all earned and unpaid wages during their employment at PSR and at the time such employment ended.

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

The Wage Order

The Wage Order applies to "all persons employed in the on-site occupations of construction, including but not limited to work involving alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq.; drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis[.]" § 1. At all relevant times

during the applicable limitations period, PSR provided roofing solutions to its customers in their re-roofing or new construction projects. Accordingly, Burdick and other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

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

In relevant part, Section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.

...

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of

ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

...

- (C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the rest period provisions, the collective bargaining agreement will prevail.
- (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's

regular rate of compensation for each work day that the meal or rest period is not provided.

PSR has intentionally and improperly failed to provide all timely rest breaks and/or meal periods free from any work or duties to Burdick and other Aggrieved Employees as required by law. In failing to do so, PSR violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

Section 4 of Wage Order states that every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period.

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

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

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

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

In relevant part, California Labor Code § 510 states,

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

At all relevant times during the applicable limitations period, PSR failed to compensate Burdick and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

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

Section 8 of Wage Order states,

(B) When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

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

As describe above, during the applicable limitations period, PSR required Burdick and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay Two Times The Minimum Wage
(Lab. Code §1198)

Section 8 of Wage Order states,

(B) When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

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

As described above, PSR required Burdick and other Aggrieved Employees to provide their own tools to perform their duties. It also failed to pay them at least two (2) times the minimum wage. Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, PSR violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. PSR also failed to include all applicable hourly rates of pay and the name of the legal entity that is the employer on their wage statements.

Accordingly, Burdick seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

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

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of PSR's failures to pay Burdick and the Aggrieved Employees within the time periods set by California Labor Code § 204, PSR failed to timely pay all wages due during employment.

Accordingly, Burdick seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violations (penalties set by Labor Code § 210).

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

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

date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

By failing to pay wages to Burdick and other Aggrieved Employees as set forth above, PSR is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and other Aggrieved Employees, Burdick seeks civil penalties from PSR as follows:

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

///

///

///

Retaliation
(Lab. Code § 98.6)

A person shall not discharge an employee because the employee has filed a bona fide complaint or claim relating to his or her rights that are under the jurisdiction of the Labor Commissioner or made a written or oral complaint that he or she is owed unpaid wages. Cal.Lab.Code § 98.6(a).

Burdick complained about PSR's failure to provide him with timely meal and rest periods. PSR terminated Burdick for objecting to conduct that violated the California Labor Code. This is a clear violation of California Labor Code § 98.6(a).

Burdick seeks civil penalties under California Labor Code § 98.6(b)(3) in an amount not to exceed \$10,000 for each violation by PSR of California Labor Code § 98.6(a), as well as attorney's fees and costs under Labor Code § 2699(g).

Retaliation
(Lab. Code § 1102.5)

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. Cal.Lab.Code § 1102.5(b).

Further, an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or

noncompliance with a local, state, or federal rule or regulation. Cal.Lab.Code § 1102.5(c).

PSR terminated Burdick for objecting to his supervisors for complaining about and refusing to participate in a conduct that violated the California Labor Code. This is a clear violation of California Labor Code § § 1102.5(b) and 1102.5(c).

Burdick seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by PSR of California Labor Code §§ 1102.5(b) and 1102.5(c), as well as attorney's fees and costs under Labor Code § 2699(g).

Individual Liability
(Lab. Code § 558.1)

In relevant part, Labor Code § 558.1 states:

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

At all relevant times, Martin Kelly and Chris Kelly were "officers," "directors," and "managing agents" of Peach State Roofing, Inc. Furthermore, at all relevant times, Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of the Aggrieved Employees and caused the Labor Code violations described above.

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

Encls. as stated

cc: Andrew Burdick

Walter Haines, Esq.

Peach State Roofing, Inc.

c/o Nikki L. Wilson, Esq.

Jackson Lewis P.C.

200 Spectrum Center Drive, Suite 500

Irvine, California 92618

Facsimile: (949)885-1380

Nikki.Wilson@jacksonlewis.com

Martin Kelly

c/o Nikki L. Wilson, Esq.

Jackson Lewis P.C.

200 Spectrum Center Drive, Suite 500

Irvine, California 92618

Facsimile: (949)885-1380

Nikki.Wilson@jacksonlewis.com

///

///

LWDA / PSR

4/2/2020

Page 19 of 19

Chris Kelly
c/o Nikki L. Wilson, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, California 92618
Facsimile: (949)885-1380
Nikki.Wilson@jacksonlewis.com

EXHIBIT 3

COPY

1 DAVID G. SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 CAROLINE TAHMASSIAN (SBN 285680)

4 caroline@spivaklaw.com

5 THE SPIVAK LAW FIRM

6 16530 Ventura Blvd, Suite 203

7 Encino, CA 91436

8 Telephone (818) 582-3086

9 Facsimile (818) 582-2561

10 Attorneys for Plaintiff,

11 ANDREW BURDICK, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 **(UNLIMITED JURISDICTION)**

15 ANDREW BURDICK, on behalf of himself,
16 and all others similarly situated,

17 *Plaintiff(s),*

18 vs.

19 PEACH STATE ROOFING, INC., a Georgia
20 corporation; MARTIN KELLY, an individual;
21 CHRIS KELLY, and individual; and DOES 1
22 through 50, inclusive,

23 *Defendant(s).*

Case No.: **20STCV20397**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.).

JURY TRIAL DEMANDED



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

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California
5 Labor Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”)
6 and the Business and Professions Code against defendants PEACH STATE ROOFING, INC.,
7 MARTIN KELLY, CHRIS KELLY, and Does 1-50, inclusive (collectively “Defendants”).

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

15 **PARTIES**

16 3. Plaintiff is 27-year-old man who resides in Corona, California. Defendants first
17 hired Plaintiff in or about December of 2018 to work in California as an hourly roofer,
18 technician and laborer. Defendants terminated Plaintiff’s employment in or about November of
19 2019 after he complained about Defendants’ failures to provide him with timely meal periods
20 and rest breaks.

21 4. Defendant PEACH STATE ROOFING, INC. is a corporation organized under
22 the laws of Georgia and also a citizen of California based on Plaintiff’s information and belief.

23 5. Defendant MARTIN KELLY is an individual, a citizen of California based on
24 Plaintiff’s information and belief, and at all relevant times the owner, and an “officer,”
25 “director,” and “managing agent” of Defendant PEACH STATE ROOFING, INC. At all
26 relevant times, he directly or indirectly, or through an agent or any other person, employed or
27 exercised control over the wages, hours, or working conditions of the class members (defined
28 below) and Plaintiff.

6. Defendant CHRIS KELLY is an individual, a citizen of California based on
Plaintiff’s information and belief, and at all relevant times an “officer,” “director,” and
“managing agent” of Defendant PEACH STATE ROOFING, INC. At all relevant times, he



1 directly or indirectly, or through an agent or any other person, employed or exercised control
2 over the wages, hours, or working conditions of the class members (defined below) and
3 Plaintiff.

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

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

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

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

24 **CLASS ACTION ALLEGATIONS**

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

30 12. **Class Definition:** The class is defined as follows: All persons employed by
31 Defendants in California as non-exempt, hourly employees, including roofers, technicians,



laborers, and persons in other 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 entered in this action.

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

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

15. **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 provide the class with all rest periods as required by section 11 of the Wage Order?

B. Whether Defendants failed to provide the class with all meal periods as required by section 10 of the Wage Order?

C. Whether Defendants failed to pay the class for all hours worked at the correct rates of pay?

D. Whether Defendants failed to indemnify the class for all business expenses?

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

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

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

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



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

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

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

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class against all Defendants)

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

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

22. Labor Code § 1198 states,

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



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

23. In relevant part, Section 11 of the Wage Order states:
Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.

...

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

24. In addition, Labor Code Section 226.7 states

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

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



or rest or recovery period is not provided.

25. Pursuant to the Wage Order, Plaintiff and the class 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.

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

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

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

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

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

29. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members and caused the violations to the Labor Code and Wage Order described above.



1 30. Defendants Martin Kelly and Chris Kelly intentionally failed to provide all rest
2 breaks to Plaintiff and the Class Members as required by law. As a result, Defendants Martin
3 Kelly and Chris Kelly violated California Labor Code §§ 226.7 and 1198.

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

7 32. By reason of the above, Plaintiff and the members of the class are entitled to
8 premium wages for workdays in which one or more rest breaks were not provided to them
9 pursuant to California Labor Code § 226.7.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

15 34. At all relevant times during the applicable limitations period, Plaintiff and the
16 class have been employees of Defendants and entitled to the benefits and protections of
17 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

18 35. Labor Code § 1198 states,

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

24 36. In relevant part, Labor Code Section 512 states

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



1 37. In relevant part, Section 10 of the Wage Order states:

2 Meal Periods:

3 (A) No employer shall employ any person for a work period of more
4 than five (5) hours without a meal period of not less than 30
5 minutes, except that when a work period of not more than six (6)
6 hours will complete the day's work the meal period may be
waived by mutual consent of the employer and the employee. (See
Labor Code Section 512.)

7 (B) An employer may not employ an employee for a work period of
8 more than ten (10) hours per day without providing the employee
9 with a second meal period of not less than 30 minutes, except that
10 if the total hours worked is no more than 12 hours, the second
meal period may be waived by mutual consent of employer and
employee only if the first meal period was not waived. (See Labor
Code Section 512.)

11 ...

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

16 38. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
17 class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for
18 each day they worked five or more hours. Pursuant to California Labor Code § 512 and the
19 Wage Order, they were also entitled to a second 30-minute meal period when they worked more
20 than ten (10) hours in a workday.

21 39. During the relevant time period, Defendants failed to provide Plaintiff and the
22 Class Members with timely first meal periods in accordance with California Labor Code § 512
23 and the Wage Order. Defendants often failed to authorize Plaintiff and the Class Members to
24 take their first meal periods until they had already worked more than five (5) hours in a
25 workday. Defendants also failed to provide Plaintiff and the Class Members with a second meal
period when they worked more than ten (10) hours in a workday.

26 40. Plaintiff is informed and believes and thereon alleges that, at relevant times
27 within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a
28 policy which resulted in Defendants not providing Plaintiff and the class with all timely meal



periods required by California Labor Code § 512 and the Wage Order.

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

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

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

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

43. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members and caused the violations to the Labor Code and Wage Order described above.

44. Defendants Martin Kelly and Chris Kelly intentionally failed to provide all timely meal periods to Plaintiff and the Class Members as required by law. As a result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 226.7, 512, and 1198.

45. As a result of Defendants’ unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

46. By reason of the above, Plaintiff and the members of the class are entitled to premium wages for workdays in which one or more meal periods were not provided to them



pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION
FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED AT
THE CORRECT RATES OF PAY
(Lab. Code §§ 510, 1194, 1197, and 1198)
(By Plaintiff and the Class against all Defendants)

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

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

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

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

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

52. 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.

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

54. The provisions of the 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 hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

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

(A) Daily Overtime - General Provisions



1 (1) The following overtime provisions are applicable to
2 employees 18 years of age or over and to employees 16 or
3 17 years of age who are not required by law to attend school
4 and are not otherwise prohibited by law from engaging in the
5 subject work. Such employees shall not be employed more
6 than eight (8) hours in any workday or more than 40 hours in
7 any workweek unless the employee receives one and one-half
8 (1 ½) times such employee's regular rate of pay for all hours
9 worked over 40 hours in the workweek. Eight (8) hours of
10 labor constitutes a day's work. Employment beyond eight (8)
11 hours in any workday or more than six (6) days in any
12 workweek is permissible provided the employee is
13 compensated for such overtime at not less than:

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

19 55. In relevant part, California Labor Code § 510 states,

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

56. At all relevant times, Defendants issued Plaintiff and Class Members their wages
on a biweekly basis. Defendants paid Plaintiff and Class Members two different pay rates. For
example, at the time of his termination, Defendants compensated Burdick at a rate of \$9.00
dollars for his travel time (time spent traveling from Defendants office to a job site and back
from the job site to the office) and at a rate of \$16.50 for non-travel time.

57. Defendants failed to compensate Plaintiff and Class Members for all travel time.
Defendants did not compensate Plaintiff and Class Members for the first 30 minutes of their
travel time from office to the job sites and for the first 30 minutes of their travel time from their
job sites back to the office. Defendants further compensated Plaintiff and Class Members with a
rate less than the applicable minimum wage for their travel time. For example, for the period of



1 10/06/2019 to 10/19/2019, Defendants reported 14.8 hours of regular “Travel Time” on
2 Plaintiff’s wage statement. Defendants, however, paid Plaintiff only \$126.72 for such travel
3 time ($\$126.72 / 14.8 \text{ hours} = \9.00 per hour). In October of 2019, the applicable hourly
4 minimum wage in California was \$12 for employers with 26 or more employees and \$11 for
5 employers with 25 or fewer employees.

6 58. Defendants also did not compensate Plaintiff and Class Members for the work
7 they required them to perform at the office before traveling to their job sites and after they
8 returned from their job sites at the end of each workday. These duties included, but were not
9 limited to, loading and unloading the company trucks and attending safety meetings. Defendants
10 further failed to compensate Plaintiff and Class Members with two (2) times the minimum wage
11 even though they required them to provide their own tools as described below.

12 59. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
14 Defendants’ failure to compensate Plaintiff and the class for all hours worked at the correct rates
15 of pay.

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

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

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

26 61. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated
27 Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the
28 “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and
Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
control over the wages, hours, or working conditions of Plaintiff and the Class Members and
caused the violations to the Labor Code and Wage Order described above.

62. Defendants Martin Kelly and Chris Kelly intentionally failed to pay Plaintiff and



1 the Class Members for all hours worked at the correct rated of pay as required by law. As a
2 result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 510, 1194,
3 1197, and 1198.

4 63. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
5 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
6 the full amount of wages earned during each pay period during the applicable limitations period,
7 including minimum and overtime wages.

8 64. As a result of Defendants' conduct, Plaintiff, on behalf of himself and the class,
9 seeks damages and/or restitution for unpaid wages which Defendants failed to pay them at the
10 rates set forth herein, interest thereon, costs of suit and reasonable attorney's fees pursuant to
11 California Labor Code §§ 1194.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO INDEMNIFY**

14 **(Lab. Code §§ 1198 and 2802)**

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

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

17 66. At all relevant times during the applicable limitations period, Plaintiff and the
18 class have been entitled to the benefits and protections of California Labor Code and the Wage
19 Order.

20 67. Section 8 of Wage Order states,

21 (B) When the employer requires the use of tools or equipment or they are
22 necessary for the performance of a job, such tools and equipment shall be
23 provided and maintained by the employer, except that an employee whose wages
24 are at least two (2) times the minimum wage may provide and maintain hand
25 tools and equipment customarily required by the particular trade or craft in
26 conformity with Labor Code Section 2802.

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

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

70. At all relevant times during the applicable limitations period, Defendants



1 required Plaintiff and the Class Members to incur certain business expenses in the course of
2 performing their duties, including use of a personal mobile telephone to communicate with co-
3 workers, customers, and management for Defendants. Defendants also required Plaintiff and
4 Class Members to purchase certain tools to perform their duties, including but not limited to,
5 hammers and scissors. Defendants further required Plaintiff and Class Members to use their
6 personal vehicles to drive to their job sites. Defendants, however, failed to reimburse them for
mileage expenses and other that they incurred.

7 71. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
9 Defendants' failure to indemnify the class for the reasonable expenses they incurred in the
10 course of performing their duties.

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

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

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

19 73. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated
20 Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the
21 "owners," "managing agents," and "officers" of Peach State Roofing, Inc. Martin Kelly and
22 Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
23 control over the wages, hours, or working conditions of Plaintiff and the Class Members and
24 caused the violations to the Labor Code and Wage Order described above.

25 74. Defendants Martin Kelly and Chris Kelly intentionally failed to reimburse
26 Plaintiff and the Class Members for all reasonable business expenses as required by law. As a
27 result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 2802 and
28 1198.

75. By reason of the above, Plaintiff and the members of the class are entitled to



1 reimbursement for all necessary expenditures and losses and interest due and owing to within
2 four years (4) of the date of the filing of the Complaint until the date of entry of judgment
3 pursuant to California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the
4 members of the class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).

5 **FIFTH CAUSE OF ACTION**

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

7 **(Lab. Code § 226)**

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

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

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

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

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

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

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



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

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

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

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

12 82. As alleged herein, Defendants have failed to properly and accurately itemize
13 each employee’s gross wages earned, net wages earned, the total hours worked, the
14 corresponding number of hours worked by employees and other requirements of California
15 Labor Code § 226. Further, Defendants failed to state the earned meal and rest period premium
16 wages and their business expenses on Plaintiff and Class Members’ itemized written wage
17 statements. Additionally, Defendants failed to state the “travel Time” hourly rates, travel time
18 hours, travel times wages earned, and the correct name of the employer on Plaintiff and Class
19 Members’ wage statements. As a result, Defendants have violated California Labor Code § 226.

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

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

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

(b) For purposes of this section, the term “other person acting on behalf of an
employer” is limited to a natural person who is an owner, director, officer, or
managing agent of the employer, and the term “managing agent” has the same



meaning as in subdivision (b) of § 3294 of the Civil Code.

85. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members and caused the violations to the Labor Code and Wage Order described above.

86. Defendants Martin Kelly and Chris Kelly intentionally failed to provide Plaintiff and the Class Members with accurate and complete wage statements as required by law. As a result, Defendants Martin Kelly and Chris Kelly violated California Labor Code § 226.

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

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

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)



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

90. 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.

91. 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.

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

93. 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 Labor Code § 201 or § 202.

94. 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.

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

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

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

96. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the "owners," "managing agents," and "officers" of Peach State Roofing, Inc. Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised



control over the wages, hours, or working conditions of Plaintiff and the Class Members and caused the violations to the Labor Code and Wage Order described above.

97. Defendants Martin Kelly and Chris Kelly intentionally failed to timely pay Plaintiff and the Class Members their final wages as required by law. As a result, Defendants Martin Kelly and Chris Kelly violated California Labor Code § 203.

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(By Plaintiff and the Class against all Defendants)

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

100. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

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

102. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the class have suffered injuries in fact and lost money or property. Plaintiff and the class were deprived of wages for all rest and meal periods not provided to them, for hours worked for which they did not receive wages at the correct rates of pay and for unpaid wages resulting from not being provided with accurate wage statements. Defendants also failed to reimburse Plaintiff and the Class Members for the business expenses they incurred during their employment.

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



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

PRAYER FOR RELIEF

105. WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief and judgment against Defendants as follows:

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

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 27, 2020

By 

DAVID SPIVAK, Attorney for Plaintiff,
ANDREW BURDICK, and all others similarly
situated



EXHIBIT 4

COPY

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 15 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

1 DAVID G. SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 CAROLINE TAHMASSIAN (SBN 285680)

4 caroline@spivaklaw.com

5 THE SPIVAK LAW FIRM

6 16530 Ventura Blvd, Suite 203

7 Encino, CA 91436

8 Telephone (818) 582-3086

9 Facsimile (818) 582-2561

10 Attorneys for Plaintiff,

11 ANDREW BURDICK, and all others similarly situated

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

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

Plaintiff(s),

vs.

PEACH STATE ROOFING, INC., a Georgia
corporation; MARTIN KELLY, an individual;
CHRIS KELLY, and individual; and DOES 1
through 50, inclusive,

Defendant(s).

Case No.: 20STCV20397

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



ADDITIONAL ATTORNEY FOR PLAINTIFF

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



1 Plaintiff ANDREW BURDICK (hereafter “Plaintiff”), on behalf of himself and all
2 others 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. 16-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendants PEACH STATE
7 ROOFING, INC., MARTIN KELLY, CHRIS KELLY, and Does 1-50, inclusive (collectively
8 “Defendants”).

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

16 **PARTIES**

17 3. Plaintiff is 27-year-old man who resides in Corona, California. Defendants first
18 hired Plaintiff in or about December of 2018 to work in California as an hourly roofer,
19 technician and laborer. Defendants terminated Plaintiff’s employment in or about November of
20 2019 after he complained about Defendants’ failures to provide him with timely meal periods
21 and rest breaks.

22 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
23 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning
24 of Labor Code Section 2699(c).

25 5. Defendant PEACH STATE ROOFING, INC. is a corporation organized under
26 the laws of Georgia and also a citizen of California based on Plaintiff’s information and belief.

27 6. Defendant MARTIN KELLY is an individual, a citizen of California based on
28 Plaintiff’s information and belief, and at all relevant times the owner, and an “officer,”
“director,” and “managing agent” of Defendant PEACH STATE ROOFING, INC. At all
relevant times, he directly or indirectly, or through an agent or any other person, employed or
exercised control over the wages, hours, or working conditions of the class members (defined



below) and Plaintiff.

7. Defendant CHRIS KELLY is an individual, a citizen of California based on Plaintiff's information and belief, and at all relevant times an "officer," "director," and "managing agent" of Defendant PEACH STATE ROOFING, INC. At all relevant times, he directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of the class members (defined below) and Plaintiff.

8. 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.

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

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

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

CLASS ACTION ALLEGATIONS

12. 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.

13. **Class Definition:** The class is defined as follows: All persons employed by Defendants in California as non-exempt, hourly employees, including roofers, technicians, laborers, and persons in other 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 entered in this action.

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

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

16. **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 provide the class with all rest periods as required by section 11 of the Wage Order?

B. Whether Defendants failed to provide the class with all meal periods as required by section 10 of the Wage Order?

C. Whether Defendants failed to pay the class for all hours worked at the correct rates of pay?

D. Whether Defendants failed to indemnify the class for all business expenses?

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

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

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



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

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

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

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

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class against all Defendants)

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

22. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of



California Labor Code §§ 226.7, 1198, and the Wage Order.

23. Labor Code § 1198 states,

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

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

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.

...

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

25. In addition, Labor Code Section 226.7 states

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

(c) If an employer fails to provide an employee a meal or rest or



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

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

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

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

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

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

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

30. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated
Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the



1 “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and
2 Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
3 control over the wages, hours, or working conditions of Plaintiff and the Class Members and
4 caused the violations to the Labor Code and Wage Order described above.

5 31. Defendants Martin Kelly and Chris Kelly intentionally failed to provide all rest
6 breaks to Plaintiff and the Class Members as required by law. As a result, Defendants Martin
7 Kelly and Chris Kelly violated California Labor Code §§ 226.7 and 1198.

8 32. As a result of Defendants’ unlawful conduct, Plaintiff and the class have suffered
9 damages in amounts subject to proof to the extent they were not paid additional wages owed for
10 all rest breaks not provided to them.

11 33. By reason of the above, Plaintiff and the members of the class are entitled to
12 premium wages for workdays in which one or more rest breaks were not provided to them
13 pursuant to California Labor Code § 226.7.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

22 36. Labor Code § 1198 states,

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

28 37. In relevant part, Labor Code Section 512 states

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



1 10 hours per day without providing the employee with a second meal
2 period of not less than 30 minutes, except that if the total hours worked is
3 no more than 12 hours, the second meal period may be waived by mutual
4 consent of the employer and the employee only if the first meal period
5 was not waived.”

6 38. In relevant part, Section 10 of the Wage Order states:

7 Meal Periods:

8 (A) No employer shall employ any person for a work period of more
9 than five (5) hours without a meal period of not less than 30
10 minutes, except that when a work period of not more than six (6)
11 hours will complete the day’s work the meal period may be
12 waived by mutual consent of the employer and the employee. (See
13 Labor Code Section 512.)

14 (B) An employer may not employ an employee for a work period of
15 more than ten (10) hours per day without providing the employee
16 with a second meal period of not less than 30 minutes, except that
17 if the total hours worked is no more than 12 hours, the second
18 meal period may be waived by mutual consent of employer and
19 employee only if the first meal period was not waived. (See Labor
20 Code Section 512.)

21 ...

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

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

40. During the relevant time period, Defendants failed to provide Plaintiff and the
Class Members with timely first meal periods in accordance with California Labor Code § 512
and the Wage Order. Defendants often failed to authorize Plaintiff and the Class Members to
take their first meal periods until they had already worked more than five (5) hours in a
workday. Defendants also failed to provide Plaintiff and the Class Members with a second meal



period when they worked more than ten (10) hours in a workday.

41. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing Plaintiff and the class with all timely meal periods required by California Labor Code § 512 and the Wage Order.

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

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

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

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

44. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members and caused the violations to the Labor Code and Wage Order described above.

45. Defendants Martin Kelly and Chris Kelly intentionally failed to provide all timely meal periods to Plaintiff and the Class Members as required by law. As a result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 226.7, 512, and 1198.

46. As a result of Defendants’ unlawful conduct, Plaintiff and the class have suffered



1 damages in amounts subject to proof to the extent they were not paid additional wages owed for
2 all meal periods not provided to them.

3 47. By reason of the above, Plaintiff and the members of the class are entitled to
4 premium wages for workdays in which one or more meal periods were not provided to them
5 pursuant to California Labor Code § 226.7.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED AT**

8 **THE CORRECT RATES OF PAY**

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

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

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

12 49. At all relevant times during the applicable limitations period, Plaintiff and the
13 class have been employees of Defendants and entitled to the benefits and protections of
14 California Labor Code §§ 1194, 1197, and the Wage Order.

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

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

21 52. Labor Code § 1194 invalidates any agreement between an employer and an
22 employee to work for less than the minimum or overtime wages required under the applicable
23 Wage Order.

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

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

55. The provisions of the 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 hours spent working “off-the-clock” (before punching in or after punching



out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

46. 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.

56. 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.

57. At all relevant times, Defendants issued Plaintiff and Class Members their wages on a biweekly basis. Defendants paid Plaintiff and Class Members two different pay rates. For example, at the time of his termination, Defendants compensated Burdick at a rate of \$9.00 dollars for his travel time (time spent traveling from Defendants office to a job site and back from the job site to the office) and at a rate of \$16.50 for non-travel time.



58. Defendants failed to compensate Plaintiff and Class Members for all travel time. Defendants did not compensate Plaintiff and Class Members for the first 30 minutes of their travel time from office to the job sites and for the first 30 minutes of their travel time from their job sites back to the office. Defendants further compensated Plaintiff and Class Members with a rate less than the applicable minimum wage for their travel time. For example, for the period of 10/06/2019 to 10/19/2019, Defendants reported 14.8 hours of regular “Travel Time” on Plaintiff’s wage statement. Defendants, however, paid Plaintiff only \$126.72 for such travel time ($\$126.72 / 14.8 \text{ hours} = \9.00 per hour). In October of 2019, the applicable hourly minimum wage in California was \$12 for employers with 26 or more employees and \$11 for employers with 25 or fewer employees.

59. Defendants also did not compensate Plaintiff and Class Members for the work they required them to perform at the office before traveling to their job sites and after they returned from their job sites at the end of each workday. These duties included, but were not limited to, loading and unloading the company trucks and attending safety meetings. Defendants further failed to compensate Plaintiff and Class Members with two (2) times the minimum wage even though they required them to provide their own tools as described below.

60. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’ failure to compensate Plaintiff and the class for all hours worked at the correct rates of pay.

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

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

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

62. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the



1 “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and
2 Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
3 control over the wages, hours, or working conditions of Plaintiff and the Class Members and
4 caused the violations to the Labor Code and Wage Order described above.

5 63. Defendants Martin Kelly and Chris Kelly intentionally failed to pay Plaintiff and
6 the Class Members for all hours worked at the correct rate of pay as required by law. As a
7 result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 510, 1194,
8 1197, and 1198.

9 64. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class
10 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
11 the full amount of wages earned during each pay period during the applicable limitations period,
12 including minimum and overtime wages.

13 65. As a result of Defendants’ conduct, Plaintiff, on behalf of himself and the class,
14 seeks damages and/or restitution for unpaid wages which Defendants failed to pay them at the
15 rates set forth herein, interest thereon, costs of suit and reasonable attorney’s fees pursuant to
16 California Labor Code §§ 1194.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO INDEMNIFY**

19 **(Lab. Code §§ 1198 and 2802)**

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

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

22 67. At all relevant times during the applicable limitations period, Plaintiff and the
23 class have been entitled to the benefits and protections of California Labor Code and the Wage
24 Order.

25 68. Section 8 of Wage Order states,

26 (B) When the employer requires the use of tools or equipment or they are
27 necessary for the performance of a job, such tools and equipment shall be
28 provided and maintained by the employer, except that an employee whose wages
are at least two (2) times the minimum wage may provide and maintain hand
tools and equipment customarily required by the particular trade or craft in
conformity with Labor Code Section 2802.

69. Labor Code § 1198 makes it unlawful for an employer to employ an employee



under conditions that violate the Wage Order.

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

71. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties, including use of a personal mobile telephone to communicate with co-workers, customers, and management for Defendants. Defendants also required Plaintiff and Class Members to purchase certain tools to perform their duties, including but not limited to, hammers and scissors. Defendants further required Plaintiff and Class Members to use their personal vehicles to drive to their job sites. Defendants, however, failed to reimburse them for mileage expenses and other that they incurred.

72. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’ failure to indemnify the class for the reasonable expenses they incurred in the course of performing their duties.

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

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

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

74. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members and caused the violations to the Labor Code and Wage Order described above.



1 75. Defendants Martin Kelly and Chris Kelly intentionally failed to reimburse
2 Plaintiff and the Class Members for all reasonable business expenses as required by law. As a
3 result, Defendants Martin Kelly and Chris Kelly violated California Labor Code §§ 2802 and
4 1198.

5 76. By reason of the above, Plaintiff and the members of the class are entitled to
6 reimbursement for all necessary expenditures and losses and interest due and owing to within
7 four years (4) of the date of the filing of the Complaint until the date of entry of judgment
8 pursuant to California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the
9 members of the class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

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

13 78. At all relevant times during the applicable limitations period, Plaintiff and the
14 class have been employees of Defendants and entitled to the benefits and protections of
15 California Labor Code § 226.

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

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

27 81. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
28 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
injury if the employer fails to provide accurate and complete information as required by



California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

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

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.

82. “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.

83. As alleged herein, 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. Further, Defendants failed to state the earned meal and rest period premium wages and their business expenses on Plaintiff and Class Members’ itemized written wage statements. Additionally, Defendants failed to state the “travel Time” hourly rates, travel time hours, travel times wages earned, and the correct name of the employer on Plaintiff and Class Members’ wage statements. As a result, Defendants have violated California Labor Code § 226.

84. Defendants’ failure to provide Plaintiff and the class with accurate 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.

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

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



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

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

8 86. At all relevant times herein, Martin Kelly and Chris Kelly owned and operated
9 Peach State Roofing, Inc. and employed Plaintiff and the Class Members. They were the
10 “owners,” “managing agents,” and “officers” of Peach State Roofing, Inc. Martin Kelly and
11 Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised
12 control over the wages, hours, or working conditions of Plaintiff and the Class Members and
13 caused the violations to the Labor Code and Wage Order described above.

14 87. Defendants Martin Kelly and Chris Kelly intentionally failed to provide Plaintiff
15 and the Class Members with accurate and complete wage statements as required by law. As a
16 result, Defendants Martin Kelly and Chris Kelly violated California Labor Code § 226.

17 88. 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
19 statements were violated and they were misled about the amount of wages they had actually
20 earned and were owed. In addition, the absence of accurate information on their wage
21 statements prevented immediate challenges to Defendants’ unlawful pay practices, has required
22 discovery and mathematical computations to determine the amounts of wages owed, has caused
23 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
24 submission of inaccurate information about wages to state and federal government agencies.
25 Further, Plaintiff and the class were not able to ascertain from the wage statements whether
26 Defendants complied with their obligations under California Labor Code § 226(a).

27 89. 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) for the initial pay period
in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for
each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an
aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are also entitled to
an award of costs and reasonable attorneys’ fees.



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

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

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

91. 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.

92. 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.

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

94. 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 Labor Code § 201 or § 202.

95. 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.

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

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

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



and the Class Members for the business expenses they incurred during their employment.

104. Pursuant to California Business & Professions Code § 17203, Plaintiff and the class 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.

105. 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.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

107. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning April 2, 2019 and ending on the date that final judgment is entered in this action.

108. Labor Code § 204 states

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

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

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

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



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

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

110. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

111. 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.

112. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

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

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

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

D. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per



1 pay period (regardless of whether the initial violations were intentionally committed) (penalty
2 amounts established by California Labor Code § 1197.1).

3 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
4 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
5 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
6 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

7 113. Plaintiff has complied with the procedures for bringing suit specified in
8 California Labor Code § 2699.3. By letter dated April 2, 2020, Plaintiff filed written notice
9 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
10 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
11 to have been violated, including the facts and theories to support the alleged violations. A true
12 and correct copy of the notice to the LWDA dated April 2, 2020 is attached as Exhibit A.
13 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
14 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
15 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
does not intend to investigate these allegations.

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

19 **PRAYER FOR RELIEF**

20 115. WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief and
21 judgment against Defendants as follows:

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

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

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

26 D. Unpaid wages;

27 E. Statutory penalties;

28 F. Civil penalties;

G. Declaratory and injunctive relief;



- 1 H. Actual damages;
2 I. Restitution;
3 J. Pre-judgement interest;
4 K. Reasonable attorneys' fees;
5 L. Cost of suits; and
6 M. Such other relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

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

10 Respectfully submitted,

11 THE SPIVAK LAW FIRM

12 Dated: June 12, 2020

13 By 
14 DAVID SPIVAK, Attorney for Plaintiff,
15 ANDREW BURDICK, and all others similarly
16 situated
17
18
19
20
21
22
23
24
25
26
27
28



EXHIBIT A



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL ***

April 2, 2020

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

RE: *Andrew Burdick / PSR*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Andrew Burdick (hereafter "Burdick") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including roofers, technicians, laborers, and in similar positions (hereafter referred to as "Aggrieved Employees,") by Peach State Roofing, Inc., a Georgia corporation, Martin Kelly, an individual, and Chris Kelly, an individual (hereafter collectively referred to as "PSR") of violations of California Labor Code §§ 98.6, 201, 202, 203, 204, 226, 510, 512, 1102.5, 1194, 1197, 1198, and 2802.

At all relevant times, PSR has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Burdick and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter "the Wage Order"), paragraph 2.H, and "aggrieved employees" within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

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

SPIVAKLAW.COM

Statement of Facts

In or about December of 2018, PSR first employed Burdick to work in California as a **hourly** roofer, technician and laborer. PSR terminated Burdick's employment in or about November 2019 after he complained about PSR's failure to provide him with timely meal periods and rest breaks.

At all relevant times, PSR issued Burdick and other Aggrieved Employees their wages on a biweekly basis. PSR paid Burdick and other Aggrieved Employees two different pay rates. For example, at the time of his termination, PSR compensated Burdick at a rate of \$9.00 dollars for his travel time (time spent traveling from PSR office to a job site and back from the job site to the office) and at a rate of \$16.50 for non-travel time

PSR failed to compensate Burdick and the Aggrieved Employees for all travel time. PSR did not compensate Burdick and the Aggrieved Employees for the first 30 minutes of their travel time from office to the job sites and for the first 30 minutes of their travel time from their job sites back to the office. PSR further compensated Burdick and the Aggrieved Employees with a rate less than the applicable minimum wage for their travel time. For example, for the period of 10/06/2019 to 10/19/2019, PSR reported 14.8 hours of regular "Travel Time" on Burdick's wage statement. PSR, however, paid Burdick only \$126.72 for these such travel time ($\$126.72 / 14.8 \text{ hours} = \9.00 per hour). In October of 2019, the applicable hourly minimum wage in California was \$12 for employers with 26 or more employees and \$11 for employers with 25 or fewer employees.

PSR also did not compensate Burdick or the other Aggrieved Employees for the work it required them to perform at its office before traveling to their job sites and after they returned from their job sites at the end of each workday. These duties included, but were not limited to, loading and unloading the company trucks and attending safety meetings. PSR further failed to compensate Burdick and other Aggrieved Employees with two (2) times the minimum wage even though it required them to provide their own tools as described below.

PSR required Burdick and other Aggrieved Employees to incur certain business expenses in the course of performing their duties, including use of a personal mobile telephone to communicate with co-workers, customers, and management for PSR. PSR also required Burdick and the Aggrieved Employees to purchase certain tools to perform their duties, including but not limited to, hammers and scissors. PSR further required Burdick and other Aggrieved Employees to use their personal vehicles to drive to their job sites. PSR, however, failed to reimburse them for mileage expenses that they incurred.

At all relevant times, PSR failed to provide Burdick and the Aggrieved Employees with all timely rest and meal periods. PSR failed to provide Burdick and the Aggrieved Employees with timely first meal periods. PSR often failed to authorize Burdick and the Aggrieved Employees to take their first meal periods until they had already worked more than five (5) hours in a workday. Further, PSR failed to provide them with a second meal period when they worked more than 10 hours in a workday. PSR also never provided Burdick and the Aggrieved Employees with their ten-minute rest breaks. PSR failed to pay premium wages for days on which it failed to provide Burdick and the Aggrieved Employees with their timely rest and/or meal periods.

Finally, PSR failed to provide Burdick and other Aggrieved Employees with accurate itemized wage statement that set forth all the information required by Labor Code section 226. PSR failed to state the “travel Time” hourly rates, travel time hours, travel times wages earned, and the correct name of the employer on Burdick and the Aggrieved Employees’ wage statements.

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

- a) PSR failed to provide Burdick and other Aggrieved Employees with all rest breaks and meal periods;
- b) PSR failed to compensate Burdick and other Aggrieved Employees at one hour’s pay for each day in which they were not provided the rest breaks required by law;

- c) PSR failed to compensate Burdick and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;
- d) PSR failed to compensate Burdick and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) PSR failed to indemnify Burdick and other Aggrieved Employees for all business expenses;
- f) PSR failed to provide Burdick and other Aggrieved Employees with accurate wage statements; and
- g) PSR failed to timely pay Burdick and other Aggrieved Employees all earned and unpaid wages during their employment at PSR and at the time such employment ended.

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

The Wage Order

The Wage Order applies to "all persons employed in the on-site occupations of construction, including but not limited to work involving alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq.; drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis[.]" § 1. At all relevant times

during the applicable limitations period, PSR provided roofing solutions to its customers in their re-roofing or new construction projects. Accordingly, Burdick and other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

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

In relevant part, Section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.

...

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of

ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

...

- (C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the rest period provisions, the collective bargaining agreement will prevail.
- (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's

regular rate of compensation for each work day that the meal or rest period is not provided.

PSR has intentionally and improperly failed to provide all timely rest breaks and/or meal periods free from any work or duties to Burdick and other Aggrieved Employees as required by law. In failing to do so, PSR violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

Section 4 of Wage Order states that every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period.

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

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

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

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

In relevant part, California Labor Code § 510 states,

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

At all relevant times during the applicable limitations period, PSR failed to compensate Burdick and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

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

Section 8 of Wage Order states,

(B) When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

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

As describe above, during the applicable limitations period, PSR required Burdick and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay Two Times The Minimum Wage
(Lab. Code §1198)

Section 8 of Wage Order states,

(B) When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

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

As described above, PSR required Burdick and other Aggrieved Employees to provide their own tools to perform their duties. It also failed to pay them at least two (2) times the minimum wage. Accordingly, Burdick seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, PSR violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. PSR also failed to include all applicable hourly rates of pay and the name of the legal entity that is the employer on their wage statements.

Accordingly, Burdick seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

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

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of PSR's failures to pay Burdick and the Aggrieved Employees within the time periods set by California Labor Code § 204, PSR failed to timely pay all wages due during employment.

Accordingly, Burdick seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violations (penalties set by Labor Code § 210).

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

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

date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

By failing to pay wages to Burdick and other Aggrieved Employees as set forth above, PSR is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and other Aggrieved Employees, Burdick seeks civil penalties from PSR as follows:

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

///
///
///

Retaliation
(Lab. Code § 98.6)

A person shall not discharge an employee because the employee has filed a bona fide complaint or claim relating to his or her rights that are under the jurisdiction of the Labor Commissioner or made a written or oral complaint that he or she is owed unpaid wages. Cal.Lab.Code § 98.6(a).

Burdick complained about PSR's failure to provide him with timely meal and rest periods. PSR terminated Burdick for objecting to conduct that violated the California Labor Code. This is a clear violation of California Labor Code § 98.6(a).

Burdick seeks civil penalties under California Labor Code § 98.6(b)(3) in an amount not to exceed \$10,000 for each violation by PSR of California Labor Code § 98.6(a), as well as attorney's fees and costs under Labor Code § 2699(g).

Retaliation
(Lab. Code § 1102.5)

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. Cal.Lab.Code § 1102.5(b).

Further, an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or

noncompliance with a local, state, or federal rule or regulation. Cal.Lab.Code § 1102.5(c).

PSR terminated Burdick for objecting to his supervisors for complaining about and refusing to participate in a conduct that violated the California Labor Code. This is a clear violation of California Labor Code § § 1102.5(b) and 1102.5(c).

Burdick seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by PSR of California Labor Code §§ 1102.5(b) and 1102.5(c), as well as attorney's fees and costs under Labor Code § 2699(g).

Individual Liability
(Lab. Code § 558.1)

In relevant part, Labor Code § 558.1 states:

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

At all relevant times, Martin Kelly and Chris Kelly were "officers," "directors," and "managing agents" of Peach State Roofing, Inc. Furthermore, at all relevant times, Martin Kelly and Chris Kelly directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, or working conditions of the Aggrieved Employees and caused the Labor Code violations described above.

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

Encls. as stated

cc: Andrew Burdick

Walter Haines, Esq.

Peach State Roofing, Inc.

c/o Nikki L. Wilson, Esq.

Jackson Lewis P.C.

200 Spectrum Center Drive, Suite 500

Irvine, California 92618

Facsimile: (949)885-1380

Nikki.Wilson@jacksonlewis.com

Martin Kelly

c/o Nikki L. Wilson, Esq.

Jackson Lewis P.C.

200 Spectrum Center Drive, Suite 500

Irvine, California 92618

Facsimile: (949)885-1380

Nikki.Wilson@jacksonlewis.com

///

///

LWDA / PSR

4/2/2020

Page 19 of 19

Chris Kelly
c/o Nikki L. Wilson, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, California 92618
Facsimile: (949)885-1380
Nikki.Wilson@jacksonlewis.com

EXHIBIT 5

Case name
Case #
Court(s)
Judge
Subject
Relevant statutes

Burdick v. Peach State Roofing, Inc., et al.
20STCV20397
Los Angeles County Superior Court
Hon. Kenneth R. Freeman
Background data
various

provided by Defendants

LWDA notice date 04/02/20
Lawsuit filing date 05/28/20
UCL SOL begin 05/28/16
Lab.Code § 203 SOL begin 05/28/17
Lab.Code § 2698 (PAGA) SOL begin 04/02/19
Lab.Code § 226 begin 05/28/19
1AC filed 6/15/20

	<u>LC §226</u>	<u>PAGA</u>	<u>LC §203</u>	<u>UCL</u>
Class size			50	90
Average hourly rate	\$ 17.00	\$ 17.00	\$ 17.00	\$ 17.00
Pay cycle	bi-weekly	bi-weekly	bi-weekly	bi-weekly
Pay periods per year	26	26	26	26
Total # of pay periods/paychecks	660	660		
Total # of workweeks (UCL Period)	2,737			
Average number of days worked per week	5.0			

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles County Superior Court
Subject	Unpaid Wages
Relevant statutes	Lab.Code §§ 510, 1194, 1771-1774

Total # of workweeks (UCL Period)		2,737
Average number of days worked per week		5.0
Total # of workdays (UCL period)		13,685
unpaid OTC hour per workday		1
Average hourly rate	\$	17.00
Average overtime rate	\$	25.50
Unpaid OTC for pre and post-shift duties	\$	348,967.50

Total # of workdays		13,685
Deducted travel time		1
Average overtime rate	\$	25.50
Unpaid Travel time	\$	348,967.50

Total # of workdays		13,685
Total # of underpaid travel time per day		2.0
violation rate		67%
Average min wage (UCL period)	\$	11.00
Travel time rate paid by Defendants	\$	9.00
Underpaid min wage rate	\$	2.00
Underpaid travel time	\$	36,493.33

Total Unpaid Wages	\$	734,428.33
---------------------------	-----------	-------------------

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles County Superior Court
Subject	Meal Periods - premium wages
Relevant statutes	Lab.Code §§ 226.7, 512

total # of workdays		13,685
% of workdays over 5 hours		100%
violation rate for late meal periods		50%
hourly rate	\$	17.00
Unpaid meal period premium wages (1st meal periods)		\$116,322.50

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles County Superior Court
Subject	2nd Meal Periods - premium wages
Relevant statutes	Lab.Code §§ 226.7, 512

total # of workdays		13,685
% of >10 hour shifts (including off-the-clock work)		50%
violation rate for no 2nd meal period		100%
hourly rate (based on the sample)	\$	17.00
Unpaid meal period premium wages (2nd meal period)	\$	116,322.50

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles County Superior Court
Subject	Rest Periods-premium wages
Relevant statutes	Lab.Code §§ 226.7, 1198

total # of workdays		13,685
% of >3.5 hour shifts		94.00%
violation rate due to no rest breaks		100%
hourly rate (based on the sample)	\$	17.00
Unpaid rest period premium wages	\$	218,686.30

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles County Superior Court
Subject	Unreimbursed Expenses
Relevant statutes	Lab.Code §§ 1198, 2802

Class size		90
Average amount of unreimbursed tools expenses	\$	300.00
Unreimbursed tools expenses	\$	27,000.00

Total number of paychecks		1,369
% of paychecks with cellphone expense		50%
unpaid cellphone expense per paycheck	\$	15.00
Unreimbursed cellphone expenses	\$	10,263.75

Total number of employees		90
Total number of days with mileage expenses per employee		25
Total number of miles per day		50
IRS mileage rate	\$	0.56
Unreimbursed mileage expenses	\$	63,000.00

Total Unreimbursed Expenses	\$	100,263.75
------------------------------------	-----------	-------------------

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles County Superior Court
Subject	Wage Statement Penalties
Relevant statutes	Lab.Code § 226

Total # of pay periods/paychecks		660
statutory penalty per paycheck	\$	100.00
Wage statement penalties	\$	66,000.00

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles County Superior Court
Subject	Waiting Time Penalties
Relevant statutes	Lab.Code § 203

Class size		50
Average hourly rate	\$	17.00
Average hours per day (including off-the-clock work)		10.00
Wages per day	\$	187.00
Waiting time days		30
Waiting time penalties	\$	280,500.00

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles 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 per pay period	Pay checks	violation rate	Civil penalties
Unpaid OT wages/unprovided meal periods	512/510/558	\$ 50.00	660	100% \$	33,000.00
Unprovided rest breaks	1198/2699	\$ 100.00	660	100% \$	66,000.00
Underpaid min wage	1197/1197.1	\$ 100.00	660	67% \$	44,220.00
Unreimbursed expenses	2802/2699	\$ 100.00	660	100% \$	66,000.00
Inaccurate wage statements	226/1198/2699	\$ 100.00	660	100% \$	66,000.00
Untimely wages	201-204/210/2699	\$ 100.00	660	100% \$	66,000.00
Civil penalties				\$	341,220.00

Case name	<i>Burdick v. Peach State Roofing, Inc., et al.</i>
Case #	20STCV20397
Court(s)	Los Angeles County Superior Court
Subject	Totals
Relevant statutes	various

Restitution/Wages/Damages

Total Unpaid Wages		\$	734,428.33
Unpaid meal period premium wages (1st meal periods)			\$116,322.50
Unpaid meal period premium wages (2nd meal period)		\$	116,322.50
Unpaid rest period premium wages		\$	218,686.30
Total Unreimbursed Expenses		\$	100,263.75
Interest	10%	\$	128,602.34
Total		\$	1,414,625.72

Penalties

Wage Statement Penalties		\$	66,000.00
Waiting time penalties		\$	280,500.00
Civil penalties		\$	341,220.00
Total		\$	687,720.00

GRAND TOTAL		\$	2,102,345.72
--------------------	--	-----------	---------------------

EXHIBIT 6

1 DAVID G. SPIVAK, State Bar # 179684

2 THE SPIVAK LAW FIRM

3 9454 Wilshire Blvd.

4 Suite 303

5 Beverly Hills, CA 90212

6 Telephone (310) 499-4730

7 Facsimile (310) 499-4739

8 Email david@spivaklaw.com

9 Attorney for Plaintiffs,

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

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

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

13 **(UNLIMITED JURISDICTION)**

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

16 *Plaintiffs,*

17 vs.

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

21 *Defendants.*

Case No.: BC430633

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

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

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

25
26
27
THE
SPIVAK
LAW FIRM

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

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

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

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

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

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

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

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

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

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

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

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

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

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

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

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

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

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

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24
25 ///

26
27 ///

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

- 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 7

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

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

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

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

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

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

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

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. SABZEVAR: NO, YOUR HONOR.

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

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

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

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

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

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

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

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

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

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

6 THE COURT: FORTY-FIVE DAYS.

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

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

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

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

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

17 MR. SPIVAK: YES, YOUR HONOR.

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

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

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

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

1 FOUR WEEKS. HERE'S OUR SITUATION.

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

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

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

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

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

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

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

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

EXHIBIT 8

Case Name: Burdick v. Peach State

Friday, October 22, 2021

Requesting Law Firm

Contact

E-Mail

ILYM Contact

E-Mail

Contact Number

The Spivak Law Firm

Emily Hounq Ly

emily@spivaklaw.com

Sean Hartranft

Sean@ilymgroupclassaction.com

949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	90
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	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

*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 \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Per Piece	\$25.00	1	Waived
Toll-Free Call Center	Flat Fee	\$50.00	1	\$50.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$1,440.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

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

NOTIFICATION/MAILING				
Fulfillment Notice	Per Piece	\$2.00	90	\$180.00
USPS First Class Postage	Per Piece	\$0.55	90	\$49.50
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	18	\$45.00
Storage, Photocopies, Deliveries	Flat Fee	\$250.00	1	\$250.00

Subtotal \$524.50

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Print & Mail (Including W2/1099 Stub & Release)**	Per Check	\$1.00	90	\$90.00
USPS First Class 1oz Postage	Per Piece	\$0.55	90	\$49.50
Preparation of Taxes	Hourly	\$120.00	6	\$720.00
Annual Filing of Tax Return	Per Year	\$600.00	1	\$600.00

***Additional Bank fees may apply*

Subtotal \$2,009.50

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$690.00

Total Case Estimate: \$4,989.00

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 provision for any services or class members/ 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 ILYM Group. All notifications are mailed out in English verbiage only unless specified otherwise. Additional costs will apply if translation for an additional language(s) are required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if the Settlement Agreement requires multiple state tax filing. **Pricing is good for 30 days.**

Mailing and Data Conversion: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive spreadsheet. ILYM Group cannot be liable for any errors or omissions arising due to additional work required for preparation of the original database. A minimum of five (5) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days if a National Change of Address update is requested.

Payment Terms: All postage charges and 50% of the final administration charges are due at the start of the case and will be billed immediately upon receipt of the data and/or Notice Documents. ILYM Group, Inc. bills are due upon receipt unless otherwise negotiated and agreed to with Counsel/Client. In the event settlement terms provide that ILYM Group, Inc. is to be paid out of the Settlement Fund, ILYM Group, Inc. will request that Counsel endeavor to make alternate payment arrangements for ILYM Group, Inc. 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/Plaintiff, or no later than the time of disbursement.

Inclusion: ILYM Group, Inc.'s general policy is to not accept Claims via facsimile. However, in the event that facsimile filing of claims must be accepted, ILYM Group will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, ILYM Group, Inc. will require disclaimer language regarding facsimile transmissions. ILYM Group, Inc. shall not be responsible for any issues caused by the U.S.P.S. ILYM Group, Inc. is not responsible for any information or data that was given to us by Counsel that is not accurate. All responses and data are strictly confidential.

Tax Reporting Requirements:

Ilym Group will file the necessary tax returns including the QSF federal and state returns. Payroll tax returns will be filed if necessary. To comply with the Employment Development Department's payroll tax filing requirements we will need the following information:

1. Defendant's EDD account number
2. Defendant's current unemployment rate. They should have this information in a recent EDD letter DE 2088 titled Notice of Contributions Rates.
3. Hire and dismissal dates of the class members so we can properly account for the periods that the wages relate to for each class member.
4. Power of Attorney form DE 48 from the defendant. This form is needed so we can report the unemployment, SDI and ETT taxes on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to the defendant's EDD account.
5. The Defendant's are responsible for reporting the SDI portion of the settlement payments on the class member's W-2. Ilym will file these forms on the defendant's behalf, if requested, for an additional fee. This will be an additional W-2 being issued for each class member because the SDI payments are to be reported under the defendant's EDD account and not the QSF's account. The Power of attorney form DE 48 will be needed in order for us to report the SDI payments on the defendant's behalf.

EXHIBIT 9



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: Burdick v Peach State

Date: October 22, 2021

All-In Settlement

Requesting Attorney: Emily Houg Ly

* Class Members: 90

Plaintiff or Defense: Plaintiff

** Opt-Out Rate: 1.5%

Firm Name: The Spivak Law Firm

Opt-Outs Received: 1

Telephone: (818) 582-3086

Postage Total: \$131.26

Email: emily@spivaklaw.com

Grand Total: \$11,399.61

***** DISCOUNTED FLAT FEE: \$7,500.00**

* 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 1 opt-out's filed. Any additional opt-out's filed above 1 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 / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	1	\$95.00
System Programming/Data Base Setup	\$150.00	1	\$150.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Static Website	\$500.00	1	\$500.00
Total			\$1,045.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form / Postage (up to 1 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	\$0.35	90	\$31.50
Mailing of Notice Pack	\$1.00	90	\$90.00
Estimated Postage (up to 1 oz.)*	\$0.58	90	\$52.20
Total			\$513.70

*Additional charges will apply if the postage exceeds 1 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	9	\$4.50
Skip Traces	\$1.25	8	\$10.00
Remail Packs	\$1.35	7	\$9.45
Estimated Postage (up to 1 oz.)	\$0.58	7	\$4.06
Clerical Staff	\$60.00	1	\$60.00
Total			\$88.01

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	1	\$10.00
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	18	\$54.00
Total			\$839.58

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	89	\$17.80
Total			\$452.80

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	89	\$222.50
Estimated Postage (up to 1 oz.)	\$0.58	89	\$51.62
Total			\$2,264.12

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	1	\$5.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	7	\$8.75
Remail Undeliverable Checks	\$2.50	7	\$17.50
Estimated Postage (up to 1 oz.)	\$0.58	8	\$4.64
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			\$4,085.89

*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	19	\$2.85
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	2	\$9.50
Estimated Postage (up to 1 oz.) for Reissue	\$0.58	2	\$1.10
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			\$2,110.51
Grand Total:			\$11,399.61

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 10



October 22, 2021

CASE ASSUMPTIONS

Class Members	90
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	89
Subtotal Admin Only	\$7,658.36

Not-to-Exceed Total \$6,000.00
For 90 Class Members

Pricing Good for Scope of Estimate Only

Includes all Aspects of Escheating to the State of CA

Case: Burdick v. Peach State, Opt-Out Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Houngh 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 **90** 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	23	\$45.00
NCOA (USPS)	\$25.00	1	\$25.00
Total			\$620.00

* 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	90	\$9.00
Notice Packet & Opt-Out Form	\$1.30	90	\$117.00
Estimated Postage (up to 2 oz.)*	\$0.51	90	\$45.90
Static Website	\$100.00	1	Included
Check Cashing Reminder Postcard	\$0.60	19	TBD
Postage Included			
Total			\$371.90

* 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	23		\$19.13
Remail Notice Packets	\$0.75	20		\$14.63
Estimated Postage	\$0.55	20		\$10.73
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$314.48

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	7		\$70.00
Case Manager	\$85.00	3		\$255.00
			Total	\$1,045.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Mail Class Checks *	\$1.00	89		\$89.00
Estimated Postage	\$0.55	89		\$48.95
			Total	\$1,447.95

* 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	18		\$24.03
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	7		\$595.00
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>19</u> Total Class Members				
Total				\$3,859.03

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,658.36



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. 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 11