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10 Attorneys for Plaintiffs,
11 MARIA VELEZ and CLAUDIA TORREZ,
12 and all others similarly situated
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SACRAMENTO**
16 **(UNLIMITED JURISDICTION)**
17

18 MARIA VELEZ and CLAUDIA TORREZ, on
19 behalf of themselves, and all others similarly
20 situated, and as “aggrieved employees” on
21 behalf of other “aggrieved employees” under
22 the Labor Code Private Attorneys General Act
23 of 2004,

24 *Plaintiff(s),*

25 vs.

26 RENAISSANCE FOOD GROUP, LLC, a
27 Delaware limited liability company; GH
28 FOODS CA LLC, a California limited liability
company; ~~KENNETH J. CATCHOT, an~~
~~individual;~~ CALAVO GROWERS, INC., a
California corporation; ~~G&M HIRE~~
~~ENTERPRISES, LLC doing business as~~
~~ATWORK PERSONNEL SERVICES;~~ and
DOES 1 through 50, inclusive,

Defendant(s).

Case No.: 34-2019-00250841

**DECLARATION OF DAVID SPIVAK IN
SUPPORT OF PLAINTIFF MARIA
VELEZ’S MOTION FOR APPROVAL OF
PAGA SETTLEMENT**

Action filed: February 19, 2019
Hearing Date: August 5, 2022
Hearing Time: 9:00 a.m.
Hearing Dept.: 25, The Honorable Jill H.
Talley



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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR**
2 **APPROVAL OF PAGA SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am
5 an attorney of record for Plaintiff Maria Velez (“Plaintiff” or “Velez”) in this action against
6 Defendant Renaissance Food Group, LLC (“Renaissance Food Group, LLC” or “Defendant
7 Renaissance”), Defendant GH Foods, CA, LLC (“GH Foods, CA, LLC” or “Defendant GH
8 Foods”), and Defendant Calavo Growers, Inc. (“Calavo Growers, Inc.” or “Defendant Calavo”).
9 I am a member in good standing of the State Bar of California. Except as otherwise indicated, I
10 have personal knowledge of all matters set forth herein and, if called as a witness, could and
11 would competently testify thereto under oath.

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

16 ***Factual and Procedural Background***

17 3. Defendants are manufacturers and distributors of prepared food products.
18 Defendants employed both Plaintiffs as a production lead from about September 25, 2017, to
19 February 23, 2018.

20 4. Plaintiffs complied with the procedures of Labor Code § 2699.3 for bringing suit
21 under PAGA. By letter dated December 14, 2018, Velez, on behalf of herself and other
22 aggrieved hourly employees gave written notice by certified mail to the Labor and Workforce
23 Development Agency (“LWDA”) and Defendants of the specific provisions of the California
24 Labor Code alleged to have been violated, including the facts and theories to support the alleged
25 violations. True and correct copies of Plaintiff’s letters to the LWDA are collectively attached
26 as **Exhibit 3**. Torrez also complied with the procedures of Labor Code § 2699.3 for bringing
27 suit under PAGA. By letter dated July 29, 2020, Torrez, on behalf of herself and other aggrieved
28 hourly employees, also gave written notice by certified mail to the LWDA and Defendants of



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1 the specific provisions of the California Labor Code alleged to have been violated, including the
2 facts and theories to support the alleged violations.

3 5. Velez filed her lawsuit in Sacramento County Superior Court on February 19,
4 2019. A true and correct copy of her lawsuit in Sacramento County Superior Court filed on
5 February 19, 2019 is attached as **Exhibit 4**. Defendant G&M filed its answer to Velez's
6 complaint on April 15, 2019. Defendant G&M filed its answer to Velez's complaint on April
7 15, 2019. A true and correct copy of Defendant G&M's answer to Velez's complaint filed on
8 April 15, 2019 is attached as **Exhibit 5**. Also on April 15, 2019, G&M filed a cross-complaint
9 against Defendants Renaissance, GH Foods, Catchot, and Calavo. A true and correct copy of
10 G&M's cross-complaint against Defendants Renaissance, GH Foods, Catchot, and Calavo filed
11 on April 15, 2019 is attached as **Exhibit 6**. On April 23, 2019, Velez and Defendants
12 Renaissance, GH Foods, Catchot, and Calavo stipulated to the dismissal of Velez's class and
13 individual claims without prejudice, pursuant to the arbitration agreement entered into between
14 Velez and Defendant Renaissance. A true and correct copy of Velez and Defendants
15 Renaissance, GH Foods, Catchot, and Calavo stipulation to the dismissal of Velez's class and
16 individual claims without prejudice filed on April 23, 2019 is attached as **Exhibit 7**. A true and
17 correct copy of the arbitration agreement entered into between Velez and Defendant
18 Renaissance is attached as **Exhibit 8**. Defendants Renaissance, GH Foods, Catchot, and Calavo
19 filed their answer to Velez's complaint on May 7, 2019. A true and correct copy of Defendants
20 Renaissance, GH Foods, Catchot, and Calavo's answer to Velez's complaint filed on May 7,
21 2019 is attached as **Exhibit 9**. On May 8, 2019, the Court issued an order dismissing Velez's
22 class and individual claims without prejudice. *See* Exhibit 7. On June 25, 2019, Velez,
23 Defendants Renaissance, GH Foods, Catchot, and Calavo, and Defendant/cross-complainant
24 G&M stipulated to (1) the dismissal of G&M without prejudice; and (2) the dismissal of G&M's
25 cross-complaint, also without prejudice. A true and correct copy of Velez, Defendants
26 Renaissance, GH Foods, Catchot, and Calavo, and Defendant/cross-complainant G&M's
27 stipulation filed on June 25, 2019 is attached as **Exhibit 10**. On July 5, 2019, the Court issued
28 an order dismissing G&M without prejudice and dismissing G&M's cross-complaint without



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1 prejudice. See Exhibit 10. On October 17, 2019, Velez and Defendants Renaissance, GH Foods,
2 Catchot, and Calavo stipulated to the dismissal of Catchot without prejudice. A true and correct
3 copy of Velez and Defendants Renaissance, GH Foods, Catchot, and Calavo's stipulation to the
4 dismissal of Catchot filed on October 17, 2019 is attached as **Exhibit 11**. The Court issued an
5 order dismissing Catchot without prejudice on October 21, 2019. See Exhibit 11. Shortly after
6 Velez served her first set of discovery requests, the Parties agreed to stay formal discovery and
7 participate in mediation.

8 6. On April 11, 2022, Velez filed a First Amended Complaint ("1AC") adding
9 Claudia Torrez as a co-plaintiff. A true and correct copy of Velez's 1AC filed on April 11, 2022
10 is attached as **Exhibit 12**. Plaintiffs' 1AC presents one cause of action for civil penalties under
11 PAGA. *Id.* On April 20, 2022, Defendants filed an answer to this 1AC. A true and correct copy
12 of Defendants' answer to Plaintiffs' 1AC filed on April 20, 2022 is attached as **Exhibit 13**.
13 Defendants deny all of Plaintiffs' allegations and strongly contend that their wage and hour
14 policies, practices and procedures are fully compliant with all applicable laws.

15 7. On April 23, 2020, the Velez and Defendants participated in mediation with
16 mediator Marc Feder in an attempt to resolve the PAGA claim. The Parties engaged in arm's-
17 length negotiations and ultimately reached a resolution of the PAGA claims asserted in the
18 Action. The PAGA Settlement was reached after exchanges of data, information and documents,
19 and is a result of extensive arms-length negotiations. The Parties conducted informal discovery
20 for purposes of potential resolution through which they ascertained the size of the aggrieved
21 employee group and the number of pay periods worked by them during the PAGA Period to
22 ascertain the total value of Plaintiffs' PAGA claim. Now that the parties have finalized the
23 PAGA Settlement, Plaintiffs submit it to this Court for approval. Notice is being given to the
24 LWDA concurrently with the filing of this motion. Here, notice is being given to the LWDA
25 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission
26 with the LWDA and a confirmation email is attached as **Exhibit 14**.

27 8. The PAGA Settlement warrants a presumption of fairness for several reasons:
28 (1) The Parties reached the Settlement through arm's-length bargaining with the aid of a



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1 respected mediator; (2) The Parties conducted sufficient investigation and discovery to allow
2 Counsel and the Court to act intelligently. Plaintiff requested and Defendants provided the
3 number PAGA Collective Members, the number of total pay periods during the PAGA Period,
4 and all policies in effect during the relevant time period; and (3) Counsel for the Parties are
5 experienced with PAGA cases. Plaintiffs considered various sources of information in the lead-
6 up to, during and after the mediation that enabled them to achieve the PAGA Settlement.
7 Plaintiffs considered documents such as Velez's personnel file, time and payroll records for the
8 PAGA Collective Members, Defendants' policies regarding Plaintiffs' claims, information
9 provided by fellow employees, and state caselaw regarding PAGA claims and related case
10 outcomes.

11 9. To the best of my knowledge, neither Plaintiffs nor I have any conflicts of interest
12 with the absent Aggrieved Employees. Plaintiffs contend that they are adequate PAGA
13 representatives. Plaintiffs and the Aggrieved Employees have strong and co-extensive interests
14 in this litigation because they all worked for Defendants during the relevant time period under
15 the same written and unwritten policies, allegedly suffered the same alleged injuries from the
16 same alleged course of conduct, and there is no evidence of any conflict of interest between
17 Plaintiffs and the Aggrieved Employees. As this is a PAGA-only claim, there is no issue of
18 ascertainability. However, Plaintiffs maintain that the number of Aggrieved Employees is
19 ascertainable because they may be identified by reference to Defendants' records and
20 Defendants have agreed to share the relevant information from its records to facilitate the
21 process. Therefore, the number of Aggrieved Employees and their whereabouts are
22 ascertainable.

23 ***Background of Counsel***

24 10. I am experienced in handling employment law matters and specifically wage and
25 hour cases. I have been practicing law since 1995. My experience has been almost exclusively
26 in the area of employment law representing employees with claims of wrongful termination,
27 harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical
28 leave violations. I have tried many cases before California and federal courts, government



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1 agencies and neutral arbitrators. I am a member of the California Employment Lawyers
2 Association (CELA).

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

5 A. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
6 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
7 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
8 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
9 back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on
10 Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, *San Diego*
11 *Union-Tribune*, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced
12 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
19 is 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
25 His Job" by Dan Weikel, *Los Angeles Times*, September 28, 2000; "Punitive Damages Awarded
26 to 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



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

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

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

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

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

27 A. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
28 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action



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1 settlement on behalf of assistant fitness manager employees).

2 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-
3 2010-000382146 (appointed Class Counsel and granted final approval of class action settlement
4 by the court on behalf of nonexempt employees).

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

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

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

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

18 G. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No.
19 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
20 action settlement on behalf of medical devices employees).

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

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

27 J. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior
28 Court, Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class



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1 action settlement on behalf of non-exempt hourly employees excluding truck drivers).

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

5 L. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
6 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
7 on behalf of dairy and agricultural laborers).

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

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

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

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

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

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

28 S. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed



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1 Class Counsel and granted final approval by this Court of class action settlement involving
2 alleged misclassification of sales employees and unpaid vacation pay).

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

6 U. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
7 No. BC421485 (granted class certification through contested motion and appointed Class
8 Counsel in case on behalf of former security workers based on late final wage payments in
9 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
12 Counsel and granted final approval of class action settlement by the court on behalf of assistant
13 store 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 ***Exposure & Risk Analysis***

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

- 24 • Defendants produced and Velez reviewed her personnel file.
- 25 • Defendants produced and Plaintiffs reviewed and analyzed time and
26 payroll records for over PAGA Collective Members.
- 27 • Plaintiffs requested that Defendants produce any and all relevant policies
28 regarding Plaintiffs' claims and Defendants produced those policies in effect during the relevant



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1 time period.

- 2 • Plaintiffs interviewed other employees about the claims at issue.
- 3 • Plaintiffs analyzed the state of caselaw on PAGA claims, and related
- 4 claims.
- 5 • Plaintiffs surveyed the outcomes of PAGA cases that went to trial or
- 6 otherwise concluded before trial.
- 7 • My site inspection on November 5, 2020 of Defendants' Riverside,
- 8 California facility, where Plaintiffs were employed.

9 14. As set forth above, Defendants have posed valid defenses to the Labor Code
10 claims underlying Plaintiffs' PAGA allegations. Thus, the PAGA claims likewise face
11 significant uncertainty. There is a risk that the Court would consider the maximum civil penalty
12 available to be confiscatory. This uncertainty increases Plaintiffs' risk of pursuing the PAGA
13 claims and required a significant discount for settlement purposes. For mediation purposes,
14 Plaintiffs' counsel estimated a maximum exposure of approximately \$4,873,400.00 in civil
15 penalties. This estimate did not take into account any of the risks discussed above and assumed
16 a violation for every single pay period. Plaintiffs' counsel also assessed multiple penalties for
17 the same pay period for the same alleged violations of different Labor Code provisions and
18 derivative violations. Although two federal district court decisions held that "stacking" PAGA
19 penalties in this fashion may be appropriate to determine the amount in controversy for purposes
20 of removal jurisdiction, Plaintiffs' counsel are not aware of any California state courts awarding
21 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
22 Labor Code provisions. This may be because the PAGA does not provide for what many
23 employers characterize as claim splitting and not merely stacking.

24 15. In preparation for mediation and during the settlement negotiations that followed,
25 Defendants disclosed that there were approximately 819 potentially aggrieved employees and
26 13,924 pay periods. The maximum possible civil penalties under the PAGA is \$4,873,400.00
27 and it is calculated by the total number of pay periods with one or more violations multiplied by
28 the maximum possible civil penalty amount per pay period. Unfortunately for the employees



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concerned, the potential for recovery of the maximum possible civil penalties depends on circumstances that are extremely unlikely independently and in combination. It would depend on the Court stacking the maximum recoverable civil penalties for per pay period for all pay periods for all potentially aggrieved employees during the PAGA Period. Plaintiffs' counsel is not aware of any California State court decision awarding a plaintiff and the other aggrieved employees they represent multiple civil penalties for the same pay period under different Labor Code provisions. Plaintiffs' counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons (outlined below).

16. **Risks Associated with Plaintiffs' Claim That Defendants Failed To Pay All Earned Wages at the Correct Rates of Pay.** There is a risk that Plaintiffs' claims that Defendants did not pay all wages at the correct rates of pay would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. In its written employment policies, Defendants mandate that employees must record all time worked accurately on its 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 the clock was *de minimis*. Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant.

17. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove this claim. Plaintiffs may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. In preparation for mediation and during the settlement negotiations that followed, I conducted a site inspection on November 5, 2020, where I counted approximately 16 time clocks, significantly more than the two to four working clocks that were on site while Plaintiffs were employed by Defendants. This has reduced the average amount of time that employees must wait to clock in to under one minute. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes"



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1 off-the-clock on a “regular” basis. Accordingly, there is a significant risk that the Court would
2 consider this evidentiary showing insufficient as a methodology for all aggrieved employees.

3 18. **Risks Associated with Plaintiffs’ Claim That Defendants Failed To Provide**
4 **All Meal Periods.** There are risks to Plaintiffs’ claims that Defendants failed to provide all meal
5 periods. Employees spent very small periods of time waiting to record time and recording time at
6 Defendants time clocks. Therefore, the impact on time spent in meal periods is not large.
7 Defendants contend that, to establish a violation of the meal period law, a plaintiff must do more
8 than show that a meal break was not taken. Defendants contend they did not impede or discourage
9 Plaintiffs, or any other employees, from taking their meal periods. Defendants’ policies mandate
10 that employees take at least a 30-minute, uninterrupted meal periods and record the beginning
11 and ending time of their meal breaks each day on their time records. The time records that
12 comprise the random sample Defendants produced to Plaintiffs for purposes of mediation show
13 that meal periods were taken the vast majority of the time. Of the time records that show a late,
14 short or no lunch, individualized evidence may be necessary to determine whether they occurred
15 due to conduct of the Defendants or each of the employees concerned.

16 19. **Risks Associated with Plaintiffs’ Claim That Defendants Failed To Authorize**
17 **or Permit Rest Breaks.** There are risks to Plaintiffs’ claims that Defendants failed to authorize
18 or permit rest breaks. Employees spent very small periods of time waiting to record time and
19 recording time at Defendants’ time clocks. Therefore, the impact on time spent in rest periods is
20 not large. Defendants contend they provided non-exempt employees the opportunity to take rest
21 periods in accordance with California law. Further, Defendants’ written policies on meal and rest
22 periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often
23 records showing whether an employee clocked out or not, there is no such evidence to prove a
24 missed rest period or that the employer refused to authorize and permit one. Managing such claims
25 at trial has become exceedingly difficult. Plaintiffs will depend on sample witness testimony and
26 surveys to prove the claims.

27 20. **Risks Associated with Plaintiffs’ Claim That Defendants Failed To Issue**
28 **Accurate and Complete Wage Statements.** Plaintiffs also assert a claim for wage statement



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violations. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Plaintiffs' wage statement claim has the same underlying risks as the above claims, as it is derivative of them. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code § 226. Further, to the extent that Plaintiffs claim Defendants' wage statements were inaccurate because they did not include premium payments for missed meal and rest breaks that Plaintiffs contend Defendants should have paid, Plaintiffs' claims are subject to additional risks, as case law suggests that such premium payments are not to be considered wages, and therefore do not give rise to claims for statutory penalties.

21. **Risks Associated with Plaintiffs' Claim That Defendants Failed To Timely Pay All Wages.** Plaintiffs' claim that Defendants did not timely pay wages is predicated on Labor Code §§ 201, 202, and 203. Defendants can argue based on the *Jones* and *Nguyen* decisions, *supra*, that meal or rest premium pay is not a "wage" for purposes of Labor Code section 203 penalties. Further, in the recent decision *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App. 5th 1239, the Court of Appeal held that unlawful meal and rest periods under section 226.7 cannot serve as a basis for recovery of penalties under section 203. *Id.* at 1252 ("We conclude that the administrative and legislative history of the statute indicates that . . . the Legislature intended section 226.7 first and foremost to *compensate* employees Section 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 unlikely that the Court will permit untimely wage penalties for Defendants' alleged failure to provide meal and rest period penalties.

22. **The Absence of Large Civil Penalty Awards under PAGA.** The sole source of money recoverable for the PAGA Collective Members and the State is civil penalties available under PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above, Plaintiffs' maximum estimated liability exposure is based on the theories that: (1) Every paycheck that Defendants issued to employees during the PAGA Period represents a



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

10 23. Additionally, PAGA states a court has discretion to award a lesser amount than
11 the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management,*
12 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that
13 the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by
14 Plaintiffs’ evidence of willful and intentional conduct. *Carrington v. Starbucks (2018) 30*

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

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



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1 *Cal.App.5th 504* (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial
2 court’s heavily discounted award of only \$5 per violation because it was within the Court’s
3 discretion to significantly reduce PAGA penalties even when there is a finding that a violation
4 of the California Labor Code occurred. Under *Carrington*, assuming 4 violations for each pay
5 period for all PAGA Collective Members, will result in a recovery of \$278,480.00 (\$13,924 x 4
6 x \$5 = \$278,480.00).

7 24. Moreover, judges have awarded extremely small sums to PAGA claimants in the
8 past. In *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court, case number BC430633
9 in which I represented the Plaintiffs, the employer underpaid commission overtime wages. The
10 plaintiffs sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial,
11 the Honorable Judge Ronald M. Sohigian awarded approximately \$275,000.00 in civil penalties
12 under the PAGA. A true and correct copy of the amended judgment in *Ghrdilyan* is attached as
13 **Exhibit 15**. A true and correct copy of the complaint in *Ghrdilyan* is attached as **Exhibit 16**. A
14 true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 17**, 19:8-
15 20:19. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security*
16 *Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court
17 awarded the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result
18 could occur here. A true and correct copy of the judgment in *Shields* is attached as **Exhibit 18**.

19 25. Defendants could also convince the Court to dismiss the claims due to
20 unmanageability because determining whether each Aggrieved Employee worked off the clock
21 or why each employee missed a meal or rest period would require separate mini-trials. *Id. See,*
22 *Mendiola v. CPS Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the
23 court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D.
24 Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case would
25 have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and
26 dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals
whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL
27 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D.



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1 Cal. 2015); *see also* *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal.
2 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number
3 of potential aggrieved employees, judicial economy favors deferring the representative portion
4 of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May
5 13, 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision
6 in *Wesson v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh’g
7 denied (Sept. 27, 2021) holding that trial courts have authority to ensure that claims under
8 PAGA are manageable, and that courts may limit or strike unmanageable PAGA claims.

9 26. While the evidence gathered through Plaintiffs’ discovery supports the merits of
10 the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the
11 risks associated with the merits of Plaintiffs’ claims, the uncertainties of complex litigation, the
12 cost of pretrial and trial proceedings, the Court’s discretion to lower the amount of penalties
13 ultimately awarded, and the secured benefit to the PAGA Collective Members and the LWDA
14 promoting compliance with the Labor Code.

15 27. The United States Supreme Court announced on December 15, 2021 that, in the
16 near future, it will hear the matter of *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, and
17 decide (likely no later than the end of summer 2022) whether or not to overrule the California
18 Supreme Court’s decision in *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348 that a private
19 arbitration agreement cannot deprive an employee of his right to sue under PAGA in a court of
20 law. If the Supreme Court sides with the Petitioner, Plaintiffs’ PAGA claim may be subject to
21 an arbitration agreement allowing only bilateral arbitration and, consequently, inhibiting the
22 claim altogether. While such an outcome would conflict squarely with *EEOC v. Waffle House*
23 (2002) 534 US 279 (private settlement agreements do not preclude government prosecutions on
24 behalf of employee signatories to such agreements), this potential outcome is a risk.

25 28. Each PAGA Collective Member will receive a portion of the civil penalties on a
26 pro-rata basis depending on the number of pay periods Defendants employed them for during
27 the PAGA Period. *See* Exhibit 1, Agreement, ¶ 5. With a total of approximately PAGA
28 Collective Members, the average estimated individual Settlement Payment for each PAGA



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1 Collective Member is approximately \$38.56 (\$31,583.33 / 819 PAGA Collective Members).
2 Although an average payment of \$38.56 per Aggrieved Employee is not an enormous sum of
3 money, it is an excellent result given the uncertainties this lawsuit entails. It is also reasonable
4 given the structure and purpose of the PAGA. The PAGA is not a restitution statute with a
5 traditional damages provision designed to restore victims to the position they would have been
6 in had the Labor Code violations not taken place. Rather, it is at best a punishment statute
7 designed to reduce future Labor Code violations. It provides for civil penalties only.

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

16 *Attorneys' Fees and Costs*

17 30. I intend to request attorneys' fees of \$91,666.67 (1/3 of the Gross Settlement
18 Amount) and up to \$12,000.00 in litigation expenses. The written retainer agreements I entered
19 into with Plaintiffs provides that I may elect to recover either (a) statutorily awarded attorney
20 fees or (b) up to 40% of any recovery.

21 31. Should the Court elect to use Plaintiffs' counsel's lodestar as the method for
22 awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiffs'
23 Counsel's fee request of \$91,666.67 (one-third of the Gross Settlement Amount) is fair and
24 reasonable based on their lodestar as cross-checked against the percentage of the recovery. In
25 this case, Plaintiffs' counsel have a total lodestar of approximately without the use of any
26 multiplier, which results in a multiplier of when compared against the \$91,666.67 fee request.
27 A true and correct summary of the time records of my firm is attached as **Exhibit 19** to this
28 declaration. I will make the detailed copies of such records available to the Court for in camera



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1 inspection upon its request. I will have waited for a lengthy period to be awarded attorneys' fees
2 for work performed since Plaintiff Velez first contacted my office, compared to Defendant's
3 counsel who have been paid as they performed work during this case. Moreover, I have
4 expended time, effort, and money that my firm could have expended on less risky cases instead.

5 32. My firm's current litigation costs total approximately will total approximately
6 \$11,636.12. A true and correct summary of my firm's costs and expense is attached as **Exhibit**
7 **20** to this declaration. I will make detailed copies of such records available to the Court for in
8 camera inspection upon its request. I anticipate that I will incur an additional \$818.72 in costs,
9 which consist of filing fees and attorney service fees for filing this motion, notice of entry of
10 order, and final accounting declarations. Thus, I anticipate my firm's litigations costs through
11 final accounting of the Settlement will total \$12,454.84 and exceed the \$12,000.00 amount
12 provided for in the Agreement. Plaintiffs' counsel request a total of \$12,000.00 in reasonable
13 litigation costs.²

14 33. In addition, based on my experience in wage and hour class action and PAGA
15 matters, fee awards of approximately one-third of the settlement fund are routinely approved as
16 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund
17 in several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin
18 County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*,
19 San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund);
20 *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-
21 third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court,
22 Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San
23 Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The*
24 *Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of
25 fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-
26 00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*,

27 ² I do not seek reimbursement for the wages I paid to the attorneys, paralegals, and legal assistants
28 to aid in the representation of the Class. I bore these expenses over the time since this lawsuit
began without expectation of reimbursement.



Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los 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).

34. My previous experience in litigating wage and hour class and representative actions supports the reasonableness of the fee request, as does the caliber of opposing counsel.

My previous experience in similar matters was integral in evaluating the strengths and



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1 weaknesses of the case against Defendants and the reasonableness of the Settlement. Practice in
2 the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly
3 evolving substantive law, state and federal, as well as the procedural law of class action
4 litigation. Because it is reasonable to compensate me commensurate with my skill, reputation,
5 and experience, attorneys' fees of approximately one-third of the Gross Settlement Amount is
6 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
7 litigation support the fairness and reasonableness of the requested fee award. Additionally, my
8 firm has incurred substantial costs in litigating this matter, \$11,636.12 to date and an estimated
9 additional \$818.72 through final accounting of the settlement for a total of \$12,454.84, including
10 the costs of a mediator to aid in the representation of the PAGA Collective Members.

11 ***Plaintiffs' General Release Payment***

12 35. Plaintiffs' General Release Payment in the amount of \$10,000.00 is being paid
13 to Plaintiffs as an enhancement award for their general release and service to the State of
14 California and the PAGA Collective Members in prosecuting the Action.

15 36. Plaintiffs' General Release Payment of \$10,000.00 is entirely reasonable given
16 Plaintiffs' efforts in the Lawsuit and the risks they undertook on behalf of the PAGA Collective
17 Members. *See generally* Velez Decl. and Torrez Decl. Plaintiffs devoted many hours advancing
18 the interests of the PAGA Collective Members. *Id.* Plaintiffs have done this, by, among other
19 things, retaining experienced counsel, providing them with information about their work history
20 with Defendants, assisting in contacting absent PAGA Collective Members to gather
21 information, participating in mediation, and being actively involved in the settlement process to
22 ensure a fair result for the PAGA Collective Members as a whole. In doing this, Plaintiffs have
23 been exposed to significant risks, including the risk of an order to pay Defendants' attorneys'
24 fees and costs if this action had been unsuccessful and in bad faith. *See* Labor Code §§ 218.5-
25 218.6. The efforts and risks that Plaintiffs undertook on behalf of the PAGA Collective Members
26 show that the proposed General Release Payment to Plaintiffs are fair, adequate, and reasonable,
27 and thus warrants approval. *See generally* Velez Decl. and Torrez Decl.

28 ///



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- A. Phoenix = \$6,000.00;
- B. ILYM = \$10,637.95; and
- C. CPT Group, Inc. = \$10,000.00.

Executed on Friday, June 03, 2022 at Sherman Oaks, California.

David Spivak

DAVID SPIVAK,
Declarant



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EXHIBIT 1

PAGA ACTION SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made between Plaintiff Maria Velez (“Plaintiff”), on behalf of herself and all others similarly situated (the “PAGA Collective Members”) and Claudia Torrez, on the one hand, and Defendants Renaissance Food Group, LLC, GH Foods, CA, LLC, and Calavo Growers, Inc.’s (“Defendants”) on the other. Plaintiff, Claudia Torrez, and Defendants will at times be referred to collectively as the “Parties” and may individually be referred to as a “Party.”

RECITALS

WHEREAS, Plaintiff was employed by Defendants during the alleged “PAGA Period,” defined as, for the Riverside plant, between December 16, 2017 and November 5, 2020, and, for the Sacramento plant, between February 2, 2018 and November 5, 2020;

WHEREAS, on February 19, 2019, Plaintiff filed a Class Action Complaint in the Superior Court of California, County of Sacramento, Case Number 34-2019-00250841, entitled *Maria Velez v. Renaissance Food Group, LLC, et al.* (the “Action”), asserting the following causes of action on a class and representative basis: (i) failure to provide rest periods; (ii) failure to provide meal periods; (iii) failure to pay all wages earned for all hours worked; (iv) failure to provide accurate wage statements; (v) waiting-time penalties; (vi) unfair competition in violation of Business and Professions Code § 17200; and (vii) civil penalties pursuant to PAGA;

WHEREAS, on May 8, 2019, the Court granted the Parties’ Stipulation to Dismiss Plaintiff’s Individual and Class Action Claims pursuant to the Arbitration Agreement Plaintiff executed during her employment with Defendants;

WHEREAS, Defendants deny the validity of Plaintiff’s claims in the PAGA Litigation, and further deny that the Lawsuit is appropriate for representative action treatment for any purpose other than this Settlement;

WHEREAS, a settlement has been reached as to the PAGA Litigation in the total gross amount of Two-Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) (the “Settlement”);

WHEREAS, the Parties want to resolve and settle the dispute that has arisen between them, as well as any other claims, asserted or not asserted, that either party may have against the other arising out of facts or events, known or unknown, occurring up to and including the date of execution of this Agreement; and

NOW, THEREFORE, in consideration of the promises in this Agreement, the Parties agree as follows:

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///

///

AGREEMENT

1. No Admission of Liability. It is understood and agreed by Plaintiff and Claudia Torrez that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability by Released Parties. Plaintiff and Claudia Torrez further agree that this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration, administrative, court, or legal proceeding (other than to seek Court approval of this Agreement, enforce the terms of this Agreement or as required by a valid court order). Defendants disclaim and deny any liability, obligation, or responsibility to Plaintiff whatsoever.

2. Gross Settlement Payment. In consideration for the releases as described in Paragraphs 3 and 4, and subject to Court approval of this Agreement, Defendants agree to pay a gross amount of Two-Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) (the "Settlement Sum") to PAGA Collective Members (as defined in Paragraph 6 below) subject to the following terms and conditions:

a. The Parties agree that of the Settlement Sum, Ten Thousand Dollars and Zero Cents (\$10,000.00) will be designated to the named Plaintiff, without deductions, and another Ten Thousand Dollars and Zero Cents (\$10,000.00) will be designated to Claudia Torrez, without deductions, as enhancement awards to Plaintiff and Claudia Torrez in addition to any amount they may be entitled to under the distribution formula as identified in Paragraph 6 for their time, effort, expense, and risks associated with being named representatives, a broader, general waiver of their rights including their individual claims, and participating in the PAGA Litigation as PAGA Collective Representatives. These payments will be reported as 1099 income. Defendants will not oppose any such application for enhancement awards described herein so long as it is consistent with the amount herein. This amount shall come from, and shall not be in addition to, the Settlement Sum. Plaintiff and Claudia Torrez acknowledge their responsibilities for any and all taxes for these sums pursuant to Paragraph 2.e;

b. The Parties agree that up to Six Thousand and Zero Cents (\$6,000.00) of the Settlement Sum will be for the payment of settlement administration fees of a third-party administrator. The costs of the Administrator shall be paid from, and shall not be in addition to, the Settlement Sum;

c. The Parties agree that the entire Net Settlement Sum will be allocated to Plaintiff's claims under the Private Attorneys General Act ("PAGA") and will be distributed in accordance with the percentages identified within the Act, twenty-five percent (25%) of the PAGA allocation will be distributed to the PAGA Collective, and seventy-five percent (75%) will be distributed to the California Labor and Workforce Development Agency ("LWDA"). These amounts shall come from, and shall not be in addition to, the Settlement Sum;

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d. The Parties agree that up to one third (1/3) of the Settlement Sum (*i.e.* \$91,666.67) will be allocated to the payment of attorneys' fees incurred in the PAGA Litigation. Defendants will not oppose any request for attorneys' fees so long as it does not exceed this threshold. Plaintiff and Claudia Torrez will also be entitled to the actual litigation costs from the Settlement Sum as approved by the Court in an amount not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00). These amounts shall come from, and shall not be in addition to, the Settlement Sum;

e. The Parties agree that all payroll taxes associated with payment to PAGA Collective Members from the Settlement Sum, if any, shall be paid out of the gross Settlement Sum, paid by Defendants. The representative Plaintiffs and PAGA Collective Members shall be responsible for any and all tax obligations, other than payroll taxes, associated with any payments they receive as part of the Settlement Sum;

f. There shall be a Net Settlement Sum that is distributed to PAGA Collective Members in accordance with the allocations set forth in Paragraph 6 below. The Net Settlement Sum shall consist of the Settlement Sum less the amounts identified in Paragraph 2.a. through 2.d., above (attorneys' fees and costs, costs of administration, and representative enhancement award). All PAGA Collective Members, including Plaintiff and Claudia Torrez, will receive a portion of the Net Settlement Sum on a pro rata basis based on the number of pay periods they worked. Specifically, the final settlement payments will be determined by the Administrator by taking the number of pay periods each individual Collective Member worked during the PAGA Period and dividing that by the total number of pay periods Collective Members worked during the PAGA Period and multiplying that fraction by the Net Settlement Amount; and

g. Within fourteen (14) calendar days after the Court grants approval of this Agreement, Defendants shall deposit the Settlement Sum (\$275,000.00 plus applicable payroll taxes) in a QSF account established by the Administrator. For purposes of counting the fourteen (14) day deadline established by this section, Court approval may be by way of minute order, order from the bench, or by signing a submitted approval order, whichever is earlier. The Administrator is to provide Defendants advance notice within seven (7) calendar days after the Court grants approval of this Agreement regarding the total monies Defendants must deposit.

3. Release. In exchange for the mutual promises and consideration set forth in this Agreement, the sufficiency of which is hereby acknowledged by the Parties, a release of liability is understood and agreed to as follows:

a. "Released Parties" as referenced herein and as released in the Agreement shall collectively mean Renaissance Food Group, LLC, GH Foods, CA, LLC, and Calavo Growers, Inc., and each of their respective past, present and future parent companies, subsidiaries, affiliates, the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, and successors and assigns of any of the foregoing principals and any other person, corporation, entity, association or partnership responsible or potentially responsible for any claims made or that could have been made in the PAGA Litigation.

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b. Plaintiff Maria Velez and Claudia Torrez on behalf of themselves and on behalf of all who claim by and through them, or their stead and each and every member of the PAGA Collective (which includes any legal heirs and/or successors in interest of each and every member of the PAGA collective) and the LWDA, hereby and forever mutually and fully releases, acquits, and discharges, and covenants not to sue Defendants, including past, present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies (collectively the “Released Parties” and each a “Released Party” or “Releasee”) for any and all penalties, costs, expenses, attorneys’ fees, or interest based on any and all PAGA claims seeking civil penalties under California Labor Code sections 558, 1198 and/or 2698 *et seq.* predicated on claims that are alleged against Defendants in the PAGA Litigation that occurred during the PAGA Period, including allegations of meal and rest break violations, unpaid wages, minimum wage violations, overtime violations, wage statement violations, the failure to pay employees during employment, and the failure to pay final wages.

c. As a condition of participating in this PAGA settlement, the PAGA Collective Members, hereby and forever mutually and fully release, acquit, and discharge, and covenant not to sue the Released Parties for any and all penalties, costs, expenses, attorneys’ fees, or interest based on any and all PAGA claims seeking civil penalties under California Labor Code sections 558, 1198 and/or 2698 *et seq.* predicated on claims that are alleged against Defendants in the PAGA Litigation that occurred during the PAGA Period, including allegations of meal and rest break violations, unpaid wages, minimum wage violations, overtime violations, wage statement violations, failure to pay employees during employment, and failure to pay final wages.

d. As a condition of receiving the enhancement awards described in Paragraph 2.a., Plaintiff and Claudia Torrez hereby irrevocably and unconditionally release, acquit and forever discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney’s fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, all claims alleged at any point in time in the PAGA Litigation, all claims dismissed by the Court in the PAGA Litigation, all claims arising from or relating to Plaintiff’s and Claudia Torrez’s relationships with any of the Released Parties, all claims for alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or any tort including defamation, or any legal restrictions on Defendants’ right to hire, refuse to hire or terminate its employees, or any federal, state or local court of law or equity or other governmental statute, regulation or ordinance, including, without limitation: (1) the Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Fair Employment and Housing Act (which Acts prohibit discrimination based upon race, religion, sex, sexual orientation, age, color, national origin, disability, medical condition and marital status); (4) Section 503 of the Rehabilitation Act of 1973; (5) the Americans with Disabilities Act; (6) the Fair Labor Standards Act (including the Equal Pay Act); (7) the California and the United States Constitution; (8) the California Labor Code (including any and all provisions authorizing Plaintiff to seek civil penalties against the Released Parties for wage-hour violations); (9) the Family and Medical Leave Act; (10) the California Family Rights Act; (11) the Worker Adjustment and Retraining Notification Act; (12) the Claimant Retirement Income Security Act; (13) the Immigration Reform and Control Act; (14) California Business and Professions Code Section 17200, *et. seq.*; (15) the California Government Code; and (16) The California Wage Orders, which Plaintiff and Claudia Torrez

now have, own or hold, or claim to have, own or hold, or which Plaintiff Claudia Torrez at any time heretofore had, owned or held, or claimed to have, own or hold against any of the Released Parties up to and including the date of Plaintiff's inspection of the Riverside facility, which took place on November 5, 2020. Nothing in this release shall be construed to mean that Plaintiff or Claudia Torrez are releasing or waiving claims to enforce this Agreement, claims arising after November 5, 2020 (including claims for retaliation for having achieved this agreement or for having asserted her underlying claims), workers' compensation claims, claims for unemployment insurance benefits, claims for indemnification pursuant to Labor Code section 2802, claims for any vested compensation and benefits (including, but not limited to, retirement benefits) attorney fees for all such claims, when available, the opportunity to pursue the claims mentioned in this sentence, or claims that, by law, cannot be waived.

4. California Civil Code Section 1542. Plaintiff and Claudia Torrez hereby agree that all rights under section 1542 of the Civil Code of the State of California are hereby waived as to the individuals or other claims they may have against Defendants. Section 1542 has been explained to Plaintiff and Claudia Torrez by their counsel and provides as follows:

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

5. Amendment to Complaint. The Parties agree to stipulate to allow Plaintiff to file an Amended Complaint adding Claudia Torrez as a named Plaintiff to this Action before Plaintiff and Claudia Torrez file a motion seeking the Court's approval of the Parties' PAGA Settlement.

6. Motion for Approval of PAGA Settlement. Plaintiff, Claudia Torrez, and their counsel shall make their best efforts to file a motion seeking approval of this Agreement as soon as reasonably possible after this Agreement is executed by the Parties. Defendants agree to cooperate with Plaintiff and Claudia Torrez in these efforts so that the motion seeking approval is filed in a timely manner.

7. Administrator and Distribution Method. The Parties agree that Plaintiff and Claudia Torrez's counsel and Defendants' counsel will select the Administrator to process and distribute the Settlement Sum in accordance with the Agreement. The Parties will agree upon an Administrator as soon as reasonably possible after this Agreement is executed by the Parties and prior to Plaintiff and Claudia Torrez's counsel filing a motion seeking approval of this Agreement. In addition, and subject to Court approval, timelines, and methods related to the administration of this Agreement shall be as follows:

a. For purposes of this Agreement, PAGA Collective Members are defined as: "all persons who are employed or have been employed by Defendants as an hourly, non-exempt employee in the State of California between December 16, 2017 and November 5, 2020 for the Riverside plant and between February 2, 2018 and November 5, 2020 for the Sacramento plant."

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b. All PAGA Collective Members will receive a portion of the Net Settlement Sum on a pro rata basis based on a reasonable estimate of the total number of pay periods worked by all members of the PAGA Collective Members during the applicable period. The estimated share of the Net Settlement Sum for each individual within the PAGA Collective will be determined as follows: 1) A Total Value Per Pay Period will be derived by dividing the Net Settlement Sum by the total number of pay periods that all PAGA Collective Members worked within the PAGA Period (*i.e.* any pay period in which a PAGA Collective Member worked at least one (1) day); and 2) each PAGA Collective Member will have their respective number of pay periods multiplied by the Total Value Per Pay Period to derive their respective share of the Net Settlement Sum.

c. One Hundred percent (100%) of the payment of the Net Settlement Sum to eligible PAGA Collective Members will consist of 1099 income representing payment for statutory and civil penalties.

d. Within seven (7) calendar days after the date that the Court grants approval of this Agreement, Defendants shall provide a list of all PAGA Collective Members and all necessary information to the Administrator to locate PAGA Collective Members, process payments, and process claims for payments, including, but not limited to, PAGA Collective pay periods or dates of employment, last known addresses, social security numbers, and any other information required to effectuate the Agreement.

e. The PAGA Collective List, and any other data provided by Defendants to the Administrator, shall be treated as confidential and not subject to disclosure by the Administrator except (a) relevant information may be provided to PAGA Collective Counsel to the extent necessary to address a disputed claim or to respond to a specific inquiry from a PAGA Collective Member, or to any third party; (b) to allow Defendants' and Plaintiff and Claudia Torrez's counsel to review and confirm the calculation of PAGA Collective Members' estimated share of the settlement is accurate and based on the correct information; and (c) as is otherwise necessary for the Administrator to perform its obligations described in this Agreement. Further, the Administrator and Plaintiff and Claudia Torrez's counsel shall use commercially reasonable efforts to secure the data provided by Defendants at all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this Agreement, and shall destroy the data (and all copies of it) in a complete and secure manner when such data is no longer required for purposes of this Agreement. The Administrator shall ensure that the Notice and any other communications to PAGA Collective Members shall not include the PAGA Collective Members' Social Security Number, except for the last four digits.

f. Within fourteen (14) calendar days from the date the Court approves this Agreement, the Administrator will provide the Parties the spreadsheet showing the Administrator's calculations for anticipated payments to PAGA Collective Members, the allocation of pay periods to PAGA Collective Members, and any payroll taxes to be paid by Defendants. The Administrator may redact any identifying information and instead use an employee number to differentiate (except as to the named Plaintiffs to the PAGA Litigation) in order to protect PAGA Collective Members' confidential information. This will allow Plaintiff, Claudia Torrez, and Defendants the opportunity to review the Administrator's calculations, and the Administrator will confirm receipt and approval of the spreadsheet by the Parties prior to disbursing the PAGA disbursements, as noted below.

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g. Within twenty-one (21) calendar days from the date the Court approves this Agreement, the Administrator will perform an NCOA check for PAGA Collective Members' most current addresses based on the information provided by Defendants and will mail disbursement forms to the PAGA Collective Members. For any disbursements returned as undeliverable, the Administrator shall perform a skip-trace on that individual and re-mail the PAGA disbursement within three (3) business days of receiving information that the mailing was undeliverable or the PAGA Collective Member was no longer at the address to the new address found in under the skip-trace.

h. Within one hundred thirty (180) calendar days after the Administrator mails PAGA collective Members their pro-rata share of the Net Settlement Sum, any unclaimed funds, including funds from uncashed settlement checks will be paid out to the California State Controller's Unclaimed Property Fund. No amount of the Settlement Sum will revert to Defendants for any reason.

i. Within ten (10) calendar days after the Administrator distributes the unclaimed funds in accordance with Paragraph 6.h., the Administrator shall provide the Parties a declaration outlining the settlement administration process and completion of payments to those specified in Paragraph 6.h.

j. The Parties agree the PAGA Collective Members' contact information and social security numbers will be used only by the Administrator counsel for the sole purpose of effectuating the Agreement.

8. PAGA Collective Counsel. The Parties agree to the designation of The Spivak Law Firm as counsel for purposes of the PAGA Collective and Settlement.

9. PAGA Representative. The Parties agree to the designation of Plaintiff Maria Velez and Claudia Torrez as the PAGA Representatives for purposes of the PAGA Settlement Collective.

9. Scope of the PAGA Collective. It was represented to Plaintiff and Claudia Torrez at the time of the execution of this Agreement that there were 819 PAGA Collective members as of August 1, 2019. To the extent the number of PAGA Collective increases beyond this number by more than 10%, Plaintiff and Claudia Torrez shall have the option to increase the total settlement amount by a proportionate amount. (If the number of employees increases by 11%, the total increase to the settlement will be 1%.) Plaintiff and Claudia Torrez shall have five (5) calendar days from the date the Administrator indicates an overage to inform Defendants' counsel in writing of their election of this option.

10. Attorneys' Fees and Costs. Except as otherwise set forth in this Agreement, the Parties agree that each shall bear their own respective attorneys' fees and costs incurred in this PAGA Litigation, with the exception of any dispute regarding the payment of the Settlement Sum. In the case of a dispute regarding the payment of the Settlement Sum, the prevailing party shall be entitled to recover their attorneys' fees and costs.

11. Enforcement. This Agreement is made and is enforceable in accordance with the provisions of California Code of Civil Procedure section 664.6 and that Parties agree that the Court shall retain jurisdiction for that purpose to effectuate the terms of this Agreement and after entry of judgment in this PAGA Litigation. This Agreement shall be admissible in any proceeding for its enforcement in accordance with sections 1118 and 1123 of the California Evidence Code.

12. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart, when executed, shall have the efficacy of an original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

13. Confidentiality. Plaintiff and Claudia Torrez represent and agree that they have not and will not issue any press release, publication, or otherwise disclose this Agreement to the press, media, websites, or any service which reports verdicts and settlements. Plaintiff and Claudia Torrez further agree not to, at any time or in any manner, talk about, write about, disclose, or otherwise publicize or cause to be publicized, the confidential, proprietary, or trade secret information of the Released Parties.

14. Attorney Liens. Plaintiff and Claudia Torrez represent and warrant that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of the representation of Plaintiff and Claudia Torrez in relation to the PAGA Litigation are Plaintiff's and Claudia Torrez's responsibilities to pay, and that any liens based on any legal expenses, bills, costs or contingency fee agreements incurred as a result of the PAGA Litigation will be satisfied by the incurring party. Plaintiff and Claudia Torrez will indemnify, defend and hold Released Parties harmless from any such claims.

15. No Additional Recovery. It is the intent of this Agreement that Plaintiff, lienholders, and any other individual or entity with an interest in Plaintiff's claims, including Claudia Torrez, with respect to payment of the Settlement Sum shall not recover (expressly excluding the PAGA Collective Members), directly or indirectly, any sums from the Released Parties other than the funds received pursuant to this Agreement and set forth in Paragraph 1. If, despite the provisions of this Paragraph, any Released Party receives any claims, including a claim for contribution, any indemnity arising out of a claim with respect to payment of the Settlement brought against another person in an interest in the claims of Plaintiff and Claudia Torrez, such party shall indemnify, provide a full defense for and hold harmless the Released Parties for such amount. In the event a trier of fact determines (and all appeals are exhausted or the time for such appeals have expired) that any Released Party is or would be liable for indemnity under any theory of law or equity, this Agreement shall act as a general release, releasing not only the Released Party but every other individual, trustee, firm, trust, corporation, or entity of any kind, who is or would be entitled to a defense and indemnity from the Released Parties with respect to any liability that person, firm, or corporation may have to Plaintiff and Claudia Torrez.

16. Entire Agreement. This Agreement sets forth the entire understanding between the Parties and supersedes any and all prior agreements, oral or written, pertaining to the PAGA Litigation. This Agreement may not be modified or amended except in writing, signed by all Parties. Each party acknowledges that there is no representation, inducement, promise or agreement which has been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

17. Conditional Nature. This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a PAGA action, this Agreement must receive approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it

shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

Dated: 2/1/2022, 2020 Maria Velez
MARIA VELEZ

Dated: 01/26/2022, 2020 Claudia
CLAUDIA TORREZ

Dated: _____, 2020 RENAISSANCE FOOD GROUP, LLC, GH FOODS, CA,
LLC, AND CALAVO GROWERS, INC.

By: _____

Print Name: _____

Title: _____

Approved as to form and content:

THE SPIVAK LAW FIRM

Dated: January 26, 2022, 2020 David Spivak
David Spivak
Counsel for Plaintiff and Claudia Torrez

FISHER & PHILLIPS, LLP

Dated: February 2, 2022, 2020 Alden J. Parker
Alden J. Parker
Counsel for Defendants

shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

Dated: _____, 2020

MARIA VELEZ

Dated: _____, 2020

CLAUDIA TORREZ

Dated: January 31, 2022, ~~2020~~

RENAISSANCE FOOD GROUP, LLC, GH FOODS, CA,
LLC, AND CALAVO GROWERS, INC.

By: 

Print Name: Graciela Montgomery

Title: CHRO

Approved as to form and content:

THE SPIVAK LAW FIRM

Dated: _____, 2020

David Spivak
Counsel for Plaintiff and Claudia Torrez

FISHER & PHILLIPS, LLP

Dated: _____, 2020

Alden J. Parker
Counsel for Defendants

ACUERDO DE LIQUIDACIÓN DE LA DEMANDA COLECTIVA DE PAGA

Este Acuerdo de Liquidación («Acuerdo») se celebra entre la Demandante María Vélez («Demandante»), en nombre de ella misma y de todos los demás en una situación similar (los «Miembros de la Demanda Colectiva de PAGA») y Claudia Torrez, por un lado, y los Demandados Renaissance Food Group, LLC, GH Foods, CA, LLC y Calavo Growers, Inc. («Demandados») por el otro. En ocasiones, se hará referencia colectivamente a la Demandante, Claudia Torrez y los Demandados como las «Partes» y se les puede denominar individualmente como una «Parte».

CONSIDERANDOS

CONSIDERANDO QUE, la Demandante fue empleada de los Demandados durante el supuesto «Período PAGA», definido como, para la planta de Riverside, entre el 16 de diciembre de 2017 y el 5 de noviembre de 2020, y, para la planta de Sacramento, entre el 2 de febrero de 2018 y el 5 de noviembre, 2020;

CONSIDERANDO QUE, el 19 de febrero de 2019, la Demandante presentó una Demanda colectiva en el Tribunal Superior de California, Condado de Sacramento, Número de caso 34-2019-00250841, titulado *María Vélez v. Renaissance Food Group, LLC, et al.* (la «Demanda Colectiva»), haciendo valer las siguientes causas de la demanda colectiva y representativa: (i) no proporcionar períodos de descanso; (ii) no proporcionar períodos de comida; (iii) no pagar todos los salarios devengados por todas las horas trabajadas; (iv) no proporcionar declaraciones de salarios precisas; (v) sanciones por tiempo de espera; (vi) competencia desleal en violación del Código de Negocios y Profesiones § 17200; y (vii) sanciones civiles de conformidad con PAGA;

CONSIDERANDO QUE, el 8 de mayo de 2019, el Tribunal concedió la Estipulación de las Partes para Desestimar las Demandas Individuales y Colectivas de la Demandante de conformidad con el Acuerdo de Arbitraje que la Demandante firmó durante su empleo con los Demandados;

CONSIDERANDO QUE, los Demandados niegan la validez de las reclamaciones de la Demandante en el Litigio PAGA, y además niegan que la Demanda sea apropiado para el tratamiento de la demanda colectiva representativa con cualquier otro propósito que no sea este Acuerdo;

CONSIDERANDO QUE, se ha llegado a un acuerdo con respecto al Litigio PAGA por el monto bruto total de doscientos setenta y cinco mil dólares y cero centavos (\$275,000.00) (el «Acuerdo»);

CONSIDERANDO QUE, que las Partes desean resolver y dirimir la controversia surgida entre ellas, así como cualquier otra reclamación, afirmada o no, que cualquiera de las partes pueda tener contra la otra derivada de hechos o eventos, conocidos o desconocidos, ocurridos hasta hasta e incluyendo la fecha de ejecución de este Acuerdo; y

POR CONSIGUIENTE, en virtud a las estipulaciones en este Acuerdo, las Partes acuerdan lo siguiente:

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ACUERDO

1. Sin admisión de responsabilidad. La Demandante y Claudia Torrez entienden y acuerdan que este Acuerdo representa un compromiso y una solución para varios asuntos y que las promesas, los pagos y la consideración de este Acuerdo no se interpretarán como una admisión de ninguna responsabilidad por parte de las Partes exoneradas. La Demandante y Claudia Torrez también acuerdan que este Acuerdo no se puede usar como evidencia, ni se puede hacer referencia a él ni confiar en él, en ningún procedimiento de arbitraje, administrativo, judicial o legal (que no sea para buscar la aprobación del Tribunal de este Acuerdo, hacer cumplir los términos de este Acuerdo o según lo exija una orden judicial válida). Los Demandados renuncian y niegan cualquier responsabilidad, obligación o responsabilidad hacia la Demandante.

2. Pago de liquidación neto. En consideración a las exoneraciones descritas en los Párrafos 3 y 4, y sujeto a la aprobación del Tribunal de este Acuerdo, los Demandados acuerdan pagar una cantidad neta de doscientos setenta y cinco mil dólares y cero centavos (\$275,000.00) (la «Suma de Liquidación») a los Miembros de la Demanda Colectiva PAGA (como se define en el Párrafo 6 a continuación) sujeto a los siguientes términos y condiciones:

a. Las Partes acuerdan que de la Suma del Acuerdo, diez mil dólares con cero centavos (\$10,000.00) serán destinados a la Demandante nombrada, sin deducciones, y otros diez mil dólares con cero centavos (\$10,000.00) serán destinados a Claudia Torrez, sin deducciones, como incentivo para a la Demandante y Claudia Torrez además de cualquier cantidad a la que puedan tener derecho bajo la fórmula de distribución identificada en el Párrafo 6 por su tiempo, esfuerzo, gasto y riesgos asociados con el nombramiento de representantes, una renuncia general más amplia de sus derechos, incluidos sus reclamos individuales, y participar en el Litigio de PAGA como Representantes de la Demanda Colectiva de PAGA. Estos pagos se informarán como ingresos en el formulario 1099. Los Demandados no se opondrán a ninguna de las solicitudes de incentivos descritos en el presente siempre y cuando sea consistente con el monto del presente Acuerdo. Este monto procederá de la Suma del Acuerdo y no será adicional a la misma. La Demandante y Claudia Torrez reconocen sus responsabilidades por todos y cada uno de los impuestos por estas sumas de conformidad con el Párrafo 2.e;

b. Las Partes acuerdan que hasta seis mil cero centavos (\$6,000.00) de la Suma del Acuerdo será para el pago de los honorarios de administración del acuerdo de un administrador externo. Los costos del Administrador se pagarán y no serán adicionales a la Suma del Acuerdo;

c. Las Partes acuerdan que toda la Suma Neta del Acuerdo se asignará a las reclamaciones de la Demandante bajo la Ley General de Abogados Privados («PAGA») y se distribuirá de acuerdo con los porcentajes identificados en la Ley, el veinticinco por ciento (25%) de la asignación de PAGA se distribuirá al colectivo de PAGA, y el setenta y cinco por ciento (75%) se distribuirá a Agencia de Desarrollo Laboral y de la Fuerza Laboral de California («LWDA»). Estos montos provendrán y no serán adicionales a la Suma del Acuerdo;

d. Las Partes acuerdan que hasta un tercio (1/3) de la Suma del Acuerdo (*es decir* \$91,666.67) se asignará al pago de los honorarios de abogados incurridos en el Litigio PAGA. Los demandados no se opondrán a ninguna solicitud de honorarios de abogados siempre que no supere este umbral. La Demandante y Claudia Torrez también tendrán derecho a los costos reales del litigio de la

Suma del Acuerdo aprobada por el Tribunal por un monto que no excederán los Doce Mil Dólares y Cero Centavos (\$12,000.00). Estos montos provendrán y no serán adicionales a la Suma del Acuerdo;

e. Las Partes acuerdan que todos los impuestos sobre la nómina asociados con el pago a los Miembros del Colectivo PAGA de la Suma del Acuerdo, si los hubiera, se pagarán del Monto neto del Acuerdo, pagado por los Demandados. Los Demandantes representativos y los Miembros Colectivos de PAGA serán responsables de todas y cada una de las obligaciones fiscales, además de los impuestos sobre la nómina, asociadas con cualquier pago que reciban como parte de la Suma del Acuerdo;

f. Habrá una Suma Neta del Acuerdo que se distribuirá a los Miembros del Colectivo PAGA de acuerdo con las asignaciones establecidas en el Párrafo 6 a continuación. La Suma Neta del Acuerdo consistirá en la Suma del Acuerdo menos los montos identificados en el Párrafo 2.a. hasta el 2.d., arriba (honorarios y costos de abogados, costos de administración e incentivos de representación). Todos los Miembros del Colectivo PAGA, incluyendo la Demandante y Claudia Torrez, recibirán una parte de la Suma Neta del Acuerdo en forma prorrateada según el número de períodos de pago que trabajaron. Específicamente, el administrador determinará los pagos finales de liquidación tomando el número de períodos de pago que cada Miembro del Colectivo individual trabajó durante el Período PAGA y dividiéndola por el número total de períodos de pago que los Miembros del Colectivo trabajaron durante el Período PAGA y multiplicando esa fracción por el Monto Neto del Acuerdo; y

g. Dentro de los catorce (14) días calendario después de que el Tribunal conceda la aprobación de este Acuerdo, los Demandados deberán depositar la Suma del Acuerdo (\$275,000.00 más los impuestos sobre la nómina aplicables) en una cuenta QSF establecida por el Administrador. Para los efectos de contar el plazo de catorce (14) días establecido por esta sección, la aprobación del Tribunal puede ser por medio de una orden del libro de actas, una orden del tribunal o mediante la firma de una orden de aprobación presentada, lo que ocurra primero. El Administrador debe proporcionar a los Demandados un aviso por adelantado dentro de los siete (7) días calendario posteriores a la aprobación por parte del Tribunal de este Acuerdo con respecto al dinero total que los Demandados deben depositar.

3. Exonerar. A cambio de las estipulaciones y consideraciones mutuas establecidas en este Acuerdo, cuya suficiencia es reconocida por las Partes, se entiende y acuerda la exoneración de responsabilidad de la siguiente manera:

a. “Partes exoneradas”, como se hace referencia en el presente y como se exonera en el Acuerdo, significarán colectivamente Renaissance Food Group, LLC, GH Foods, CA, LLC y Calavo Growers, Inc., y cada una de sus respectivas empresas matrices y subsidiarias afiliados, accionistas, pasadas, presentes y futuras, directores, funcionarios, agentes, empleados, abogados, aseguradores, predecesores y sucesores y cesionarios pasados, presentes y futuros de cualquiera de los directores anteriores y cualquier otra persona, corporación, entidad, asociación o sociedad responsable o potencialmente responsable de cualquier reclamo realizado o que pudiera haberse realizado en el Litigio PAGA.

b. Las demandantes María Vélez y Claudia Torrez en nombre propio y en nombre de todos los que reclaman por y a través de ellas, o en su lugar y todos y cada uno de los miembros del Colectivo PAGA (que incluye a los herederos legales y/o sucesores en interés de todos y cada uno de los miembros del colectivo PAGA) y la LWDA, por la presente y para siempre exoneran, absuelven y eximen de toda responsabilidad y manera mutua y total, y se comprometen a no demandar a los Demandados,

incluyendo las divisiones pasadas, presentes y futuras, afiliadas, matrices, subsidiarias, predecesores, sucesores, cesionarios, accionistas, propietarios, funcionarios, directores, empleados, agentes, fideicomisarios, abogados, representantes, administradores, fiduciarios, beneficiarios, subrogantes, albaceas, socios y privados (colectivamente, las «Partes Exoneradas» y cada una de ellas «Parte Exonerada» o «Parte Exonerada») por todas y cada una de las multas, costos, gastos, honorarios de abogados o intereses basados en todas y cada una de las reclamaciones de PAGA que buscan sanciones civiles según las secciones 558, 1198 y/o 2698 *et seq.* del Código Laboral de California basadas en las reclamaciones que se alegan contra los Demandados en el Litigio PAGA que ocurrieron durante el Período PAGA, incluyendo las denuncias de violaciones de descansos y comidas, salarios no pagados, violaciones del salario mínimo, violaciones de horas extras, violaciones de declaraciones de salarios, salarios no pagados a los empleados durante el empleo y salarios finales no pagados.

c. Como condición para participar en este acuerdo de PAGA, los Miembros del Colectivo PAGA, por la presente y para siempre, liberan, absuelven y eximen mutuamente y por completo, y se comprometen a no demandar a las Partes Exoneradas por ninguna y todas las sanciones, costos, gastos, honorarios de abogados, o interés basado en todas y cada una de las reclamaciones de PAGA que buscan sanciones civiles según las secciones 558, 1198 y / o 2698 *et seq.* del Código Laboral de California basadas en las reclamaciones que se alegan contra los Demandados en el Litigio PAGA que ocurrieron durante el Período PAGA, incluyendo las denuncias de violaciones de descansos y comidas, salarios no pagados, violaciones del salario mínimo, violaciones de horas extras, violaciones de declaraciones de salarios, salarios no pagados a los empleados durante el empleo y salarios finales no pagados.

d. Como condición para recibir los incentivos descritos en el Párrafo 2.a., la Demandante y Claudia Torrez por la presente exoneran, absuelven y eximen para siempre de manera irrevocable e incondicional a las Partes Exoneradas de todos y cada uno de los cargos, quejas, reclamos, responsabilidades, obligaciones, promesas, acuerdos, controversias, daños, acciones, causas de acción, juicios, derechos, demandas, costos, pérdidas, deudas y gastos (incluyendo los honorarios de abogados y los costos realmente incurridos) de cualquier naturaleza, conocidos o desconocidos, sospechosos o no sospechosos, incluyendo, entre otros, limitado a, todos los reclamos alegados en cualquier momento en el Litigio PAGA, todas las reclamaciones desestimadas por el Tribunal en el Litigio PAGA, todos los reclamos que surjan o se relacionen con las relaciones de la Demandante y Claudia Torrez con cualquiera de las Partes Exoneradas, todas las reclamaciones por presuntas violaciones de cualquier contrato, expreso o implícito, cualquier convenio de buena fe y trato justo, expreso o implícito, o cualquier agravio, incluyendo la difamación, o cualquier restricción legal sobre el derecho de los Demandados a contratar, negarse a contratar o despedir a sus empleados, o cualquier tribunal federal, estatal o local de justicia o equidad u otro estatuto, regulación u ordenanza gubernamental, que incluye, entre otros: (1) la Ley de Derechos Civiles de 1964, enmendada; (2) 42 USC § 1981; (3) la Ley de Vivienda y Empleo Justos de California (cuyas leyes prohíben la discriminación por motivos de raza, religión, sexo, orientación sexual, edad, color, origen nacional, discapacidad, condición médica y estado civil); (4) Sección 503 de la Ley de Rehabilitación de 1973; (5) la Ley de Estadounidenses con Discapacidades; (6) la Ley de Normas Laborales Justas (incluyendo la Ley de Igualdad Salarial); (7) la Constitución de California y de los Estados Unidos; (8) el Código Laboral de California (incluyendo todas y cada una de las disposiciones que autorizan a la Demandante a buscar sanciones civiles contra las Partes Exoneradas por violaciones de las horas de salario); (9) la Ley sobre Ausencias del Trabajo por Motivos Médicos y Familiares; (10) la Ley de Derechos de la Familia de California; (11) la Ley de Notificación de Ajuste y Recapacitación de Trabajadores; (12) la Ley de Seguridad de los Ingresos de Jubilación del Demandante; (13) la Ley de

Control y Reforma de la Inmigración; (14) Código de Negocios y Profesiones de California Sección 17200, *et. seq.*; (15) el Código de Gobierno de California; y (16) Las Órdenes Salariales de California, que la Demandante y Claudia Torrez ahora tienen, poseen o mantienen, o reclaman tener, poseen o mantienen, o que la Demandante Claudia Torrez en cualquier momento hasta ahora tuvo, poseyó o mantuvo, o afirmó tener, poseer o mantener contra cualquiera de las Partes Exoneradas hasta la fecha incluida de la inspección de la Demandante de las instalaciones de Riverside, que tuvo lugar el 5 de noviembre de 2020. Nada en este comunicado se interpretará en el sentido de que la Demandante o Claudia Torrez están liberando o renunciando a las reclamaciones para hacer cumplir este Acuerdo, las reclamaciones que surjan después del 5 de noviembre de 2020 (incluyendo las reclamaciones por represalias por haber logrado este acuerdo o por haber hecho valer sus reclamaciones subyacentes), reclamaciones de compensación de trabajadores, reclamaciones de beneficios de seguro de desempleo, reclamaciones de indemnización de conformidad con la sección 2802 del Código Laboral, reclamaciones por cualquier compensación y beneficios adquiridos (incluyendo, entre otros, los beneficios de jubilación), honorarios de abogados para todas esas reclamaciones, cuando estén disponibles, la oportunidad de ejercer las reclamaciones mencionadas en esta frase, o reclamaciones a las que, por ley, no se puede renunciar.

4. Sección 1542 del Código Civil de del Estado de California. La Demandante y Claudia Torrez acuerdan por la presente que renuncian a todos los derechos bajo la sección 1542 del Código Civil del Estado de California en cuanto a las personas u otras reclamaciones que puedan tener contra los Demandados. La Sección 1542 ha sido explicada a la Demandante y a Claudia Torrez por sus abogados y establece lo siguiente:

UNA EXONERACIÓN GENERAL NO SE EXTIENDE A LAS RECLAMACIONES QUE EL ACREEDOR O LA PARTE LIBERADORA DESCONOCE Y NO SOSPECHA QUE EXISTAN A SU FAVOR EN EL MOMENTO DE EJECUTAR LA EXONERACIÓN DE RESPONSABILIDAD Y QUE, SI ÉL O ELLA LAS HUBIERAN CONOCIDO, PODRÍAN HABER AFECTADO MATERIALMENTE SU ACUERDO CON EL DEUDOR O EXONERADO.

5. Enmienda a la reclamación. Las Partes acuerdan estipular que se permita a la Demandante presentar una Demanda Enmendada agregando a Claudia Torrez como Demandante nombrada a esta Demanda Colectiva antes de que la Demandante y Claudia Torrez presenten una moción que solicitando la aprobación del Tribunal del Acuerdo PAGA de las Partes.

6. Moción para la Aprobación del Acuerdo PAGA. La Demandante, Claudia Torrez, y su abogado harán todo lo posible para presentar una moción que solicite la aprobación de este Acuerdo tan pronto como sea razonablemente posible después de que las Partes firmen este Acuerdo. Los Demandados acuerdan cooperar con la Demandante y Claudia Torrez en estos esfuerzos para que la moción de aprobación se presente de manera oportuna.

7. Administrador y método de distribución. Las Partes acuerdan que los abogados de la Demandante y Claudia Torrez y los abogados de los Demandados seleccionarán al Administrador para procesar y distribuir la Suma del Acuerdo de conformidad con el Acuerdo. Las Partes acordarán en un Administrador tan pronto como sea razonablemente posible después de que las Partes firmen este Acuerdo

y antes de que la Demandante y los abogados de Claudia Torrez presenten una moción para obtener la aprobación de este Acuerdo. Además, y sujeto a la aprobación del Tribunal, los plazos y métodos relacionados con la administración de este Acuerdo serán los siguientes:

a. A los efectos de este Acuerdo, los Miembros del Colectivo PAGA se definen como: «todas las personas que están empleadas o han sido empleadas por los Demandados como empleados por hora y no exentos en el Estado de California entre el 16 de diciembre de 2017 y el 5 de noviembre de 2020 para la planta de Riverside y entre el 2 de febrero de 2018 y el 5 de noviembre de 2020 para la planta de Sacramento».

b. Todos los Miembros del Colectivo PAGA recibirán una parte de la Suma Neta del Acuerdo de forma prorrateada en función de una estimación razonable del número total de períodos de pago trabajados por todos los miembros del Colectivo PAGA durante el período aplicable. La parte estimada de la Suma Neta del Acuerdo para cada individuo dentro del Colectivo PAGA se determinará de la siguiente manera: 1) Se obtendrá un valor total por período de pago dividiendo la suma neta del acuerdo por el número total de períodos de pago que todos los miembros del colectivo PAGA trabajaron dentro del período de PAGA (*es decir* cualquier período de pago en el que un Miembro del Colectivo PAGA trabajado al menos un (1) día); y 2) cada Miembro del Colectivo PAGA tendrá su número respectivo de períodos de pago multiplicado por el Valor Total por Período de Pago para obtener su parte respectiva de la Suma Neta del Acuerdo.

c. El cien por ciento (100%) del pago de la Suma Neta del Acuerdo a los Miembros elegibles del Colectivo PAGA consistirá en ingresos mediante el formulario 1099 que representan el pago de sanciones legales y civiles.

d. Dentro de los siete (7) días calendario posteriores a la fecha en que el Tribunal otorgue la aprobación de este Acuerdo, los Demandados deberán proporcionar una lista de todos los Miembros del Colectivo PAGA y toda la información necesaria al Administrador para localizar a los Miembros del Colectivo PAGA, procesar pagos y procesar las reclamaciones de pagos, incluyendo, entre otros, los períodos de pago colectivo de PAGA o las fechas de empleo, las últimas direcciones conocidas, los números de seguro social y cualquier otra información necesaria para efectuar el Acuerdo.

e. La Lista del Colectivo de PAGA, y cualquier otro dato proporcionado por los Demandados al Administrador, se tratará como confidencial y no estará sujeto a divulgación por parte del Administrador, excepto que (a) se podrá proporcionar información relevante al Abogado Colectivo de PAGA en la medida necesaria para abordar una reclamación en disputa o para responder a una investigación específica de un Miembro del Colectivo PAGA, o de cualquier tercero; (b) se podrá permitir que los abogados de los Demandados y de la Demandante y de Claudia Torrez revisen y confirmen que el cálculo de la participación estimada de los Miembros del Colectivo PAGA en el acuerdo es exacto y se basa en la información correcta; y (c) según sea necesario para que el Administrador cumpla con sus obligaciones descritas en este Acuerdo. Además, el Administrador, la Demandante y el abogado de Claudia Torrez harán todos los esfuerzos comercialmente razonables para proteger los datos proporcionados por los Demandados en todo momento a fin de evitar la divulgación o el uso involuntario o no autorizado de dichos datos que no sean los permitidos por este Acuerdo, y destruirán los datos (y todas las copias de los mismos) de manera completa y segura cuando dichos datos ya no sean necesarios para los fines de este Acuerdo. El Administrador se asegurará de que el Aviso y cualquier otra

comunicación a los Miembros del Colectivo PAGA no incluyan el Número de Seguro Social de los Miembros del Colectivo PAGA, excepto los últimos cuatro dígitos.

f. Dentro de los catorce (14) días calendario a partir de la fecha en que el Tribunal apruebe este Acuerdo, el Administrador proporcionará a las Partes la hoja de cálculo que muestra los cálculos del Administrador para los pagos anticipados a los Miembros del Colectivo PAGA, la asignación de períodos de pago a los Miembros del Colectivo PAGA y cualquier impuesto sobre la nómina que deben pagar los Demandados. El Administrador puede redactar cualquier información de identificación y, en su lugar, usar un número de empleado para diferenciar (excepto en lo que respecta a los Demandantes nombrados en el Litigio de PAGA) a fin de proteger la información confidencial de los Miembros del Colectivo de PAGA. Esto permitirá que la Demandante, Claudia Torrez y los Demandados tengan la oportunidad de revisar los cálculos del Administrador, y el Administrador confirmará la recepción y aprobación de la hoja de cálculo por las Partes antes de ejecutar los desembolsos de PAGA, como se indica a continuación.

g. Dentro de los veintiún (21) días calendario a partir de la fecha en que el Tribunal apruebe este Acuerdo, el Administrador realizará una verificación NCOA de las direcciones más actuales de los Miembros del Colectivo PAGA en función de la información proporcionada por los Demandados y enviará por correo postal formularios de desembolso a los Miembros del Colectivo PAGA. Para cualquier desembolso devuelto como imposibles de entregar, el Administrador realizará un seguimiento de omisión de esa persona y volverá a enviar por correo el desembolso de PAGA dentro de los tres (3) días hábiles posteriores a la recepción de la información de que el correo no pudo entregar o que el miembro colectivo de PAGA ya no estaba en la dirección a la nueva dirección que se encuentre bajo el registro de omisión.

h. Dentro de los ciento treinta (180) días calendario después de que el Administrador envíe por correo a los Miembros del Colectivo PAGA su parte prorrateada de la Suma Neta del Acuerdo, cualquier fondo no reclamado, incluyendo los fondos de los cheques del acuerdo no cobrados, se pagarán al Fondo de Propiedad No Reclamada del Contralor del Estado de California. Ningún monto de la Suma del Acuerdo se revertirá a los Demandados por ningún motivo.

i. Dentro de los diez (10) días calendario después de que el Administrador distribuya los fondos no reclamados de conformidad con el Párrafo 6.h., el Administrador proporcionará a las Partes una declaración que describa el proceso de administración de liquidación y la finalización de los pagos a los especificados en el Párrafo 6.h.

j. Las Partes acuerdan que la información de contacto y los números de seguro social de los Miembros del Colectivo PAGA serán utilizados únicamente por el abogado del Administrador con el único propósito de efectuar el Acuerdo.

8. Abogado del Colectivo PAGA. Las Partes acuerdan la designación de The Spivak Law Firm como abogado para los fines del Colectivo y Acuerdo PAGA.

9. Representante PAGA. Las Partes acuerdan la designación de la Demandante María Vélez y Claudia Torrez como Representantes de PAGA a los efectos del Acuerdo Colectivo de PAGA.

9. Alcance del Colectivo PAGA. Se representó a la Demandante y a Claudia Torrez en el momento de la ejecución de este Acuerdo que había 819 miembros del Colectivo PAGA al 1 de agosto de

2019. En la medida en que el número del Colectivo PAGA aumente más allá de este número en más del 10%, la Demandante y Claudia Torrez tendrán la opción de aumentar el monto total de la liquidación en una cantidad proporcional. (Si el número de empleados aumenta en un 11%, el aumento total del acuerdo será del 1%). La Demandante y Claudia Torrez tendrán cinco (5) días calendario a partir de la fecha en que el Administrador indique un excedente para informar por escrito al abogado de los Demandados por escrito de su elección de esta opción.

10. Honorarios de abogados y costos. Salvo que se establezca lo contrario en este Acuerdo, las Partes acuerdan que cada una asumirá los honorarios de sus respectivos abogados y los costos incurridos en este Litigio de PAGA, con la excepción de cualquier disputa relacionada con el pago de la Suma del Acuerdo. En el caso de una disputa sobre el pago de la Suma del Acuerdo, la parte prevaleciente tendrá derecho a recuperar los honorarios y costos de sus abogados.

11. Cumplimiento. Este Acuerdo se realiza y es ejecutable de conformidad con las disposiciones del Código de Procedimiento Civil de California, sección 664.6, y las Partes acuerdan que el Tribunal conservará la jurisdicción a tal efecto para hacer efectivos los términos de este Acuerdo y después de dictar sentencia en este Litigio PAGA. Este Acuerdo será admisible en cualquier procedimiento para su cumplimiento de conformidad con las secciones 1118 y 1123 del Código de Evidencia de California.

12. Contrapartes. Este Acuerdo puede ejecutarse en una o más copias y cada copia, una vez ejecutada, tendrá la eficacia de un original. Se podrán utilizar las copias fotográficas o facsímiles de dichas contrapartes firmadas en lugar del original para cualquier fin.

13. Confidencialidad. La Demandante y Claudia Torrez declaran y aceptan que no han emitido y no emitirán ningún comunicado de prensa, publicación o divulgación de este Acuerdo a la prensa, los medios, los sitios web o cualquier servicio que informe sobre veredictos y acuerdos. La Demandante y Claudia Torrez además acuerdan no, en ningún momento ni de ninguna manera, hablar, escribir, divulgar o publicitar o hacer que se publique, la información confidencial, de propiedad exclusiva o secreto comercial de las Partes Exoneradas.

14. Gravámenes de abogados. La Demandante y Claudia Torrez declaran y garantizan que todos los gastos legales, facturas, costos o acuerdos de honorarios de contingencia que resulten o surjan de la representación de la Demandante y Claudia Torrez en relación con el Litigio PAGA son responsabilidad de la Demandante y de Claudia Torrez de pagar, y que cualquier gravamen basado en cualquier gasto legal, factura, costos o acuerdos de honorarios de contingencia incurridos como resultado del Litigio PAGA serán satisfechos por la parte que incurre. La Demandante y Claudia Torrez indemnizarán, defenderán y eximirán de responsabilidad a las Partes Exoneradas de dichos reclamos.

15. Sin recuperación adicional. Es la intención de este Acuerdo que la Demandante, los titulares de gravámenes y cualquier otra persona o entidad con un interés en de las reclamaciones de la Demandante, incluyendo Claudia Torrez, con respecto al pago de la Suma del Acuerdo no se recuperen (excluyendo expresamente a los Miembros del Colectivo PAGA), directa o indirectamente, ninguna suma de las Partes Exoneradas que no sean los fondos recibidos de conformidad con este Acuerdo y establecidos en el Párrafo 1. Si, a pesar de las disposiciones de este Párrafo, cualquier Parte Exonerada recibe cualquier reclamación, incluyendo una reclamación de contribución, cualquier indemnización que surja de una reclamación con respecto al pago del Acuerdo interpuesto contra otra persona interesada en las

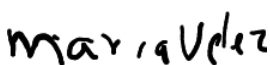
reclamaciones de la Demandante y Claudia Torrez, dicha parte deberá indemnizar, proporcionará una defensa completa y eximirá de toda responsabilidad a las Partes Exoneradas por tal cantidad. En el caso de que un juzgador determine (y todas las apelaciones se hayan agotado o se haya vencido el plazo para tales apelaciones) que cualquier Parte Exonerada es o sería responsable de indemnización bajo cualquier teoría de ley o equidad, este Acuerdo actuará como una exoneración general, exonerando no sólo a la Parte Exonerada sino a cualquier otra persona, fideicomisario, empresa, fideicomiso, corporación o entidad de cualquier tipo, que tenga o pueda tener derecho a una defensa e indemnización de las Partes Exoneradas con respecto a cualquier responsabilidad que esa persona, empresa o corporación pueda tener ante la Demandante y Claudia Torrez.

16. Acuerdo completo. Este Acuerdo establece el entendimiento completo entre las Partes y reemplaza todos y cada uno de los acuerdos anteriores, orales o escritos, relacionados con el Litigio PAGA. Este Acuerdo no puede ser modificado o enmendado excepto por escrito, firmado por todas las Partes. Cada parte reconoce que no existe ninguna representación, incentivo, promesa o acuerdo realizado, oralmente o de otro modo, por la otra parte, con respecto a los términos o condiciones de este Acuerdo, que no esté expresamente incorporado en este Acuerdo. Al firmar este Acuerdo, las Partes declaran que los términos de este Acuerdo son completamente entendidos y aceptados voluntariamente por las Partes.

17. Naturaleza Condicional. Este Acuerdo y todas las pruebas o anexos asociados se realizan con el único propósito de resolver la Demanda Colectiva. Este Acuerdo y el acuerdo que evidencia se realizan en compromiso de las reclamaciones en disputa. Debido a que la Demanda Colectiva se presentó como una demanda colectiva PAGA, este Acuerdo debe recibir la aprobación del Tribunal. En consecuencia, las Partes firman este Acuerdo y la liquidación asociada de carácter condicional. Si el Tribunal no emite una orden otorgando la aprobación final del Acuerdo, este Acuerdo se considerará nulo y sin efecto; no tendrá fuerza ni efecto alguno; no se hará referencia a él ni se utilizará para ningún fin; y la negociación, los términos y la celebración del Acuerdo permanecerán sujetos a las disposiciones de las Secciones 1119 y 1152 del Código de Evidencia de California, la Regla Federal de Evidencia 408 y cualquier otra regla de evidencia análoga que pueda ser aplicable.

Las Partes, con el beneficio de la representación y el asesoramiento de un abogado, han leído este Acuerdo y comprenden completamente todas y cada una de las disposiciones contenidas en él.

Con fecha de: 02 / 01 / 2022, 2022



María Vélez

Con fecha de: _____, 2022

Claudia Torrez

///
///
///
///
///
///
///
///

Con fecha de: _____, 2022

RENAISSANCE FOOD GROUP, LLC, GH FOODS, CA,
LLC, AND CALAVO GROWERS, INC.

Por: _____

Escribir el nombre completo con letra de molde:

Título de trabajo: _____

Aprobado en forma y contenido:

THE SPIVAK LAW FIRM

Con fecha de: _____, 2022

David Spivak
Abogado de la Demandante y Claudia Torrez

FISHER & PHILLIPS, LLP

Con fecha de: _____, 2022

Alden J. Parker
Abogado de los Demandados

EXHIBIT 2

1 **NOTICE OF PAGA SETTLEMENT**

2 *Maria Velez v. Renaissance Food Group, LLC, et al.*

3 *Superior Court of California, County of Sacramento*

4 *Case No. 34-2019-00250841*

5 <<Phoenix Settlement Administrators>>

6 []

7 []

8 Telephone: []

9 «Barcode» «BarcodeString»

10 ID «ID»

11 «FirstName»

12 «LastName»

13 «Address1» «Address2»

14 «City» «State» «Zip»

15 You are receiving this notice as a result of a lawsuit brought on a representative basis
16 under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”) (“the Action”).
17 The Plaintiffs in the Action are Maria Velez and Claudia Torrez (collectively “Plaintiffs”) and
18 the Defendants are Renaissance Food Group, LLC, GH Foods, CA, LLC, and Calavo Growers,
19 Inc. (collectively “Defendants”). The Action seeks civil penalties for purported violations of the
20 California Labor Code on behalf of all Defendants’ current and former California non-exempt
21 employees (“PAGA Collective Members”) who Defendants employed during the “PAGA
22 Period,” defined as, for employees of the Riverside plant, between December 16, 2017 and
23 November 5, 2020, and, for the Sacramento plant, between February 2, 2018 and November 5,
24 2020. Defendants deny all claims and allegations in the Action, deny that they owe any penalties,
25 and assert that they have fully complied with all applicable Labor Code provisions.

26 Nevertheless, to avoid further costs and time in defending the Action, Defendants have
27 settled the case and the Court has approved the settlement and release of claims. By settling the
28 Action, Defendants are not admitting that they have done anything wrong.

As of and subject to the occurrence of the Effective Date of the Settlement, the Settlement
resolves, and in consideration for the Gross Settlement Amount and the claims settled, fully
released and forever discharged by the LWDA and the PAGA Collective Members, including
Plaintiffs, any and all claims for civil penalties Plaintiffs, the PAGA Collective Members, and
the State of California may have against the Released Parties under the California Labor Code,
Wage Orders, regulations, and/or any other provisions of state and federal law arising from
allegations that the PAGA Collective Members suffered Labor Code violations based on 558,
1198, and any other Labor Code violations that were alleged in the Action, or that could have
been alleged in the Action based on the facts alleged in the Action, which includes, but is not
limited to, alleged violations of Labor Code sections , and 2698 *et seq.* (“PAGA Released
Claims”).

1 The "Released Parties" are Renaissance Food Group, LLC, GH Foods, CA, LLC, and
2 Calavo Growers, Inc., and each of their respective past, present and future parent companies,
3 subsidiaries, affiliates, the past, present and future shareholders, directors, officers, agents,
4 employees, attorneys, insurers, predecessors, and successors and assigns of any of the foregoing
principals and any other person, corporation, entity, association or partnership responsible or
potentially responsible for any claims made or that could have been made in the PAGA
Litigation.

5
6 By Order dated <<court approval order date>>, the Superior Court of the State of
California, County of Sacramento approved the Settlement of the PAGA claims.

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

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

16 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
17 or to ask questions about the claims process. If you have any questions, you may call or write to
18 Phoenix Settlement Administrators (the Settlement Administrator) using the contact information
at the top of this correspondence.

EXHIBIT 3



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 14, 2018

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

RE: *Maria Velez / Renaissance Food Group, LLC et al.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Maria Velez (hereafter “Velez”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to production leads, production workers, quality control technicians, maintenance technicians, machine operators, and similarly situated employees (hereafter “Aggrieved Employees”) by Renaissance Food Group, LLC, a Delaware limited liability company, GH Foods CA LLC, a California limited liability company, Kenneth J. Catchot, an individual, and Calavo Growers, Inc., a California corporation (hereafter collectively “RFG”) of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

At all relevant times, RFG has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Velez and the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage Order”), paragraph 2.E, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

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ENCINO, CA 91436

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FAX (818) 582-2561

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Statement of Facts

RFG hired Velez as a full time hourly employee on or about September 25, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its processing facility in Riverside, California. RFG continuously employed Velez in California from approximately September 25, 2017 to February 23, 2018, when her employment terminated.

RFG compensated Velez and the Aggrieved Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Velez started her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve hours in a day. On a day to day basis, Velez and the other Aggrieved Employees did not know when their shifts would end. Supervisors assigned Velez and the Aggrieved Employees the work that needed to be completed for the day and their work shifts ended upon completion of their assignments.

Until January of 2018, when Velez and the Aggrieved Employees returned from meal breaks, RFG regularly required them to wait in a line of fifteen to twenty (15-20) other employees to clock back in to work. RFG did not pay them for this time and such wait times reduced their meal periods to less than 30 minutes.

RFG failed to provide Velez and the Aggrieved Employees with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday. Velez worked in excess of 10 hours in a workday on multiple occasions. RFG failed to provide all but one second daily meal period.

RFG routinely denied Velez and the other Aggrieved Employees an uninterrupted timely second rest period. On average, RFG instructed its supervisors to permit Velez and the Aggrieved Employees to take a second rest break on only one workday per week. RFG did not provide Velez and the Aggrieved Employees with a third rest period after the tenth hour of work as required by law. Although Velez worked more than ten hours in a workday on

multiple occasions, during the course of her employment at RFG, Velez never received a timely duty-free third rest period.

RFG required Velez and the other Aggrieved Employees to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating them for such time worked at the overtime rates required by California law. RFG failed to pay one and one half times (1 ½ x) the hourly rates of pay of Velez and the Aggrieved Employees by reducing their recorded work hours by 30 minutes and by failing to pay for times waiting in line to clock in to work.

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

- a) RFG failed to compensate Velez and the Aggrieved Employees all their wages earned, including but not limited to, minimum and overtime wages;
- b) RFG unlawfully deducted the wages Velez and the Aggrieved Employees earned, including but not limited to, minimum and overtime wages;
- c) RFG failed to provide Velez and the Aggrieved Employees with all meal periods required by law;
- d) RFG failed to provide Velez and the other Aggrieved Employees with rest breaks as required by law;
- e) RFG failed to compensate Velez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more meal periods in a workday;

- f) RFG failed to compensate Velez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more rest periods in a workday;
- g) RFG failed to provide Velez and the other Aggrieved Employees with accurate and complete wage statements; and
- h) RFG willfully and knowingly failed to pay Velez and the Aggrieved Employees during, and upon termination of, employment, all accrued compensation, including compensation for missed meal periods and work off the clock.

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

Wage Order 8

Wage Order 8 applies to "all persons employed in the industries handling products **after harvest** whether paid on a time, piece rate, commission, or other basis." (emphasis added). At all relevant times during the applicable limitations period, Velez was employed by RFG as a production lead. Accordingly, Velez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked **(Lab. Code §§ 510, 558.1, 1194, 1197, and 1198)**

At all relevant times, Velez and the other Aggrieved Employees have been non-exempt employees of RFG and entitled to the benefits and protections of California Labor Code sections 510, 558.1, 1194, 1197, 1198, and the Wage Order.

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

Section 3 of the Wage Order states:

(1) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: Such employees shall not be employed more than eight (8) hours in any one 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. ...

...

(3) Overtime hours shall be compensated at:

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

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

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

knowledge that employees are working.

Labor Code section 510 states:

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

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

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

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, §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 herein, RFG employed Catchot as a Manager and Catchot acted as an “owner,” “managing agent,” and “officer.” Catchot directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, or working conditions of Velez and the other Aggrieved Employees and caused the violations to the Labor Code and the Wage Order described above.

In conjunction, these 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 unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

At all relevant times during the applicable limitations period, as described above, RFG knowingly failed to compensate Velez and the Aggrieved Employees for all hours worked, including, but not limited to minimum and overtime wages for all hours in excess of 40 in a week and all in excess of eight in a day.

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

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to

recover underpaid wages (penalties set by California Labor Code § 558);

2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code section 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

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

RFG illegally and arbitrarily deducts several minutes from the records of Velez and the other Aggrieved Employees of their daily time worked and reports less hours than their actual hours worked on their wage statements. As a result,

RFG collected and received part of Velez' and the other Aggrieved Employees' wages in violation of California Labor Code § 221.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

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, Section 12 of the Wage Order states:

Rest Periods:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees

whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

In relevant part, California Labor Code § 512 states:

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

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

Meal Periods:

(A) No employer shall employ any person for a work period of not 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 employer and employee.

(B) An employer may not employ and 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 the

employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

California Labor Code § 226.7 states:

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

RFG has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Velez and the other Aggrieved Employees as required by law. As a result, RFG violated California Labor Code §§ 226.7, 512 and 1198.

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

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1198 occurred (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,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,

- 7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, RFG failed to provide Velez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and unpaid wages for uncompensated work such as standing in lines to clock in to work. As a result, RFG failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, RFG has violated California Labor Code § 226.

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

Failures to Timely Pay Wages During Employment
(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.

As alleged herein, RFG failed to provide Velez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided. RFG failed to compensate Velez and the Aggrieved Employees for all hours worked on workdays it modified their time records to falsely state that 30-minute uninterrupted meal periods took place in compliance with California laws. RFG failed to pay Velez and the other Aggrieved Employees for time spent waiting in line to clock in to work. As a result, RFG failed to timely pay Velez and the other Aggrieved Employees all earned minimum, overtime, and premium wages within the time periods set by California Labor Code § 204. As a result, RFG has violated California Labor Code § 204.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

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

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

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

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

RFG failed to provide Velez and the Aggrieved Employees with meal and rest periods in compliance with California laws. They also failed to provide Velez and the other Aggrieved Employees with premium wages on workdays they failed to make one or more meal or rest periods available. RFG failed to compensate Velez and the other Aggrieved Employees for all hours worked on days they modified their time records to falsely state that meal and rest periods took place in compliance with California laws. RFG failed to pay Velez and the other Aggrieved Employees for time spent waiting in line to clock in after a meal period. By willfully failing to pay wages to Velez and the other Aggrieved Employees as set forth above, at the time of termination of employment, RFG is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the other Aggrieved Employees, Velez seeks civil penalties from RFG 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));

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///

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)).

Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Maria Velez

///

///

///

Renaissance Food Group, LLC
c/o James S. Catchot
Agent for Service of Process
11020 White Rock Rd., Ste. 100
Rancho Cordova, CA 95670

Calavo Growers, Inc.
c/o James Snyder, CAO
1141A Cummings Road
Santa Paula, CA 93060

Calavo Growers, Inc.
c/o National Registered Agents, Inc. (C1941323),
Agent for Service of Process
111 Eighth Ave. 13th Floor
New York, NY 10011

GH Foods CA, LLC
c/o James E. Gibson
Agent for Service of Process
14559 Guadalupe Drive
Rancho Murieta, CA 95683

Kenneth J. Catchot
14151 Indio Drive
Sloughhouse, CA 95683



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

July 29, 2020

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

RE: *Claudia Torrez / Renaissance Food Group, LLC, et al.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Claudia Torrez (hereafter “Torrez”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to production leads, production workers, quality control technicians, maintenance technicians, machine operators, and similarly situated employees (hereafter “Aggrieved Employees”) by Renaissance Food Group, LLC, a Delaware limited liability company, GH Foods CA LLC, a California limited liability company, and Calavo Growers, Inc., a California corporation (hereafter collectively “RFG”) of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

At all relevant times, RFG has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Torrez and the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage Order”), paragraph 2.E, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

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Statement of Facts

RFG hired Torrez as a full time hourly employee on or about May 5, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its processing facility in Riverside, California. RFG continuously employed Torrez in California from the time of her hire until on or about January 2, 2020, when her employment terminated.

RFG compensated Torrez and the Aggrieved Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Torrez started her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve hours in a day. On a day to day basis, Torrez and the other Aggrieved Employees did not know when their shifts would end. Supervisors assigned Torrez and the Aggrieved Employees the work that needed to be completed for the day and their work shifts ended upon completion of their assignments.

When Torrez and the Aggrieved Employees returned from meal breaks, RFG compelled them to wait in a line of fifteen to twenty (15-20) other employees to clock back in to work. Torrez and the Aggrieved Employees regularly waited in line for approximately three minutes before they could clock back in to work. In order to clock back in for work within the 30-minute period RFG afforded Torrez and the Aggrieved Employees for meal periods, they would return from work and enter the line at least 3 minutes before the conclusion of their meal period. RFG did not pay them for this time and such wait times reduced their meal periods to less than 30 minutes.

RFG failed to provide Torrez and the Aggrieved Employees with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday. Torrez worked in excess of 10 hours in a workday on multiple occasions. On such occasions, RFG regularly failed to provide Torrez and the Aggrieved Employees with a second daily meal period.

RFG routinely denied Torrez and the other Aggrieved Employees an uninterrupted timely second rest period. On average, RFG instructed its supervisors to permit Torrez and the Aggrieved Employees to take a second rest break on only one workday per week. On all but a few rare occasions, RFG

did not provide Torrez and the Aggrieved Employees with a third rest period after the tenth hour of work as required by law. Although Torrez worked more than ten hours in a workday on multiple occasions, during the course of her employment at RFG, Torrez rarely received a timely duty-free third rest period.

RFG required Torrez and the other Aggrieved Employees to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating them for such time worked at the overtime rates required by California law. RFG failed to pay one and one half times ($1 \frac{1}{2} \times$) the hourly rates of pay of Torrez and the Aggrieved Employees by reducing their recorded work hours by 30 minutes and by failing to pay for times waiting in line to clock in to work.

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

- a) RFG failed to compensate Torrez and the Aggrieved Employees all their wages earned, including but not limited to, minimum and overtime wages;
- b) RFG unlawfully deducted the wages Torrez and the Aggrieved Employees earned, including but not limited to, minimum and overtime wages;
- c) RFG failed to provide Torrez and the Aggrieved Employees with all meal periods required by law;
- d) RFG failed to provide Torrez and the other Aggrieved Employees with rest breaks as required by law;
- e) RFG failed to compensate Torrez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more meal periods in a workday;

- f) RFG failed to compensate Torrez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more rest periods in a workday;
- g) RFG failed to provide Torrez and the other Aggrieved Employees with accurate and complete wage statements; and
- h) RFG willfully and knowingly failed to pay Torrez and the Aggrieved Employees during, and upon termination of, employment, all accrued compensation, including compensation for missed meal periods and work off the clock.

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

Wage Order 8

Wage Order 8 applies to "all persons employed in the industries handling products after harvest whether paid on a time, piece rate, commission, or other basis." (emphasis added). At all relevant times during the applicable limitations period, Torrez was employed by RFG as a production lead. Accordingly, Torrez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked **(Lab. Code §§ 510, 558.1, 1194, 1197, and 1198)**

At all relevant times, Torrez and the other Aggrieved Employees have been non-exempt employees of RFG and entitled to the benefits and protections of California Labor Code sections 510, 558.1, 1194, 1197, 1198, and the Wage Order.

Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the

time the employee is suffered or permitted to work, whether or not required to do so.”

Section 3 of the Wage Order states:

(1) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: Such employees shall not be employed more than eight (8) hours in any one 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. ...

...

(3) Overtime hours shall be compensated at:

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

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

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

Labor Code section 510 states:

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

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

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

In conjunction, these 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 unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

At all relevant times during the applicable limitations period, as described above, RFG knowingly failed to compensate Torrez and the Aggrieved Employees for all hours worked, including, but not limited to minimum and

overtime wages for all hours in excess of 40 in a week and all in excess of eight in a day.

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

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code section 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

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

RFG illegally and arbitrarily deducts several minutes from the records of Torrez and the other Aggrieved Employees of their daily time worked and reports less hours than their actual hours worked on their wage statements. As a result, RFG collected and received part of Torrez’ and the other Aggrieved Employees’ wages in violation of California Labor Code § 221.

Accordingly, Torrez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

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, Section 12 of the Wage Order states:

Rest Periods:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

In relevant part, California Labor Code § 512 states:

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

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

Meal Periods:

(A) No employer shall employ any person for a work period of not 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 employer and employee.

(B) An employer may not employ and 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 the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular

rate of compensation for each workday that the meal or rest or recovery period is not provided.

RFG has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Torrez and the other Aggrieved Employees as required by law. As a result, RFG violated California Labor Code §§ 226.7, 512 and 1198.

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

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

- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, RFG failed to provide Torrez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and unpaid wages for uncompensated work such as standing in lines to clock in to work. As a result, RFG failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, RFG has violated California Labor Code § 226.

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

Failures to Timely Pay Wages During Employment **(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.

As alleged herein, RFG failed to provide Torrez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided. RFG failed to compensate Torrez and the Aggrieved Employees for all hours worked on workdays it modified their time records to falsely state that 30-minute uninterrupted meal periods took place in compliance with California laws. RFG failed to pay Torrez and the other Aggrieved Employees for time spent waiting in line to clock in to work. As a result, RFG failed to timely pay Torrez and the other Aggrieved Employees all earned minimum, overtime, and premium wages within the time periods set by California Labor Code § 204. As a result, RFG has violated California Labor Code § 204.

Accordingly, Torrez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

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

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other

provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

RFG failed to provide Torrez and the Aggrieved Employees with meal and rest periods in compliance with California laws. They also failed to provide Torrez and the other Aggrieved Employees with premium wages on workdays they failed to make one or more meal or rest periods available. RFG failed to compensate Torrez and the other Aggrieved Employees for all hours worked on days they modified their time records to falsely state that meal and rest periods took place in compliance with California laws. RFG failed to pay Torrez and the other Aggrieved Employees for time spent waiting in line to clock in after a meal period. By willfully failing to pay wages to Torrez and the other Aggrieved Employees as set forth above, at the time of termination of employment, RFG is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the other Aggrieved Employees, Torrez seeks civil penalties from RFG 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)).

Conclusion

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

Sincerely,



David Spivak, Esq.
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cc: Claudia Torrez

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EXHIBIT 4

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3 THE SPIVAK LAW FIRM

4 16530 Ventura Blvd., Ste 312

5 Encino, CA 91436

6 Telephone (818) 582-3086

7 Facsimile (818) 582-2561

8 Attorneys for Plaintiff,

9 MARIA VELEZ, and all others similarly situated

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

11 **FOR THE COUNTY OF SACRAMENTO**
12 **(UNLIMITED JURISDICTION)**

13 MARIA VELEZ, on behalf of herself, and all
14 others similarly situated, and as an "aggrieved
15 employee" on behalf of other "aggrieved
16 employees" under the Labor Code Private
17 Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 RENAISSANCE FOOD GROUP, LLC, a
21 Delaware limited liability company; GH
22 FOODS CA LLC, a California limited liability
23 company; KENNETH J. CATCHOT, an
24 individual; CALAVO GROWERS, INC., a
25 California corporation; G&M HIRE
26 ENTERPRISES, LLC doing business as
27 ATWORK PERSONNEL SERVICES; and
28 DOES 1 through 50, inclusive,

Defendant(s).

FILED

**Superior Court Of California,
Sacramento**

02/19/2019

nzeyaad

By _____, Deputy

Case Number:

34-2019-00250841

Case No.:

BY FAX

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 (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Wage Statement Penalties (Lab. Code § 226); and Waiting Time Penalties (Lab. Code §§ 201-203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED



1 Plaintiff (hereafter "Plaintiff"), on behalf of herself and all others similarly situated,
2 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. 8-2001 (hereafter "the
6 Wage Order") and the Business and Professions Code against defendants RENAISSANCE
7 FOOD GROUP, LLC, a Delaware limited liability company; GH FOODS CA LLC, a
8 California limited liability company; KENNETH J. CATCHOT, an individual; CALAVO
9 GROWERS, INC., a California corporation; G&M HIRE ENTERPRISES, LLC doing business
10 as ATWORK PERSONNEL SERVICES; and DOES 1 through 50, inclusive (collectively
11 "Defendants").

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

19 **JURISDICTION AND VENUE**

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

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

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

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

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PARTIES

7. Plaintiff is an individual and a resident of the State of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11080 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

8. Defendant RENAISSANCE FOOD GROUP, LLC is a limited liability company organized under the laws of Delaware and also a citizen of California. Defendant RENAISSANCE FOOD GROUP, LLC’s corporate headquarters are located in Rancho Cordova in the County of Sacramento, California based on Plaintiff’s information and belief.

9. Defendant GH FOODS CA LLC is a limited liability company organized under the laws of California and therefore a citizen of California and based on Plaintiff’s information and belief. Defendant GH FOODS CA LLC’s corporate headquarters are located in Rancho Cordova in the County of Sacramento, California based on Plaintiff’s information and belief.

10. Defendant CALAVO GROWERS, INC., is a corporation organized under the laws of California and therefore a citizen of California based on Plaintiff’s information and belief.

11. In relevant part, Labor Code section 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.

12. Based on Plaintiff’s information and belief, Defendant KENNETH J. CATCHOT is an individual and a resident of Sacramento County, State of California, and an owner, director, officer, and or managing agent of Defendants who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the class. Therefore, he is liable to Plaintiff and the class for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 2802,



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1 and the Wage Order pursuant to Labor Code section 558.1.

2 13. Defendant G&M HIRE ENTERPRISES, LLC doing business as ATWORK
3 PERSONNEL SERVICES is a corporation organized under the laws of California and therefore
4 a citizen of California based on Plaintiff's information and belief.

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

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

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

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

25 **CLASS ACTION ALLEGATIONS**

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

31 19. **Class Definition:** The class is defined as follows: All persons Defendants



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employed in California as hourly non-exempt employees, including but not limited to production leads, quality control technicians, maintenance technicians, machine operators, and persons in other similar positions (“Class Members”), at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

20. **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.

21. **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.

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

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

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

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

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

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

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

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



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

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

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

STATEMENT OF FACTS

27. Defendants hired Plaintiff in May 2017 to work for Defendants as a temporary non-exempt hourly Production lead.

28. Defendants hired Velez as a full time hourly employee on or about September 25, 2017 to work as a production lead in the Fruit Department of its processing facility in Riverside, California.

29. During her employment, Defendants continuously employed Velez in California from approximately September 25, 2017 to February 23, 2018, when her employment terminated.

30. Throughout Velez' employment period and the time period beginning one year before the date of this letter, Defendants compensated Velez and the Class Members with an



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1 hourly rate of pay and it paid them their wages on a biweekly basis. Velez started her work
2 shifts at 5:30 a.m. or 6:00 a.m. The work shifts lasted between six to twelve hours or until the
3 Class Members completed the day's assigned work.

4 31. Until January of 2018, when Velez and the Class Members returned from meal
5 breaks, Defendants regularly required them to wait in a line of fifteen to twenty (15-20) other
6 employees to clock back in to work. Defendants did not pay them for this time and such wait
7 times reduced their meal periods to less than 30 minutes.

8 32. Defendants failed to provide Velez and the Class Members with a second
9 uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday.
10 Velez worked in excess of 10 hours in a workday on multiple occasions but only received one
11 second daily meal period while employed by Defendants.

12 33. Defendants routinely denied Velez and the other Class Members an
13 uninterrupted timely second rest period. On average, Defendants instructed its supervisors to
14 permit Velez and the Class Members to take a second rest break on only one workday per week.
15 Defendants did not provide Velez and the Class Members with a third rest period after the tenth
16 hour of work as required by law. Although Velez worked more than ten hours in a workday on
17 multiple occasions, during the course of her employment with Defendants, Velez never received
18 a timely duty-free third rest period.

19 34. Defendants required Velez and the other Class Members to work in excess of
20 eight (8) hours in one workday and forty (40) hours in one workweek without compensating
21 them for such time worked at the overtime rates required by California law. Velez and the Class
22 Members incurred uncompensated overtime when Defendants failed to provide them with an
23 uninterrupted 30-minute meal period and when Defendants required them to wait in lines to
24 clock in for work.

25 35. For the reasons stated herein, Plaintiff alleges the following violations of the
26 California Labor Code and the Wage Order 8 on behalf of herself and the Class Members:

27 a) Defendants failed to provide Plaintiff and the Class Members with all rest
28 breaks and meal periods;

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

c) Defendants failed to pay Plaintiff and the Class Members one hour's pay



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1 for each workday in which they failed to provide them with one or more meal periods;

2 d) Defendants failed to pay Plaintiff and the Class Members minimum
3 wages for all hours worked;

4 e) Defendants failed to pay Plaintiff and the Class Members overtime wages
5 for all overtime hours worked, including doubletime for work over twelve hours;

6 f) Defendants failed to provide Plaintiff and the Class Members with
7 accurate wage statements; and

8 g) Defendants willfully failed to maintain accurate employment records
9 regarding Plaintiff and the Class Members.

10 36. Kenneth Catchot owned or otherwise controlled the other Defendants mentioned
11 herein, pursuant to Lab. Code §558.1 (b). As such, Catchot employed Plaintiff and the Class
12 Members, and at all relevant times functioned as “owner,” “managing agent,” and “officer” of
13 Defendants. Catchot directly or indirectly, employed and exercised control over the wages,
14 hours, or working conditions of Plaintiff and the Class Members and caused the Labor Code and
15 Wage Order violations described above. Catchot is a Managing Member of GH Foods CA LLC
16 and his name appears on some of Plaintiff’s wage statements.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST BREAKS**

19 **(Lab. Code §§ 226.7 and 1198)**

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

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

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

25 39. Labor Code § 1198 states,

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

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



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Rest Periods:

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

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

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

42. 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.

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

44. Defendants failed to provide Plaintiff with all required rest breaks in accordance



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

5 45. Due to their workload, Defendants often did not provide Plaintiff and Class
6 Members with all their duty-free rest breaks.

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

27 51. Labor Code § 1198 states,

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



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1 52. In relevant part, Labor Code Section 512 states

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

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

15 Meal Periods:

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

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

28 (C) Unless the employee is relieved of all duty during a 30
minute meal period, the meal period shall be considered an “on
duty” meal period and counted as time worked. An “on duty”
meal period shall be permitted only when the nature of the work
prevents an employee from being relieved of all duty and when by
written agreement between the parties an on-the job paid meal
period is agreed to. The written agreement shall state that the
employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period
in accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the



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

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

55. During the relevant time period, Defendants failed to provide Plaintiff with all required meal periods in accordance with California Labor Code § 512 and the Wage Order, including, but not limited to, a second 30-minute uninterrupted meal periods on workdays the employee worked more than ten hours in a workday. 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 the Class Members with all meal periods required by California Labor Code § 512 and the Wage Order, including, but not limited to, a second 30-minute uninterrupted meal period on workdays they worked more than ten hours in a workday.

56. Due to their workload, Defendants often did not provide Plaintiff and the Class Members with all their duty-free meal periods. Defendants required Plaintiff and the Class Members to stop their lunch break early to stand in line to clock back in to work. This resulted in interrupted and on-duty meal periods.

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

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

59. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to



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1 California Labor Code § 226.7.

2 **THIRD CAUSE OF ACTION**

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

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

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

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

7 61. At all relevant times, Plaintiff and the Class Members have been employees of
8 Defendants and entitled to the benefits and protections of the California Labor Code sections
9 510, 1194, 1197, and 1198 and the Wage Order.

10 62. Section 3 of the applicable Wage Order states:

11 (A) Daily Overtime - General Provisions

12 (1) The following overtime provisions are applicable to employees 18
13 years of age or over and to employees 16 or 17 years of age who are not
14 required by law to attend school and are not otherwise prohibited by law
15 from engaging in the subject work. Such employees shall not be
16 employed more than eight (8) hours in any workday or more than 40
17 hours in any workweek unless the employee receives one and one-half (1
18 1/2) times such employee's regular rate of pay for all hours worked over
19 40 hours in the workweek. Eight (8) hours of labor constitutes a day's
20 work. Employment beyond eight (8) hours in any workday or more than
21 six (6) days in any workweek is permissible under the following
22 conditions:

23 (2) MANDATORY DAY OFF REQUIREMENT: An employee may
24 work up to a maximum of 72 hours in any workweek after which the
25 employee shall have a 24-hour period off duty...

26 63. Labor Code section 510 states:

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



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to be paid to an employee for any hour of overtime work.

64. Labor Code section 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.

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

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

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

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

69. Defendants compensated Plaintiff and the Class Members with an hourly rate of pay on a bi-weekly basis. .

70. Defendants further deducted at least 30 minutes from Plaintiff and the Class Members’ hours worked in a workday even if they could not take their duty-free meal periods. Defendants also failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay. Defendants compensated Plaintiff and the Class Members fewer overtime hours than they actually worked.

71. 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 the Class Members for all hours worked as required by California law, including, but not limited to overtime wages for all overtime hours they worked.

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

73. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class



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Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

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

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

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

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

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

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



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

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

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

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

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

14 81. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
15 all wages owed, including but not limited to, minimum and overtime wages and all premium
16 wages for unprovided rest and/or meal periods. As a result, Defendants have failed to properly
17 and accurately itemize each employee’s gross wages earned, net wages earned, the total hours
18 worked, the corresponding number of hours worked by employees and other requirements of
19 California Labor Code § 226. As a result, Defendants have violated California Labor Code §
20 226.

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

25 83. As a result of being provided with inaccurate wage statements by Defendants,
26 Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate
27 wage statements were violated and they were misled about the amount of wages they had
28 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



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1 submission of inaccurate information about wages to state and federal government agencies.
2 Further, Plaintiff and the Class Members were not able to ascertain from the wage statements
3 whether Defendants complied with their obligations under California Labor Code § 226(a).

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

10 **FIFTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(Lab. Code §§ 201-203)**

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

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

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

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

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

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

27 90. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
28 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.



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1 91. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
2 herself and the Class Members, in amounts subject to proof not to exceed 30 days of waiting
3 time penalties for each class member.

4 **SIXTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

26 97. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
27 connection with their unfair competition claims pursuant to California Code of Civil Procedure
28 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

99. 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.

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

101. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

102. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on



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1 behalf of themselves and other current or former employees, to bring a civil action to recover
2 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

3 103. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
4 entitled to recover civil penalties for each of the Defendants' violations of California Labor
5 Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198 during the
6 applicable limitations period in the following amounts:

7 A. For violations of California Labor Code § 204, one hundred dollars
8 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
9 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
10 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
11 violation (penalty amounts established by California Labor Code § 210).

12 B. For violations of California Labor Code § 221, one hundred dollars
13 (\$100) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200)
14 for each Aggrieved Employee for each subsequent violation, or any willful or intentional
15 violation (penalty amounts established by California Labor Code § 225.5).

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

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for
22 each aggrieved employee for each subsequent violation, per pay period in addition to an amount
23 sufficient to recover underpaid wages (penalty amounts established by California Labor Code §
24 558).

25 E. For violations of California Labor Code § 1197, one hundred dollars
26 (\$100.00) for each aggrieved employee for each initial and intentional violation and two
27 hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per
28 pay period (regardless of whether the initial violations were intentionally committed), in
addition to an amount sufficient to recover unpaid wages (penalty amounts established by
California Labor Code § 1197.1).

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



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1 and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each
2 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
3 for each subsequent violation (penalty amounts established by California Labor Code §
4 2699(f)(2)).

5 104. Plaintiff has complied with the procedures for bringing suit specified in
6 California Labor Code § 2699.3. By letter dated December 14, 2018, Plaintiff filed written
7 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written
8 notice by certified mail to Defendants of the specific provisions of the California Labor Code
9 alleged to have been violated, including the facts and theories to support the alleged violations.
10 A true and correct copy of the notice to the LWDA dated December 14, 2018 is attached as
11 **Exhibit A**. Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The
12 LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s
13 notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing
14 her that it does not intend to investigate these allegations.

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

18 **PRAYER FOR RELIEF**

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

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

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

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

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

26 E. Premium wages;

27 F. Statutory penalties;

28 G. Civil penalties;

H. Declaratory relief;

I. Actual damages;

J. Restitution;



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

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 19, 2019

By 

DAVID SPIVAK, Attorney for Plaintiff,
MARIA VELEZ, and all others similarly
situated



SPIVAK LAW

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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 14, 2018

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

RE: *Maria Velez / Renaissance Food Group, LLC et al.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Maria Velez (hereafter “Velez”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to production leads, production workers, quality control technicians, maintenance technicians, machine operators, and similarly situated employees (hereafter “Aggrieved Employees”) by Renaissance Food Group, LLC, a Delaware limited liability company, GH Foods CA LLC, a California limited liability company, Kenneth J. Catchot, an individual, and Calavo Growers, Inc., a California corporation (hereafter collectively “RFG”) of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

At all relevant times, RFG has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Velez and the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage Order”), paragraph 2.E, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

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Statement of Facts

RFG hired Velez as a full time hourly employee on or about September 25, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its processing facility in Riverside, California. RFG continuously employed Velez in California from approximately September 25, 2017 to February 23, 2018, when her employment terminated.

RFG compensated Velez and the Aggrieved Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Velez started her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve hours in a day. On a day to day basis, Velez and the other Aggrieved Employees did not know when their shifts would end. Supervisors assigned Velez and the Aggrieved Employees the work that needed to be completed for the day and their work shifts ended upon completion of their assignments.

Until January of 2018, when Velez and the Aggrieved Employees returned from meal breaks, RFG regularly required them to wait in a line of fifteen to twenty (15-20) other employees to clock back in to work. RFG did not pay them for this time and such wait times reduced their meal periods to less than 30 minutes.

RFG failed to provide Velez and the Aggrieved Employees with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday. Velez worked in excess of 10 hours in a workday on multiple occasions. RFG failed to provide all but one second daily meal period.

RFG routinely denied Velez and the other Aggrieved Employees an uninterrupted timely second rest period. On average, RFG instructed its supervisors to permit Velez and the Aggrieved Employees to take a second rest break on only one workday per week. RFG did not provide Velez and the Aggrieved Employees with a third rest period after the tenth hour of work as required by law. Although Velez worked more than ten hours in a workday on

multiple occasions, during the course of her employment at RFG, Velez never received a timely duty-free third rest period.

RFG required Velez and the other Aggrieved Employees to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating them for such time worked at the overtime rates required by California law. RFG failed to pay one and one half times (1 ½ x) the hourly rates of pay of Velez and the Aggrieved Employees by reducing their recorded work hours by 30 minutes and by failing to pay for times waiting in line to clock in to work.

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

- a) RFG failed to compensate Velez and the Aggrieved Employees all their wages earned, including but not limited to, minimum and overtime wages;
- b) RFG unlawfully deducted the wages Velez and the Aggrieved Employees earned, including but not limited to, minimum and overtime wages;
- c) RFG failed to provide Velez and the Aggrieved Employees with all meal periods required by law;
- d) RFG failed to provide Velez and the other Aggrieved Employees with rest breaks as required by law;
- e) RFG failed to compensate Velez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more meal periods in a workday;

- f) RFG failed to compensate Velez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more rest periods in a workday;
- g) RFG failed to provide Velez and the other Aggrieved Employees with accurate and complete wage statements; and
- h) RFG willfully and knowingly failed to pay Velez and the Aggrieved Employees during, and upon termination of, employment, all accrued compensation, including compensation for missed meal periods and work off the clock.

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

Wage Order 8

Wage Order 8 applies to "all persons employed in the industries handling products **after harvest** whether paid on a time, piece rate, commission, or other basis." (emphasis added). At all relevant times during the applicable limitations period, Velez was employed by RFG as a production lead. Accordingly, Velez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked **(Lab. Code §§ 510, 558.1, 1194, 1197, and 1198)**

At all relevant times, Velez and the other Aggrieved Employees have been non-exempt employees of RFG and entitled to the benefits and protections of California Labor Code sections 510, 558.1, 1194, 1197, 1198, and the Wage Order.

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

Section 3 of the Wage Order states:

(1) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: Such employees shall not be employed more than eight (8) hours in any one 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. ...

...

(3) Overtime hours shall be compensated at:

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

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

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

knowledge that employees are working.

Labor Code section 510 states:

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

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

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

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, §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 herein, RFG employed Catchot as a Manager and Catchot acted as an “owner,” “managing agent,” and “officer.” Catchot directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, or working conditions of Velez and the other Aggrieved Employees and caused the violations to the Labor Code and the Wage Order described above.

In conjunction, these 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 unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

At all relevant times during the applicable limitations period, as described above, RFG knowingly failed to compensate Velez and the Aggrieved Employees for all hours worked, including, but not limited to minimum and overtime wages for all hours in excess of 40 in a week and all in excess of eight in a day.

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

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to

recover underpaid wages (penalties set by California Labor Code § 558);

2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code section 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

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

RFG illegally and arbitrarily deducts several minutes from the records of Velez and the other Aggrieved Employees of their daily time worked and reports less hours than their actual hours worked on their wage statements. As a result,

RFG collected and received part of Velez' and the other Aggrieved Employees' wages in violation of California Labor Code § 221.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

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, Section 12 of the Wage Order states:

Rest Periods:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees

whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

In relevant part, California Labor Code § 512 states:

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

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

Meal Periods:

(A) No employer shall employ any person for a work period of not 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 employer and employee.

(B) An employer may not employ and 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 the

employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

California Labor Code § 226.7 states:

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

RFG has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Velez and the other Aggrieved Employees as required by law. As a result, RFG violated California Labor Code §§ 226.7, 512 and 1198.

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

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1198 occurred (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,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,

- 7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, RFG failed to provide Velez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and unpaid wages for uncompensated work such as standing in lines to clock in to work. As a result, RFG failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, RFG has violated California Labor Code § 226.

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

Failures to Timely Pay Wages During Employment
(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.

As alleged herein, RFG failed to provide Velez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided. RFG failed to compensate Velez and the Aggrieved Employees for all hours worked on workdays it modified their time records to falsely state that 30-minute uninterrupted meal periods took place in compliance with California laws. RFG failed to pay Velez and the other Aggrieved Employees for time spent waiting in line to clock in to work. As a result, RFG failed to timely pay Velez and the other Aggrieved Employees all earned minimum, overtime, and premium wages within the time periods set by California Labor Code § 204. As a result, RFG has violated California Labor Code § 204.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

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

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

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

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

RFG failed to provide Velez and the Aggrieved Employees with meal and rest periods in compliance with California laws. They also failed to provide Velez and the other Aggrieved Employees with premium wages on workdays they failed to make one or more meal or rest periods available. RFG failed to compensate Velez and the other Aggrieved Employees for all hours worked on days they modified their time records to falsely state that meal and rest periods took place in compliance with California laws. RFG failed to pay Velez and the other Aggrieved Employees for time spent waiting in line to clock in after a meal period. By willfully failing to pay wages to Velez and the other Aggrieved Employees as set forth above, at the time of termination of employment, RFG is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the other Aggrieved Employees, Velez seeks civil penalties from RFG 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));

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///

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)).

Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Maria Velez

///

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///

Renaissance Food Group, LLC
c/o James S. Catchot
Agent for Service of Process
11020 White Rock Rd., Ste. 100
Rancho Cordova, CA 95670

Calavo Growers, Inc.
c/o James Snyder, CAO
1141A Cummings Road
Santa Paula, CA 93060

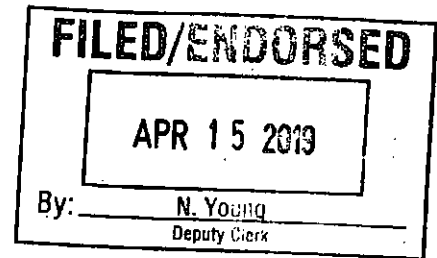
Calavo Growers, Inc.
c/o National Registered Agents, Inc. (C1941323),
Agent for Service of Process
111 Eighth Ave. 13th Floor
New York, NY 10011

GH Foods CA, LLC
c/o James E. Gibson
Agent for Service of Process
14559 Guadalupe Drive
Rancho Murieta, CA 95683

Kenneth J. Catchot
14151 Indio Drive
Sloughhouse, CA 95683

EXHIBIT 5

JL SEAN SLATTERY (SBN: 210965)
DAVID P. HALL (SBN: 196891)
TIMOTHY E. CAMPEN (SBN: 197941)
CARLSBAD LAW GROUP, LLP
5050 Avenida Encinas, Suite 300
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(858) 793-6005 – Facsimile



Attorneys for Defendant: G&M Hire Enterprises, LLC
d/b/a AtWork Personnel Services

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

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

Plaintiffs,

vs.

RENAISSANCE FOOD GROUP, LLC, a
Delaware limited liability company; GH
FOODS CA LLC, a California limited
liability company; KENNETH J.
CATCHOT, an individual; CALAVO
GROWERS, INC., a California corporation;
G&M HIRE ENTERPRISES, LLC doing
business as ATWORK PERSONNEL
SERVICES; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 34-2019-00250841

**DEFENDANT G&M HIRE ENTERPRISES,
LLC'S ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendant G&M HIRE ENTERPRISES, LLC, a California limited liability company doing
business as ATWORK PERSONNEL SERVICES (hereinafter "Defendant") in answer to the
unverified Complaint of plaintiff MARIA VELEZ ("Plaintiff") denies and alleges as follows:

///

1 **GENERAL DENIAL**

2 1. Pursuant to Section 431.30 of the Code of Civil Procedure, Defendant denies generally
3 and specifically each and every allegation in the Complaint, and the whole thereof; and specifically
4 denies that Plaintiff and the purported classes were damaged in any amount by reason of any act of
5 omission on the part of Defendant.

6 2. Further answering the Complaint, Defendant denies that Plaintiff and the purported
7 classes sustained, or will sustain, any injury, damage or loss by reason of any act, omission, breach,
8 negligence or any other conduct or the absence thereof, on the part of this Defendant, or any agent,
9 servant or employee of this Defendant, and deny that Defendant was negligent, careless, reckless,
10 breached any obligation or are liable for any alleged wrongful act or omission whatsoever.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure to State Cause of Action)**

13 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
14 alleges that the Complaint fails to state facts sufficient to constitute a cause of action as to Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Statute of Limitations)**

17 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant allege
18 that the Complaint is barred by the applicable statute of limitations, including, but not limited to
19 California Code of Civil Procedures sections 335.1, 338(a), 339(1) and 340(a) as well as Business &
20 Professions Code section 17208.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Laches)**

23 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
24 alleges that Plaintiff's claims are barred in whole or in part due to the unreasonable delay in notifying
25 this Defendant of the alleged actionable wrongs and by reason of the unreasonable delay in seeking
26 recovery requested herein, which delays have resulted in prejudice to Defendant.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Waiver/Estoppel/Consent)**

3 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
4 alleges that Plaintiff and the purported classes were responsible for and/or directed the acts, omissions
5 and transactions alleged in the Complaint; and otherwise knowingly and voluntarily consented to and
6 approved the acts, omissions, and transactions alleged in the Complaint about which Plaintiff now
7 complains. By virtue of the foregoing, Plaintiff's claims are barred under the doctrines of waiver,
8 estoppel and/or consent.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Lack of Standing)**

11 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
12 alleges that Plaintiff lacks standing to maintain some or all of the purported classes in this lawsuit.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Labor Code Section 203)**

15 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
16 alleges that Plaintiff and the purported classes absented themselves to avoid payment of wages and/or
17 refused to receive the payment fully tendered, thereby relieving this Defendant of liability for waiting
18 time penalties under Labor Code section 203.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 **(Justification)**

21 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
22 alleges that all acts and omissions alleged in the Complaint performed or omitted to be performed by
23 Defendant were legally, equitably and factually justified under the circumstances then prevailing.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Failure to Mitigate Damages)**

26 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
27 alleges that Plaintiff and the purported classes are not entitled to recover any alleged damage in any
28 sum whatsoever because Plaintiff and the purported classes have failed to mitigate any such damage.

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Violation of U.S. and California Constitution)**

3 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
4 alleges that any award of penalties against this Defendant would be in violation of its rights under the
5 United States and California Constitution, would constitute cruel and unusual punishment, be in
6 violation of due process, and constitute an illegal double jeopardy and is thereby barred.

7 **TENTH AFFIRMATIVE DEFENSE**

8 **(Good Faith and Reasonable Conduct)**

9 As a distinct and separate affirmative defense to the Complaint on file herein,
10 Defendant alleges that their acts and omissions, as alleged in the Complaint, were reasonable and that
11 Plaintiff and the proposed classes were treated fairly and in good faith, and that all actions taken to
12 them were taken for lawful business reasons and in good faith.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 **(Unclean Hands)**

15 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
16 alleges that Plaintiff's claims, and any relief sought thereby, are barred as Plaintiff has unclean hands
17 in and about the matters alleged in the Complaint.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 **(No Damages)**

20 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
21 alleges that Plaintiff and the purported classes have suffered no damage as a result of the conduct and
22 transactions alleged in the Complaint.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 **(Administrative Remedies)**

25 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
26 alleges that Plaintiff and the purported classes are barred by failure to exhaust their notice and
27 administrative remedies.

28 ///

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Compensation)**

3 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
4 alleges that Plaintiff and the purported classes were paid all compensation when due.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 **(Consent)**

7 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
8 alleges that Plaintiff and the purported classes consented to all acts which were done by this Defendant.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 **(Failure to State Sufficient Facts for Damages)**

11 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
12 alleges that Plaintiff and the purported classes fail to state sufficient facts upon which a basis for
13 penalties against this Defendant exists.

14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 **(Independent Contractor)**

16 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
17 alleges that Plaintiff and the purported classes were independent contractors and Defendants are
18 therefore not subject to any of the wage payment provisions or penalties set forth in Labor Code
19 Section 200 et seq.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 **(Failure to Comply With Notice)**

22 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
23 alleges upon information and belief, Plaintiff failed to comply with the requirements under California
24 Labor Code section 2699.3.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 **(Exclusive Remedy)**

27 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
28 alleges that the Workers' Compensation Act, California Labor Code § 3200 *et seq.*, may provide the

1 exclusive remedy for injuries claimed by Plaintiff and the purported classes.

2 **TWENTIETH AFFIRMATIVE DEFENSE**

3 **(Exercise of Management Discretion)**

4 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
5 alleges that they engaged in the just and proper exercise of management discretion in dealing with
6 Plaintiff and the purported classes.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 **(Improper Class Representatives)**

9 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
10 alleges that the Plaintiff may not proceed as a representative of a class because she is unable to satisfy
11 the requirements for class certification, including those set forth in California Code of Civil Procedure
12 § 382.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 **(Lack of Standing)**

15 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
16 alleges that Plaintiff and some or all of the purported classes lack standing to bring this action.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 **(Failure to State Facts Sufficient to State a Claim for Declaratory Relief)**

19 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant allege
20 that Plaintiff has failed to allege facts sufficient to state a claim for declaratory relief and/or Plaintiff
21 has an adequate remedy at law.

22 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

23 **(Misjoinder of Parties)**

24 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
25 alleges that the allegations of the Complaint constitute a misjoinder of parties to the extent Plaintiff
26 seeks to proceed against unnamed defendants in their individual or personal capacities.

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1 **TWENTH-FIFTH AFFIRMATIVE DEFENSE**

2 **(Improperly Claimed Time)**

3 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
4 alleges that some or all of the time for which Plaintiff and the purported classes claim compensation
5 is not work time for which compensation was due.

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

7 **(Voluntary Action)**

8 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
9 alleges that Plaintiff and the purported classes were provided with meal breaks and rest breaks and
10 Plaintiff and the purported classes voluntarily chose not to take them.

11 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

12 **(Doctrine of Avoidable Consequences)**

13 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
14 alleges that each purported cause of action in the Complaint, or some of the causes of action, are
15 barred, or recovery should be reduced, pursuant to the doctrine of avoidable consequences.

16 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

17 **(Good Faith Belief in Lawfulness)**

18 As a distinct and separate affirmative defense to the Complaint on file herein, Defendant
19 alleges that the Complaint and each cause of action set forth therein cannot be maintained because,
20 without admitting that any violation took place, Defendants allege that any violation of the California
21 Labor Code or of a Wage Order of the Industrial Welfare Commission was an act or omission made
22 in good faith, and that in any participation in such acts, Defendants had reasonable grounds for
23 believing that the act or omission was not a violation of the California Labor Code or of a Wage Order
24 of the Industrial Welfare Commission.

25 **TWENTY-NINETH AFFIRMATIVE DEFENSE**

26 **(Reservation of Additional Affirmative Defenses)**

27 Defendant's discovery and investigation in this matter is ongoing. Accordingly, Defendant
28 reserves the right to modify or supplement its affirmative defenses and allegations as appropriate.

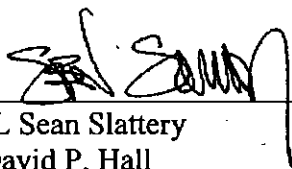
1 Defendant's assertion of any affirmative defense shall not be construed as a concession as to whether
2 or not it bears the burden of proof of any particular issue.

3 WHEREFORE, Defendant pray for judgment as follows:

- 4 1. That Plaintiff and these purported classes take nothing by this suit;
- 5 2. That the Complaint be dismissed in its entirety;
- 6 3. That judgment be entered in favor of Defendant;
- 7 4. That Defendant be awarded the costs of suit, including Defendant's reasonable
8 attorneys' fees; and
- 9 5. That Defendant be awarded such other and further relief as the Court may deem just
10 and proper.

11 Dated: April 15, 2019

CARLSBAD LAW GROUP, LLP

12
13 By: 

JL Sean Slattery

David P. Hall

Timothy E. Campen

Attorneys for Defendant: G&M Hire Enterprises,
LLC d/b/a AtWork Personnel Services

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SACRAMENTO	COURT USE ONLY
<u>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):</u> JL Sean Slattery (SBN: 210965) David P. Hall (SBN: 196891) Timothy E. Campen (SBN: 197941) Tel: (858) 793-6244 CARLSBAD LAW GROUP, LLP Fax (858) 793-6005 5050 Avenida Encinas, Suite 300 Carlsbad, California 92008	
<u>SHORT CASE TITLE</u> Maria Velez v. Renaissance Food Group, LLC, et al.	DEPT: 32
<u>ATTORNEYS FOR DEFENDANT</u> G&M Hire Enterprises, LLC dba AtWork Personnel Services	Case No. 34-2019-00250841

PROOF OF SERVICE

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, and that I am not a party to the subject cause. My business address is 5050 Avenida Encinas, Suite 300, Carlsbad, California 92008.

On April 15, 2019, I served the following document(s):

1. **DEFENDANT G&M HIRE ENTERPRISES, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT;**
2. **DEFENDANT G&M HIRE ENTERPRISES, LLC'S CROSS-COMPLAINT;**
- AND
3. **SUMMONS (CROSS-COMPLAINT)**

on interested parties in this action as follows:-

David Spivak, Esq.
 THE SPIVAK LAW FIRM
 16530 Ventura Blvd., Suite 312
 Encino, California 91436
 (818) 582-3086 - Telephone
 (818) 582-2561 - Facsimile
 david@spivaklaw.com

Attorneys for Plaintiff: Maria Velez

() **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.** I am familiar with this firm's practice of collection and processing correspondence for certified mailing, return receipt requested with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §877.6.

- 1 (X) **BY MAIL.** I am familiar with this firm's practice of collection and processing
2 correspondence for mailing with the United States Postal Service, and that the
3 correspondence shall be deposited with the United States Postal Service this same day in
4 the ordinary course of business pursuant to Code of Civil Procedure §1013a.
- 5 () **BY FAX.** In addition to service by mail as set forth above, a copy of said document(s)
6 were also delivered by facsimile transmission to the addressee pursuant to Code of Civil
7 Procedure §1013(e).
- 8 () **BY PERSONAL SERVICE.** I hand-delivered said document(s) to the addressee
9 pursuant to Code of Civil Procedure §1011.
- 10 () **BY PERSONAL SERVICE.** I caused each such envelope to be given to a courier
11 messenger who personally delivered each such envelope to the office or residence of the
12 address.
- 13 () **BY FEDERAL EXPRESS.** I deposited said document(s) in a box or other facility
14 regularly maintained by the express service carrier providing overnight delivery pursuant
15 to Code of Civil Procedure §1013(c).
- 16 () **BY EMAIL.** I emailed the document(s) listed above to the E-mail address(es) set forth
17 above on this date before 5:00 p.m.

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

20 Executed on April 15, 2019

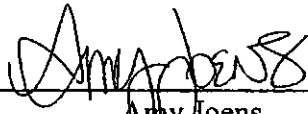
21 
22 _____
23 Amy Joens

EXHIBIT 6

1 JL SEAN SLATTERY (SBN: 210965)
2 DAVID P. HALL (SBN: 196891)
3 TIMOTHY E. CAMPEN (SBN: 197941)
4 CARLSBAD LAW GROUP, LLP
5 5050 Avenida Encinas, Suite 300
6 Carlsbad, California 92008
7 (858) 793-6244 – Telephone
8 (858) 793-6005 – Facsimile

9 Attorneys for Defendant: G&M Hire Enterprises, LLC
10 d/b/a AtWork Personnel Services

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

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

Plaintiffs,

vs.

RENAISSANCE FOOD GROUP, LLC, a
Delaware limited liability company; GH
FOODS CA LLC, a California limited
liability company; KENNETH J.
CATCHOT, an individual; CALAVO
GROWERS, INC., a California corporation;
G&M HIRE ENTERPRISES, LLC doing
business as ATWORK PERSONNEL
SERVICES; and DOES 1 through 50,
inclusive,

Defendants.

G&M HIRE ENTERPRISES, LLC doing
business as ATWORK PERSONNEL
SERVICES.

FILED/ENDORSED

APR 15 2019

By: N. Young
Deputy Clerk

CASE NO. 34-2019-00250841

**DEFENDANT G&M HIRE ENTERPRISES,
LLC'S CROSS-COMPLAINT FOR:**

- 1. IMPLIED EQUITABLE INDEMNITY;**
- 2. EQUITABLE INDEMNITY; AND**
- 3. DECLARATORY RELIEF**

1 Cross-Complainant,
2 vs.

3 RENAISSANCE FOOD GROUP, LLC, a
4 Delaware limited liability company; GH
5 FOODS CA LLC, a California limited
6 liability company; KENNETH J.
7 CATCHOT, an individual; CALAVO
8 GROWERS, INC., a California corporation;
9 and ROES 1 through 50, inclusive,

10 Cross-Defendants.

11 Cross-Complainant, G&M HIRE ENTERPRISES, LLC, a California limited liability
12 company doing business as ATWORK PERSONNEL SERVICES, for causes of action against
13 Cross-Defendants, RENAISSANCE FOOD GROUP, LLC, a Delaware limited liability company;
14 GH FOODS CA LLC, a California limited liability company; KENNETH J. CATCHOT, an
15 individual; CALAVO GROWERS, INC., a California corporation; and ROES 1 through 50,
16 inclusive, alleges as follows:

17 1. At all times mentioned herein, G&M HIRE ENTERPRISES, LLC, a California
18 limited liability company doing business as ATWORK PERSONNEL SERVICES (hereinafter
19 "Cross-Complainant") was a California limited liability company.

20 2. At all times mentioned herein, Cross-Defendant, RENAISSANCE FOOD GROUP,
21 LLC, was a Delaware limited liability company.

22 3. At all times mentioned herein, Cross-Defendant, GH FOODS CA, LLC, was a
23 California limited liability company.

24 4. At all times mentioned herein, Cross-Defendant, KENNETH J. CATCHOT, was an
25 individual.

26 5. At all times mentioned herein, Cross-Defendant, CALVO GROWERS, INC., was a
27 California corporation.

28 6. The true names and capacities of Cross-Defendant Roes 1 through 50, inclusive, are
unknown to Cross-Complainant, who therefore sues said Cross-Defendants and each of them, by such
fictitious names. Cross-Complainant will seek leave of court to amend this Cross-Complaint to insert

1 the true names and capacities of fictitiously named Cross-Defendants when the same have been
2 ascertained. Cross-Complainant is informed and believes and based thereon alleges that each Cross-
3 Defendant herein designated as a "ROE" is legally responsible in some manner for the acts,
4 occurrences, damages, and liabilities hereinafter alleged, and actively and passively caused and
5 contributed to the various damages referred to herein.

6 7. Cross-Complainant is informed and believes and based thereon alleges that at all times
7 herein mentioned, each Cross-Defendant designated herein is or was the agent, partner, employee, co-
8 developer, joint venturer, subcontractor, consultant, and/or supplier of each of the remaining Cross-
9 Defendants and was at all times herein mentioned, acting within the course and scope of said agency
10 and employment.

11 8. On or about February 19, 2019 an action entitled Class Action Complaint For: 1.
12 Failure to Provide Rest Breaks (Labor. Code §§ 226.7 and 1198); 2. Failure to Provide Meal Periods
13 (Labor Code §§ 226.7, 512 and 1198); 3. Failure to Pay All Wages Earned for All Hours Worked
14 (Labor Code §§ 510, 1194, 1197, and 1198); 4. Failure to Provide Accurate Written Wage Statements
15 (Labor Code §§ 226); 5. Wage Statement Penalties (Labor Code § 226) and Waiting Time Penalties
16 (Labor Code § 201-203); 6. Unfair Competition (Business & Professions Code §§ 17200, *et seq.*); and
17 7. Civil Penalties (Labor Code §§ 2698, *et seq.*) with Case Number 34-2019-00250841 was filed in
18 the Superior Court for the County of Sacramento (the "Complaint"), alleging that Cross-Complainant
19 was liable to Plaintiff for damages and injuries arising from the allegations set forth in Plaintiff's
20 Complaint. Cross-Complainant incorporates herein by reference, the contents of the Complaint,
21 without admitting the allegations contained thereof, the truth of which is expressly denied. The
22 Complaint alleges that Plaintiff and the Class Members have been damaged and suffered injuries as a
23 result of violations of the California Labor Code and unfair competition pursuant to California
24 Business and Professions Code.

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1 **FIRST CAUSE OF ACTION**

2 **Implied Equitable Indemnity**

3 **(As Against all Cross-Defendants)**

4 9. Cross-Complainant refers to, and incorporates by reference, the allegations of
5 Paragraphs 1 through 8 of this Cross-Complaint, as though fully set forth herein.

6 10. Cross-Complainant is informed and believes, and based thereon alleges, that it is in no
7 way responsible for the damages alleged in Plaintiff's Complaint. However, if Cross-Complainant is
8 found responsible under the law for any of the allegations contained in Plaintiff's Complaint, then
9 Cross-Complainant is informed and believes, and based thereon alleges, that the conduct, in whole or
10 in part, of the Cross-Defendants, and each of them, contributed to the happening of the acts alleged in
11 Plaintiff's Complaint on file herein.

12 **SECOND CAUSE OF ACTION**

13 **Equitable Indemnity**

14 **(As Against all Cross-Defendants.)**

15 11. Cross-Complainant refers to, and incorporates by reference, the allegations of
16 Paragraphs 1 through 10 of this Cross-Complaint, as though fully set forth herein.

17 12. Cross-Complainant is informed and believes, and based thereon alleges, that they are
18 in no way responsible for the damages alleged in Plaintiff's Complaint. However, if Cross-
19 Complainant is found responsible under the law for any of the allegations contained in Plaintiff's
20 Complaint, then Cross-Complainant is informed and believes, and based thereon alleges, that the
21 conduct, in whole or in part, of the Cross-Defendants, and each of them, contributed to the happening
22 of the acts alleged in Plaintiff's Complaint on file herein.

23 13. By reason of the foregoing allegations, if Plaintiff recovers judgment against Cross-
24 Complainant, then Cross-Complainant is entitled to a judgment, over and against the Cross-
25 Defendants herein, and each of them, for their fair share of Plaintiff's Judgment.

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1 **THIRD CAUSE OF ACTION**

2 **Declaratory Relief**

3 *(As Against all Cross-Defendants)*

4 14. Cross-Complainant refers to, and incorporates by reference, the allegations of
5 Paragraphs 1 through 12 of this Cross-Complaint, as though fully set forth herein.

6 15. A dispute has arisen and an actual controversy now exists between Cross-Complainant
7 and Cross-Defendants, and each of them, concerning their respective rights and duties, in that Cross-
8 Complainant contends that it is entitled to indemnity from Cross-Defendants, and each of them, by
9 virtue of the theory of implied equitable indemnity, and the theory of equitable indemnity. Cross-
10 Complainant is informed and believes, and based thereon alleges that Cross-Defendants, and each of
11 them, oppose and deny the above contentions and contend that Cross-Complainant is not entitled to
12 indemnity or contribution from any Cross-Defendant herein.

13 16. A declaration of rights is necessary and appropriate at this time so that Cross-
14 Complainant may ascertain its rights and duties, because no adequate remedy, other than as prayed
15 for, exists by which the rights of the parties may be determined.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Cross-Defendant prays for relief as follows:

18 **FIRST CAUSE OF ACTION:**

19 17. For a declaration of this Court that Cross-Defendants, and each of them, are obligated
20 to indemnify and hold Cross-Complainant harmless against any judgment which Plaintiff may recover
21 against Cross-Complainant in this action;

22 18. For a judgment against Cross-Defendants, and each of them, in such amount as Plaintiff
23 may recover against Cross-Complainant in this action;

24 **SECOND CAUSE OF ACTION:**

25 19. For a declaration of this Court that Cross-Defendants, and each of them, are obligated
26 to indemnify and hold Cross-Complainant harmless against any judgment which Plaintiff may recover
27 against Cross-Complainant in this action;

28 20. For a judgment against Cross-Defendants, and each of them, in such amount as

1 Plaintiff may recover against Cross-Complainant in this action;

2 **THIRD CAUSE OF ACTION:**

3 21. For a judgment against Cross-Defendants, and each of them, declaring that Cross-
4 Complainant has no liability as to Plaintiff's Complaint filed in this action, that such liability is instead
5 upon such Cross-Defendants, and each of them, and that any liability of Cross-Complainant arising
6 out of this action must be borne proportionately by such Cross-Defendants based on their respective
7 percentage liability under the Complaint and Cross-Complaints filed in this action;

8 **ALL CAUSES OF ACTION:**

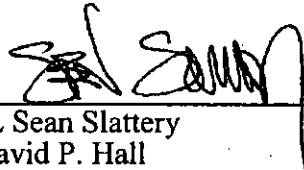
9 22. For attorneys' fees according to proof;

10 23. For costs of suit incurred herein; and

11 24. For such other and further relief as the Court may deem just and proper.

12
13 Dated: April 15, 2019

CARLSBAD LAW GROUP, LLP

14
15 By: 

JL Sean Slattery

David P. Hall

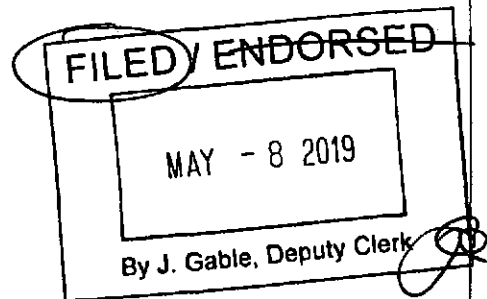
Timothy E. Campen

Attorneys for Defendant: G&M Hire Enterprises,
LLC d/b/a AtWork Personnel Services

EXHIBIT 7

Filed by fax

Alden J. Parker, State Bar No. 196808
Drew M. Tate, State Bar No. 312219
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Attorneys for Defendants
RENAISSANCE FOOD GROUP, LLC;
GH FOODS CA LLC; KENNETH J. CATCHOT;
and CALAVO GROWERS, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

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

Case No.: 34-2019-00250841

*[Assigned for All Purposes to
Hon. Emily E. Vasquez, Department 32]*

Plaintiff,

**STIPULATION TO DISMISS
PLAINTIFF'S INDIVIDUAL AND
CLASS ACTION CLAIMS;
[PROPOSED] ORDER THEREON**

v.

RENAISSANCE FOOD GROUP, LLC, a
Delaware limited liability company; GH
FOODS CA LLC, a California limited
liability company; KENNETH J. CATCHOT,
an individual; CALAVO GROWERS, INC.,
a California corporation; G&M HIRE
ENTERPRISES, LLC doing business as
ATWORK PERSONNEL SERVICES; and
DOES 1 through 50, inclusive,

Complaint Filed: February 19, 2019
Trial Date: None set

Defendants.



**STIPULATION TO DISMISS PLAINTIFF'S INDIVIDUAL AND CLASS ACTION CLAIMS;
[PROPOSED] ORDER THEREON**

1 Plaintiff MARIA VELEZ ("Plaintiff") and Defendants RENAISSANCE FOOD GROUP,
2 LLC, GH FOODS, CA, LLC, KENNETH J. CATCHOT, and CALAVO GROWERS, INC.
3 (collectively "Defendants"), by and through their respective counsel of record, hereby stipulate
4 and agree as follows:

5 WHEREAS, on or about February 19, 2019, Plaintiff filed the above-captioned class
6 action Complaint in the Superior Court of California, County of Sacramento, Case No. 34-2019-
7 00250841 (the "Complaint"), for alleged wage and hour violations against Defendants arising
8 out of her former employment pursuant to the California Labor Code and California Business
9 and Professions Code;

10 WHEREAS, on or about September 25, 2017, Plaintiff executed an Arbitration
11 Agreement (the "Agreement") concerning any and all claims and disputes arising out of her
12 employment with Defendants. A true and correct copy of the Agreement is attached hereto as
13 **Exhibit A**;

14 WHEREAS, Defendants assert that the Agreement, attached hereto as **Exhibit A**,
15 contains a class action waiver;

16 WHEREAS, Defendants assert that the Agreement, attached hereto as **Exhibit A**, is a
17 valid, binding, and enforceable agreement to arbitrate any and all disputes arising out of
18 Plaintiff's former employment;

19 WHEREAS, Defendants assert that the Agreement, attached hereto as **Exhibit A**,
20 encompasses the individual claims alleged by Plaintiff against Defendants, and precludes the
21 litigation of class claims;

22 WHEREAS, the Parties agree and hereby stipulate that Plaintiff will dismiss, without
23 prejudice, all of her individual claims;

24 WHEREAS, the Parties agree and hereby stipulate that Plaintiff will dismiss, without
25 prejudice, all of her class claims;

26 WHEREAS, the Parties agree that this action has not become widely known to the public
27 in general, and that no prejudice will result to the putative class because dismissal of these class
28 ///

1 claims against Defendants are without prejudice, which will not bar any putative class member
2 from filing an individual claim on similar grounds against Defendants;

3 WHEREAS, the Parties agree that upon Court approval of this Stipulation, the class
4 claims in the above-captioned civil action shall be dismissed;

5 WHEREAS, the Parties agree this Stipulation shall in no way be construed as a waiver of
6 any statute of limitation defenses that Defendants may assert;

7 WHEREAS, by signing this Stipulation, counsel of record for both Plaintiff and
8 Defendants represent that they have full authority from their respective clients to enter into this
9 Stipulation on their clients' behalf; and

10 WHEREAS, the Parties agree that this Stipulation may be executed in one or more
11 counterparts, each of which shall be deemed an original and all of which shall constitute one and
12 the same stipulation.

13 IT IS HEREBY STIPULATED, by and between the Parties hereto, by and through their
14 counsel of record, as follows:

15 1. That Plaintiff's class claims against all Defendants shall be dismissed, without
16 prejudice;

17 2. That Plaintiff's individual claims against all Defendants shall be dismissed,
18 without prejudice;

19 3. By signing this Stipulation, counsel of record for both Plaintiff and Defendants
20 represent that they have full authority from their respective clients to enter into this Stipulation
21 on their clients' behalf; and

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28 ///

1 4. That this Stipulation may be executed in one or more counterparts, each of which
2 shall be deemed an original and all of which shall constitute one and the same Stipulation.

3 **IT IS SO STIPULATED.**

4
5 Dated: April 23, 2019

FISHER & PHILLIPS LLP

6
7 By: _____

Alden J. Parker
Drew M. Tate

8
9 Attorneys for Defendants
10 RENAISSANCE FOOD GROUP, LLC;
11 GH FOODS CA LLC; KENNETH J. CATCHOT;
12 and CALAVO GROWERS, INC.

13 Dated: April 23, 2019

14 THE SPIVAK LAW FIRM

15 By: _____

David G. Spivak

16 Attorneys for Plaintiff
17 MARIA VELEZ

18
19 **[PROPOSED] ORDER**

20 Pursuant to the Parties' Stipulation, and good cause having been show, IT IS SO
21 ORDERED THAT:

- 22 1. Plaintiff's class claims are hereby dismissed, without prejudice.
23 2. Plaintiff's individual claims are hereby dismissed, without prejudice.

24 **IT IS SO ORDERED.**

25 Dated: _____, 2019

26 _____
JUDGE OF THE SUPERIOR COURT

1 4. That this Stipulation may be executed in one or more counterparts, each of which
2 shall be deemed an original and all of which shall constitute one and the same Stipulation.

3 **IT IS SO STIPULATED.**

4
5 Dated: April 25, 2019

FISHER & PHILLIPS LLP

6
7 By: _____

Alden J. Parker

Drew M. Tate

8
9 Attorneys for Defendants

RENAISSANCE FOOD GROUP, LLC;

10 GH FOODS CA LLC; KENNETH J. CATCHOT;

11 and CALAVO GROWERS, INC.

12
13 Dated: April 25, 2019

THE SPIVAK LAW FIRM

14
15 By: _____

David G. Spivak

16 Attorneys for Plaintiff

17 MARIA VELEZ

18
19 **[PROPOSED] ORDER**

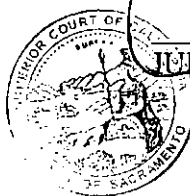
20 Pursuant to the Parties' Stipulation, and good cause having been show, IT IS SO
21 ORDERED THAT:

22 1. Plaintiff's class claims are hereby dismissed, without prejudice.

23 2. Plaintiff's individual claims are hereby dismissed, without prejudice.

24 **IT IS SO ORDERED.**

25 Dated: MAY - 8 2019



JUDGE OF THE SUPERIOR COURT
STEVEN H. RODDA

PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; I am employed with the law offices of Fisher & Phillips LLP and my business address is 621 Capitol Mall, Suite 1400, Sacramento, California, 95814.

On April 29, 2019, I served the foregoing document entitled **STIPULATION TO DISMISS PLAINTIFF'S INDIVIDUAL AND CLASS ACTION CLAIMS; [PROPOSED] ORDER THEREON**, on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

David G. Spivak
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 312
Encino, CA 91436

T: 818.582.3086
F: 818.582.2561
E: david@spivaklaw.com

Attorneys for Plaintiff
MARIA VELEZ

☒ [by MAIL] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☐ [by FEDERAL EXPRESS] I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

☐ [by PERSONAL SERVICE] I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s).

☐ [by FAX] I caused the aforementioned document(s) to be telefaxed to the aforementioned facsimile number(s). The machine printed a record of the transmission, and no error was reported by the machine.

☐ [by ELECTRONIC SERVICE] Pursuant to an agreement of the parties to accept service by electronic transmission, I caused the aforementioned document(s) to be transmitted by e-mail to the addressee(s) listed.

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

Executed on April 29, 2019, at Sacramento, California.

Angela L. Eure

Print Name

By:


Signature

EXHIBIT A



Arbitration Agreement

From time to time, situations may occur that result in disputes or disagreements that arise out of your employment. It is the intent of GH Foods, LLC [or Renaissance Food Group, LLC.] (hereinafter the "Company") to resolve these matters internally. To bring the matter to a satisfactory resolution, employees should contact their direct supervisor, Human Resources, or any senior manager of the company in any instance where they disagree with an employee action, a policy, or a procedure.

However, in instances where the matter cannot be resolved internally, you agree that any and all disputes or disagreements arising out of or related to your employment shall be resolved exclusively through arbitration.

By accepting employment with the Company, you agree that, in the event of any legal dispute arising out of your hiring, employment or the cessation of your employment, the dispute shall proceed to mandatory, binding arbitration. Except as otherwise prohibited by applicable law, claims covered by this arbitration agreement include but are not limited to any claims of breach of contract; defamation; wrongful termination; unlawful discrimination, harassment or retaliation based on age, sex, sexual orientation, race, color, national origin, ancestry, religion, physical or mental disability, gender identity wage and hour, workplace safety, family or medical leave, hiring, promotion, benefits, insurance, or any other employment related matter. Also except as otherwise prohibited by applicable law, claims covered by this arbitration agreement include but are not limited to those arising under the following laws and all applicable local equivalents: Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Fair Labor Standards Act, Family and Medical Leave Act and all local and state laws, including but not limited to California Fair Employment and Housing Act, the California Equal Pay Act, and the California Labor Code.

Arbitration under this agreement will be conducted by a single neutral arbitrator within sixty (60) geographical miles of your work location, through the American Arbitration Association ("AAA") pursuant to the AAA's Employment Arbitration Rules then in effect, which are available online at www.adr.org. The arbitrator shall permit adequate discovery and is empowered to award all remedies otherwise available in a court of competent jurisdiction, and any judgment rendered by



the arbitrator may be entered by any court of competent jurisdiction. The arbitrator shall issue an award in writing and state the essential findings and conclusions on which the award is based.

The Company shall pay all AAA fees and arbitrator costs, but each party will be jointly responsible for the costs of court reporter and transcription services and transcripts, if any.

By signing this agreement, you and the Company both waive the right to have any disputes or claims tried before a judge or jury, to the fullest extent permitted by applicable law. The company's agreement to employ you and the mutual promise by the company and you to otherwise arbitrate any and all disputes between us, rather than litigate them before the courts or other bodies, provides the consideration for this agreement to arbitrate.

Except for representative claims which cannot be waived under applicable law, including but not limited to representative claims pursuant to the California Private Attorneys General Act, and which are therefore excluded from this Agreement ("Excluded Claims"), you and the Company expressly intend and agree that: (a) class action and representative action procedures are hereby waived and shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement; (b) each will not assert class action or representative action claims against the other in arbitration or otherwise; and (c) you and the Company shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person. To the extent that the dispute involves both timely filed Excluded Claims and claims subject to this Agreement, the parties agree to bifurcate and stay for the duration of the arbitration proceedings any such Excluded Claims.

If a court of competent jurisdiction or arbitrator determines that the scope and/or operation of this agreement is too broad to be enforced as written, the Company and you intend that the court or arbitrator should reform such provision to a narrower scope and/or operation as it determines to be enforceable. If, however, any term or provision in this agreement is held to be illegal, invalid, or otherwise unenforceable under present or future law, and not subject to reformation, then such provision shall be fully severable, this agreement shall be construed and enforced as if such provision was never a part of this agreement, and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.



Notwithstanding the foregoing provisions, you agree that any legal dispute in which it is claimed that you have breached your obligations of confidentiality, breached non-solicitation obligations, and/or breached any obligations you have with respect the Company's intellectual property, is not subject to the mandatory arbitration provisions set forth herein and legal action may be resolved only in the state and federal courts located in Sacramento/Riverside County within the State of California and the appellate courts having jurisdiction of appeals in such courts. The parties agree, however, to waive the right to have any such disputes or claims tried by a jury.

By signing this agreement, you understand that no supervisor, manager, co-worker, or representative of the Company, other than the Company's COO, has the authority to enter into any agreement contrary to this agreement.

This agreement, the rights and obligations of the parties hereto, and all claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law provisions thereof.

I, Maria Velaz [print employee's name] agree to comply with and abide by the terms of this Arbitration Agreement.

Maria Velaz 9-25-17

Employee's Signature

Date

EXHIBIT 8



Arbitration Agreement

From time to time, situations may occur that result in disputes or disagreements that arise out of your employment. It is the intent of GH Foods, LLC [or Renaissance Food Group, LLC.] (hereinafter the "Company") to resolve these matters internally. To bring the matter to a satisfactory resolution, employees should contact their direct supervisor, Human Resources, or any senior manager of the company in any instance where they disagree with an employee action, a policy, or a procedure.

However, in instances where the matter cannot be resolved internally, you agree that any and all disputes or disagreements arising out of or related to your employment shall be resolved exclusively through arbitration.

By accepting employment with the Company, you agree that, in the event of any legal dispute arising out of your hiring, employment or the cessation of your employment, the dispute shall proceed to mandatory, binding arbitration. Except as otherwise prohibited by applicable law, claims covered by this arbitration agreement include but are not limited to any claims of breach of contract; defamation; wrongful termination; unlawful discrimination, harassment or retaliation based on age, sex, sexual orientation, race, color, national origin, ancestry, religion, physical or mental disability, gender identity wage and hour, workplace safety, family or medical leave, hiring, promotion, benefits, insurance, or any other employment related matter. Also except as otherwise prohibited by applicable law, claims covered by this arbitration agreement include but are not limited to those arising under the following laws and all applicable local equivalents: Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Fair Labor Standards Act, Family and Medical Leave Act and all local and state laws, including but not limited to California Fair Employment and Housing Act, the California Equal Pay Act, and the California Labor Code.

Arbitration under this agreement will be conducted by a single neutral arbitrator within sixty (60) geographical miles of your work location, through the American Arbitration Association ("AAA") pursuant to the AAA's Employment Arbitration Rules then in effect, which are available online at www.adr.org. The arbitrator shall permit adequate discovery and is empowered to award all remedies otherwise available in a court of competent jurisdiction, and any judgment rendered by



the arbitrator may be entered by any court of competent jurisdiction. The arbitrator shall issue an award in writing and state the essential findings and conclusions on which the award is based.

The Company shall pay all AAA fees and arbitrator costs, but each party will be jointly responsible for the costs of court reporter and transcription services and transcripts, if any.

By signing this agreement, you and the Company both waive the right to have any disputes or claims tried before a judge or jury, to the fullest extent permitted by applicable law. The company's agreement to employ you and the mutual promise by the company and you to otherwise arbitrate any and all disputes between us, rather than litigate them before the courts or other bodies, provides the consideration for this agreement to arbitrate.

Except for representative claims which cannot be waived under applicable law, including but not limited to representative claims pursuant to the California Private Attorneys General Act, and which are therefore excluded from this Agreement ("Excluded Claims"), you and the Company expressly intend and agree that: (a) class action and representative action procedures are hereby waived and shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement; (b) each will not assert class action or representative action claims against the other in arbitration or otherwise; and (c) you and the Company shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person. To the extent that the dispute involves both timely filed Excluded Claims and claims subject to this Agreement, the parties agree to bifurcate and stay for the duration of the arbitration proceedings any such Excluded Claims.

If a court of competent jurisdiction or arbitrator determines that the scope and/or operation of this agreement is too broad to be enforced as written, the Company and you intend that the court or arbitrator should reform such provision to a narrower scope and/or operation as it determines to be enforceable. If, however, any term or provision in this agreement is held to be illegal, invalid, or otherwise unenforceable under present or future law, and not subject to reformation, then such provision shall be fully severable, this agreement shall be construed and enforced as if such provision was never a part of this agreement, and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.



Notwithstanding the foregoing provisions, you agree that any legal dispute in which it is claimed that you have breached your obligations of confidentiality, breached non-solicitation obligations, and/or breached any obligations you have with respect to the Company's intellectual property, is not subject to the mandatory arbitration provisions set forth herein and legal action may be resolved only in the state and federal courts located in Sacramento/Riverside County within the State of California and the appellate courts having jurisdiction of appeals in such courts. The parties agree, however, to waive the right to have any such disputes or claims tried by a jury.

By signing this agreement, you understand that no supervisor, manager, co-worker, or representative of the Company, other than the Company's COO, has the authority to enter into any agreement contrary to this agreement.

This agreement, the rights and obligations of the parties hereto, and all claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law provisions thereof.

I, Maria Velaz [print employee's name] agree to comply with and abide by the terms of this Arbitration Agreement.

Maria Velaz 9-25-17

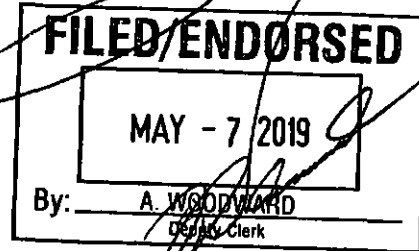
Employee's Signature

Date

EXHIBIT 9

1 Alden J. Parker, State Bar No. 196808
2 Drew M. Tate, State Bar No. 312219
3 FISHER & PHILLIPS, LLP
4 621 Capital Mall, Suite 1400
5 Sacramento, CA 95814
6 Telephone (916) 210-0400
7 Facsimile (916) 210-0401
8 Email: aparker@fisherphillips.com
9 Email: dtate@fisherphillips.com

10 Attorneys for Defendants
11 RENAISSANCE FOOD GROUP, LLC;
12 GH FOODS CA LLC; KENNETH J. CATCHOT;
13 and CALAVO GROWERS, INC.



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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

11 MARIA VELEZ, on behalf of herself, and all
12 others similarly situated, and as an
13 "aggrieved employee" on behalf of other
14 "aggrieved employees" under the Labor Code
15 Private Attorneys General Act of 2004,

16 Plaintiff,

17 v.

18 RENAISSANCE FOOD GROUP, LLC, a
19 Delaware limited liability company; GH
20 FOODS CA LLC, a California limited
21 liability company; KENNETH J. CATCHOT,
22 an individual; CALAVO GROWERS, INC.,
23 a California corporation; G&M HIRE
24 ENTERPRISES, LLC doing business as
25 ATWORK PERSONNEL SERVICES; and
26 DOES 1 through 50, inclusive,

27 Defendants.

Case No.: 34-2019-00250841

*[Assigned for All Purposes to
Hon. Emily E. Vasquez, Department 32]*

**DEFENDANTS RENAISSANCE FOOD
GROUP, LLC, GH FOODS CA LLC,
KENNETH J. CATCHOT, AND
CALAVO GROWERS, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFF MARIA VELEZ'S
COMPLAINT**

FILED BY FAX

Complaint Filed: February 19, 2019
Trial Date: None set

1 Defendants RENAISSANCE FOOD GROUP, LLC, GH FOODS, CA, LLC, KENNETH
2 J. CATCHOT, and CALAVO GROWERS, INC. (collectively "Defendants") respond to Plaintiff
3 MARIA VELEZ's ("Plaintiff") Complaint as follows:

4 **ANSWER AND GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30, subdivision (d),
6 Defendants generally deny each and every allegation and cause of action in Plaintiff's Complaint.
7 Defendants further deny that Plaintiff has sustained any injury, damage, or loss by reason of any
8 act or omission on the part of Defendants, and specifically deny that Plaintiff suffered any loss
9 or damage alleged in the Complaint.

10 **AFFIRMATIVE DEFENSES**

11 For a further answer to Plaintiff's Complaint and by way of affirmative defenses,
12 Defendants allege as follows:

13 **FIRST AFFIRMATIVE DEFENSE**

14 1. Plaintiff's Complaint, and each cause of action contained therein, fails to state a
15 claim upon which relief may be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 2. Plaintiff's Complaint, and each cause of action contained therein, is barred by the
18 applicable statute of limitations, including those set forth in California Code of Civil Procedure
19 sections 335.1, 338(a), 340(a), 342 and 343; California Labor Code sections 203 and 226;
20 California Business and Professions Code section 17208; and California Government Code
21 sections 12960 and 12965(b).

22 **THIRD AFFIRMATIVE DEFENSE**

23 3. Defendants' actions did not violate a public policy or statute of the State of
24 California.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 4. Plaintiff's claims are barred by her respective failure to exhaust administrative
27 remedies and/or internal grievance procedures.

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FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff, by reason of his knowledge, statements and conduct, is estopped to complain of any act or omission on the part of Defendants, if any there were.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff's Complaint, and each cause of action contained therein, is barred by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiff's Complaint, and each cause of action contained therein, is barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

8. An award of penalties against Defendants under the circumstances of this case would constitute an excessive fine and otherwise be unconstitutional to the extent that the penalty is disproportionate to actual losses suffered by the Plaintiff, similarly aggrieved individuals, and/or the proposed class.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiff's claims are barred, because Plaintiff was paid all remuneration, compensation, and/or wages due to her on a timely basis pursuant to the requirements contained in the California Labor Code and any applicable wage order.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiff's claim for waiting time penalties pursuant to Labor Code section 203 is barred because Defendants did not willfully withhold wages over which there was no good faith dispute and, in fact, acted at all times with the good faith belief that Plaintiff was compensated as required by law.

ELEVENTH AFFIRMATIVE DEFENSE

11. Any recovery on Plaintiff's Complaint, or any cause of action contained therein, is barred on the ground that to the extent Plaintiff did work that was unpaid, such work was unauthorized by Defendants and performed without Defendants' knowledge.

///

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 12. At all times Defendants were acting in good faith and had reasonable grounds for
3 believing that their method of compensating Plaintiff was lawful.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 13. Plaintiff's claim that she was unlawfully denied her right to meal periods by
6 Defendants is barred to the extent that Plaintiff was "provided" an off-duty meal period of at least
7 thirty (30) minutes duration at the appropriate times as required by Section 11 of the applicable
8 Industrial Welfare Commission Wage Order(s), and any interruption during said meal periods
9 (which Defendants do not concede) was "*de minimus*," as permitted by law.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 14. Plaintiff's claim that she was unlawfully denied her right to rest periods is barred
12 to the extent she voluntarily relinquished or waived her right to such rest periods.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 15. The class allegations set forth in the Complaint are barred as a matter of law
15 because the named Plaintiff lacks standing, and thus, cannot represent the interests of the putative
16 class members as to each purported cause of action contained therein.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 16. Although Defendants maintain that Plaintiff cannot establish any claim for
19 restitution or other damages, should Defendants be found liable for any amount of restitution or
20 damages, Defendants maintain that such amounts are barred legally, or subject to an equitable
21 offset, due to damages suffered by Defendants which were caused by wrongful conduct of
22 Plaintiff.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 17. The class allegations are barred as a matter of law because the prerequisites for
25 class certification cannot be satisfied as required by California Code of Civil Procedure section
26 382.

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1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 18. The class allegations set forth on behalf of the alleged class, the existence of which
3 is expressly denied, involve matters for which individual questions predominate, and therefore,
4 are not appropriate claims for Class treatment pursuant to California Code of Civil Procedure
5 section 382.

6 **NINETEENTH AFFIRMATIVE DEFENSE**

7 19. The class of persons which the named Plaintiff purports to represent, the existence
8 of which is expressly denied, is not so numerous that joinder is impracticable, and therefore, fails
9 to meet the prerequisites for class certification as required by Code of Civil Procedure section
10 382.

11 **TWENTIETH AFFIRMATIVE DEFENSE**

12 20. The claims alleged by the named Plaintiff are neither common to nor typical of
13 those, if any, of the alleged class, which the named Plaintiff purports to represent, the existence
14 of which is expressly denied.

15 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

16 21. Proposed class counsel is not able to fairly and adequately represent the interests
17 of the putative class.

18 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

19 22. The named Plaintiff is not an adequate representative of any alleged class of
20 persons they purport to represent, the existence of which is expressly denied.

21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

22 23. Certain interests of the putative class are in conflict with the interests of all or
23 certain sub-groups of the members of the alleged class of persons, which the named Plaintiff
24 purports to represent, the existence of which is expressly denied.

25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

26 24. Plaintiff's request for injunctive relief and/or restitution is barred to the extent that
27 Plaintiff and the putative class had an adequate remedy at law in that they also request monetary
28 damages, interest and an award of attorneys' fees and costs.

1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 25. Any recovery on Plaintiff's Complaint, or any cause of action contained therein,
3 is barred in whole or in part by Plaintiff's failure to mitigate her damages.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

5 26. Defendants are informed and believe and based on that information and belief
6 allege that any finding of liability pursuant to California Business and Professions Code section
7 17200, *et seq.*, would violate the Due Process and Equal Protection Clauses of the United States
8 and California Constitutions because the standards of liability under those statutes are unduly
9 vague and subjective.

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

11 27. Plaintiff is not entitled to recover punitive or exemplary damages from Defendants
12 on the grounds that any award of punitive or exemplary damages would violate Defendants'
13 constitutional rights under the Due Process Clauses of the Fifth and Fourteenth Amendments of
14 the United States Constitution.

15 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

16 28. The acts of DOE Defendants of which Plaintiff complains were all undertaken
17 outside the scope of their agency, employment, and/or other business relationship with
18 Defendants (if any), and without the knowledge or consent of Defendants, and Defendants may
19 not be held liable therefor.

20 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

21 29. Plaintiff's claims and/or the claims of the putative class members are subject to
22 binding arbitration pursuant to the agreement of the parties.

23 **THIRTIETH AFFIRMATIVE DEFENSE**

24 30. Plaintiff's claim for penalties pursuant to Labor Code section 226, subdivision (e),
25 are barred because Plaintiff has not been injured by Defendants' alleged failure to comply with
26 Section 226(a), or any statute of similar effect.

27 ///

28 ///

1 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

2 31. Defendants “provided” Plaintiff with off-duty meal periods of at least thirty (30)
3 minute duration pursuant to the applicable Industrial Welfare Commission Wage Order and
4 Labor Code section 512.

5 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

6 32. Defendants authorized and permitted Plaintiff to take rest periods pursuant to the
7 applicable Industrial Welfare Commission Wage Order.

8 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

9 33. Plaintiff’s claim for statutory penalties pursuant to California Labor Code section
10 226 is barred because Defendants at all times acted with the good faith belief that they were in
11 compliance with the requirements of Labor Code section 226.

12 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

13 34. As a separate and distinct affirmative defense, Defendants oppose class
14 certification and disputes the propriety of class treatment. If the Court certifies a class in this case
15 over Defendants’ objections, then Defendants assert the affirmative defenses set forth herein
16 against each and every member of the certified class.

17 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

18 35. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and
19 the putative class members are not entitled to equitable relief insofar as they have adequate
20 remedies at law.

21 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

22 36. Any penalties available to Plaintiff under the Private Attorney Generals Act are
23 subject to equitable reduction pursuant to California Labor Code § 2699(e)(2), on the grounds
24 that awarding the maximum available penalty would be unjust, arbitrary and oppressive, and
25 confiscatory.

26 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

27 37. Plaintiff does not have standing to bring a claim under California Private
28 Attorneys General Act of 2004, Labor Code Section 2698, *et seq.*

1 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

2 38. Plaintiff's claims, if any, against Defendants under California Labor Code
3 sections 2698-2699, the Private Attorney Generals Act of 2004, are barred because Plaintiff, and
4 the individuals she seeks to represent, are not "aggrieved employees" as defined by California
5 Labor Code section 2699.

6 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

7 39. Plaintiff's representative action under the Private Attorneys General Act is not
8 manageable because it would require the testimony of each of the persons on whose behalf civil
9 penalties and other relief is sought in order for there to be recovery of penalties and other relief
10 on any such persons' behalf.

11 **FORTIETH AFFIRMATIVE DEFENSE**

12 40. Plaintiff's claims cannot proceed as a representative action because Plaintiff is not
13 an "aggrieved employee."

14 **FORTY-FIRST AFFIRMATIVE DEFENSE**

15 41. Any recovery on Plaintiff's Complaint, or on each purported cause of action
16 alleged therein, is barred by California Labor Code sections 2854 and 2856 in that Plaintiff failed
17 to use ordinary care and diligence in the performance of his duties and failed to comply
18 substantially with the reasonable directions of his employer.

19 **FORTY-SECOND AFFIRMATIVE DEFENSE**

20 42. Plaintiff's claim under Labor Code 226(a) is barred as Plaintiffs were provided
21 with accurate wage statements in compliance therewith.

22 **FORTY-THIRD AFFIRMATIVE DEFENSE**

23 43. Defendants expressly reserves the right to amend, supplement, alter, or change
24 their answer and affirmative defenses upon revelation of more definitive facts by Plaintiff and
25 upon Defendants' undertaking of discovery and investigation of this matter. Accordingly, the
26 right to assert additional affirmative defenses, if and to the extent that such affirmative defenses
27 are applicable, is hereby reserved.

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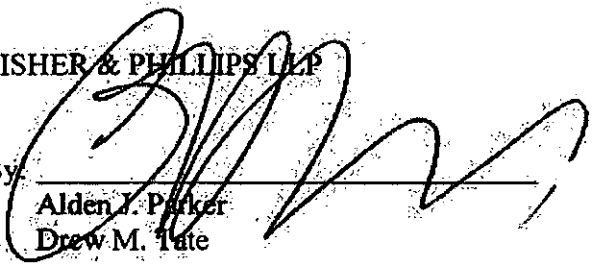
1 **PRAYER**

2 WHEREFORE, Defendants pray for judgment as follows:

- 3 1. That Plaintiff take nothing by the Complaint on file herein;
- 4 2. That Plaintiff's Complaint herein be dismissed in its entirety with prejudice;
- 5 3. That Defendants recovers its costs of suit incurred herein, including their reasonable
- 6 attorney's fees; and
- 7 4. That the Court award such other and further relief as it deems appropriate.
- 8

9 Dated: May 7, 2019

FISHER & PHILLIPS LLP

10 By 

11 Alden J. Parker
12 Drew M. Tate

13 Attorneys for Defendants
14 RENAISSANCE FOOD GROUP, LLC;
15 GH FOODS CA LLC; KENNETH J. CATCHOT;
16 and CALAVO GROWERS, INC.
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PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; I am employed with the law offices of Fisher & Phillips LLP and my business address is 621 Capitol Mall, Suite 1400, Sacramento, California, 95814.

On May 7, 2019, I served the foregoing document entitled **DEFENDANTS RENAISSANCE FOOD GROUP, LLC, GH FOODS CA LLC, KENNETH J. CATCHOT, AND CALAVO GROWERS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF MARIA VELEZ'S COMPLAINT**, on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

David G. Spivak
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 312
Encino, CA 91436

T: 818.582.3086
F: 818.582.2561
E: david@spivaklaw.com

Attorneys for Plaintiff
MARIA VELEZ

JL Sean Slattery
David P. Hall
Timothy E. Campen
CARLSBAD LAW GROUP, LLP
5050 Avenida Encinas, Suite 300
Carlsbad, CA 92008

T: 858.793.6244
F: 858.793.6005

Attorneys for Defendant and Cross-Complainant
G&M HIRE ENTERPRISES, LLC dba
ATWORK PERSONNEL SERVICES

☒ [by MAIL] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

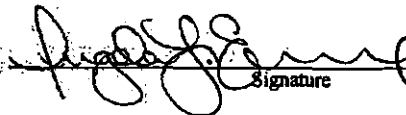
☒ STATE - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 7, 2019, at Sacramento, California.

Angela L. Eure

Print Name

By:



Signature

EXHIBIT 10

FILED/ENDORSED

JUL 5 2019

By: M. Harwell
Deputy Clerk

1 Alden J. Parker, State Bar No. 196808
 2 Drew M. Tate, State Bar No. 312219
 3 FISHER & PHILLIPS, LLP
 4 621 Capital Mall, Suite 1400
 5 Sacramento, CA 95814
 6 Telephone (916) 210-0400
 7 Facsimile (916) 210-0401
 8 Email: aparker@fisherphillips.com
 9 Email: dtate@fisherphillips.com

10 Attorneys for Defendants and Cross-Defendants
 11 RENAISSANCE FOOD GROUP, LLC;
 12 GH FOODS CA LLC; KENNETH J. CATCHOT;
 13 and CALAVO GROWERS, INC.

14
 15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 16 **IN AND FOR THE COUNTY OF SACRAMENTO**

17 MARIA VELEZ, on behalf of herself, and all
 18 others similarly situated, and as an
 19 "aggrieved employee" on behalf of other
 20 "aggrieved employees" under the Labor Code
 21 Private Attorneys General Act of 2004,

22 Plaintiff,

23 v.

24 RENAISSANCE FOOD GROUP, LLC, a
 25 Delaware limited liability company; GH
 26 FOODS CA LLC, a California limited
 27 liability company; KENNETH J.
 28 CATCHOT, an individual; CALAVO
 GROWERS, INC., a California corporation;
 G&M HIRE ENTERPRISES, LLC doing
 business as ATWORK PERSONNEL
 SERVICES; and DOES 1 through 50,
 inclusive,

Defendants.

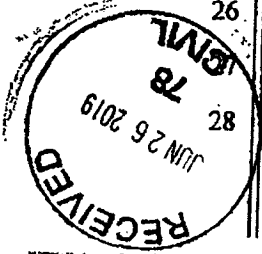
Case No.: 34-2019-00250841

[Assigned for All Purposes to
 Hon. Emily E. Vasquez, Department 32]

STIPULATION AND ~~PROPOSED~~ ^{EEV}
 ORDER DISMISSING DEFENDANT
 G&M HIRE ENTERPRISES, LLC

Complaint Filed: February 19, 2019
 Trial Date: None set

STIPULATION AND [PROPOSED] ORDER DISMISSING DEFENDANT G&M HIRE ENTERPRISES, LLC
 FPDOCS 35606387.1



1 G&M HIRE ENTERPRISES, LLC dba
2 ATWORK PERSONNEL SERVICES,

3 Cross-Complainant,

4 v.

5 RENAISSANCE FOOD GROUP, LLC, a
6 Delaware limited liability company; GH
7 FOODS CA LLC, a California limited
8 liability company; KENNETH J.
9 CATCHOT, an individual; CALAVO
10 GROWERS, INC., a California corporation;
11 and ROES 1 through 50, inclusive,

12 Cross-Defendants.
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1 Plaintiff MARIA VELEZ ("Plaintiff") and Defendants RENAISSANCE FOOD GROUP,
2 LLC ("RFG"), GH FOODS, CA, LLC ("GH FOODS"), KENNETH J. CATCHOT
3 ("CATCHOT"), CALAVO GROWERS, INC. ("CALAVO"), and G&M HIRE ENTERPRISES,
4 LLC (collectively "Defendants"), by and through their respective counsel of record, hereby
5 stipulate and agree as follows:

6 WHEREAS, on or about February 19, 2019, Plaintiff filed the above-captioned class
7 action Complaint in the Superior Court of California, County of Sacramento, Case No. 34-2019-
8 00250841, for alleged wage and hour violations against Defendants arising out of her former
9 employment pursuant to the California Labor Code and Business and Professions Code;

10 WHEREAS, on or about September 25, 2017, Plaintiff executed an Arbitration
11 Agreement ("Agreement") concerning any and all claims and disputes arising out of her
12 employment;

13 WHEREAS, RFG, GH FOODS, CATCHOT, and CALAVO assert that the Agreement
14 contains a class action waiver, an enforceable agreement to arbitrate any and all disputes arising
15 out of Plaintiff's former employment, encompasses the individual claims alleged by Plaintiff,
16 and precludes the litigation of Plaintiff's class claims;

17 WHEREAS, Plaintiff, RFG, GH FOODS, CATCHOT, and CALAVO previously agreed
18 and stipulated to dismiss, without prejudice, Plaintiff's individual and class claims;

19 WHEREAS, on April 29, 2019, Plaintiff, RFG, GH FOODS, CATCHOT, and CALAVO
20 filed a Stipulation to dismiss Plaintiff's individual and class action claims and a Proposed Order
21 thereon;

22 WHEREAS, on May 8, 2019, the Court entered an Order dismissing Plaintiff's class and
23 individual claims, without prejudice, pursuant to the above-referenced Stipulation;

24 WHEREAS, in light of the Court's Order, dated May 8, 2019, the only cause of action in
25 this action is Plaintiff's cause of action to recover civil penalties for alleged Labor Code
26 violations pursuant to the California Private Attorneys General Act (See Lab. Code § 2698 *et*
27 *seq.*) ("PAGA");

28 ///

1 WHEREAS, the Parties subsequently met and conferred regarding G&M HIRE
2 ENTERPRISES, LLC;

3 WHEREAS, on April 15, 2019, G&M HIRE ENTERPRISES, LLC filed a Cross-
4 Complaint against RFG, GH FOODS, CATCHOT, and CALAVO for (i) implied equitable
5 indemnity; (ii) equitable indemnity; and (iii) declaratory relief;

6 WHEREAS, Defendants assert that G&M HIRE ENTERPRISES, LLC's alleged acts,
7 and/or omissions in this action occurred outside of the statute of limitations on Plaintiff's PAGA
8 cause of action;

9 WHEREAS, the Parties agree and hereby stipulate that Plaintiff will dismiss G&M HIRE
10 ENTERPRISES, LLC, without prejudice;

11 WHEREAS, the Parties agree and hereby stipulate that G&M HIRE ENTERPRISES,
12 LLC will dismiss its Cross-Complaint, without prejudice;

13 WHEREAS, the Parties agree that this Stipulation shall in no way be construed as a
14 waiver of any statute of limitation defenses that Defendants may assert;

15 WHEREAS, by signing this Stipulation, counsel of record for Plaintiff and Defendants
16 represent that they have full authority from their respective clients to enter into this Stipulation
17 on their clients' behalf; and

18 WHEREAS, the Parties agree that this Stipulation may be executed in one or more
19 counterparts, each of which shall be deemed an original and all of which shall constitute one and
20 the same stipulation.

21 IT IS HEREBY STIPULATED, by and between the Parties hereto, by and through their
22 counsel of record, as follows:

23 1. That Defendant G&M HIRE ENTERPRISES, LLC shall be dismissed, without
24 prejudice;

25 2. That Defendant G&M HIRE ENTERPRISES, LLC's Cross-Complaint shall be
26 dismissed, without prejudice;

27 ///

28 ///

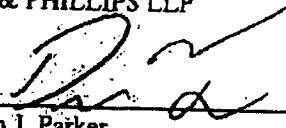
1 3. By signing this Stipulation, counsel of record for Plaintiff and Defendants
2 represent that they have full authority from their respective clients to enter into this Stipulation
3 on their clients' behalf; and

4 4. That this Stipulation may be executed in one or more counterparts, each of which
5 shall be deemed an original and all of which shall constitute one and the same Stipulation.

6 IT IS SO STIPULATED.

7
8 Dated: June 25, 2019

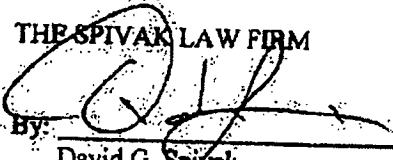
FISHER & PHILLIPS LLP

9
10 By: 
11 Alden J. Parker
Drew M. Taie

12 Attorneys for Defendants and Cross-Defendants
13 RENAISSANCE FOOD GROUP, LLC;
14 GH FOODS CA LLC; KENNETH J. CATCHOT;
and CALAVO GROWERS, INC.

15 Dated: June 21, 2019

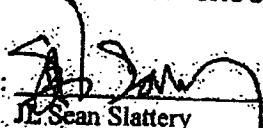
16 THE SPIVAK LAW FIRM

17 By: 
18 David G. Spivak

19 Attorneys for Plaintiff
20 MARIA VELEZ

21 Dated: June 21, 2019

22 CARLSBAD LAW GROUP, LLP

23 By: 
24 J. Sean Slattery

25 Attorneys for Defendant & Cross-Complainant
26 G&M HIRE ENTERPRISES, LLC
27
28

EDV 7/5/2019

~~PROPOSED~~ ORDER

Pursuant to the Parties' Stipulation, and good cause having been shown, IT IS ORDERED
THAT:

1. Defendant G&M HIRE ENTERPRISES, LLC is hereby dismissed, without
prejudice;

2. Defendant G&M HIRE ENTERPRISES, LLC's Cross-Complaint is hereby
dismissed, without prejudice;

IT IS SO ORDERED.

Dated: July 5, 2019

Emily E. Vasquez
JUDGE OF THE SUPERIOR COURT



PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; I am employed with the law offices of Fisher & Phillips LLP and my business address is 621 Capitol Mall, Suite 1400, Sacramento, California, 95814.

On June 25, 2019, I served the foregoing document entitled **STIPULATION AND [PROPOSED] ORDER DISMISSING DEFENDANT G&M HIRE ENTERPRISES, LLC**, on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

David G. Spivak
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 312
Encino, CA 91436

T: 818.582.3086
F: 818.582.2561
E: david@spivaklaw.com

Attorneys for Plaintiff
MARIA VELEZ

JL Sean Slattery
David P. Hall
Timothy E. Campen
CARLSBAD LAW GROUP, LLP
5050 Avenida Encinas, Suite 300
Carlsbad, CA 92008

T: 858.793.6244
F: 858.793.6005
E: sslattery@carlsbadlg.com

Attorneys for Defendant and Cross-Complainant
G&M HIRE ENTERPRISES, LLC dba
ATWORK PERSONNEL SERVICES

☒ [by MAIL] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☐ [by FEDERAL EXPRESS] I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

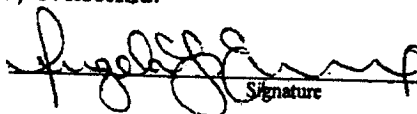
☒ STATE - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 25, 2019, at Sacramento, California.

Angela L. Eure

Print Name

By:


Signature

1 Case No. 34-2019-00250841

2 **CERTIFICATE OF SERVICE BY MAILING**

3 (C.C.P. Sec. 1013a(4))

4
5
6 I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown
7 below I served the foregoing **STIPULATION AND ORDER DISMISSING DEFENDANT G&M HIRE ENTERPRISES, LLC** by
8 depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at
9 Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

10 **David G. Spivak, Esq.**
11 The Spivak Law Firm
12 16530 Ventura Blvd., Suite 312
13 Encino, CA 91436

Alden J. Parker, Esq.
Drew M. Tate, Esq.
Fisher & Phillips LLP
621 Capital Mall, Suite 1400
Sacramento, CA 95814

14 **JL Sean Slattery, Esq.**

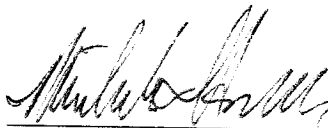
15 **David P. Hall, Esq.**

16 **Timothy E. Campen, Esq.**

17 Carlsbad Law Group, LLP
18 5050 Avenida Encinas, Suite 300
19 Carlsbad, CA 92008
20

21 I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.
22

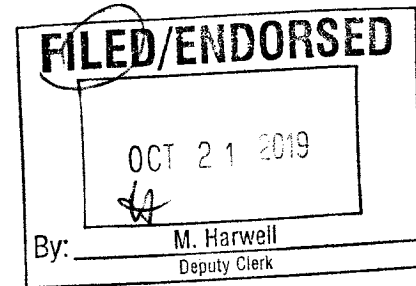
23 Dated: July 3, 2019 Superior Court of California, County of Sacramento
24

25
26 By: 

27 M. Harwell, Deputy Clerk.
28

EXHIBIT 11

1 Alden J. Parker, State Bar No. 196808
 2 Drew M. Tate, State Bar No. 312219
 3 FISHER & PHILLIPS, LLP
 4 621 Capital Mall, Suite 1400
 5 Sacramento, CA 95814
 Telephone (916) 210-0400
 Facsimile (916) 210-0401
 Email: aparker@fisherphillips.com
 Email: dtate@fisherphillips.com



6 Attorneys for Defendants
 7 RENAISSANCE FOOD GROUP, LLC;
 8 GH FOODS CA LLC; KENNETH J. CATCHOT;
 and CALAVO GROWERS, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **IN AND FOR THE COUNTY OF SACRAMENTO**

11 MARIA VELEZ, on behalf of herself, and all
 12 others similarly situated, and as an
 13 "aggrieved employee" on behalf of other
 14 "aggrieved employees" under the Labor Code
 Private Attorneys General Act of 2004,

15 Plaintiff,

16 v.

17 RENAISSANCE FOOD GROUP, LLC, a
 18 Delaware limited liability company; GH
 19 FOODS CA LLC, a California limited
 20 liability company; KENNETH J. CATCHOT,
 21 an individual; CALAVO GROWERS, INC.,
 22 a California corporation; G&M HIRE
 ENTERPRISES, LLC doing business as
 ATWORK PERSONNEL SERVICES; and
 DOES 1 through 50, inclusive,

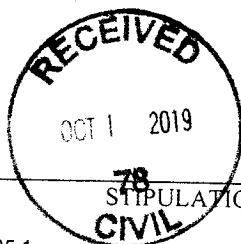
23 Defendants.

Case No.: 34-2019-00250841

*[Assigned for All Purposes to
 Hon. Emily E. Vasquez, Department 32]*

**STIPULATION TO DISMISS
 DEFENDANT KENNETH J. CATCHOT;
 [PROPOSED] ORDER THEREON**
E.E.V.

Complaint Filed: February 19, 2019
 Trial Date: None set



STIPULATION TO DISMISS DEFENDANT KENNETH J. CATCHOT;
 [PROPOSED] ORDER THEREON

1 Plaintiff MARIA VELEZ ("Plaintiff") and Defendants RENAISSANCE FOOD GROUP,
2 LLC, GH FOODS, CA, LLC, KENNETH J. CATCHOT, and CALAVO GROWERS, INC.
3 (collectively "Defendants"), by and through their respective counsel of record, hereby stipulate
4 and agree as follows:

5 WHEREAS, on or about February 19, 2019, Plaintiff filed the above-captioned class
6 action Complaint in the Superior Court of California, County of Sacramento, Case No. 34-2019-
7 00250841 (the "Complaint"), for alleged wage and hour violations against Defendants arising
8 out of her former employment pursuant to the California Labor Code and California Business
9 and Professions Code;

10 WHEREAS, on or about September 25, 2017, Plaintiff executed an Arbitration
11 Agreement ("Agreement") concerning any and all claims and disputes arising out of her
12 employment;

13 WHEREAS, RFG, GH FOODS, CATCHOT, and CALAVO assert that the Agreement
14 contains a class action waiver, an enforceable agreement to arbitrate any and all disputes arising
15 out of Plaintiff's former employment, encompasses the individual claims alleged by Plaintiff,
16 and precludes the litigation of Plaintiff's class claims;

17 WHEREAS, Plaintiff, RFG, GH FOODS, CATCHOT, and CALAVO previously agreed
18 and stipulated to dismiss, without prejudice, Plaintiff's individual and class claims;

19 WHEREAS, on April 29, 2019, Plaintiff, RFG, GH FOODS, CATCHOT, and CALAVO
20 filed a Stipulation to dismiss Plaintiff's individual and class action claims and a Proposed Order
21 thereon;

22 WHEREAS, on May 8, 2019, the Court entered an Order dismissing Plaintiff's class and
23 individual claims, without prejudice, pursuant to the above-referenced Stipulation;

24 WHEREAS, in light of the Court's Order, dated May 8, 2019, the only cause of action in
25 this action is Plaintiff's cause of action to recover civil penalties for alleged Labor Code
26 violations pursuant to the California Private Attorneys General Act (See Lab. Code § 2698 *et*
27 *seq.*) ("PAGA");

28 ///

1 WHEREAS, the Parties subsequently met and conferred regarding Defendant Kenneth J.
2 Catchot;

3 WHEREAS, Defendants assert that Kenneth J. Catchot alleged acts and/or omissions in
4 this action occurred outside of the statute of limitations on Plaintiff's PAGA cause of action;

5 WHEREAS, the Parties agree and hereby stipulate that Plaintiff will dismiss, without
6 prejudice, Defendant Kenneth J. Catchot;

7 WHEREAS, the Parties agree that upon Court approval of this Stipulation, Defendant
8 Kenneth J. Catchot shall be dismissed;

9 WHEREAS, the Parties agree this Stipulation shall in no way be construed as a waiver of
10 any statute of limitation defenses that Defendants may assert;

11 WHEREAS, by signing this Stipulation, counsel of record for both Plaintiff and
12 Defendants represent that they have full authority from their respective clients to enter into this
13 Stipulation on their clients' behalf; and

14 WHEREAS, the Parties agree that this Stipulation may be executed in one or more
15 counterparts, each of which shall be deemed an original and all of which shall constitute one and
16 the same stipulation.

17 IT IS HEREBY STIPULATED, by and between the Parties hereto, by and through their
18 counsel of record, as follows:

19 1. That Defendant Kenneth J. Catchot shall be dismissed, without prejudice;

20 2. By signing this Stipulation, counsel of record for both Plaintiff and Defendants
21 represent that they have full authority from their respective clients to enter into this Stipulation
22 on their clients' behalf; and

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 3. That this Stipulation may be executed in one or more counterparts, each of
2 which shall be deemed an original and all of which shall constitute one and the same
3 Stipulation.

4 **IT IS SO STIPULATED.**

5
6 Dated: October 17, 2019

FISHER & PHILLIPS LLP

7
8 By: 

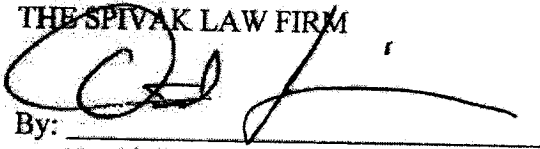
Alden J. Parker

Drew M. Tate

9
10 Attorneys for Defendants
11 RENAISSANCE FOOD GROUP, LLC;
12 GH FOODS CA LLC; KENNETH J. CATCHOT;
13 and CALAVO GROWERS, INC.

14 Dated: October 17, 2019

THE SPIVAK LAW FIRM

15
16 By: 

David G. Spivak

17 Attorneys for Plaintiff
18 MARIA VELEZ

EEV

PROPOSED ORDER

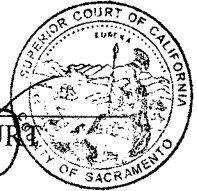
Pursuant to the Parties' Stipulation, and good cause having been show, IT IS SO ORDERED THAT:

1. Defendant Kenneth J. Catchot shall be dismissed, without prejudice.

IT IS SO ORDERED.

Dated: Oct. 21, 2019

Emily E. Vasquez
JUDGE OF THE SUPERIOR COURT



PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; I am employed with the law offices of Fisher & Phillips LLP and my business address is 621 Capitol Mall, Suite 1400, Sacramento, California, 95814.

On October 18, 2019, I served the foregoing document entitled **STIPULATION TO DISMISS DEFENDANT KENNETH J. CATCHOT; [PROPOSED] ORDER THEREON**, on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

David G. Spivak
Carl J. Kaplan
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 312
Encino, CA 91436

T: 818.582.3086
F: 818.582.2561
E: david@spivaklaw.com

Attorneys for Plaintiff
MARIA VELEZ

☒ [by MAIL] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☐ [by FEDERAL EXPRESS] I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

☐ [by PERSONAL SERVICE] I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s).

☐ [by FAX] I caused the aforementioned document(s) to be telefaxed to the aforementioned facsimile number(s). The machine printed a record of the transmission, and no error was reported by the machine.

☐ [by ELECTRONIC SERVICE] Pursuant to an agreement of the parties to accept service by electronic transmission, I caused the aforementioned document(s) to be transmitted by e-mail to the addressee(s) listed.

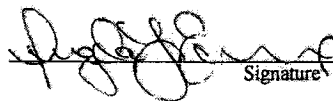
☒ **STATE** - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **October 18, 2019**, at **Sacramento, California**.

Angela L. Eure

Print Name

By:



Signature

Case No. 34-2019-00250841

CERTIFICATE OF SERVICE BY MAILING

(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **STIPULATION AND ORDER DISMISSING DEFENDANT KENNETH J. CATCHCOT** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

David G. Spivak, Esq.

The Spivak Law Firm
16530 Ventura Blvd., Suite 312
Encino, CA 91436

Alden J. Parker, Esq.

Drew M. Tate, Esq.
Fisher & Phillips LLP
621 Capital Mall, Suite 1400
Sacramento, CA 95814

JL Sean Slattery, Esq.

David P. Hall, Esq.

Timothy E. Campen, Esq.

Carlsbad Law Group, LLP
5050 Avenida Encinas, Suite 300
Carlsbad, CA 92008

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: October 22, 2019

Superior Court of California, County of Sacramento

By: 

M. Harwell, Deputy Clerk

EXHIBIT 12

COPY

FILED

Superior Court Of California,
Sacramento

04/11/2022

nzayaad

By _____, Deputy

Case Number:

34-2019-00250841

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 SARA BROWN (SBN 325763)

sara@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Blvd. PMB 42554

5 West Hollywood, CA 90069

6 Telephone (213) 725-9094

Facsimile (213) 634-2485

7 Attorneys for Plaintiffs,

8 MARIA VELEZ and CLAUDIA TORREZ,

9 and all others similarly situated

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

11 **FOR THE COUNTY OF SACRAMENTO**

12 **(UNLIMITED JURISDICTION)**

13
14 MARIA VELEZ and CLAUDIA TORREZ, on
15 behalf of themselves, and all others similarly
16 situated, and as "aggrieved employees" on
17 behalf of other "aggrieved employees" under
the Labor Code Private Attorneys General Act
of 2004,

18 *Plaintiff(s),*

19 vs.

20 RENAISSANCE FOOD GROUP, LLC, a
21 Delaware limited liability company; GH
22 FOODS CA LLC, a California limited liability
23 company; ~~KENNETH J. CATCHOT, an~~
~~individual~~; CALAVO GROWERS, INC., a
24 California corporation; ~~G&M HIRE~~
~~ENTERPRISES, LLC doing business as~~
25 ~~ATWORK PERSONNEL SERVICES~~; and
DOES 1 through 50, inclusive,

26 *Defendant(s).*

Case No.: 34-2019-00250841

**~~PROPOSED~~ FIRST AMENDED
COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**



SPIVAK LAW

Employee Rights Attorneys

Mail:

8605 Santa Monica Blvd., PMB
42554

West Hollywood, CA 90069

(213) 725-9094 Tel

(213) 634-2485 Fax

SpivakLaw.com

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1 Plaintiff Maria Velez (hereafter “Plaintiff Velez” or “Velez”) and Plaintiff Claudia Torrez
2 (hereafter “Plaintiff Torrez” or “Torrez”) (collectively referred to as “Plaintiffs”), on behalf of
3 themselves and all others similarly situated, complain and allege as follows:

4 INTRODUCTION

5 1. Plaintiffs bring this representative action based on alleged violations of the
6 California Labor Code, Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage
7 Order”) and the Business and Professions Code against defendants RENAISSANCE FOOD
8 GROUP, LLC, a Delaware limited liability company; GH FOODS CA LLC, a California limited
9 liability company; CALAVO GROWERS, INC., a California corporation; and DOES 1 through
10 50, inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
12 them, The State of California, and the Aggrieved Employees (defined below), for civil penalties
13 and other related relief. These claims are based on Defendants’ failures to: (1) pay all wages for
14 all hours worked, (2) provide all rest and meal periods, (3), timely pay wages upon termination
15 of employment, and (4) provide accurate written wage statements. Accordingly, Plaintiffs now
16 seek to recover civil penalties and related relief through this representative action.

17 PARTIES

18 3. Plaintiffs are individuals and residents of the State of California. At all relevant
19 times, Plaintiffs were employees within the meaning of Title 8 California Code of Regulations
20 Section 11080 and aggrieved employees within the meaning of Labor Code Section 2699(c).

21 4. Defendant RENAISSANCE FOOD GROUP, LLC is a limited liability company
22 organized under the laws of Delaware and also a citizen of California. Defendant
23 RENAISSANCE FOOD GROUP, LLC’s corporate headquarters are located in Rancho Cordova
24 in the County of Sacramento, California based on Plaintiffs’ information and belief.

25 5. Defendant GH FOODS CA LLC is a limited liability company organized under
26 the laws of California and therefore a citizen of California and based on Plaintiffs’ information
27 and belief. Defendant GH FOODS CA LLC’s corporate headquarters are located in Rancho
28 Cordova in the County of Sacramento, California based on Plaintiffs’ information and belief.



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1 6. Defendant CALAVO GROWERS, INC., is a corporation organized under the laws
2 of California and therefore a citizen of California based on Plaintiffs' information and belief.

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

9 8. The "Aggrieved Employees" are all individuals the Defendants have employed or
10 otherwise contracted with in California as hourly non-exempt employees, including but not
11 limited to production leads, production workers, quality control technicians, maintenance
12 technicians, machine operators, and similarly situated employees, individuals performing work
13 comparable to the aforementioned, and individuals in similar positions during the period between
14 December 16, 2017 and November 5, 2020, for those employees who worked at the Defendants'
15 Riverside Plant and the period between February 2, 2018 and November 5, 2020, for those
16 employees who worked at Defendants' Sacramento plant.

17 9. Plaintiffs are informed and believe and thereon allege that, at all relevant times
18 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
19 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
20 and scope of such agency or employment, and with the approval and ratification of each of the
21 other Defendants.

22 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
23 defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
24 of a practice which resulted in Defendants not paying Plaintiffs and the other Aggrieved
25 Employees in accordance with applicable California labor laws as alleged herein.

26 11. Plaintiffs are informed and believe and thereon allege that each and every one of
27 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
28 each acting as agents and/or employees, and/or under the direction and control of each of the other



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defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

PLAINTIFFS' ALLEGATIONS

12. IWC Wage Order 8-2001 ("the Wage Order") applies to "all persons employed in the industries handling products after harvest whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1.

13. Wage Order, § 2(D). At all relevant times during the applicable limitations period, Defendants, Plaintiffs, and all of the Aggrieved Employees were covered by the Wage Order because the Defendants operated, and Plaintiffs, and all of the Aggrieved Employees worked for, one or more establishments operated as a produce processing facility. Accordingly, Plaintiffs and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

14. For the reasons stated below, Plaintiffs allege the following violations of the California Labor Code and the Wage Order 8 on behalf of themselves and the Aggrieved Employees:

a) Defendants failed to provide Plaintiffs and the Aggrieved Employees with all rest breaks and meal periods;

b) Defendants failed to pay Plaintiffs and the Aggrieved Employees one hour's pay for each workday in which they failed to provide them with one or more rest breaks;

c) Defendants failed to pay Plaintiffs and the Aggrieved Employees one hour's pay for each workday in which they failed to provide them with one or more meal periods;

d) Defendants failed to pay Plaintiffs and the Aggrieved Employees minimum wages for all hours worked;

e) Defendants failed to pay Plaintiffs and the Aggrieved Employees overtime wages for all overtime hours worked, including doubletime for work over twelve hours;

f) Defendants failed to provide Plaintiffs and the Aggrieved Employees with accurate wage statements; and

g) Defendants willfully failed to maintain accurate employment records regarding Plaintiffs and the Aggrieved Employees.



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1
2
3 **PLAINTIFF VELEZ'S STATEMENT OF FACTS**

4 15. Defendants hired Plaintiff Velez in or around May 2017 to work for Defendants
5 as a temporary non-exempt hourly Production lead.

6 16. Defendants hired Plaintiff Velez as a fulltime hourly employee on or about
7 September 25, 2017 to work as a production lead in the Fruit Department of its processing facility
8 in Riverside, California.

9 17. During her employment, Defendants continuously employed Plaintiff Velez in
10 California from approximately September 25, 2017 to February 23, 2018, when her employment
11 terminated.

12 18. Throughout Plaintiff Velez's employment period and the time period beginning
13 one year before the date of this letter, Defendants compensated Plaintiff Velez and the Aggrieved
14 Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Velez
15 started her work shifts at 5:30 a.m. or 6:00 a.m. The work shifts lasted between six to twelve hours
16 or until the Aggrieved Employees completed the day's assigned work.

17 19. Until January of 2018, when Plaintiff Velez and the Aggrieved Employees
18 returned from meal breaks, Defendants regularly required them to wait in a line of fifteen to
19 twenty (15-20) other employees to clock back in to work. Defendants did not pay them for this
20 time and such wait times reduced their meal periods to less than 30 minutes.

21 20. Defendants failed to provide Plaintiff Velez and the Aggrieved Employees with a
22 second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a
23 workday. Plaintiff Velez worked in excess of 10 hours in a workday on multiple occasions but
24 only received one second daily meal period while employed by Defendants.

25 21. Defendants routinely denied Plaintiff Velez and the other Aggrieved Employees
26 an uninterrupted timely second rest period. On average, Defendants instructed its supervisors to
27 permit Plaintiff Velez and the Aggrieved Employees to take a second rest break on only one
28 workday per week. Defendants did not provide Plaintiff Velez and the Aggrieved Employees with
a third rest period after the tenth hour of work as required by law. Although Plaintiff Velez worked



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1 more than ten hours in a workday on multiple occasions, during the course of her employment
2 with Defendants, Plaintiff Velez never received a timely duty-free third rest period.

3 22. Defendants required Plaintiff Velez and the other Aggrieved Employees to work
4 in excess of eight (8) hours in one workday and forty (40) hours in one workweek without
5 compensating them for such time worked at the overtime rates required by California law.
6 Plaintiff Velez and the Aggrieved Employees incurred uncompensated overtime when Defendants
7 failed to provide them with an uninterrupted 30-minute meal period and when Defendants
8 required them to wait in lines to clock in for work.

9 **PLAINTIFF TORREZ STATEMENT OF FACTS**

10 23. Defendants hired Plaintiff Torrez as a full-time hourly employee on or about May
11 5, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its
12 processing facility in Riverside, California. Defendants continuously employed Plaintiff Torrez
13 in California from the time of her hire until on or about January 2, 2020, when her employment
14 terminated.

15 24. Defendants compensated Plaintiff Torrez and the Other Aggrieved Employees
16 with an hourly rate of pay and it paid them their wages on a biweekly basis. Plaintiff Torrez started
17 her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve
18 hours in a day. On a day-to-day basis, Plaintiff Torrez and the other Aggrieved Employees did
19 not know when their shifts would end. Supervisors assigned Plaintiff Torrez and the other
20 Aggrieved Employees the work that needed to be completed for the day and their work shifts
21 ended upon completion of their assignments.

22 25. When Plaintiff Torrez and the other Aggrieved Employees returned from meal
23 breaks, Defendants compelled them to wait in a line of fifteen to twenty (15-20) other employees
24 to clock back in to work. Plaintiff Torrez and the other Aggrieved Employees regularly waited in
25 line for approximately three minutes before they could clock back in to work. In order to clock
26 back in for work within the 30-minute period Defendants afforded Torrez and the other Aggrieved
27 Employees for meal periods, they would return from work and enter the line at least 3 minutes
28 before the conclusion of their meal period. Defendants did not pay them for this time and such



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1 wait times reduced their meal periods to less than 30 minutes.

2 26. Defendants failed to provide Plaintiff Torrez and the other Aggrieved Employees
3 with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a
4 workday. Plaintiff Torrez worked in excess of 10 hours in a workday on multiple occasions. On
5 such occasions, Defendants regularly failed to provide Plaintiff Torrez and the Aggrieved
6 Employees with a second daily meal period.

7 27. Defendants routinely denied Plaintiff Torrez and the other Aggrieved Employees
8 an uninterrupted timely second rest period. On average, Defendants instructed its supervisors to
9 permit Plaintiff Torrez and the Aggrieved Employees to take a second rest break on only one
10 workday per week. On all but a few rare occasions, Defendants did not provide Plaintiff Torrez
11 and the other Aggrieved Employees with a third rest period after the tenth hour of work as required
12 by law. Although Plaintiff Torrez worked more than ten hours in a workday on multiple occasions,
13 during the course of her employment at Defendants, Plaintiff Torrez rarely received a timely duty-
14 free third rest period.

15 28. Defendants required Plaintiff Torrez and the other Aggrieved Employees to work
16 in excess of eight (8) hours in one workday and forty (40) hours in one workweek without
17 compensating them for such time worked at the overtime rates required by California law.
18 Defendants failed to pay one and one half times (1½ x) the hourly rates of pay of Plaintiff Torrez
19 and the other Aggrieved Employees by reducing their recorded work hours by 30 minutes and by
20 failing to pay for times waiting in line to clock in to work.

21 **FIRST AND ONLY CAUSE OF ACTION**

22 **CIVIL PENALTIES**

23 **(Lab. Code §§ 2698, et seq.)**

24 **(By Plaintiffs on behalf of themselves and the other Aggrieved Employees against all**
25 **Defendants)**

26 29. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

27 30. At all relevant times during the applicable limitations period, Plaintiffs and the
28 Aggrieved Employees have been employees of Defendants and entitled to the benefits and
29 protections of California Labor Code and the Wage Order

30 ///



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1 **A. FAILURE TO PROVIDE REST BREAKS**

2 31. Labor Code § 1198 states,

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

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

9 Rest Periods:

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

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

24 33. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break
25 should fall on either side of the meal break. (*Ibid.*)” *Brinker Rest. Corp. v. Superior Court* (2012)
26 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

27 34. In addition, Labor Code Section 226.7 states

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

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

41 35. Pursuant to the Wage Order, Plaintiffs and the Aggrieved Employees were entitled



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1 to be provided with net rest breaks of at least ten minutes for each four hour period of work, or
2 major fraction thereof.

3 36. Defendants failed to provide Plaintiffs with all required rest breaks in accordance
4 with the Wage Order. Plaintiffs are informed and believe and thereon allege that, at relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Aggrieved Employees with all rest breaks required
7 by California law.

8 37. Due to their workload, Defendants often did not provide Plaintiffs and Aggrieved
9 Employees with all their duty-free rest breaks.

10 38. Defendants failed to pay Plaintiffs the additional wages required by California
11 Labor Code § 226.7 for all rest breaks not provided to them. Plaintiffs are informed and believe
12 and thereon allege that, at relevant times within the applicable limitations period, Defendants have
13 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
14 Aggrieved Employees with additional wages for all rest breaks not provided to them as required
15 by California Labor Code § 226.7.

16 **B. FAILURE TO PROVIDE MEAL PERIODS**

17 39. Labor Code § 1198 states,

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

23 40. In relevant part, Labor Code Section 512 states

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

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

Meal Periods:



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(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 the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

42. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the Aggrieved Employees were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

43. During the relevant time period, Defendants failed to provide Plaintiffs with all required meal periods in accordance with California Labor Code § 512 and the Wage Order, including, but not limited to, a second 30-minute uninterrupted meal periods on workdays the employee worked more than ten hours in a workday. Plaintiffs are informed and believe and thereon allege 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 the Aggrieved Employees with all meal periods required by California Labor Code § 512 and the Wage Order, including, but not limited to, a second 30-minute uninterrupted meal period on



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workdays they worked more than ten hours in a workday.

44. Due to their workload, Defendants often did not provide Plaintiffs and the Aggrieved Employees with all their duty-free meal periods. Defendants required Plaintiffs and the Aggrieved Employees to stop their lunch break early to stand in line to clock back in to work. This resulted in interrupted and on-duty meal periods.

45. Defendants failed to pay Plaintiffs the additional wages required by California Labor Code § 226.7 for all meal periods not provided to them. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all meal periods not provided to them as required by California Labor Code § 226.7.

C. FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED

46. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

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

(2) **MANDATORY DAY OFF REQUIREMENT:** An employee may work up to a maximum of 72 hours in any workweek after which the employee shall have a 24-hour period off duty...

47. Labor Code section 510 states:

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



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

48. Labor Code section 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.

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

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

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

52. Plaintiffs are informed and believe that, at all relevant times, Defendants have applied centrally devised policies and practices to them and the Aggrieved Employees with respect to working conditions and compensation arrangements.

53. Defendants compensated Plaintiffs and the Aggrieved Employees with an hourly rate of pay on a bi-weekly basis.

54. Defendants further deducted at least 30 minutes from Plaintiffs and the Aggrieved Employees’ hours worked in a workday even if they could not take their duty-free meal periods. Defendants also failed to compensate Plaintiffs and the Aggrieved Employees for all hours worked at the correct rates of pay. Defendants compensated Plaintiffs and the Aggrieved Employees fewer overtime hours than they actually worked.

55. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’ failure to compensate the Aggrieved Employees for all hours worked as required by California law, including, but not limited to overtime wages for all overtime hours they worked.



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1 56. As a result of Defendants' unlawful conduct, Plaintiffs and the other Aggrieved
2 Employees have suffered damages in an amount, subject to proof, to the extent they were not paid
3 the full amount of wages earned during each pay period during the applicable limitations period.

4 57. Additionally, with respect to this cause of action, on behalf of themselves and the
5 Aggrieved Employees, Plaintiffs pray for an award of reasonable costs and attorneys' fees,
6 including interest thereon, as permitted by law, all in amounts subject to proof.

7 **D. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
8 **STATEMENTS**

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

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

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

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

28 B. Which deductions the employer made from gross wages to determine the



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1 net wages paid to the employee during the pay period;

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

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

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

11 62. As alleged herein, Defendants failed to provide Plaintiffs and the Aggrieved
12 Employees all wages owed, including but not limited to, minimum and overtime wages and all
13 premium wages for unprovided rest and/or meal periods. As a result, Defendants have failed to
14 properly and accurately itemize each employee's gross wages earned, net wages earned, the total
15 hours worked, the corresponding number of hours worked by employees and other requirements
16 of California Labor Code § 226. As a result, Defendants have violated California Labor Code §
17 226.

18 63. Defendants' failure to provide Plaintiffs and the Aggrieved Employees with
19 accurate wage statements was knowing and intentional. Defendants had the ability to provide
20 Plaintiffs and the Aggrieved Employees with accurate wage statements but intentionally provided
21 wage statements that Defendants knew were not accurate.

22 64. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiffs and the Aggrieved Employees have suffered injury. Their legal rights to receive accurate
24 wage statements were violated and they were misled about the amount of wages they had actually
25 earned and were owed. In addition, the absence of accurate information on their wage statements
26 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
27 and mathematical computations to determine the amounts of wages owed, has caused difficulty
28 and expense in attempting to reconstruct time and pay records and/or has led to the submission of



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1 inaccurate information about wages to state and federal government agencies. Further, Plaintiffs
2 and the Aggrieved Employees were not able to ascertain from the wage statements whether
3 Defendants complied with their obligations under California Labor Code § 226(a).

4 65. Pursuant to California Labor Code § 226(e), Plaintiffs and the Aggrieved
5 Employees are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
6 for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one
7 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
8 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Aggrieved Employee,
9 and are also entitled to an award of costs and reasonable attorneys' fees.

10 **E. UNTIMELY WAGES DURING EMPLOYMENT**

11 66. Labor Code § 204 states:

12 (a) All wages, other than those mentioned in Section 201,
13 201.3, 202, 204.1, or 204.2, earned by any person in any
14 employment are due and payable twice during each
15 calendar month, on days designated in advance by the
16 employer as the regular paydays. Labor performed
17 between the 1st and 15th days, inclusive, of any calendar
18 month shall be paid for between the 16th and the 26th day
19 of the month during which the labor was performed, and
20 labor performed between the 16th and the last day,
21 inclusive, of any calendar month, shall be paid for
22 between the 1st and 10th day of the following month. ...

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

27 (2) An employer is in compliance with the
28 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



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semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

67. Defendants failed to compensate Plaintiffs and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiffs and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiffs and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

F. UNTIMELY FINAL WAGES

68. 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.

69. 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.

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

71. 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.

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



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G. **FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

73. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

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

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

74. Labor Code § 1174.5 states:

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

75. Section 7 of the Wage Order states:

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

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

...



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(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

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

77. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiffs and the Aggrieved Employees.

78. Accordingly, Plaintiffs seek an award of civil penalties against the Defendants on behalf of themselves and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

H. CIVIL PENALTIES SOUGHT

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

80. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198, and related Labor Code statutes.

81. 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.

82. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the Aggrieved



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1 Employees are entitled to recover civil penalties for each of the Defendants' violations of
2 California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and
3 1198, and related Labor Code statutes during the applicable limitations period in the following
4 amounts:

5 A. For violations of California Labor Code § 204, one hundred dollars
6 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
7 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully
8 withheld from each aggrieved employee for each subsequent, willful or intentional violation
9 (penalty amounts established by California Labor Code § 210).

10 B. For violations of California Labor Code § 221, one hundred dollars (\$100)
11 for each Aggrieved Employee for each initial violation and two hundred dollars (\$200) for each
12 Aggrieved Employee for each subsequent violation, or any willful or intentional violation
13 (penalty amounts established by California Labor Code § 225.5).

14 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
15 (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00)
16 for each aggrieved employee for each subsequent violation (penalty amounts established by
17 California Labor Code § 226.3).

18 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
19 (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for
20 each aggrieved employee for each subsequent violation, per pay period (penalty amounts
21 established by California Labor Code § 558).

22 E. For violations of California Labor Code § 1197, one hundred dollars
23 (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred
24 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period
25 (regardless of whether the initial violations were intentionally committed), (penalty amounts
26 established by California Labor Code § 1197.1).

27 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
28 and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each



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1 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
2 for each subsequent violation (penalty amounts established by California Labor Code §
3 2699(f)(2)).

4 **I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

5 83. Plaintiffs have complied with the procedures for bringing suit specified in
6 California Labor Code § 2699.3. By letter dated December 14, 2018, Plaintiff Velez filed written
7 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written
8 notice by certified mail to Defendants of the specific provisions of the California Labor Code
9 alleged to have been violated, including the facts and theories to support the alleged violations. A
10 true and correct copy of the notice to the LWDA dated December 14, 2018 is attached as **Exhibit**
11 **A**. Plaintiff Velez accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA
12 has failed to take action in response within 65 calendar days of the date of Plaintiff Velez’s notice,
13 but Plaintiff Velez anticipates that the LWDA will provide written notice to Plaintiff Velez
14 informing her that it does not intend to investigate these allegations.

15 84. By letter dated July 29, 2020, Plaintiff Torrez filed written notice online with the
16 LWDA and gave written notice by certified mail to Defendants of the specific provisions of the
17 California Labor Code alleged to have been violated, including the facts and theories to support
18 the alleged violations. A true and correct copy of the notice to the LWDA dated July 29, 2020, is
19 attached as **Exhibit B**. Plaintiff Torrez accompanied her LWDA notice with a fee in the amount
20 of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of
21 Plaintiff Torrez’s notice, but Plaintiff Torrez anticipates that the LWDA will provide written
22 notice to Plaintiff Torrez informing her that it does not intend to investigate these allegations.

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

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on behalf of themselves and the Aggrieved Employees, pray
28 for relief and judgment against Defendants as follows:



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- 1 A. Civil penalties;
2 B. Costs of suit;
3 C. Reasonable attorneys' fees; and
4 D. Such other relief as the Court deems just and proper.

5 Respectfully submitted,

6 THE SPIVAK LAW FIRM

7
8 Dated: March 28, 2022

9 By 
10 DAVID SPIVAK
11 SARA BROWN
12 Attorney for Plaintiffs, MARIA VELEZ and
13 CLAUDIA TORREZ, and all others similarly
14 situated
15
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17
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 14, 2018

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

RE: *Maria Velez / Renaissance Food Group, LLC et al.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Maria Velez (hereafter “Velez”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to production leads, production workers, quality control technicians, maintenance technicians, machine operators, and similarly situated employees (hereafter “Aggrieved Employees”) by Renaissance Food Group, LLC, a Delaware limited liability company, GH Foods CA LLC, a California limited liability company, Kenneth J. Catchot, an individual, and Calavo Growers, Inc., a California corporation (hereafter collectively “RFG”) of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

At all relevant times, RFG has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Velez and the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage Order”), paragraph 2.E, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

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Statement of Facts

RFG hired Velez as a full time hourly employee on or about September 25, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its processing facility in Riverside, California. RFG continuously employed Velez in California from approximately September 25, 2017 to February 23, 2018, when her employment terminated.

RFG compensated Velez and the Aggrieved Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Velez started her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve hours in a day. On a day to day basis, Velez and the other Aggrieved Employees did not know when their shifts would end. Supervisors assigned Velez and the Aggrieved Employees the work that needed to be completed for the day and their work shifts ended upon completion of their assignments.

Until January of 2018, when Velez and the Aggrieved Employees returned from meal breaks, RFG regularly required them to wait in a line of fifteen to twenty (15-20) other employees to clock back in to work. RFG did not pay them for this time and such wait times reduced their meal periods to less than 30 minutes.

RFG failed to provide Velez and the Aggrieved Employees with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday. Velez worked in excess of 10 hours in a workday on multiple occasions. RFG failed to provide all but one second daily meal period.

RFG routinely denied Velez and the other Aggrieved Employees an uninterrupted timely second rest period. On average, RFG instructed its supervisors to permit Velez and the Aggrieved Employees to take a second rest break on only one workday per week. RFG did not provide Velez and the Aggrieved Employees with a third rest period after the tenth hour of work as required by law. Although Velez worked more than ten hours in a workday on

multiple occasions, during the course of her employment at RFG, Velez never received a timely duty-free third rest period.

RFG required Velez and the other Aggrieved Employees to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating them for such time worked at the overtime rates required by California law. RFG failed to pay one and one half times (1 ½ x) the hourly rates of pay of Velez and the Aggrieved Employees by reducing their recorded work hours by 30 minutes and by failing to pay for times waiting in line to clock in to work.

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

- a) RFG failed to compensate Velez and the Aggrieved Employees all their wages earned, including but not limited to, minimum and overtime wages;
- b) RFG unlawfully deducted the wages Velez and the Aggrieved Employees earned, including but not limited to, minimum and overtime wages;
- c) RFG failed to provide Velez and the Aggrieved Employees with all meal periods required by law;
- d) RFG failed to provide Velez and the other Aggrieved Employees with rest breaks as required by law;
- e) RFG failed to compensate Velez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more meal periods in a workday;

- f) RFG failed to compensate Velez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more rest periods in a workday;
- g) RFG failed to provide Velez and the other Aggrieved Employees with accurate and complete wage statements; and
- h) RFG willfully and knowingly failed to pay Velez and the Aggrieved Employees during, and upon termination of, employment, all accrued compensation, including compensation for missed meal periods and work off the clock.

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

Wage Order 8

Wage Order 8 applies to "all persons employed in the industries handling products **after harvest** whether paid on a time, piece rate, commission, or other basis." (emphasis added). At all relevant times during the applicable limitations period, Velez was employed by RFG as a production lead. Accordingly, Velez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked **(Lab. Code §§ 510, 558.1, 1194, 1197, and 1198)**

At all relevant times, Velez and the other Aggrieved Employees have been non-exempt employees of RFG and entitled to the benefits and protections of California Labor Code sections 510, 558.1, 1194, 1197, 1198, and the Wage Order.

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

Section 3 of the Wage Order states:

(1) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: Such employees shall not be employed more than eight (8) hours in any one 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. ...

...

(3) Overtime hours shall be compensated at:

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

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

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

knowledge that employees are working.

Labor Code section 510 states:

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

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

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

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, §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 herein, RFG employed Catchot as a Manager and Catchot acted as an “owner,” “managing agent,” and “officer.” Catchot directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, or working conditions of Velez and the other Aggrieved Employees and caused the violations to the Labor Code and the Wage Order described above.

In conjunction, these 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 unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

At all relevant times during the applicable limitations period, as described above, RFG knowingly failed to compensate Velez and the Aggrieved Employees for all hours worked, including, but not limited to minimum and overtime wages for all hours in excess of 40 in a week and all in excess of eight in a day.

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

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to

recover underpaid wages (penalties set by California Labor Code § 558);

2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code section 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

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

RFG illegally and arbitrarily deducts several minutes from the records of Velez and the other Aggrieved Employees of their daily time worked and reports less hours than their actual hours worked on their wage statements. As a result,

RFG collected and received part of Velez' and the other Aggrieved Employees' wages in violation of California Labor Code § 221.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

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, Section 12 of the Wage Order states:

Rest Periods:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees

whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

In relevant part, California Labor Code § 512 states:

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

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

Meal Periods:

(A) No employer shall employ any person for a work period of not 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 employer and employee.

(B) An employer may not employ and 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 the

employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

California Labor Code § 226.7 states:

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

RFG has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Velez and the other Aggrieved Employees as required by law. As a result, RFG violated California Labor Code §§ 226.7, 512 and 1198.

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

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1198 occurred (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,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,

- 7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, RFG failed to provide Velez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and unpaid wages for uncompensated work such as standing in lines to clock in to work. As a result, RFG failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, RFG has violated California Labor Code § 226.

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

Failures to Timely Pay Wages During Employment
(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.

As alleged herein, RFG failed to provide Velez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided. RFG failed to compensate Velez and the Aggrieved Employees for all hours worked on workdays it modified their time records to falsely state that 30-minute uninterrupted meal periods took place in compliance with California laws. RFG failed to pay Velez and the other Aggrieved Employees for time spent waiting in line to clock in to work. As a result, RFG failed to timely pay Velez and the other Aggrieved Employees all earned minimum, overtime, and premium wages within the time periods set by California Labor Code § 204. As a result, RFG has violated California Labor Code § 204.

Accordingly, Velez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

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

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

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

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

RFG failed to provide Velez and the Aggrieved Employees with meal and rest periods in compliance with California laws. They also failed to provide Velez and the other Aggrieved Employees with premium wages on workdays they failed to make one or more meal or rest periods available. RFG failed to compensate Velez and the other Aggrieved Employees for all hours worked on days they modified their time records to falsely state that meal and rest periods took place in compliance with California laws. RFG failed to pay Velez and the other Aggrieved Employees for time spent waiting in line to clock in after a meal period. By willfully failing to pay wages to Velez and the other Aggrieved Employees as set forth above, at the time of termination of employment, RFG is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the other Aggrieved Employees, Velez seeks civil penalties from RFG 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));

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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)).

Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Maria Velez

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Renaissance Food Group, LLC
c/o James S. Catchot
Agent for Service of Process
11020 White Rock Rd., Ste. 100
Rancho Cordova, CA 95670

Calavo Growers, Inc.
c/o James Snyder, CAO
1141A Cummings Road
Santa Paula, CA 93060

Calavo Growers, Inc.
c/o National Registered Agents, Inc. (C1941323),
Agent for Service of Process
111 Eighth Ave. 13th Floor
New York, NY 10011

GH Foods CA, LLC
c/o James E. Gibson
Agent for Service of Process
14559 Guadalupe Drive
Rancho Murieta, CA 95683

Kenneth J. Catchot
14151 Indio Drive
Sloughhouse, CA 95683

EXHIBIT B



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

July 29, 2020

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

RE: *Claudia Torrez / Renaissance Food Group, LLC, et al.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Claudia Torrez (hereafter “Torrez”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to production leads, production workers, quality control technicians, maintenance technicians, machine operators, and similarly situated employees (hereafter “Aggrieved Employees”) by Renaissance Food Group, LLC, a Delaware limited liability company, GH Foods CA LLC, a California limited liability company, and Calavo Growers, Inc., a California corporation (hereafter collectively “RFG”) of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

At all relevant times, RFG has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Torrez and the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 8-2001 (hereafter “the Wage Order”), paragraph 2.E, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

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SPIVAKLAW.COM

Statement of Facts

RFG hired Torrez as a full time hourly employee on or about May 5, 2017 to work as a production lead, a non-supervisory position, in the Fruit Department of its processing facility in Riverside, California. RFG continuously employed Torrez in California from the time of her hire until on or about January 2, 2020, when her employment terminated.

RFG compensated Torrez and the Aggrieved Employees with an hourly rate of pay and it paid them their wages on a biweekly basis. Torrez started her work shift at 5:30 a.m. or 6:00 a.m. The length of the work shifts varied from six to twelve hours in a day. On a day to day basis, Torrez and the other Aggrieved Employees did not know when their shifts would end. Supervisors assigned Torrez and the Aggrieved Employees the work that needed to be completed for the day and their work shifts ended upon completion of their assignments.

When Torrez and the Aggrieved Employees returned from meal breaks, RFG compelled them to wait in a line of fifteen to twenty (15-20) other employees to clock back in to work. Torrez and the Aggrieved Employees regularly waited in line for approximately three minutes before they could clock back in to work. In order to clock back in for work within the 30-minute period RFG afforded Torrez and the Aggrieved Employees for meal periods, they would return from work and enter the line at least 3 minutes before the conclusion of their meal period. RFG did not pay them for this time and such wait times reduced their meal periods to less than 30 minutes.

RFG failed to provide Torrez and the Aggrieved Employees with a second uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday. Torrez worked in excess of 10 hours in a workday on multiple occasions. On such occasions, RFG regularly failed to provide Torrez and the Aggrieved Employees with a second daily meal period.

RFG routinely denied Torrez and the other Aggrieved Employees an uninterrupted timely second rest period. On average, RFG instructed its supervisors to permit Torrez and the Aggrieved Employees to take a second rest break on only one workday per week. On all but a few rare occasions, RFG

did not provide Torrez and the Aggrieved Employees with a third rest period after the tenth hour of work as required by law. Although Torrez worked more than ten hours in a workday on multiple occasions, during the course of her employment at RFG, Torrez rarely received a timely duty-free third rest period.

RFG required Torrez and the other Aggrieved Employees to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating them for such time worked at the overtime rates required by California law. RFG failed to pay one and one half times ($1 \frac{1}{2} \times$) the hourly rates of pay of Torrez and the Aggrieved Employees by reducing their recorded work hours by 30 minutes and by failing to pay for times waiting in line to clock in to work.

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

- a) RFG failed to compensate Torrez and the Aggrieved Employees all their wages earned, including but not limited to, minimum and overtime wages;
- b) RFG unlawfully deducted the wages Torrez and the Aggrieved Employees earned, including but not limited to, minimum and overtime wages;
- c) RFG failed to provide Torrez and the Aggrieved Employees with all meal periods required by law;
- d) RFG failed to provide Torrez and the other Aggrieved Employees with rest breaks as required by law;
- e) RFG failed to compensate Torrez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more meal periods in a workday;

- f) RFG failed to compensate Torrez and the other Aggrieved Employees at one hour's pay on days when RFG failed to provide them with one or more rest periods in a workday;
- g) RFG failed to provide Torrez and the other Aggrieved Employees with accurate and complete wage statements; and
- h) RFG willfully and knowingly failed to pay Torrez and the Aggrieved Employees during, and upon termination of, employment, all accrued compensation, including compensation for missed meal periods and work off the clock.

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

Wage Order 8

Wage Order 8 applies to "all persons employed in the industries handling products after harvest whether paid on a time, piece rate, commission, or other basis." (emphasis added). At all relevant times during the applicable limitations period, Torrez was employed by RFG as a production lead. Accordingly, Torrez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked **(Lab. Code §§ 510, 558.1, 1194, 1197, and 1198)**

At all relevant times, Torrez and the other Aggrieved Employees have been non-exempt employees of RFG and entitled to the benefits and protections of California Labor Code sections 510, 558.1, 1194, 1197, 1198, and the Wage Order.

Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the

time the employee is suffered or permitted to work, whether or not required to do so.”

Section 3 of the Wage Order states:

(1) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school: Such employees shall not be employed more than eight (8) hours in any one 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. ...

...

(3) Overtime hours shall be compensated at:

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

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

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

Labor Code section 510 states:

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

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

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

In conjunction, these 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 unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

At all relevant times during the applicable limitations period, as described above, RFG knowingly failed to compensate Torrez and the Aggrieved Employees for all hours worked, including, but not limited to minimum and

overtime wages for all hours in excess of 40 in a week and all in excess of eight in a day.

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

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages and liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code section 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

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

RFG illegally and arbitrarily deducts several minutes from the records of Torrez and the other Aggrieved Employees of their daily time worked and reports less hours than their actual hours worked on their wage statements. As a result, RFG collected and received part of Torrez’ and the other Aggrieved Employees’ wages in violation of California Labor Code § 221.

Accordingly, Torrez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld, for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

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, Section 12 of the Wage Order states:

Rest Periods:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

In relevant part, California Labor Code § 512 states:

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

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

Meal Periods:

(A) No employer shall employ any person for a work period of not 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 employer and employee.

(B) An employer may not employ and 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 the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular

rate of compensation for each workday that the meal or rest or recovery period is not provided.

RFG has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Torrez and the other Aggrieved Employees as required by law. As a result, RFG violated California Labor Code §§ 226.7, 512 and 1198.

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

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

- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, RFG failed to provide Torrez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and unpaid wages for uncompensated work such as standing in lines to clock in to work. As a result, RFG failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, RFG has violated California Labor Code § 226.

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

Failures to Timely Pay Wages During Employment **(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.

As alleged herein, RFG failed to provide Torrez and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided. RFG failed to compensate Torrez and the Aggrieved Employees for all hours worked on workdays it modified their time records to falsely state that 30-minute uninterrupted meal periods took place in compliance with California laws. RFG failed to pay Torrez and the other Aggrieved Employees for time spent waiting in line to clock in to work. As a result, RFG failed to timely pay Torrez and the other Aggrieved Employees all earned minimum, overtime, and premium wages within the time periods set by California Labor Code § 204. As a result, RFG has violated California Labor Code § 204.

Accordingly, Torrez seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

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

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other

provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

RFG failed to provide Torrez and the Aggrieved Employees with meal and rest periods in compliance with California laws. They also failed to provide Torrez and the other Aggrieved Employees with premium wages on workdays they failed to make one or more meal or rest periods available. RFG failed to compensate Torrez and the other Aggrieved Employees for all hours worked on days they modified their time records to falsely state that meal and rest periods took place in compliance with California laws. RFG failed to pay Torrez and the other Aggrieved Employees for time spent waiting in line to clock in after a meal period. By willfully failing to pay wages to Torrez and the other Aggrieved Employees as set forth above, at the time of termination of employment, RFG is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the other Aggrieved Employees, Torrez seeks civil penalties from RFG 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)).

Conclusion

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

Sincerely,



David Spivak, Esq.
david@spivaklaw.com
cc: Claudia Torrez

Renaissance Food Group, LLC
c/o Alden Parker, Esq.
Fisher & Phillips, LLP
621 Capital Mall, Suite 1400
Sacramento, CA 95814
aparker@fisherphillips.com

///
///
///

Calavo Growers, Inc.
c/o Alden Parker, Esq.
Fisher & Phillips, LLP
621 Capital Mall, Suite 1400
Sacramento, CA 95814
aparker@fisherphillips.com

GH Foods CA, LLC
c/o Alden Parker, Esq.
Fisher & Phillips, LLP
621 Capital Mall, Suite 1400
Sacramento, CA 95814
aparker@fisherphillips.com

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 15303 Ventura Bl, Ste 900, Sherman Oaks, CA 91403.

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

On Monday, March 28, 2022, I served the foregoing document described as **[PROPOSED] FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE LABOR CODE AND CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE §§ 2698, ET SEQ.** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Alden J. Parker, Esq.
Drew Tate, Esq.
Fisher & Phillips LLP
621 Capitol Mall, Suite 1400
Sacramento, CA 95814
aparker@fisherphillips.com
dtate@fisherphillips.com
lysmith@fisherphillips.com
vrathke@fisherphillips.com

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address breck@spivaklaw.com or boyama@spivaklaw.com.

EXECUTED on Monday, March 28, 2022, at Los Angeles, California.

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

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

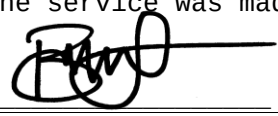

BRECK OYAMA

EXHIBIT 13

FILED
Superior Court Of California,
Sacramento
04/20/2022
mwhtaker
By _____, Deputy
Case Number:
34-2019-00250841

1 ALDEN J. PARKER, SBN 196808
Email: aparker@fisherphillips.com
2 DREW M. TATE, SBN 312219
Email: dtate@fisherphillips.com
3 FISHER & PHILLIPS LLP
621 Capitol Mall, Suite 1400
4 Sacramento, California 95814
Telephone: (916) 210-0400
5 Facsimile: (916) 210-0401

6 Attorneys for Defendants
RENAISSANCE FOOD GROUP, LLC;
7 GH FOODS CA, LLC; and
CALAVO GROWERS, INC.
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SACRAMENTO - GORDON D. SCHABER COURTHOUSE
11

12 MARIA VELEZ, on behalf of herself, and all
13 others similarly situated, and as an "aggrieved
employee" on behalf of other "aggrieved
14 employees" under the Labor Code Private
Attorneys General Act of 2004,

15 Plaintiffs,

16 v.

17 RENAISSANCE FOOD GROUP, LLC, a
Delaware limited liability company; GH
18 FOODS CA LLC, a California limited liability
company; KENNETH J. CATCHOT, an
19 individual; CALAVO GROWERS, INC., a
California corporation; G&M HIRE
20 ENTERPRISES, LLC doing business as
ATWORK PERSONNEL SERVICES; and
21 DOES 1 through 50, inclusive,

22 Defendants.
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CASE NO.: 34-2019-00250841

[Assigned for all purposes to Dept. 24]

**DEFENDANTS RENAISSANCE FOOD
GROUP, LLC, GH FOODS CA, LLC AND
CALAVO GROWERS, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFFS
MARIA VELEZ AND CLAUDIA TORREZ'S
FIRST AMENDED COMPLAINT**

BY FAX

Complaint Filed: February 19, 2019
Trial Date: Not Set

1 Defendants RENAISSANCE FOOD GROUP, LLC, GH FOODS CA, LLC and CALAVO
2 GROWERS, INC. (collectively "Defendants") respond to Plaintiffs MARIA VELEZ and CLAUDIA
3 TORREZ's (collectively "Plaintiffs") First Amended Complaint ("FAC") as follows:

4 **ANSWER AND GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure section 431.30, subdivision (d), Defendants
6 generally deny each and every allegation and cause of action in Plaintiffs' FAC. Defendants further deny
7 that Plaintiffs have sustained any injury, damage, or loss by reason of any act or omission on the part of
8 Defendants, and specifically deny that Plaintiffs suffered any loss or damage alleged in the FAC.

9 **AFFIRMATIVE DEFENSES**

10 For a further answer to Plaintiffs' FAC and by way of affirmative defenses, Defendants allege as
11 follows:

12 **FIRST AFFIRMATIVE DEFENSE**

13 1. Plaintiffs' FAC, and each and every cause of action contained therein, fails to state facts
14 sufficient to constitute any cause of action against Defendants.

15 **SECOND AFFIRMATIVE DEFENSE**

16 2. Plaintiffs' FAC, and each and every cause of action contained therein, is barred by the
17 applicable statute of limitations, including those set forth in California Code of Civil Procedure sections
18 335.1, 338(a), 340(a), and 343; and California Labor Code sections 203 and 226.

19 **THIRD AFFIRMATIVE DEFENSE**

20 3. Plaintiffs' claims are barred by their respective failures to exhaust administrative
21 remedies and/or internal grievance procedures.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 4. Plaintiffs, by reason of their knowledge, statements and conduct, are estopped to
24 complain of any act or omission on the part of Defendants, if any there were.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 5. Plaintiffs' FAC, and each cause of action contained therein, is barred by the doctrine of
27 waiver.

28 ///

1 **SIXTH AFFIRMATIVE DEFENSE**

2 6. Plaintiff's FAC, and each cause of action contained therein, is barred by the doctrine of
3 unclean hands.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 7. An award of penalties against Defendants under the circumstances of this case would
6 constitute an excessive fine and otherwise be unconstitutional to the extent that the penalty is
7 disproportionate to actual losses suffered by the Plaintiffs and/or similarly aggrieved individuals.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 8. Plaintiffs' claims are barred, because Plaintiffs were paid all remuneration, compensation,
10 and/or wages due to them on a timely basis pursuant to the requirements contained in the California
11 Labor Code and any applicable wage order.

12 **NINTH AFFIRMATIVE DEFENSE**

13 9. Plaintiffs' claim for waiting time penalties pursuant to Labor Code section 203 is barred
14 because Defendants did not willfully withhold wages over which there was no good faith dispute and, in
15 fact, acted at all times with the good faith belief that Plaintiffs were compensated as required by law.

16 **TENTH AFFIRMATIVE DEFENSE**

17 10. Any recovery on Plaintiffs' FAC, or any cause of action contained therein, is barred on
18 the ground that to the extent Plaintiffs did work that was unpaid, such work was unauthorized by
19 Defendants and performed without Defendants' knowledge.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 11. At all times Defendants were acting in good faith and had reasonable grounds for
22 believing that their method of compensating Plaintiffs was lawful.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 12. Plaintiffs' claim that they were unlawfully denied their right to meal periods by
25 Defendants is barred to the extent that Plaintiffs were "provided" an off-duty meal period of at least
26 thirty (30) minutes duration at the appropriate times as required by Section 11 of the applicable Industrial
27 Welfare Commission Wage Order(s), and any interruption during said meal periods (which Defendants
28 do not concede) was "*de minimus*," as permitted by law.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 13. Plaintiffs' claim that they were unlawfully denied their right to rest and/or meal periods
3 is barred to the extent they voluntarily relinquished or waived they right to such rest and/or meal periods.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 14. Proposed counsel for the aggrieved employees is not able to fairly and adequately
6 represent the interests of the aggrieved employees.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 15. Any recovery on Plaintiffs' FAC, or any cause of action contained therein, is barred in
9 whole or in part by Plaintiffs' failure to mitigate their damages.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 16. Plaintiffs are not entitled to recover punitive or exemplary damages from Defendants on
12 the grounds that any award of punitive or exemplary damages would violate Defendants' constitutional
13 rights under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States
14 Constitution.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 17. The acts of DOE Defendants of which Plaintiffs complain were all undertaken outside
17 the scope of their agency, employment, and/or other business relationship with Defendants (if any), and
18 without the knowledge or consent of Defendants, and Defendants may not be held liable therefor.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 18. Plaintiffs' claim for penalties pursuant to California Labor Code section 226, subdivision
21 (e), are barred because Plaintiffs have not been injured by Defendants' alleged failure to comply with
22 Section 226(a), or any statute of similar effect.

23 **NINETEENTH AFFIRMATIVE DEFENSE**

24 19. Defendants "provided" Plaintiffs with off-duty meal periods of at least thirty (30) minute
25 duration pursuant to the applicable Industrial Welfare Commission Wage Order and California Labor
26 Code section 512.

27 ///

28 ///

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 20. Defendants authorized and permitted Plaintiffs to take rest and/or meal periods pursuant
3 to the applicable Industrial Welfare Commission Wage Order.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 21. Plaintiffs' claim for statutory penalties pursuant to California Labor Code section 226 is
6 barred because Defendants at all times acted with the good faith belief that they were in compliance with
7 the requirements of California Labor Code section 226.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 22. Any penalties available to Plaintiffs under the Private Attorney Generals Act are subject
10 to equitable reduction pursuant to California Labor Code section 2699(e)(2), on the grounds that
11 awarding the maximum available penalty would be unjust, arbitrary and oppressive, and confiscatory.

12 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

13 23. Plaintiffs do not have standing to bring a claim under California Private Attorneys
14 General Act of 2004, California Labor Code section 2698, et seq.

15 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

16 24. Plaintiffs' claims, if any, against Defendants under California Labor Code sections 2698-
17 2699, the Private Attorney Generals Act of 2004, are barred because Plaintiffs, and the individuals they
18 seeks to represent, are not "aggrieved employees" as defined by California Labor Code section 2699.

19 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

20 25. Plaintiffs' representative action under the Private Attorneys General Act is not
21 manageable because it would require the testimony of each of the persons on whose behalf civil penalties
22 and other relief is sought in order for there to be recovery of penalties and other relief on any such
23 persons' behalf.

24 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

25 26. Plaintiffs' claims cannot proceed as a representative action because they are not an
26 "aggrieved employees."

27 ///

28 ///

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 27. Plaintiffs' claim under California Labor Code section 226(a) is barred as Plaintiffs were
3 provided with accurate wage statements in compliance therewith.

4 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

5 28. Defendants expressly reserve the right to amend, supplement, alter, or change their
6 answer and affirmative defenses upon revelation of more definitive facts by Plaintiffs and upon
7 Defendants' undertaking of discovery and investigation of this matter. Accordingly, the right to assert
8 additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is
9 hereby reserved.

10 **PRAYER**

11 WHEREFORE, Defendants pray for judgment as follows:

- 12 1. That Plaintiffs take nothing by the FAC on file herein;
13 2. That Plaintiffs' FAC herein be dismissed in its entirety with prejudice;
14 3. That the Court decline to allow Plaintiffs' claims to proceed as collective or representative
15 claims;
16 4. That Defendants recover their costs of suit incurred herein, including their reasonable
17 attorneys' fees; and
18 5. That the Court award such other and further relief as it deems appropriate.
19

20 DATE: April 20, 2022

FISHER & PHILLIPS LLP

21
22 By: 

23 ALDEN J. PARKER
DREW M. TATE

24 Attorneys for Defendants
25 RENAISSANCE FOOD GROUP, LLC;
26 GH FOODS CA LLC; and
27 CALAVO GROWERS, INC.
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PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am at least 18 years old and not a party to this action. I am employed in the County of Sacramento with the law offices of Fisher & Phillips LLP and its business address is 621 Capitol Mall, Suite 1400, Sacramento, California 95814.

On April 20, 2022, I served the foregoing document(s), **DEFENDANTS RENAISSANCE FOOD GROUP, LLC, GH FOODS CA, LLC AND CALAVO GROWERS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS MARIA VELEZ AND CLAUDIA TORREZ'S FIRST AMENDED COMPLAINT**, on the person(s) listed below as follows:

David G. Spivak
Sara Brown
THE SPIVAK LAW FIRM
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

Attorneys for Plaintiff
MARIA VELEZ

Facsimile: (213) 634-2485
Emails: david@spivaklaw.com
sara@spivaklaw.com

☐ [by MAIL] - I enclosed the document(s) in a sealed envelope or package addressed to the person(s) whose address(es) are listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in Sacramento, California, in a sealed envelope with postage fully prepaid.

☐ [by FAX] - Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the person(s) at fax number(s) listed above from fax number (916) 210-0401. The machine printed a record of the transmission, and no error was reported by the machine.

☐ [by OVERNIGHT DELIVERY] - I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight carrier.

☒ [by ELECTRONIC SERVICE] - Based on a court order or an agreement of the parties to accept service by electronic transmission, I electronically served the document(s) to the person(s) at the electronic service address(es) listed above.

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

Executed April 20, 2022, at Sacramento, California.

Vicki Rathke

Print Name

By:



Signature

EXHIBIT 14

EXHIBIT 15

41
FILED

Superior Court Of California
County Of Los Angeles

JUN 21 2012

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

Received

MAY 18 2012

Fax Filing

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

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

Plaintiffs,

vs.

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

Defendants.

Case No.: BC430633

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

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

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

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

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

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

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

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

18 **Plaintiff Alina Ghrdilyan**

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

27 **Plaintiff Evgenia Sultanian**

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

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

Other Aggrieved Employees

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

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

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

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

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

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

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

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

1 ~~3~~ The aggrieved employees shall have judgment under the PAGA against
2 Defendant Ramil Abalkhad in the amount of \$81,250.

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

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

7 Defendant Ramil Abalkhad must pay the Plaintiffs and their attorneys on the First
8 Amended Complaint attorneys' fees in the amount of \$ **581,770.78** ^{PP} and costs in the amount
9 of \$ **21,272.00** ^{PP}

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

13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14 **JUNE 21, 2012**
15 DATE

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

State of California,
County of Los Angeles

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

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

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

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

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

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

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

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

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


BROCK OYAMA

EXHIBIT 16

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
4 Suite 303
5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
8 Email david@spivaklaw.com

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

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

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
10 (UNLIMITED JURISDICTION)

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

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

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

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

19 *Defendants.*

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

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

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27
THE
SPIVAK
LAW FIRM

1 “Defendants”) for violations of the California Labor Code, the applicable Industrial Welfare
2 Commission Order(s) (“Wage Order(s)”), and the California Business and Professions Code,
3 and as grounds therefore alleges:

4 INTRODUCTION

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 CLASS ACTION ALLEGATIONS

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

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

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class**, and/or **Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class**, **Overtime Class**,
6 **Rest Periods Class**, **Meal Periods Class**, **Inaccurate Wage Statement**
7 **Class**, **Unauthorized Deduction Class**, **Former Employee Class**, and/or
8 **Indemnification Class**.

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

25 27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully
26 alleged herein.

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 “Management Recognition Days,” without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney’s fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

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

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs’ wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24
25 ///

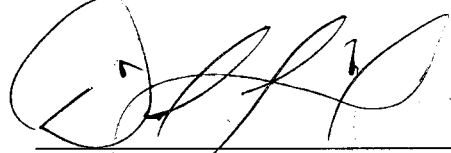
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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM



By:

Date: February 23, 2010

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

EXHIBIT 17

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. SABZEVAR: NO, YOUR HONOR.

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

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

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

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

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

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

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

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

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

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

6 THE COURT: FORTY-FIVE DAYS.

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

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

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

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

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

17 MR. SPIVAK: YES, YOUR HONOR.

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

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

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

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

1 FOUR WEEKS. HERE'S OUR SITUATION.

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

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

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

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

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

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

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

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

EXHIBIT 18

OCT 24 2017

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

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

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

Plaintiff,

v.

Security Paving Company, Inc.,

Defendant.

Case No. BC492828

Proposed Statement of Decision

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

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

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

1 I. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

3 4 II. OUTLINE OF ISSUES DECIDED AT TRIAL

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

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

23 24 III. PAGA REST BREAK CLAIMS

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

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

1 A. Labor Code Provisions and Wage Order 16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17
18 These witnesses and their testimony were neither credible nor was the testimony corroborated by
19 contemporaneous employment or payroll records. Despite testimony that missed rest breaks were
20 recorded by foremen on timesheets, the defendant failed to mark or admit as a separate exhibit
21
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23 ¹⁷ By contrast, the defendant's current employees uniformly sponsored the wholly incredible testimony that they were
24 indifferent to losing their jobs -- all of which were incredibly high-paying positions. These defense witnesses had an
25 obvious and clear financial motive to testify in a way to assist the company. When each and every one of them
26 testified that they were indifferent to the possibility of losing their six-figure salaries, they lost a good deal of
credibility. Equally problematic to their credibility was the recurrent admission that they'd spoken with defense
counsel and had been told what questions to expect to be asked.

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

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

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

14
15 Of those witnesses who worked day shifts, their testimony was inconsistent and failed to establish
16 defendant's claim that it had a consistent and enforced policy of authorizing and permitting two
17 rest periods -- one in the morning and one in the afternoon. Many of these defense witnesses
18 testified to different rest break practices in key aspects. Graham's crew had fixed rest and meal
19 breaks and would be required to ask permission if they wanted to take a break at a different time.
20 Jose Munoz, also a carpenter foreman, instructed his crew when to take their breaks. Walsh took
21 his breaks at fixed times and never deviated from that schedule for "any reason." Ryan Tevelde,
22 an equipment operator, took regular breaks but would deviate from a fixed schedule if necessitated
23 by the work being performed without asking permission.

24
25
26 ¹⁹ In defendant's post-trial brief, defendant drew the court's attention to two pages of an admitted exhibit of hundreds
27 of certified payroll records -- an exhibit that was so voluminous that it was submitted in the form of a thumb drive.
(Exh. 55). The absolutely scarcity of such examples supports the conclusion that, in the vast, vast, vast majority of
occasions, missed rest break premiums were not paid by the defendant.

28 ²⁰ Until 2015, defendant did not have a time-keeping system that was capable of capturing or preserving this
information.

1 Only five of the defendant's nineteen witnesses worked on the types of shifts that are being
2 challenged by these aggrieved employees -- overnight road replacement and paving shifts
3 involving lane closures during which work assignments for lane removal and replacement had to
4 be performed within a relatively short time period. As to the small number of defense witnesses
5 who had worked on night shifts, they did not testify consistently or credibly as to whether and
6 when rest breaks were provided during those assignments. As discussed above, two defense
7 witnesses testified that they instructed their crews to use "downtimes" for meal and rest breaks.
8 Tevelde testified that he took breaks and he never believed that he could walk away from the
9 equipment during "downtime." Abel Lemus testified that he took his breaks during downtime.
10 But, Kamran Sepanlou, testified that he took breaks whenever he wanted to and he was free to
11 take a break and walk away from his equipment during a cement pour if he wanted and no
12 questions would be asked.

13
14 Other of these defense witnesses were impeached by prior testimony or appeared during their
15 testimony as evasive, defensive and not credible. Michael Rodriguez, the defendant's "PMQ" was
16 entirely not credible. His demeanor while testifying was hostile and defensive. His testimony, in
17 critical aspects, defied common sense. For example, although he testified that there was no
18 record-keeping by the defendant regarding rest breaks until 2015, he was confident that before this
19 change in 2015 employees had been paid premiums "many times" for missed rest breaks.²¹ This
20 testimony was contradicted by his deposition testimony. At his deposition, he testified that he was
21 not aware of employees being paid a one-hour penalty for rest breaks.²² He also incredibly
22 testified that meal and rest breaks were discussed at *every* tailgate meeting, even though he was
23 personally present at only maybe 20 of the more than 2000 weekly meetings held over his seven-

24
25
26 ²¹ The documents show that Security Paving has only paid 19 hours of missed rest periods since the new program was introduced in January 2015.

27 ²² Equally incredible was defendant's witnesses' claim that Wage Order 16 was prominently posted at all the
28 overnight road paving job sites. There was no fixed location based on the nature of these projects at which such a posting could have been provided. The credible testimony of plaintiff's witnesses is that they never saw any postings because they worked hours in which the main offices were closed.

1 year employment history at Security Paving. His most incredible testimony was his claim that the
2 2015 improvement in record-keeping at Security Paving had nothing to do with this lawsuit,
3 despite a complete lack of foundation as to that question because he admitted that he'd never
4 attended a meeting during which the lawsuit was discussed.

5
6 Shane Hunter, a superintendent for Security Paving, provided some of the most unbelievable
7 testimony at the trial. He acknowledged that the road replacement crews were expected to
8 complete a target of pavement removed and pavement replaced for each shift. He also testified
9 that Cal Trans lane closure requirements and stipulated time for completion in contracts are factors
10 in making work schedules. He then, however, went on to testify that these conditions have no
11 effect on the pace at which work is performed and whether breaks are authorized and permitted.
12 He admitted that even though there are liquidated damages as much as \$30,000 per hour, the
13 workers would never work through lunch or breaks for the sake of contract completion. He then,
14 amended his testimony and admitted that although he did discuss daily project completion
15 deadlines with the foremen who reported to him, he never discussed project completion targets
16 with them. How one can discuss one without discussing the other was never made apparent. His
17 inconsistent testimony severely affected the credibility of his testimony regarding whether rest
18 breaks were authorized and permitted by the defendant.

19
20 The defense witness who offered the most unbelievable testimony was Ray Guillen, the foreman
21 who worked, at least for some relevant period, with plaintiff Jon Shields. Guillen was sullen,
22 defensive and avoidant while testifying. His posture and attitude revealed an unbelievable
23 antipathy for the plaintiff. Like other defense witnesses, Guillen started answering questions
24 before defense counsel even finished asking them -- showing that he clearly had been told what
25 questions would be asked and had prepared answers with the assistance of someone else. During
26 cross-examination, Guillen was visibly angry with plaintiff's counsel.

1 Moreover, Guillen's testimony made no sense. His version of Bret Leutzinger's complaint about
2 the absence of breaks is one example. Why would an employee voluntarily retreat from a
3 complaint about receiving breaks -- as Guillen testified? The only logical explanation -- which
4 was proffered by Leutzinger himself -- would be that the employee believed that he would be
5 retaliated against if he continued to complain.

6
7 Another incredible part of Guillen's testimony is that he told his crews -- each and every week at
8 every single tailgate meeting -- about the company's meal and rest break policies. And, what
9 would he have told them? According to him, crews were to take breaks while there was
10 "downtime." The problem with that testimony is that when Jon Shields took a nap during such a
11 "downtime" break, he was written up -- twice. So, if you are disciplined for taking a nap during
12 downtime, how can you take a break during which you are free from management control? How
13 does a foreman know if the nap you are taking is your break or not? How can you be relieved of
14 all responsibility, and yet be disciplined for taking a nap during the same downtime?

15
16 That the defendant is subject to oversight by Cal Trans and other regulatory agencies does not
17 persuade the court that duty-free rest breaks during downtime were authorized and permitted. It
18 would be virtually impossible for the intermittent presence of government representatives during a
19 nighttime road replacement operation -- who would be focused on progress of the task,
20 engineering/plans or questions of safety compliance -- to detect the absence of rest breaks and/or
21 the failure to pay a premium wage for those missed breaks. Even the occasional business agent of
22 the unions failed to detect the defendant's non-compliance. As credibly testified to by a number of
23 plaintiff's witnesses, employees were too scared to complain and business agents were too
24 captured by the employer to investigate. Again and again, the absence of a complaint was
25 considered by the union to be a reason not to investigate.

26
27 Nor does the existence of a number of collective bargaining agreements -- all of which were
28 admitted as exhibits during the defendant's case -- exonerate or excuse the failure by Security

1 Paving to authorize and permit nighttime road repair and replacement crews to take legally
2 compliant rest breaks. While the defendant may have believed that it provided a complete defense
3 for the workplace practices it engaged in, it does not – as a matter of law – provide that protection.
4 And, that the company was required to pay for an eight-hour shift, even if the shift workers
5 completed their tasks before eight hours elapsed does not provide an excuse or defense to the
6 company’s failure to authorize and permit employees to take rest periods, or to pay premiums for
7 missed periods.²³

8
9 In conclusion, the plaintiff has met his burden of proving that the defendant failed to comply -- at
10 least with regard to nighttime road replacement and repair crews -- with the Labor Code's
11 requirements with regard to rest breaks.

12
13 C. The Petersen Survey and Damage Study Are Entitled to No Weight

14
15 Having established the factual existence of a violation of the labor laws based on Security
16 Paving’s failure to afford nighttime road repair and replacement crews legally compliant rest
17 breaks, the next question is how many aggrieved employees on how many shifts failed to receive a
18 legally compliant rest break?

19
20 Under Labor Code Section 2699(a), aggrieved employees can initiate actions to recover civil
21 penalties for Labor Code violations that may be recovered by the Labor and Workforce
22 Development Agency (“LWDA”) or any of its departments, divisions or employees. To prevail in
23 his representative claims, Plaintiff must prove Labor Code violations with respect to each and
24 every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA. *See*
25 *Hibbs-Rines v. Seagate Tech., LLC* (N.D. Cal. Mar. 2, 2009) 2009 WL 513496, at *4.

26
27 ²³ Although one or two witnesses testified to leaving early on those days when rest breaks were missed, the vast
28 majority of the witnesses for both sides testified to working an eight-hour shift and remaining at work until the end of
the shift.

1
2 Such actions are fundamentally law enforcement actions, with the aggrieved employee acting as a
3 private attorney general to collect penalties from employers who violate labor laws. *Esparza v. KS*
4 *Industries* (2017) 13 Cal.App.5th 1240-1241 (the employee plaintiff represents the same legal right
5 and interest as the LWDA). In a PAGA representative action, the government enforcement entity
6 is “always the real party in interest in the suit.” This is an important distinction between civil
7 penalties and statutory damages. *Id.* at 1241.

8
9 To establish the number of Security Paving employees who were not afforded and permitted a
10 legally compliant rest break during the PAGA period, plaintiff proffered a survey and report
11 prepared by Dr. Jeffrey Petersen. This survey was undertaken to measure how many aggrieved
12 employees during the PAGA period missed a legally compliant rest break and to compute their
13 unpaid wage amounts, penalties and interest.²⁴

14
15 As a preliminary matter, Dr. Petersen received from plaintiff’s counsel a list (“the July 2017 list”)
16 of individuals provided by the defendant as part of a “contact list” process. Of the 1013 names on
17 that list, 858 of these individuals had phone numbers. If an individual did not have a phone
18 number, he or she would be excluded from consideration for the survey.²⁵

19
20 Dr. Petersen then randomly ordered the remaining names from the July 2017 contact list provided
21 by the defendant and identified the first 400 persons on this list.²⁶

22
23 ²⁴ Before trial began, defendant moved to exclude Dr. Petersen’s survey as unsupported by general scientific theory
24 and having been conducted using improper scientific survey techniques. *See Sargon Enterprises, Inc. v. University of*
25 *Southern California* (2012) 55 Cal.4th 747, 772. Although the court denied that motion, it did so with the
understanding that the weight to be given to the plaintiff’s evidence would be independently evaluated after the
conclusion of all the testimony. *Cf. Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 60.

26 ²⁵ Although Dr. Petersen testified that the elimination of employees without phone numbers would have no effect on
27 the survey results because whether or not an individual has a working phone number is not likely a source of bias, his
only authority for this proposition was an article that he wrote. (Exh. 41 at 3, n.12).

28 ²⁶ Dr. Petersen testified that he believed that 400 was a sufficient size for his survey based on his “pilot study” that he
claims to have performed previously. Dr. Petersen did not perform a pilot for his 2017 survey. The survey that he

1 Dr. Petersen then contacted Susan Allman to survey these persons. Ms. Allman is a CPA and is
2 his business partner's daughter-in-law. Ms. Allman has received no formal training in survey
3 techniques; but she conducted two other surveys for Dr. Petersen. Dr. Petersen gave Ms. Allman
4 instructions on the telephone as to the "proper survey protocol."²⁷ Dr. Petersen instructed Ms.
5 Allman to keep a call log to detail her interaction with potential survey participants, including
6 whether she was able to validate that the phone numbers belonged to the people on the random
7 list.

8
9 Ms. Allman attempted to call each individual on the list of 400 four times. Out of the 400, 162
10 had valid phone numbers and 91 participated in the survey.²⁸

11
12 In the survey that Dr. Petersen prepared, he asked the participants whether they had *received* rest
13 breaks, which he defined as a ten-minute period where they were relieved of their job
14 responsibilities.²⁹ (Exh. 41 at 22 (emphasis added)).

15
16 If the participant provided an answer, such as "everyday" or "always," the survey would conclude.

17
18 submitted to the court for purposes of the 2016 motion for class certification was not a "pilot" for this survey – despite
19 his testimony to the contrary. The declaration filed by Dr. Petersen in support of the 2016 survey did not mention nor
20 did it describe the survey conducted in 2016 as a "pilot" survey. Further, the 2016 survey asked different questions
21 than those posed in the 2017 survey. Dr. Petersen's testimony where he claimed that the 2016 survey was a pilot for
22 the 2017 survey is wholly not credible and generally (adversely) affected his credibility with regards to his entire
23 testimony.

24
25 ²⁷ That protocol and the particular training received by Ms. Allman was not described in Dr. Petersen's report, other
26 than by citing to a chapter in a book written by Robert Groves. Ms. Allman was not given scripts regarding certain
27 responses to particular inquiries by the participants; she was told only to refer questions to Dr. Petersen. Ms. Allman
28 was not told to make her phone calls during identified times of the day, nor was she instructed on how to record
information provided by the participants fully and accurately. At the time that she conducted the survey, Ms. Allman
was aware of the lawsuit, the company and that the survey sought to obtain information regarding the participant's
employment.

²⁸ Listed employees who spoke Spanish were eliminated from participation in the survey because Ms. Allman did not
speak Spanish. (Exh. 41-1).

²⁹ Specifically, the survey asked each participant: "[t]hinking about your entire employment period at Security
Paving and all the different projects you worked on; if you worked a five day work week, how many of those days
would you receive a 10 minute paid rest break for every four hours worked, on average?"

1 For all other respondents, the survey asked each participant to estimate the exact number of days
2 that they had *received* a rest break. (Id.)

3
4 Then, the survey presented the participants with an open-ended question: “What was the reason,
5 or reasons, you did not receive the rest breaks?” (Id.)

6
7 If the participant reported that they did not receive a rest break, the survey then asked whether
8 they’d received a payment for their missed rest break time. (Id.)

9
10 The survey also asked the participants if the frequency regarding receiving rest breaks changed
11 depending on the project and they were asked, by year, to estimate for each year worked how
12 many rest breaks they received, on average. (Id.)

13
14 The potential survey participants knew about the litigation-related purpose of the survey in
15 advance of receiving a phone call. In a letter sent by plaintiff’s counsel to those employees on the
16 July 2017 list in advance of the survey being conducted, the plaintiff’s counsel told the potential
17 interviewees that they were “potentially” aggrieved employees. (Exh. 41 at 4, 25). In the event a
18 survey participant didn’t read or forgot about the letter, Ms. Allman reminded the participants that
19 they were potentially interested parties in a lawsuit: “[w]e have been asked by the lawyers who
20 seek to represent employees who performed work for Security Paving in a collective action
21 lawsuit to conduct a survey.” (Exh. 41 at 21).

22
23 The survey was conducted over a very brief period of time – during approximately six days in late
24 August 2017. (Exh. 41-1 (Excel spreadsheet of Allman call-log contained on disc attached to the
25 hard copy portion of Exhibit 41)).

1 For those persons who participated in the survey, their responses to the open-ended question 6
2 were recorded by Ms. Allman.³⁰ These answers were provided to Dr. Petersen who reviewed and
3 coded the information obtained in the survey. Specifically, Dr. Petersen took these answers to the
4 open-ended question 6 asking the participant to explain why a rest break had not been provided
5 and then assigned either a 1 or 0 to those responses. A 1 was used to signify that a break had been
6 provided and a 0 was used to show that a legally-compliant break had not been received. (See CD
7 attached as part of Exhibit 41 at Excel Tab Analy L2). Thus, coding was used by Dr. Petersen to
8 interpret answers to the open-ended question 6 ("What was the reason, or reasons, you did not
9 receive the rest breaks?") to determine how frequently a violation occurred.

10
11 Dr. Hildreth, defendant's expert, challenged certain of the coding decisions made by Dr. Petersen.
12 For example, he declined to agree with Dr. Petersen that an answer of "Don't know just went
13 along with the program" should be counted as a rest break violation. Another example, "pouring
14 concrete they would leave early" was also recorded as a violation, even though the employee can
15 elect to take their rest break at the end of the shift by leaving early.

16
17 When asked to explain the methodology that he used in assigning a violation to an explanation,
18 Dr. Petersen vaguely testified that these answers didn't "indicate any personal choice to me." As
19 he explained further why he coded certain answers as violations:

20
21 "Well, they were just – the situation, as I understood it, is they're just out there working
22 and they didn't get a break, so they don't know why they didn't get a break. It just didn't
23 happen."

24
25
26
27
28 ³⁰ An additional four responses were included by Dr. Petersen in his report, but they were obtained in an earlier survey
conducted by him as part of plaintiff's class certification motion.

1 Based on this coding, Dr. Petersen then computed the percentage of survey participants who stated
2 that they did not receive all of their required rest breaks due to reasons other than personal choice
3 and computed PAGA penalties based upon this information.

4
5 Dr. Hildreth, who testified for the defendant, criticized a number of errors in the design and
6 implementation of this survey and further challenged the conclusions reached by Dr. Petersen.

7
8 The Court finds the testimony of Dr. Hildreth very credible and adopts, as findings, many of his
9 conclusions with regard to the unscientific nature of Dr. Petersen's survey.

10
11 First, the sample employed by Dr. Petersen was self-selected and biased. Before the survey
12 process even began, the plaintiff's law firm sent a letter out to persons on the 2017 contact list to
13 inform them of the impending survey contact and questionnaire. The letter explicitly stated the
14 plaintiff's law firm was preparing for trial and that, although none of them would be required to
15 appear or attend the trial, they were potentially aggrieved employees. In this way, the letter
16 entreated future participants in the upcoming survey by a promise of potential financial gain.³¹
17 (Exh. 41 at 25). Similarly, the interviewer in this case also knew about the lawsuit. Thus both
18 respondents and interviewer were on notice of the possibility of financial gain associated with
19 certain answers to the questions that were to be posed. This survey design is clearly contrary to
20 the "double blind" standard methods of scientific survey research.³²

21
22 The survey letter and script also allowed participants to believe that their answers would not
23 subject them to legal process, thus providing them with a degree of anonymity. These notices

24
25
26 ³¹ In the event that survey participants had not received the letter or had forgotten its contents, they were reminded as
27 part of the telephone script that "this survey is part of a collective action lawsuit." While an advance letter may have
been useful to improve respondent cooperation, Dr. Hildreth competently testified that these should be written without
mentioning the purpose or the sponsor of the survey.

28 ³² Although Dr. Petersen (again citing only to his own article) opined that double-blind surveys were impossible in
wage and hour cases, he cited no factual basis for that conclusion.

1 gave the impression that any information the survey provided would be anonymous. As Dr.
2 Petersen himself acknowledged in one of his articles, the promise of anonymity increases bias
3 because the participants will exaggerate their reported harm. Both the letter and the survey taker's
4 remarks in this case alerted and informed a specific sub-section of the sample that they were
5 aggrieved and could exaggerate their alleged harms without consequence.

6
7 Second, the sample size selected by Dr. Petersen was too small to obtain the 95 percent confidence
8 estimates sponsored by Dr. Petersen. Moreover, the reason provided by Dr. Petersen to support
9 his decision to limit the sample size to 400 (i.e., that a pilot study was performed previously and
10 supported this sample size) is found by the court to be factually untrue.

11
12 Third, even if the survey methodology were proper, the survey questions themselves failed to
13 elicit how often a violation of the relevant Labor Code rest break provisions had occurred. By
14 asking whether they received breaks, employees were incorrectly directed to report every instance
15 in which a rest break was not 'received,' not whether the employer authorized or permitted such
16 breaks – which is what the law requires.³³

17
18 Fourth, the use of an open-ended question failed to convert the improper "received" breaks
19 question into one that discovered whether employees were "authorized and permitted" but simply
20 elected not to take breaks. Dr. Petersen coded answers from respondents in a biased and
21 unscientific manner, thus rendering the survey's conclusion as to the frequency of violations
22 invalid. A number of Dr. Petersen's coding decisions demonstrate his partisan viewpoint and his
23 lack of objectivity – taking this survey well outside the bounds of proper scientific study.³⁴

24
25 ³³ An employer is obligated only to authorize and permit rest breaks; it has no obligation to ensure that employees take
26 rest breaks. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033. Employees are free to decline rest
27 breaks. *Id.* Thus, the survey (which inquires as to whether a rest break was received in four separate questions) did
28 not gather relevant information regarding the defendant's liability.

³⁴ Another example of Dr. Petersen's embroilment in this litigation is his computation of the margin of error, which he
admitted was underestimated. Performing the correct scientific calculations and accepting Dr. Petersen's 95%
confidence level, the relative margin of error using a t-distribution (due to the small sample size) was 23.7%. In other

1 Fifth, Dr. Petersen's damages analysis, based on his survey results, failed to utilize rates of pay of
2 specific employees to calculate the amounts due for allegedly unpaid premiums for missed rest
3 breaks. Instead he impermissibly used a 'blended' rate averaging the pay rates of the entire
4 Security Paving workforce. This aggregation is legally impermissible for two reasons. By
5 looking at the entire workforce, Dr. Petersen failed to use the pay rates only of those nighttime
6 shift employees who suffered the violations. Secondly, this use of a blended average is flatly
7 contrary to the requirement of Labor Code section 226.7, which requires a premium be computed
8 as "one additional hour of pay *at the employee's* regular rate of compensation for each workday
9 that the . . . rest . . . period is not provided. *See Medlock v. Taco Bell Corp.* (E.D. Cal. Dec. 11,
10 2015) 2015 WL 10791410 at *5.

11
12 In short, the court concludes that the plaintiff's survey results cannot be used to identify each and
13 every employee who did not receive a legally compliant rest break, nor does it permissibly
14 compute back wages or PAGA penalties for aggrieved employees in this case.

15
16 D. If the Petersen Survey and Damage Study Are Entitled to No Weight, What Is the Effect of that
17 Failure of Proof?

18 The only evidence adduced by the plaintiff to quantify how frequently the defendant failed to
19 provide its nighttime road replacement and repair crews with legally compliant rest breaks was the
20 Petersen survey. The only evidence adduced by the plaintiff to quantify unpaid wages and
21 penalties for the aggrieved employees was the Petersen damage study.³⁵

22
23 words, to give an estimate of the proper penalty with 95 percent confidence, Dr. Petersen's estimate would have to
24 vary by almost a quarter from the lower end to the higher end. While this is, admittedly, better than the 49 percent
25 margin of error in the *Duran* case, it is substantially worse than the 5 or 10 margins of error that Dr. Hildreth testified
26 were found in well-performed statistical studies.

27 ³⁵ Although in his post-trial brief, plaintiff's counsel attempted to reopen the trial to adduce two more evidentiary
28 bases by which to identify the number of rest breaks missed by aggrieved employees, such evidence cannot be
"deduced" from Exhibit 55. Exhibit 55 is a "thumb drive" that holds pdf copies of thousands of handwritten
signatures on the bottom of numerous Security Paving "tail gate meeting" forms and other undifferentiated payroll
reports and business records. It is incapable – without considerable review, selection, computation and handwriting
discernment – of becoming the basis by which to "deduce" the basis for any employee's claim for rest break
violations. It is not, as plaintiff contends, nothing more than "simple math." Moreover, even if it were, defendant has

1 The individual plaintiff, Jon Shields, did not testify regarding the number of rest breaks (or meal
2 breaks) that he contended were not received. None of the witnesses from these crews called by the
3 plaintiff testified regarding the number of shifts they worked during the relevant period and how
4 often, once or twice per eight-hour shift, they were not afforded and provided a legally compliant
5 rest break. Nor did any of these witnesses testify as to their hourly or regular rate of pay.

6
7 Where, as here, the plaintiff has met his burden of proof of establishing the fact of a Labor Code
8 violation but has failed to answer by competent evidence how often that violation occurred, what
9 is the effect of that failure of proof?

10
11 Defendant contends that as plaintiff has failed to adduce any competent evidence as to the
12 measurement of how often the aggrieved employees suffered this violation, it should be granted
13 judgment in this case. In support of that contention, defendant cites a number of cases holding
14 that a plaintiff's failure to establish an amount of damage is fatal to the claim. *See, e.g., City of*
15 *Oakland v. Pacific Gas & Elec. Co.* (1941) 47 Cal.App.2d 444, 450; *Saunders v. Taylor* (1996) 42
16 Cal.App.4th 1538, 1543.

17
18 The court agrees that, in general except as otherwise provided by law, a party has the burden of
19 proof as to each fact the existence or non-existence of which is essential to the claim for relief or
20 defense that he is asserting. *Amaral v. Cintas* (2008) 163 Cal. App. 4th 1157, 1188. On occasion,
21 however, courts may alter the normal allocation of the burden of proof. *Id.* In determining
22 whether the normal allocation of proof should be altered, courts consider a number of factors: the
23 knowledge of the parties concerning the particular fact, the availability of the evidence to the

24
25 been deprived of the opportunity to question a witness who has conducted that mathematical analysis. Plaintiff's
26 attempt to reopen the trial at this late date to adduce alternative evidence to the Petersen survey violates due process
27 and shall not be considered by the Court. *See People v. Bolton* (1979) 23 Cal.3d 208, 213 n.2 (axiomatic that new
28 evidence cannot be adduced in closing argument."); *Garcia v. ConMed Corp.* (2014) 204 Cal.App.4th 144, 159.
Defendant Security Paving's motion to strike Exhibit A and B of Plaintiff's Post-Trial Brief. There is no basis upon
which to reopen the proceeding and to allow plaintiff to present new evidence that could have been presented at trial.
See Town of Atherton v. California High-Speed Rail Auth. (2014) 228 Cal.App.4th 314, 325.

1 parties, the most desirable result in terms of public policy in the absence of proof of a particular
2 fact, and the probability of the existence or nonexistence of the fact. *Id.*

3
4 A long-standing application of burden-shifting occurs in the wage and hour context when an
5 employer's compensation records are so incomplete or inaccurate that an employee cannot prove
6 his or her damages.³⁶ *Id.* Even when the records at issue are not legally required to be maintained,
7 the burden may be shifted. *Id.* at 1190 ("fundamental principle of American jurisprudence that for
8 every wrong there is a remedy, and that, unless countered by public policy, an injured party should
9 be compensated for all damage proximately caused by the wrongdoer.")

10
11 The problem in this case, however, is that the aggrieved plaintiff never argued for that burden-
12 shifting to be applied and defendant adduced no evidence whatsoever from which an estimate
13 could be made of the frequency of the violations or the employees on the nighttime road repair and
14 replacement crews who suffered them. Accordingly, while the lack of this evidence may not be
15 fatal to the plaintiff's PAGA case – as the burden had shifted to the defendant to provide this
16 critical, missing information – it still presents the problem that the Court does not have any
17 competent evidence by which to award unpaid wages or penalties to the aggrieved employees.

18
19 Where, as here, the fact that the defendant has failed to comply with the Labor Code's requirement
20 of authorizing and permitting rest breaks during which employees are free from supervisory
21 control has been established, but the frequency of occurrence of this violation and the employees
22 who suffered this deprivation cannot be identified, nominal damages should be available.

23 Nominal damages are granted neither to compensate the plaintiff nor punish the defendant.

24 Nominal damages can be awarded when the defendant has invaded a cognizable legal interest of
25 the plaintiff, *i.e.*, to be afforded legally compliant rest breaks, even when the plaintiff cannot prove

26
27
28 ³⁶ Outside of the wage and hour context, when the parties have unequal access to evidence necessary to prove a
disputed issue, the party who exclusively possesses facts essential to that claim bears the burden of going forward with
the evidence on the issue, although it is not the party asserting the claim. *See Amaral*, 163 Cal.App.4th at 1189-1190.

1 compensatory damages and sues only to establish a right or to obtain a ruling regarding the
2 defendant's conduct. *See Restatement 2d of Torts* § 907. The award of nominal damages in such
3 cases avoids allowing a wrongdoer to avoid punishment and furthers the public's interest in the
4 robust enforcement of the labor laws. Nominal damages are properly awarded when, although the
5 claimant has shown significant harm, its amount is not proved with sufficient certainty to entitle
6 him to an award of compensatory damages. *Id.*

7
8 In this case, therefore, the aggrieved employees have shown significant harm, but its amount has
9 not been proved with sufficient certainty to allow the court to compute or award civil penalties.
10 Accordingly, the court awards a nominal civil penalty assessment of \$50 for an initial violation of
11 Labor Code § 558.³⁷

12 IV. SHIELDS' INDIVIDUAL CLAIMS

13
14 Jon Shields also alleged individual causes of action for lost wages due to missed meal and rest
15 breaks, waiting period penalties and an individual claim for restitution and/or injunctive under the
16 UCL based on these statutory violations.

17 A. Meal and Rest Breaks

18 California's meal period rules are set forth in Labor Code Section 512 and the Wage Orders.
19 These rules generally prohibit employers from employing an employee for a work period of more
20 than five hours without providing a meal period of at least 30 minutes. As explained and
21

22
23 ³⁷ Injunctive relief is not available under PAGA. PAGA actions can recover only statutory penalties in fixed amounts
24 per violation. *Plaisted v. Dress Barn, Inc.* (C.D. Cal. Sept. 20, 2012) 2012 WL 4356158, *2). Moreover, even if such
25 relief were available, plaintiff adduced no evidence after March 27, 2015 with regard to Security Paving's rest break
practices. Thus, there is no basis to find an ongoing violation that would occasion the need for an injunction.

26 The court declines to award a separate PAGA statutory penalty in this case. PAGA is simply a procedural statute
27 allowing aggrieved employees to recover civil penalties for Labor Code violations. PAGA's plain language confirms
28 that the statute allows only civil penalties. The civil penalty awarded in this case of \$50 must be distributed 75% to
the Labor and Workforce Development Agency and 25% to the aggrieved employees. *See* Labor Code § 2699(i).
Where, as here, Labor Code Section 558 provides a civil penalty, PAGA does not allow a separate double penalty to
be imposed. *See Wert v. U.S. Bancorp* (S.D. Cal. Jun. 23, 2014) 2014 WL 2860287, *2-3.

1 examined in *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, it is not a duty of
2 an employer to ensure that no work is performed. Rather, an employer satisfies its obligation if it
3 (1) relieves employees of all duties; (2) relinquishes control over their activities; (3) permits them
4 a reasonable opportunity to take a 30-minute break, and (4) does not discourage or impede them
5 from doing so.

6
7 Employers must also comply with the meal period timing rules when providing meal periods. In
8 the absence of a waiver, Labor Code Section 512 requires a first meal period no later than the end
9 of an employee's fifth hour of work, and a second meal period no later than the end of an
10 employee's tenth hour of work. This has been construed to mean that a meal break should be
11 afforded no later than the start of an employee's sixth hour of work and no later than what would
12 be the start of the 11th hour of work.³⁸

13
14 Shields' individual claim for missed rest breaks, as discussed *supra*, are controlled by Wage Order
15 16, which provides that "[e]very employer *shall authorize and permit* all employees to take rest
16 periods, which insofar as practicable, shall be in the middle of each work period The
17 authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
18 net rest time for every four (4) hours worked, or major fraction thereof." Wage Order 16-2001, §
19 11(A).

20
21
22 ³⁸ The plaintiff -- at a very late point in the case -- asserted that his individual meal break claim could also be proved
23 based on the absence of potable water, soap and towels with which to wash his hands before eating. *See* Wage Order
24 Section 10(c). Defendant objects, understandably, to the lateness of these allegations. The plaintiff's complaint fails
25 to mention a claim for individual meal period violations pursuant to Section 10(c). Section 10(c) requires that
26 employers provide "an adequate supply of potable water, soap, or other suitable cleansing agent, and single use towels
27 for handwashing." There is nothing that requires the potable water to be provided at any particular location or to be
28 located proximately to the soap and towels. The credible testimony adduced from the witnesses proffered by both
plaintiff and defendant established that defendant's work sites had both potable water and separate wash stations with
soap and hand towels -- albeit at different locations. There was no testimony adduced by the plaintiff suggesting that it
was a problem for soap and towels to be taken over to the potable water for use in handwashing. Thus, it is not
necessary to rule on defendant's late objection to the claim because plaintiff failed to meet his burden of proving that
defendant violated 10(c).

1 Shields testified credibly that he had not been provided legally compliant meal and rest breaks
2 during the eight months that he drove a volumetric mixer for Security Paving as part of a night
3 roadway repair and replacement crews. He did not, however, quantify that claim. He did not
4 testify how often he missed his meal and/or rest breaks, how many shifts he worked for Security
5 Paving during the eight months that he worked on overnight road crews, what his regular or hourly
6 rate was, or any other fact upon which his individual losses could be calculated with reasonable
7 certainty.

8
9 Unlike the position that the PAGA aggrieved employees found themselves in, however, Shields
10 possessed all of the information required to perfect his individual claims. He testified that he
11 verified the hours appearing on his paychecks against his personally maintained work records and,
12 on occasion, brought errors to the attention of his employer.³⁹ Unlike the representative group of
13 employees, Shields as an individual plaintiff possessed the information from which a reasonable
14 estimate of missed meal and/or rest breaks during this eight-month period could have been
15 computed and sponsored at trial.⁴⁰ And, he testified that he knew the number of occasions for
16 which he had received premium pay for missed breaks. But, for reasons not entirely clear to the
17 court, he failed to provide any evidence concerning his damages at trial.

18
19 Where, as here, there is no basis to shift the burden of demonstrating damages to the defendant,
20 the plaintiff's failure to prove the amount of his loss is fatal to his individual meal and rest break
21 claims. *See City of Oakland*, 47 Cal.App.2d at 450.

22
23
24

³⁹ He further testified that he received premium payments for some missed meal periods during the time that he
25 worked on asphalt projects and could answer the question of how often by referring to his "notes." (Trial Transcript –
26 September 20, 2017 at 26:2-3).

27
28
⁴⁰ Jon Shields kept track of every hour that he worked for Security Paving and followed up with the company if his
records did not match the company records. (See Exh. 508 at 2.) The company also maintained payroll records to the
same effect for his days of employment. (Id. at 17-21.) The Court, however, declines to consider the plaintiff's late
interjection of this information – which has been extracted, manipulated and computed -- in the post-trial brief as
proof of individual damages for Jon Shields. *See supra* n. 35.

1
2 B. Derivative Wage Statement Claims and Waiting Time Penalties

3
4 Not only did plaintiff Jon Shields fail to adduce competent evidence with which to establish his
5 damages from missed meal periods and rest breaks during the time that he worked with nighttime
6 road paving crews, he adduced no evidence on either his derivative wage statement claim or his
7 cause of action for waiting time penalties.

8 C. UCL Claims

9
10 Jon Shields' final individual cause of action asserts a claim for restitution and injunctive relief
11 under the UCL. There is no evidence in this record as to the amount of any unpaid wages that
12 might be claimed by the individual plaintiff as restitution. Nor is there any basis for injunctive
13 relief presented in this case. Jon Shields was fired by Security Paving many years ago. A UCL
14 representative plaintiff who is no longer employed by or otherwise affiliated in any way with a
15 defendant-employer apart from a lawsuit lacks standing to pursue an injunction against his former
16 employer as he faces no "real and immediate threat of repeated injury from such practices."
17 *Cleveland v. Groceryworks.com LLC* (N.D. Cal. 2016) 200 F. Supp.3d 924, 961-962.

18
19 CONCLUSION

20
21 Shields, as an aggrieved employee on behalf of the representative group, shall receive a nominal
22 award in the amount of \$50. Defendant has prevailed on the remaining causes of action. Plaintiff
23 shall prepare a judgment consistent with this ruling.

24
25 DATED: October 24, 2017

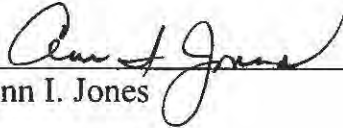
26 
Hon. Ann I. Jones

EXHIBIT 19

Attorney/Paralegal	Total Hours	Rate	Pre-Multiplier Lodestar
David Spivak (26th Year Attorney)	48.47	\$ 700.00	\$ 33,931.33
Michelle Grimberg (Formerly Employed 20+ Year Attorney)	1.75	\$ 650.00	\$ 1,137.50
Oliva Burgos (Formerly Employed 23+ Year Attorney)	34.50	\$ 650.00	\$ 22,425.00
Caroline Tahmassian (9th Year Attorney)	0.58	\$ 450.00	\$ 261.00
Carl Kaplan (Formerly Employed 2nd Year Attorney)	48.92	\$ 350.00	\$ 17,120.83
Christina Prejean (4th Year Attorney)	10.33	\$ 350.00	\$ 3,615.50
Breck Oyama (13th Year Paralegal)	26.25	\$ 300.00	\$ 7,874.00
Sara Brown (Formerly Employed 2nd Year Associate Attorney)	32.74	\$ 300.00	\$ 9,822.00
Lizzett Cortez (9th Year Paralegal)	22.43	\$ 250.00	\$ 5,608.33
Nora Greer (15+ Year Paralegal)	0.50	\$ 200.00	\$ 100.00
Angelica Raya (Formerly Employed 1st Year Legal Secretary)	1.92	\$ 150.00	\$ 287.50
April Rivera (Formerly Employed 1st Year Legal Secretary)	47.00	\$ 150.00	\$ 7,050.00
Daniela Linares (1st Year Intake Assistant)	0.98	\$ 150.00	\$ 147.00
Emily Ly (1st Year Paralegal)	0.25	\$ 150.00	\$ 37.50
Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	0.08	\$ 150.00	\$ 12.00
TOTAL AS OF 5/19/2022	276.70		\$ 109,429.50

Fees Requested	\$ 91,666.67
Multiplier	0.838

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
2/27/2018	Lizzett Cortez (9th Year Paralegal)	Call with client re claims	0.50	\$ 250.00	\$ 125.00
2/28/2018	Lizzett Cortez (9th Year Paralegal)	Call with client re dgs additional questions	0.50	\$ 250.00	\$ 125.00
3/9/2018	Lizzett Cortez (9th Year Paralegal)	drafted card and emailed	0.17	\$ 250.00	\$ 41.67
5/8/2018	Lizzett Cortez (9th Year Paralegal)	mtg APR re ev pres lt. emailed dgs re staus	0.17	\$ 250.00	\$ 41.67
8/7/2018	Lizzett Cortez (9th Year Paralegal)	Call with client. Emailed dgs re call	0.17	\$ 250.00	\$ 41.67
9/6/2018	Lizzett Cortez (9th Year Paralegal)	provided client with an update and emailed dgs	0.25	\$ 250.00	\$ 62.50
9/7/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Research IWC wage orders and Labor Code; Prepare draft of LWDA letter	5.00	\$ 650.00	\$ 3,250.00
9/7/2018	Lizzett Cortez (9th Year Paralegal)	emailed OAB re additional questions	0.08	\$ 250.00	\$ 20.83
9/11/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	review file re overtime, meal break, rest break issues; prepare list of questions and issues for client	0.75	\$ 650.00	\$ 487.50
9/11/2018	Lizzett Cortez (9th Year Paralegal)	discussed questions with OAB. emailed re update on call.	0.25	\$ 250.00	\$ 62.50
9/12/2018	Lizzett Cortez (9th Year Paralegal)	Called client re OB questions. Emailed OB responses.	0.50	\$ 250.00	\$ 125.00
9/12/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Review client response to questions, prepare further questions re OTC evidence and status of client under IWC	0.50	\$ 650.00	\$ 325.00
9/13/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Review client's personnel file and pay stubs; revise lwda letter	2.00	\$ 650.00	\$ 1,300.00
9/14/2018	Lizzett Cortez (9th Year Paralegal)	emailed dgs re AR follow up	0.08	\$ 250.00	\$ 20.83
9/15/2018	David Spivak (26th Year Attorney)	review pleading	0.33	\$ 700.00	\$ 233.33
9/18/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Review personnel file from employment agency and RGF for purpose of PAGA letter	2.00	\$ 650.00	\$ 1,300.00
9/18/2018	Lizzett Cortez (9th Year Paralegal)	Called client re meal and rest claims. Emailed Olivia clients response.	0.25	\$ 250.00	\$ 62.50
9/19/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Review dgs email and questions; draft more questions for client; prepare email to request records from RFG and GH; review AR memo re response by Velez to questions	1.50	\$ 650.00	\$ 975.00
9/20/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	revise PAGA letter	1.25	\$ 650.00	\$ 812.50
9/21/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Revise LDWA letter	1.00	\$ 650.00	\$ 650.00
9/26/2018	David Spivak (26th Year Attorney)	review and revise PAGA notice	0.33	\$ 700.00	\$ 233.33

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
9/26/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	revise LDWA letter	2.00	\$ 650.00	\$ 1,300.00
9/28/2018	David Spivak (26th Year Attorney)	review and revise LWDA notice	0.33	\$ 700.00	\$ 233.33
10/30/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	revise LWDA letter	1.00	\$ 650.00	\$ 650.00
10/31/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Revise lwda ltr	1.00	\$ 650.00	\$ 650.00
11/8/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	revise lwda letter; investigate and confirm facts and parties	2.00	\$ 650.00	\$ 1,300.00
11/9/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Prepare Complaint	4.00	\$ 650.00	\$ 2,600.00
11/29/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	Revise lwda letter and Complaint	4.00	\$ 650.00	\$ 2,600.00
12/3/2018	David Spivak (26th Year Attorney)	review and revise complaint	0.33	\$ 700.00	\$ 233.33
12/4/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	revise lwda; research LC 221; review Complaint	1.00	\$ 650.00	\$ 650.00
12/5/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	revise Complaint and lwda; review AR email re Velez responses to questions	2.00	\$ 650.00	\$ 1,300.00
12/7/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	revise lwda and Complaint	2.00	\$ 650.00	\$ 1,300.00
12/10/2018	Oliva Burgos (Formerly Employed 23+ Year Attorney)	review and revise LWDA notice	0.75	\$ 650.00	\$ 487.50
12/14/2018	Angelica Raya (Formerly Employed 1st Year Legal Secretary)	E-submit, certify mail and email lwda notice; scan and save docs	1.25	\$ 150.00	\$ 187.50
12/26/2018	Angelica Raya (Formerly Employed 1st Year Legal Secretary)	Mail filing fee check to lwda	0.17	\$ 150.00	\$ 25.00
1/14/2019	Oliva Burgos (Formerly Employed 23+ Year Attorney)	draft Complaint	0.75	\$ 650.00	\$ 487.50
2/19/2019	Breck Oyama (13th Year Paralegal)	check SOL, email DGS re complaint	0.25	\$ 300.00	\$ 75.00
2/19/2019	Breck Oyama (13th Year Paralegal)	Review/revise S&C, prep forms, mtg w/ DGS, finalize & file w/ court	1.33	\$ 300.00	\$ 400.00
2/26/2019	Breck Oyama (13th Year Paralegal)	download/assemble S&C, calendar deadlines, update abacus, upload LWDA	0.33	\$ 300.00	\$ 100.00
2/27/2019	Breck Oyama (13th Year Paralegal)	Upload SOP order onelegal	0.33	\$ 300.00	\$ 100.00
2/28/2019	Breck Oyama (13th Year Paralegal)	cancel SOP order, prep N&A	0.50	\$ 300.00	\$ 150.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
3/1/2019	Breck Oyama (13th Year Paralegal)	save/review completed POS Summons	0.17	\$ 300.00	\$ 50.00
3/1/2019	Breck Oyama (13th Year Paralegal)	mail/email N&A to OC, calendar deadlines	0.75	\$ 300.00	\$ 225.00
3/21/2019	Breck Oyama (13th Year Paralegal)	f/u OC re N&A, save to file and prep pos summons	0.50	\$ 300.00	\$ 150.00
3/25/2019	Breck Oyama (13th Year Paralegal)	file/serve pos and pos summons, forward AR/APR to send client	0.75	\$ 300.00	\$ 225.00
3/26/2019	Breck Oyama (13th Year Paralegal)	review email from OC, calendar deadlines	0.33	\$ 300.00	\$ 100.00
4/12/2019	David Spivak (26th Year Attorney)	email CK and AR re arbitration agreement	0.67	\$ 700.00	\$ 466.67
4/12/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed client files, drafted client email, drafted emails to opposing counsel.	1.17	\$ 350.00	\$ 408.33
4/12/2019	Angelica Raya (Formerly Employed 1st Year Legal Secretary)	Speak to client re paga only and email; contact professional re translation services, send to client	0.50	\$ 150.00	\$ 75.00
4/16/2019	Breck Oyama (13th Year Paralegal)	email DGS-CK re paga	0.08	\$ 300.00	\$ 25.00
4/17/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Internal emails (with DGS) and correspondence with OC.	0.42	\$ 350.00	\$ 145.83
4/19/2019	Breck Oyama (13th Year Paralegal)	review arb agmt, email CK sample SOC	0.17	\$ 300.00	\$ 50.00
4/23/2019	David Spivak (26th Year Attorney)	review and revise stip to dismiss re arb agreement	0.17	\$ 700.00	\$ 116.67
4/26/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Reviewed cross-complaint, discussed with DGS	0.33	\$ 350.00	\$ 116.67
5/14/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with OC, discussion with BO, AR, DGS	0.67	\$ 350.00	\$ 233.33
5/14/2019	David Spivak (26th Year Attorney)	M&C re CMC	0.17	\$ 700.00	\$ 116.67
5/16/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	M&C with OC and cross-complainant	0.50	\$ 350.00	\$ 175.00
5/17/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	scanned/saved documents, sent email to client	0.17	\$ 150.00	\$ 25.00
5/29/2019	Breck Oyama (13th Year Paralegal)	review notes, prep cmc statement	0.33	\$ 300.00	\$ 100.00
5/30/2019	Lizzett Cortez (9th Year Paralegal)	drafted pos for cmc. uploaded one legal, saved order, mailed to oc .	0.33	\$ 250.00	\$ 83.33
6/5/2019	Breck Oyama (13th Year Paralegal)	schedule courtcall and update calendar	0.17	\$ 300.00	\$ 50.00
6/7/2019	Breck Oyama (13th Year Paralegal)	update calendra	0.08	\$ 300.00	\$ 25.00
6/7/2019	Breck Oyama (13th Year Paralegal)	prep bw stip and protective order	0.50	\$ 300.00	\$ 150.00
6/7/2019	Breck Oyama (13th Year Paralegal)	finalize scrub and email OC draft stips	0.33	\$ 300.00	\$ 100.00
6/14/2019	David Spivak (26th Year Attorney)	prep for cmc and cmc by Courtcall; follow up re mediator with OC	0.75	\$ 700.00	\$ 525.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
6/14/2019	Breck Oyama (13th Year Paralegal)	save/review notes re cmc and calendar, f/u CK re bw, check status discovery	0.33	\$ 300.00	\$ 100.00
6/20/2019	Breck Oyama (13th Year Paralegal)	download/review order, prep notice	0.25	\$ 300.00	\$ 75.00
6/20/2019	Breck Oyama (13th Year Paralegal)	review/save stip and email dgs	0.17	\$ 300.00	\$ 50.00
6/24/2019	Breck Oyama (13th Year Paralegal)	scan/email signed stip	0.17	\$ 300.00	\$ 50.00
6/25/2019	Lizzett Cortez (9th Year Paralegal)	Called client left voicemail re case.	0.08	\$ 250.00	\$ 20.83
6/27/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed emails from ar, reviewed file for velez and [REDACTED] read [REDACTED] and velez lwda, read over dgs cmc notes, confer with ck and lc re ev pres. drafted ev pres letter, sent to oc, calendared date	2.50	\$ 150.00	\$ 375.00
7/15/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	Follow up with witness [REDACTED] [REDACTED] re phone call	0.08	\$ 150.00	\$ 12.50
7/16/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed PM's email to client. follow up with [REDACTED] [REDACTED] phone call/voicemail to [REDACTED] mother, phone call/vm to client	0.25	\$ 150.00	\$ 37.50
7/22/2019	Breck Oyama (13th Year Paralegal)	remind CK re f/u	0.08	\$ 300.00	\$ 25.00
7/23/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	Follow up with witness [REDACTED] [REDACTED] voicemail to client, call with client. Phone call to [REDACTED] [REDACTED] updated v card.	0.50	\$ 150.00	\$ 75.00
7/24/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	Reviewed/edited discovery drafts: R4P and special rogs	0.58	\$ 150.00	\$ 87.50
7/25/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	Transferring client contact info to file vine	0.08	\$ 150.00	\$ 12.50
7/26/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	review filevine task, confer with ck re [REDACTED] and dismissal of defendant, phone call voicemail/email to witness, phone call/vm to witness secondary contact, phone call with client. reviewed docs in file re dismissal.	0.75	\$ 150.00	\$ 112.50
7/29/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Discussion with AR, DGS re: [REDACTED]	0.42	\$ 350.00	\$ 145.83
7/31/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with OC	0.33	\$ 350.00	\$ 116.67
8/1/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed filevine tasks, sent text messages to client re status of obtaining witness/client [REDACTED] updated contact	0.17	\$ 150.00	\$ 25.00
8/2/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	sent dgs email re discovery drafts	0.08	\$ 150.00	\$ 12.50
8/8/2019	David Spivak (26th Year Attorney)	review and revise discovery requests	0.92	\$ 700.00	\$ 644.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
8/9/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	Finalized discovery r4p and special rogs for renaissance, drafted discovery for all remaining defendants:calavo,catchot, and gh foods. form rogs gen and employment for each set, scanning/saving/printing all docs, pos for each, prepared mailing. calendared response deadline, created hightail link, send copies of drafts to client.	4.33	\$ 150.00	\$ 650.00
8/15/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with OC, draft stip to stay pending mediation, email to OC	1.25	\$ 350.00	\$ 437.50
8/22/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with OC re: mediator selection, stip to stay, potential dismissal of Defendant Catchott	0.33	\$ 350.00	\$ 116.67
9/10/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	read CK email, researched mediator and case manger, requested availability	0.17	\$ 150.00	\$ 25.00
9/11/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Email to OC, reviewed 8-k and 10-k provided by OC re: Catchot noninvolvement	0.33	\$ 350.00	\$ 116.67
9/13/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with OC, drafted tolling agreement	0.83	\$ 350.00	\$ 291.67
9/18/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	email to case manager re new mediation dates	0.08	\$ 150.00	\$ 12.50
9/18/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	checked calendar for availability, sent potential mediation dates to oc	0.17	\$ 150.00	\$ 25.00
9/20/2019	David Spivak (26th Year Attorney)	review tolling agreement	0.17	\$ 700.00	\$ 119.00
10/7/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	scanned/saved docs to file, sent fully executed version to oc, served doc by mail and one legal	0.58	\$ 150.00	\$ 87.50
10/8/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	sent email to oc	0.08	\$ 150.00	\$ 12.50
10/9/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	saved invoices to file	0.08	\$ 150.00	\$ 12.50
10/17/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	printed stip dismissal for sig, scanned/saved	0.25	\$ 150.00	\$ 37.50
10/18/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed calendar, sent updated availability to OC	0.25	\$ 150.00	\$ 37.50
10/21/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	saved docs to file	0.17	\$ 150.00	\$ 25.00
10/23/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	sent mediation confirmation details to mediator case manager	0.33	\$ 150.00	\$ 50.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
10/28/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	scanned docs, email to oc	0.17	\$ 150.00	\$ 25.00
11/12/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with OC re: mediator selection, discussion with DGS & AR	0.25	\$ 350.00	\$ 87.50
11/15/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	read/reviewed email, phone call/email to mediator case manager	0.25	\$ 150.00	\$ 37.50
11/21/2019	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Call with OC re: mediator selection; discussion with DGS re: merits and size of case, research re: size of Defendants' business; discussion with AR re: mediator selection	0.75	\$ 350.00	\$ 262.50
11/21/2019	David Spivak (26th Year Attorney)	conf with CK re settlement considerations and mediator	0.17	\$ 700.00	\$ 119.00
12/9/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	conf with ck, researched mediator/contact info, sent email to mediator re availability for mediation, reviewed calendar, sent dates to oc,	0.33	\$ 150.00	\$ 50.00
12/13/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	email to mediator case manager	0.08	\$ 150.00	\$ 12.50
12/23/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	follow up email to oc re mediation	0.08	\$ 150.00	\$ 12.50
12/27/2019	April Rivera (Formerly Employed 1st Year Legal Secretary)	email to oc re mediation, reviewed calendar availability, sent email to mediator case manager	0.17	\$ 150.00	\$ 25.00
1/6/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	email to case manager	0.08	\$ 150.00	\$ 12.50
1/7/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	confer with CK, phone call with client	0.17	\$ 150.00	\$ 25.00
1/7/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Discussion with AR re client interview; mediation wishlist; email to DGS	0.50	\$ 350.00	\$ 175.00
1/13/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	phone call with client re mediation, conf with CK, read email re questions for client	0.25	\$ 150.00	\$ 37.50
1/13/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Discussion with DGS re mediation wishlist, discussion with AR re questions for client	0.50	\$ 350.00	\$ 175.00
1/13/2020	David Spivak (26th Year Attorney)	review and revise mediation requests; conf with CK re proof	0.58	\$ 700.00	\$ 406.00
1/24/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	researched conference rooms for mediation, phone call to regus re conference room availability, sent email to dgs re quote for room. Phone call with client re CK questions	1.00	\$ 150.00	\$ 150.00
2/3/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Email to OC	0.08	\$ 350.00	\$ 29.17

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
2/11/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed email from oc, replied to dgs questions via email	0.17	\$ 150.00	\$ 25.00
2/18/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed emails/file, quote from regus re mediation conference rooms, sent quote to oc	0.33	\$ 150.00	\$ 50.00
2/19/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	emails with dgs, reserved conference rooms with Regus, saved/circulated confirmation	0.50	\$ 150.00	\$ 75.00
2/20/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	updated witness list	0.08	\$ 150.00	\$ 12.50
2/20/2020	Lizzett Cortez (9th Year Paralegal)	Call with Client. Messaged APR re client call	0.25	\$ 250.00	\$ 62.50
2/24/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	email to oc, updated calendar, phone call to mediator's office, phone call/email to client	0.33	\$ 150.00	\$ 50.00
3/6/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC; draft PAGA questionnaire	1.00	\$ 350.00	\$ 350.00
3/6/2020	David Spivak (26th Year Attorney)	review status report; conf with CK	0.08	\$ 700.00	\$ 56.00
3/9/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	emails with staff, reviewed calendar, confer with CK, file/serve supp cmc, draft/file/serve mediation statement	0.83	\$ 150.00	\$ 125.00
3/9/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	saved filed docs to file	0.08	\$ 150.00	\$ 12.50
3/11/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	scheduled courtcall	0.17	\$ 150.00	\$ 25.00
3/16/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed/saved MO	0.17	\$ 150.00	\$ 25.00
3/16/2020	Breck Oyama (13th Year Paralegal)	scan and email docs to team	0.08	\$ 300.00	\$ 24.00
3/18/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed docket and courtcall appearances, sent email to BO, phone call to clerk, email to staff, cancelled courtcall, reviewed/circulated tentative	0.50	\$ 150.00	\$ 75.00
3/18/2020	Breck Oyama (13th Year Paralegal)	update calendar and deadline chain	0.17	\$ 300.00	\$ 51.00
3/19/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	saved docs to file	0.17	\$ 150.00	\$ 25.00
3/24/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	read email from oc, reviewed calendar, emails to mediator, phone call with client re attending zoom mediation, email to dgs, cancelled conference rooms	0.42	\$ 150.00	\$ 62.50
3/25/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	sent email to mediator case manager	0.08	\$ 150.00	\$ 12.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
3/26/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	emails with mediator case manager	0.08	\$ 150.00	\$ 12.50
3/27/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed lwdca/compliant, emails with CK, created witness interview chart	0.58	\$ 150.00	\$ 87.50
3/31/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	witness interview, confer with CK, sent autho via hellosign, text to witness	1.58	\$ 150.00	\$ 237.50
4/2/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	requested quotes for interpreter, witness interview	0.67	\$ 150.00	\$ 100.00
4/3/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	drafted autho, sent to witness via hellosign, sent witness text message, sent dgs email re translator, confer with LC, sent email to day translations re discount, witness interviews, sent authos/texts to witnesses, sent ev pres letter to OC. calendared deadline	3.50	\$ 150.00	\$ 525.00
4/6/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	read email from case manager, sent email to dgs, saved/reviewed witness autho, emails/phone call to day translations, updated account, booked interpreter, sent witness autho to OC, created zoom meeting and circulated link, vm/text to client	1.00	\$ 150.00	\$ 150.00
4/6/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	phone call/texts with client	0.17	\$ 150.00	\$ 25.00
4/7/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email to OC re mediation discovery	0.17	\$ 350.00	\$ 59.50
4/8/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	saved email, updated expenses, emails with mediator case manager, texts with client	0.25	\$ 150.00	\$ 37.50
4/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email to OC	0.08	\$ 350.00	\$ 28.00
4/9/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	file/serve notice of entry, sent to CK for sig	0.42	\$ 150.00	\$ 62.50
4/10/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	email with day translations re complaint for interpreter	0.08	\$ 150.00	\$ 12.50
4/10/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed witness folder/hellosign, sent text reminders to witnesses re authos, text with witness, sent updated autho	0.33	\$ 150.00	\$ 50.00
4/13/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	reviewed/saved def doc production	0.17	\$ 150.00	\$ 25.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
4/14/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	confer with CK, phone call/email to Micah re confirming availability, reviewed defendant docs, extracted/reviewed time records, created excel chart for data entry, phone call client, witness calls/interviews, drafted/sent autho	2.50	\$ 150.00	\$ 375.00
4/15/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	phone calls to witnesses	0.17	\$ 150.00	\$ 25.00
4/15/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mediation statement & doc review	1.50	\$ 350.00	\$ 525.00
4/16/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	zoom mtg with CK re witness interview questions	0.17	\$ 150.00	\$ 25.00
4/16/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	phone call to client, vm's to witnesses, confer with CK	0.25	\$ 150.00	\$ 37.50
4/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	calls with OC	0.33	\$ 350.00	\$ 115.50
4/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	mediation brief	4.42	\$ 350.00	\$ 1,547.00
4/19/2020	David Spivak (26th Year Attorney)	review and revise mediation statement	1.50	\$ 700.00	\$ 1,050.00
4/20/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	email to dgs re cancellation of regus rooms	0.08	\$ 150.00	\$ 12.50
4/20/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	phone call/text to client, sent client zoom tutorial in spanish	0.17	\$ 150.00	\$ 25.00
4/20/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	exhibits to mediation brief, confer with CK re exhibits	1.25	\$ 150.00	\$ 187.50
4/20/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	confer with CK re statue of limitations and mediation, reviewed file and calendar, calendared SOLs, texts with client, updated calendar with zoom info, sent email to client	0.50	\$ 150.00	\$ 75.00
4/20/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	zoom meeting with dgs and CK re pre-mediation questions	0.58	\$ 150.00	\$ 87.50
4/20/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	phone call with client re dgs notes from zoom meeting, test zoom meeting with client, saved docs to file, sent email to dgs/ck re call notes with client	1.33	\$ 150.00	\$ 200.00
4/20/2020	David Spivak (26th Year Attorney)	prep for mediation	2.00	\$ 700.00	\$ 1,400.00
4/20/2020	David Spivak (26th Year Attorney)	research GH foods; legal research language barriers in policy enforcement	1.75	\$ 700.00	\$ 1,225.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
4/20/2020	Nora Greer (15+ Year Paralegal)	Screenshot of website for apr	0.25	\$ 200.00	\$ 50.00
4/20/2020	David Spivak (26th Year Attorney)	review and revise mediation statement	1.17	\$ 700.00	\$ 819.00
4/21/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	saved doc to file	0.08	\$ 150.00	\$ 12.50
4/21/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	phone call with case manager and mediator re confidentiality agreement, phone call with day translation, email to case manager	0.25	\$ 150.00	\$ 37.50
4/21/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	confer with CK and DGS re updated meeting time, phone calls with client, phone calls/emails to day translations re updated meeting time, updated calendar	0.50	\$ 150.00	\$ 75.00
4/21/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	finalized exhibits and mediation statement, sent to dgs for signature, saved damages to file, converted to PDF, created hightail link, sent docs to mediator and plaintiff.	1.75	\$ 150.00	\$ 262.50
4/21/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	pre-mediation zoom meeting with dgs, ck, client, and interpreter	0.50	\$ 150.00	\$ 75.00
4/21/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	read/replied to dgs email re competing case, downloaded/saved diaz mx final approval mpa and 1AC, reviewed/compared claims to velez, confer with CK	0.75	\$ 150.00	\$ 112.50
4/21/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	searched/messaged sac witnesses, been verified searches, texts with client	0.58	\$ 150.00	\$ 87.50
4/21/2020	David Spivak (26th Year Attorney)	prep for mediation on zoom with client and interp.	0.42	\$ 700.00	\$ 294.00
4/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	zoom mediation prep w interpreter, client, DGS, AR	0.50	\$ 350.00	\$ 175.00
4/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Finalized mediation statement & damages analysis	2.00	\$ 350.00	\$ 700.00
4/21/2020	David Spivak (26th Year Attorney)	review settlement docs in Diaz case	0.75	\$ 700.00	\$ 525.00
4/22/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	read email from day translation, sent email to dgs, saved completed analysis questions, sac court case search/searched docket, downloaded exhibit list and extracted settlement agreement, sent settlement agreement to dgs	0.33	\$ 150.00	\$ 50.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
4/22/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	follow up messages to REDACTED witnesses, phone calls/vms to witnesses, phone call/vm/texts to client, combine/ocr plaintiff and defendant docs, uploaded docs to FV, created zoom meeting and circulated link,	0.75	\$ 150.00	\$ 112.50
4/22/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	phone call/email with mediator case manager, phone call/vm/text to client re confidentiality agreement doc	0.17	\$ 150.00	\$ 25.00
4/22/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	witness interview, additional questions REDACTED REDACTED	0.25	\$ 150.00	\$ 37.50
4/22/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Emails with Micah re data analysis	0.33	\$ 350.00	\$ 115.50
4/22/2020	David Spivak (26th Year Attorney)	review Feder agreement	0.17	\$ 700.00	\$ 119.00
4/22/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Calls with OC re mediation discovery	0.42	\$ 350.00	\$ 147.00
4/22/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	updated damages analysis	0.33	\$ 350.00	\$ 115.50
4/22/2020	David Spivak (26th Year Attorney)	review data analysis; email CK and Micah	0.50	\$ 700.00	\$ 350.00
4/23/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	read/replied dgs emails, phone calls to client re dgs mediation q's	0.25	\$ 150.00	\$ 37.50
4/23/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	Mediation related tasks, follow up interviews with riverside witnesses, interview with sac witnesses, follow up FB messages, phone call/texts to client, phone calls with interpreter, texts to mediator, confer with CK and DGS	6.00	\$ 150.00	\$ 900.00
4/23/2020	David Spivak (26th Year Attorney)	zoom mediation and prep	13.50	\$ 700.00	\$ 9,450.00
4/23/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	zoom mediation & mediation prep	11.00	\$ 350.00	\$ 3,850.00
4/23/2020	Breck Oyama (13th Year Paralegal)	review costs/prep estimated projection	0.75	\$ 300.00	\$ 225.00
4/28/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	read emails from day translations, saved/reviewed invoice, email to dgs	0.17	\$ 150.00	\$ 25.00
4/29/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	emails/phone calls to day translations, paid invoice	0.25	\$ 150.00	\$ 37.50
4/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC; text to DGS; email to OC	0.25	\$ 350.00	\$ 87.50
4/29/2020	Lizzett Cortez (9th Year Paralegal)	Messaged APR re Day Translations. Reset account.	0.17	\$ 250.00	\$ 42.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
5/4/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	review/update protective order & BW stip, sent to dgs for review	0.42	\$ 150.00	\$ 62.50
5/14/2020	David Spivak (26th Year Attorney)	review and revise Belaire and confidentiality stip	0.50	\$ 700.00	\$ 350.00
5/18/2020	April Rivera (Formerly Employed 1st Year Legal Secretary)	review emails, updated calendar	0.08	\$ 150.00	\$ 12.50
5/20/2020	Breck Oyama (13th Year Paralegal)	update deadline chain	0.08	\$ 300.00	\$ 24.00
5/20/2020	David Spivak (26th Year Attorney)	Respond to email by mediator	0.08	\$ 700.00	\$ 56.00
5/20/2020	David Spivak (26th Year Attorney)	Review status report draft by OC	0.08	\$ 700.00	\$ 56.00
5/28/2020	Breck Oyama (13th Year Paralegal)	update calendar and deadline chain	0.33	\$ 300.00	\$ 99.00
5/28/2020	Breck Oyama (13th Year Paralegal)	schedule courtcall and update calendar	0.25	\$ 300.00	\$ 75.00
5/28/2020	Lizzett Cortez (9th Year Paralegal)	emailed OC re setting up call.	0.08	\$ 250.00	\$ 20.00
6/1/2020	Lizzett Cortez (9th Year Paralegal)	Called client and set up call. calendared	0.17	\$ 250.00	\$ 42.50
6/1/2020	David Spivak (26th Year Attorney)	call with OC; prep notes and tasks for staff	1.25	\$ 700.00	\$ 875.00
6/2/2020	David Spivak (26th Year Attorney)	emails with LC re witness interviews	0.08	\$ 700.00	\$ 56.00
6/2/2020	David Spivak (26th Year Attorney)	review and revise settlement docs		\$ 700.00	\$ -
6/2/2020	Lizzett Cortez (9th Year Paralegal)	Called client re witness providing line footage.	0.08	\$ 250.00	\$ 20.00
6/2/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ client re def docs. emailed dgs. emailed client def docs.	0.75	\$ 250.00	\$ 187.50
6/3/2020	Breck Oyama (13th Year Paralegal)	update calendar and email clerk re cmc	0.25	\$ 300.00	\$ 75.00
6/3/2020	Breck Oyama (13th Year Paralegal)	update deadline chain	0.17	\$ 300.00	\$ 51.00
6/3/2020	Lizzett Cortez (9th Year Paralegal)	Saved folders for witnesses added authos. updated witness chart. Called witnesses	1.17	\$ 250.00	\$ 292.50
6/3/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email DGS re class period	0.08	\$ 350.00	\$ 28.00
6/4/2020	Lizzett Cortez (9th Year Paralegal)	emailed dgs re witnesses	0.08	\$ 250.00	\$ 20.00
6/4/2020	Lizzett Cortez (9th Year Paralegal)	Called witnesses left messages. Interviewed witness	1.33	\$ 250.00	\$ 332.50
6/4/2020	Breck Oyama (13th Year Paralegal)	review/save CMC notes, update calendar and deadline chains	0.25	\$ 300.00	\$ 75.00
6/4/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Attended CMC via zoom	0.42	\$ 350.00	\$ 147.00
6/5/2020	Lizzett Cortez (9th Year Paralegal)	emailed dgs re witnesses. Emailed and called data annalist	0.42	\$ 250.00	\$ 105.00
6/8/2020	Breck Oyama (13th Year Paralegal)	download/review preview MO and court certificate service	0.17	\$ 300.00	\$ 51.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
6/8/2020	Breck Oyama (13th Year Paralegal)	mtg w/ team, email OC to reschedule call	0.50	\$ 300.00	\$ 150.00
6/8/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ Elliot re analysis. Call w/ dgs re witnesses. Called witness left a voice	0.33	\$ 250.00	\$ 82.50
6/9/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ client re def docs and witnesses. Emailed dgs.	0.50	\$ 250.00	\$ 125.00
6/11/2020	Lizzett Cortez (9th Year Paralegal)	messaging expert	0.08	\$ 250.00	\$ 20.00
6/12/2020	Lizzett Cortez (9th Year Paralegal)	messaging and called expert re analysis. messaging Bo re Conf Call	0.25	\$ 250.00	\$ 62.50
6/12/2020	Breck Oyama (13th Year Paralegal)	emails w/ OC, calendar conf call	0.17	\$ 300.00	\$ 51.00
6/12/2020	Breck Oyama (13th Year Paralegal)	msg w/ LC, email OC re rescheduling conf call	0.33	\$ 300.00	\$ 99.00
6/14/2020	David Spivak (26th Year Attorney)	Review new declaration and time record analysis by opposing counsel	0.50	\$ 700.00	\$ 350.00
6/15/2020	Breck Oyama (13th Year Paralegal)	download personnel file pcm	0.17	\$ 300.00	\$ 51.00
6/16/2020	Lizzett Cortez (9th Year Paralegal)	call w/ expert. Emailed dgs update.	0.25	\$ 250.00	\$ 62.50
6/17/2020	Lizzett Cortez (9th Year Paralegal)	call w/ witness. drafted autho emailed. drafted ev pres lt and emailed to OC.	0.58	\$ 250.00	\$ 145.00
6/18/2020	Lizzett Cortez (9th Year Paralegal)	Called witnesses left voicemails. drafted autho emailed. drafted ev pres lt and emailed to OC	0.75	\$ 250.00	\$ 187.50
6/18/2020	David Spivak (26th Year Attorney)	Call with LC re witness interview	0.25	\$ 700.00	\$ 175.00
6/18/2020	Lizzett Cortez (9th Year Paralegal)	Call w/ client	0.17	\$ 250.00	\$ 42.50
6/23/2020	Lizzett Cortez (9th Year Paralegal)	Called witnesses and left voicemails	0.25	\$ 250.00	\$ 62.50
6/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	calls with data analyst, reviewed analysis docs	1.25	\$ 350.00	\$ 437.50
6/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Drafted Torres LWDA ltr	0.42	\$ 350.00	\$ 147.00
6/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting with DGS & LC	0.17	\$ 350.00	\$ 59.50
6/25/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Calls with data analyst	0.33	\$ 350.00	\$ 115.50
6/26/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed latest version of data analysis	0.42	\$ 350.00	\$ 147.00
6/30/2020	Breck Oyama (13th Year Paralegal)	review FV, update deadline	0.17	\$ 300.00	\$ 51.00
7/7/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC re settlement discussions	0.50	\$ 350.00	\$ 175.00
7/7/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, email to data analyst re further analysis	0.33	\$ 350.00	\$ 115.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
7/7/2020	David Spivak (26th Year Attorney)	call with OC re settlement; witnesses; Belaire; data analysis	0.50	\$ 700.00	\$ 350.00
7/7/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with DGS, LC re data analysis & witnesses	0.25	\$ 350.00	\$ 87.50
7/7/2020	David Spivak (26th Year Attorney)	call with LC and CK re data and witness interviews	0.25	\$ 700.00	\$ 175.00
7/7/2020	Lizzett Cortez (9th Year Paralegal)	message Dgs re update on case.	0.08	\$ 250.00	\$ 20.00
7/27/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	revisions to Torrez LWDA ltr	0.25	\$ 350.00	\$ 87.50
7/27/2020	Breck Oyama (13th Year Paralegal)	review emails/FV, update calendar	0.25	\$ 300.00	\$ 75.00
7/27/2020	Lizzett Cortez (9th Year Paralegal)	Call with witness re facts. Call w/ CK re LWDA.	0.75	\$ 250.00	\$ 187.50
7/27/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting with LC re Torrez LWDA	0.25	\$ 350.00	\$ 87.50
7/28/2020	Breck Oyama (13th Year Paralegal)	download PCM records	0.33	\$ 300.00	\$ 99.00
7/28/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	draft email to OC re Torrez representation	0.25	\$ 350.00	\$ 87.50
7/29/2020	Lizzett Cortez (9th Year Paralegal)	filed LWDA ltr and saved submissions. emailed dgs re fee	0.50	\$ 250.00	\$ 125.00
7/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with LC re Torrez LWDA; email OC	0.33	\$ 350.00	\$ 115.50
7/30/2020	Lizzett Cortez (9th Year Paralegal)	cert mail torrez sent lwda by mail	0.33	\$ 250.00	\$ 82.50
8/5/2020	Breck Oyama (13th Year Paralegal)	add deadline chains	0.25	\$ 300.00	\$ 75.00
8/26/2020	Lizzett Cortez (9th Year Paralegal)	emailed OC re witnesses and depositions	0.08	\$ 250.00	\$ 20.00
8/28/2020	Lizzett Cortez (9th Year Paralegal)	emailed depo dates to counsel	0.08	\$ 250.00	\$ 20.00
9/9/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed discovery; call, email OC	1.33	\$ 350.00	\$ 465.50
9/11/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with DGS, BO, LC; email OC	0.25	\$ 350.00	\$ 87.50
9/14/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion w DGS re discovery	0.08	\$ 350.00	\$ 28.00
9/14/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meet and confer letter to OC	0.50	\$ 350.00	\$ 175.00
9/14/2020	David Spivak (26th Year Attorney)	call with CJK re discovery	0.08	\$ 700.00	\$ 56.00
9/14/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	edits and revisions to joint statement	0.42	\$ 350.00	\$ 147.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
9/16/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	review B-W, email OC re discovery	0.25	\$ 350.00	\$ 87.50
9/17/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	finalized joint status report	0.17	\$ 350.00	\$ 59.50
9/17/2020	Lizzett Cortez (9th Year Paralegal)	Checked file for discovery and emails. Emailed dgs. Call w/ OC re discovery.	0.33	\$ 250.00	\$ 82.50
9/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC, followup email re discovery dispute	0.42	\$ 350.00	\$ 147.00
9/21/2020	Lizzett Cortez (9th Year Paralegal)	messed CK re Torrez time records	0.05	\$ 250.00	\$ 12.50
9/23/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	discussion with LC re Ds discovery requests; calls, emails with OC	0.58	\$ 350.00	\$ 203.00
9/24/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	reviewed OC m&c letter, email summary to DGS	0.67	\$ 350.00	\$ 234.50
9/24/2020	Breck Oyama (13th Year Paralegal)	vmail clerk re zoom	0.17	\$ 300.00	\$ 51.00
9/28/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	calls, emails with OC re Torrez time records	0.50	\$ 350.00	\$ 175.00
9/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meet and confer with OC re supp discovery responses, followup summary email	0.58	\$ 350.00	\$ 203.00
9/29/2020	Lizzett Cortez (9th Year Paralegal)	mtg with dgs and ck re case. mtg w/ client and dgs re depo prep. took notes	2.50	\$ 250.00	\$ 625.00
9/29/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	meeting with DGS and LC re Torrez depo	0.75	\$ 350.00	\$ 262.50
9/29/2020	David Spivak (26th Year Attorney)	conf with LC and CJK re torrez depo prep; DGS review of file and email history	1.08	\$ 700.00	\$ 756.00
10/1/2020	Lizzett Cortez (9th Year Paralegal)	messed claudia re docs	0.08	\$ 250.00	\$ 20.00
10/1/2020	Lizzett Cortez (9th Year Paralegal)	drafted discovery	3.00	\$ 250.00	\$ 750.00
10/1/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	CMC, call with OC re B-W, discovery	0.42	\$ 350.00	\$ 147.00
10/1/2020	David Spivak (26th Year Attorney)	call with OC re informal site inspection; notes to staff	0.58	\$ 700.00	\$ 406.00
10/1/2020	Lizzett Cortez (9th Year Paralegal)	Called client. left message re discovery	0.08	\$ 250.00	\$ 20.00
10/2/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	research re PAGA standing & severance release of claims; call, email OC re b-w and discovery	1.17	\$ 350.00	\$ 409.50
10/5/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	research re individual release & PAGA standing, emails to OC	0.58	\$ 350.00	\$ 203.00
10/6/2020	Breck Oyama (13th Year Paralegal)	check w/ team re Torrez as Plf	0.17	\$ 300.00	\$ 51.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
10/8/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, email OC re extension on P discovery responses	0.17	\$ 350.00	\$ 59.50
10/9/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, emails to OC re extension on p discovery	0.25	\$ 350.00	\$ 87.50
10/13/2020	David Spivak (26th Year Attorney)	zoom with CJK re site inspection	0.08	\$ 700.00	\$ 56.00
10/13/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	Discussion with DGS re tolling agrmt Torrez complaint	0.08	\$ 350.00	\$ 28.00
10/14/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, email OC re tolling agrmt on Torrez complaint	0.25	\$ 350.00	\$ 87.50
10/21/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	check CELA listservs re PAGA claim & full release	0.42	\$ 350.00	\$ 147.00
10/22/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call, email OC re request discovery extension	0.17	\$ 350.00	\$ 59.50
10/23/2020	David Spivak (26th Year Attorney)	call with CO re informal site visit	0.17	\$ 700.00	\$ 119.00
11/5/2020	David Spivak (26th Year Attorney)	review notes; summarize and present conclusions to staff	1.08	\$ 700.00	\$ 756.00
11/5/2020	Lizzett Cortez (9th Year Paralegal)	messed CK re mx to compel deadline. Responded to BO email re Mx Compel	0.17	\$ 250.00	\$ 42.50
11/5/2020	Breck Oyama (13th Year Paralegal)	save/review DGS site inspection notes	0.25	\$ 300.00	\$ 75.00
11/5/2020	Breck Oyama (13th Year Paralegal)	check w/ team re mx compel deadline	0.08	\$ 300.00	\$ 24.00
11/5/2020	David Spivak (26th Year Attorney)	travel and informal site inspection	5.50	\$ 700.00	\$ 3,850.00
11/10/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with DGS, LC re settlement	0.25	\$ 350.00	\$ 87.50
11/10/2020	David Spivak (26th Year Attorney)	call with CJK and LC re settlement demand reduction considerations	0.25	\$ 700.00	\$ 175.00
11/13/2020	Carl Kaplan (Formerly Employed 2nd Year Attorney)	draft mediator demand letter	1.08	\$ 350.00	\$ 378.00
11/15/2020	David Spivak (26th Year Attorney)	Review and revise settlement demand reduction email	0.33	\$ 700.00	\$ 231.00
11/17/2020	David Spivak (26th Year Attorney)	call with Marc Feder and email notes of conv to staff	0.25	\$ 700.00	\$ 175.00
12/23/2020	Breck Oyama (13th Year Paralegal)	check w/ LC re depo transcript	0.08	\$ 300.00	\$ 24.00
1/12/2021	David Spivak (26th Year Attorney)	call with Feder	0.08	\$ 700.00	\$ 56.00
2/4/2021	Breck Oyama (13th Year Paralegal)	review docket, call court re cmc	0.25	\$ 300.00	\$ 75.00
2/9/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC re joint cmc statement	0.25	\$ 350.00	\$ 87.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
2/9/2021	Breck Oyama (13th Year Paralegal)	call w/ clerk re CMC	0.17	\$ 300.00	\$ 51.00
2/11/2021	Breck Oyama (13th Year Paralegal)	save/review JSR	0.17	\$ 300.00	\$ 51.00
2/11/2021	Breck Oyama (13th Year Paralegal)	calls w/ clerk re cmc, review docket	0.17	\$ 300.00	\$ 51.00
2/11/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	review joint cmc statement, email OC	0.25	\$ 350.00	\$ 87.50
2/23/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email team re cmc appearance	0.17	\$ 350.00	\$ 59.50
2/23/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with OC re stip continue, draft stip	0.50	\$ 350.00	\$ 175.00
2/25/2021	Caroline Tahmassian (9th Year Attorney)	call with CK to discuss status of case for CMC	0.08	\$ 450.00	\$ 36.00
2/25/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	call with CT re CMC	0.08	\$ 350.00	\$ 28.00
2/25/2021	Carl Kaplan (Formerly Employed 2nd Year Attorney)	email OC re stip continue	0.08	\$ 350.00	\$ 28.00
2/26/2021	Caroline Tahmassian (9th Year Attorney)	review joint status report and attend hearing; email hearing notes to staff	0.50	\$ 450.00	\$ 225.00
3/9/2021	Breck Oyama (13th Year Paralegal)	download MO, prep notice	0.25	\$ 300.00	\$ 75.00
3/9/2021	Breck Oyama (13th Year Paralegal)	file/serve notice order	0.33	\$ 300.00	\$ 99.00
4/5/2021	David Spivak (26th Year Attorney)	Review settlement negotiations history; email Feder	0.42	\$ 700.00	\$ 294.00
5/7/2021	Lizzett Cortez (9th Year Paralegal)	Called client re settlement. Called Claudia left a message	0.17	\$ 250.00	\$ 42.50
6/24/2021	Breck Oyama (13th Year Paralegal)	review FV feed	0.08	\$ 300.00	\$ 24.00
7/1/2021	David Spivak (26th Year Attorney)	review and revise settlement agreement	1.17	\$ 700.00	\$ 819.00
7/2/2021	Breck Oyama (13th Year Paralegal)	review emails/save redline agmt	0.08	\$ 300.00	\$ 24.00
7/7/2021	Breck Oyama (13th Year Paralegal)	schedule f/u email to OC	0.08	\$ 300.00	\$ 24.00
7/8/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails	0.08	\$ 150.00	\$ 12.00
7/12/2021	Lizzett Cortez (9th Year Paralegal)	reviewed feed and emails	0.08	\$ 250.00	\$ 20.00
7/12/2021	Breck Oyama (13th Year Paralegal)	email OC f/u re SA and CMC	0.17	\$ 300.00	\$ 51.00
7/14/2021	Breck Oyama (13th Year Paralegal)	save/review cmc statement	0.08	\$ 300.00	\$ 24.00
7/14/2021	Breck Oyama (13th Year Paralegal)	f/u OC re joint statement	0.08	\$ 300.00	\$ 24.00
7/14/2021	Lizzett Cortez (9th Year Paralegal)	reviewed feed and emails	0.08	\$ 250.00	\$ 20.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
7/15/2021	Breck Oyama (13th Year Paralegal)	email OC re JSR/courtesy copy	0.08	\$ 300.00	\$ 24.00
7/15/2021	Lizzett Cortez (9th Year Paralegal)	saved final executed Joint Report	0.08	\$ 250.00	\$ 20.00
7/23/2021	Breck Oyama (13th Year Paralegal)	check w/ team re agmt	0.08	\$ 300.00	\$ 24.00
7/27/2021	Breck Oyama (13th Year Paralegal)	email DGS redline comparison of SA	0.08	\$ 300.00	\$ 24.00
7/29/2021	Michelle Grimberg (Formerly Employed 20+ Year Attorney)	Communications re upcoming CMC; review and analyze case file; prepare for CMC hearing.	1.75	\$ 650.00	\$ 1,137.50
7/29/2021	Breck Oyama (13th Year Paralegal)	check docket, vmail clerk, update calendar re CMC	0.25	\$ 300.00	\$ 75.00
7/30/2021	Lizzett Cortez (9th Year Paralegal)	saved dgs status conference notes	0.08	\$ 250.00	\$ 20.00
7/30/2021	David Spivak (26th Year Attorney)	Prepare for hearing and status conference	0.33	\$ 700.00	\$ 231.00
7/30/2021	Nora Greer (15+ Year Paralegal)	TC to Dept re first call for hearing, email to dgs and lc	0.17	\$ 200.00	\$ 34.00
7/30/2021	Lizzett Cortez (9th Year Paralegal)	reviewed notes and calendared deadlines re mx PAGA approval	0.17	\$ 250.00	\$ 42.50
7/30/2021	David Spivak (26th Year Attorney)	review and revise settlement agreement	0.58	\$ 700.00	\$ 406.00
8/5/2021	Breck Oyama (13th Year Paralegal)	review emails, update deadline chains	0.33	\$ 300.00	\$ 99.00
8/11/2021	Breck Oyama (13th Year Paralegal)	check docket for MO, save/review, draft notice entry	0.33	\$ 300.00	\$ 99.00
8/12/2021	Breck Oyama (13th Year Paralegal)	file/serve notice, email OC	0.25	\$ 300.00	\$ 75.00
8/26/2021	Lizzett Cortez (9th Year Paralegal)	Reviewed emails	0.08	\$ 250.00	\$ 20.00
10/8/2021	Lizzett Cortez (9th Year Paralegal)	fwd stip to dgs and emailed for sig	0.17	\$ 250.00	\$ 42.50
10/8/2021	Lizzett Cortez (9th Year Paralegal)	saved signed stip and emailed to OC. fwd hellosign to filevine	0.25	\$ 250.00	\$ 62.50
11/16/2021	David Spivak (26th Year Attorney)	call with OC re status of settlement	0.08	\$ 700.00	\$ 56.00
11/18/2021	Breck Oyama (13th Year Paralegal)	file/serve notice entry	0.17	\$ 300.00	\$ 51.00
11/18/2021	Breck Oyama (13th Year Paralegal)	save/review order, update calendar, prep notice entry	0.08	\$ 300.00	\$ 24.00
12/8/2021	Lizzett Cortez (9th Year Paralegal)	marked feed. Call w/ client re update on case.	0.17	\$ 250.00	\$ 42.50
12/15/2021	Lizzett Cortez (9th Year Paralegal)	marked feed and saved filed notice of entry	0.08	\$ 250.00	\$ 20.00
1/9/2022	David Spivak (26th Year Attorney)	review changes to settlement agreement by OC	0.58	\$ 700.00	\$ 406.00
1/11/2022	Breck Oyama (13th Year Paralegal)	review emails re status	0.08	\$ 300.00	\$ 24.00
1/18/2022	Breck Oyama (13th Year Paralegal)	review emails, email OC f/u re SA	0.08	\$ 300.00	\$ 24.00
1/20/2022	Breck Oyama (13th Year Paralegal)	review agmt and costs cap, email DGS revisions	0.33	\$ 300.00	\$ 99.00
1/20/2022	Breck Oyama (13th Year Paralegal)	email OC revised agmt scrubbed and PDF	0.25	\$ 300.00	\$ 75.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
1/26/2022	Breck Oyama (13th Year Paralegal)	review emails, msg w/ LC re translation/budget	0.08	\$ 300.00	\$ 24.00
1/26/2022	Lizzett Cortez (9th Year Paralegal)	emailed settlement agreement for signatures. Emailed Blanca re estimate to translate	0.25	\$ 250.00	\$ 62.50
1/27/2022	Lizzett Cortez (9th Year Paralegal)	emailed translation to proceed with translation	0.08	\$ 250.00	\$ 20.00
1/28/2022	Lizzett Cortez (9th Year Paralegal)	Call w/ Client re settlement agreement	0.08	\$ 250.00	\$ 20.00
1/28/2022	Lizzett Cortez (9th Year Paralegal)	Additional call w/client re settlement agreement	0.17	\$ 250.00	\$ 42.50
1/31/2022	Lizzett Cortez (9th Year Paralegal)	updated cost. saved invoice and settlement. Updated dates on settlement. Emailed to client. Fwd invoice to DB	0.42	\$ 250.00	\$ 105.00
2/1/2022	Lizzett Cortez (9th Year Paralegal)	Call w/ client re settlement	0.08	\$ 250.00	\$ 20.00
2/1/2022	Lizzett Cortez (9th Year Paralegal)	additional call w/ client re settlement. combined docs and emailed to OC. Saved signed sp version	0.67	\$ 250.00	\$ 167.50
2/2/2022	Lizzett Cortez (9th Year Paralegal)	saved executed settlement	0.08	\$ 250.00	\$ 20.00
2/2/2022	Breck Oyama (13th Year Paralegal)	review FV/emails	0.08	\$ 300.00	\$ 24.00
2/3/2022	Lizzett Cortez (9th Year Paralegal)	sent fully executed settlement agreements to clients	0.17	\$ 250.00	\$ 42.50
2/14/2022	David Spivak (26th Year Attorney)	prepare settlement approval mx	3.50	\$ 700.00	\$ 2,450.00
2/16/2022	Breck Oyama (13th Year Paralegal)	review email from OC re TPA selection	0.08	\$ 300.00	\$ 24.00
2/16/2022	Breck Oyama (13th Year Paralegal)	review emails, save stip, email OC re TPA	0.25	\$ 300.00	\$ 75.00
2/17/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/17/2022	Breck Oyama (13th Year Paralegal)	update calendar re hearing info	0.08	\$ 300.00	\$ 24.00
2/18/2022	Breck Oyama (13th Year Paralegal)	file/serve notices	0.17	\$ 300.00	\$ 51.00
2/18/2022	Breck Oyama (13th Year Paralegal)	save notes, calendar cmc and update deadline chain, download/circulate MO, prep notice entry and change address, update POS	0.33	\$ 300.00	\$ 99.00
2/23/2022	Breck Oyama (13th Year Paralegal)	review FV activity	0.08	\$ 300.00	\$ 24.00
2/25/2022	Breck Oyama (13th Year Paralegal)	save/enter invoices, check w/ team re status	0.08	\$ 300.00	\$ 24.00
3/1/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	double checking dates/facts in MX prelim, adding PL Torrez, drafting stip	11.45	\$ 300.00	\$ 3,435.00
3/2/2022	Breck Oyama (13th Year Paralegal)	review emails, check w/ team	0.08	\$ 300.00	\$ 24.00
3/7/2022	Breck Oyama (13th Year Paralegal)	review emails/status, check status of filings, save/circulate	0.08	\$ 300.00	\$ 24.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
3/7/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	worked on supp mpa	4.33	\$ 300.00	\$ 1,299.00
3/10/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	reviewed 1AC and stip	2.58	\$ 300.00	\$ 774.00
3/10/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	Reviewed redlines, made edits, sent to OC	0.75	\$ 300.00	\$ 225.00
3/10/2022	Breck Oyama (13th Year Paralegal)	review emails, save conformed copies	0.17	\$ 300.00	\$ 51.00
3/15/2022	Breck Oyama (13th Year Paralegal)	review emails, save docs	0.08	\$ 300.00	\$ 24.00
3/16/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	reviewed oc redlines	0.33	\$ 300.00	\$ 99.00
3/23/2022	David Spivak (26th Year Attorney)	Review and revise first amended complaint and stipulation for its filing	0.58	\$ 700.00	\$ 406.00
3/23/2022	Breck Oyama (13th Year Paralegal)	update stip and 1AC for signatures, email OC	0.25	\$ 300.00	\$ 75.00
3/23/2022	Breck Oyama (13th Year Paralegal)	finalize stip 1AC and circulate w/ OC for signature	0.42	\$ 300.00	\$ 126.00
3/23/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	reviewed redline changes	0.25	\$ 300.00	\$ 75.00
3/23/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	reviewed email, checked file to see if stip sent to OC, emailed team regarding stip	0.58	\$ 300.00	\$ 174.00
3/23/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/28/2022	Breck Oyama (13th Year Paralegal)	file/serve stip, calendar deadline upload LWDA, email client and email DL to send to spanish client	0.25	\$ 300.00	\$ 75.00
3/28/2022	Breck Oyama (13th Year Paralegal)	review emails, save/circulate stip, prep stip/1AC for filing	0.25	\$ 300.00	\$ 75.00
3/29/2022	Breck Oyama (13th Year Paralegal)	review emails/filing status	0.08	\$ 300.00	\$ 24.00
3/30/2022	Breck Oyama (13th Year Paralegal)	save/enter invoice, review emails/filing	0.08	\$ 300.00	\$ 24.00
4/5/2022	Breck Oyama (13th Year Paralegal)	check docket re stip 1AC	0.08	\$ 300.00	\$ 24.00
4/7/2022	Breck Oyama (13th Year Paralegal)	submit proposed 1AC to LWDA, email rapidlegal re order	0.25	\$ 300.00	\$ 75.00
4/11/2022	Breck Oyama (13th Year Paralegal)	research Lexis, download order and prep notice, file/serve 1AC, calendar deadlines	0.42	\$ 300.00	\$ 126.00
4/15/2022	Breck Oyama (13th Year Paralegal)	check docket re status of filing, check w/ SB re mx	0.08	\$ 300.00	\$ 24.00
4/16/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	worked on mx	4.25	\$ 300.00	\$ 1,275.00
4/18/2022	Breck Oyama (13th Year Paralegal)	review emails/FV	0.08	\$ 300.00	\$ 24.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
4/19/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	worked on mx	2.92	\$ 300.00	\$ 876.00
4/19/2022	Breck Oyama (13th Year Paralegal)	review/update tasks	0.08	\$ 300.00	\$ 24.00
4/20/2022	Breck Oyama (13th Year Paralegal)	review emails/status, check w/ team re mx hearings, review court website	0.17	\$ 300.00	\$ 51.00
4/20/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	cotinued	1.00	\$ 300.00	\$ 300.00
4/20/2022	Daniela Linares (1st Year Intake Assistant)	Call to client. email. fwd vm to fv	0.08	\$ 150.00	\$ 12.00
4/21/2022	Sara Brown (Formerly Employed 2nd Year Associate Attorney)	worked motion	4.30	\$ 300.00	\$ 1,290.00
4/21/2022	Breck Oyama (13th Year Paralegal)	review FV/emails, review docket and update CMC dept	0.17	\$ 300.00	\$ 51.00
4/21/2022	Daniela Linares (1st Year Intake Assistant)	Email review	0.08	\$ 150.00	\$ 12.00
4/22/2022	Daniela Linares (1st Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
4/22/2022	Breck Oyama (13th Year Paralegal)	review/fwd emails	0.08	\$ 300.00	\$ 24.00
4/22/2022	David Spivak (26th Year Attorney)	Review and revise the Taurus declaration and the motion for private attorney general settlement approval; instructions to staff	1.00	\$ 700.00	\$ 700.00
4/25/2022	Christina Prejean (4th Year Attorney)	Mtg with EL re MX REDACTED	0.50	\$ 350.00	\$ 175.00
4/25/2022	Christina Prejean (4th Year Attorney)	Review/sign CMC statement	0.08	\$ 350.00	\$ 28.00
4/25/2022	Christina Prejean (4th Year Attorney)	Reviewed and revised Torrez Declaration	0.33	\$ 350.00	\$ 115.50
4/25/2022	Breck Oyama (13th Year Paralegal)	fwd emails to CP, check docket re 1AC, check w/ team re cmc statement	0.17	\$ 300.00	\$ 51.00
4/25/2022	Breck Oyama (13th Year Paralegal)	review emails, email w/ client and CP, prep cmc statement	0.33	\$ 300.00	\$ 99.00
4/25/2022	Christina Prejean (4th Year Attorney)	Drafted LWDA re PAGA violations for Claudia Torrez	0.83	\$ 350.00	\$ 290.50
4/25/2022	Christina Prejean (4th Year Attorney)	Reviewed/revised Motion for PAGA Approval, Torrez Declaration, and emails	1.25	\$ 350.00	\$ 437.50
4/25/2022	Nora Greer (15+ Year Paralegal)	Review emails and forward to BO	0.08	\$ 200.00	\$ 16.00
4/25/2022	Christina Prejean (4th Year Attorney)	Cont. to review and revise Torrez decl.	0.02	\$ 350.00	\$ 7.00
4/26/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, prep cmc statement for filing/service	0.42	\$ 300.00	\$ 126.00
4/26/2022	Christina Prejean (4th Year Attorney)	Discuss revisions to approval motion with DGS	0.50	\$ 350.00	\$ 175.00
4/26/2022	David Spivak (26th Year Attorney)	Discuss revisions to approval motion with Christina	0.50	\$ 700.00	\$ 350.00
4/26/2022	Christina Prejean (4th Year Attorney)	Review/revise/edit PAGA settlement, DGS Decl., Damages/Demand for PAGA Settlement Approval	1.75	\$ 350.00	\$ 612.50

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
4/26/2022	Christina Prejean (4th Year Attorney)	Review and revise Torrez Dec. and supporting docs, and emailed for final	0.67	\$ 350.00	\$ 234.50
4/27/2022	Christina Prejean (4th Year Attorney)	Review and revise MX PAGA Settlement Approval and Decl, include site inspection and review emails	1.58	\$ 350.00	\$ 553.00
4/27/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, emails w/ team for mx, email OC re JSR, save/fwd invoice to AL	0.33	\$ 300.00	\$ 99.00
4/27/2022	Christina Prejean (4th Year Attorney)	Review emails and court order	0.08	\$ 350.00	\$ 28.00
4/28/2022	Christina Prejean (4th Year Attorney)	Final revision and draft of PAGA Settlement approval, emailed final to OC	0.58	\$ 350.00	\$ 203.00
4/28/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, vmail Dept 25 clerk re mx availability after 5/27	0.08	\$ 300.00	\$ 24.00
4/28/2022	Christina Prejean (4th Year Attorney)	Review emails, revise mx for preliminary approval w confirmation of additional info needed	0.75	\$ 350.00	\$ 262.50
4/28/2022	Breck Oyama (13th Year Paralegal)	review emails, save court notice and email team re mx	0.17	\$ 300.00	\$ 51.00
4/28/2022	Breck Oyama (13th Year Paralegal)	save/circulate 1AC, upload to LWDA and save submissions	0.25	\$ 300.00	\$ 75.00
4/29/2022	Christina Prejean (4th Year Attorney)	Revision/Exhibits added to Decl. in Mx PAG Approval	0.75	\$ 350.00	\$ 262.50
4/29/2022	Breck Oyama (13th Year Paralegal)	review docs, email OC, email CP re exhibit #s	0.25	\$ 300.00	\$ 75.00
4/29/2022	Christina Prejean (4th Year Attorney)	Review/revise OC's Joint Status Report for CMC, mult. emails to BO, OC office	0.50	\$ 350.00	\$ 175.00
4/29/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, check w/ CP re Torrez decl, calendar time to work on mx	0.17	\$ 300.00	\$ 51.00
4/29/2022	Daniela Linares (1st Year Intake Assistant)	Call to client. LVM	0.08	\$ 150.00	\$ 12.00
4/29/2022	Breck Oyama (13th Year Paralegal)	review velez emails for time log	0.33	\$ 300.00	\$ 99.00
4/29/2022	Breck Oyama (13th Year Paralegal)	save/send OC signed JSR	0.17	\$ 300.00	\$ 51.00
4/29/2022	Daniela Linares (1st Year Intake Assistant)	fwd vm to FV. review emails. call to cl. lvm	0.17	\$ 150.00	\$ 25.50
5/3/2022	Breck Oyama (13th Year Paralegal)	review emails, save conformed copy	0.08	\$ 300.00	\$ 24.00
5/3/2022	Breck Oyama (13th Year Paralegal)	email OC re conformed copy and courtesy to clerk	0.08	\$ 300.00	\$ 24.00
5/4/2022	Breck Oyama (13th Year Paralegal)	review/snooze emails	0.08	\$ 300.00	\$ 24.00
5/4/2022	Breck Oyama (13th Year Paralegal)	call w/ Clerk re mx dates, email OC	0.17	\$ 300.00	\$ 51.00
5/6/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/6/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, call w/ Clerk, email OC re hearing dates and update calendar	0.33	\$ 300.00	\$ 99.00
5/9/2022	Christina Prejean (4th Year Attorney)	Review BO's email, client's folder for possible OC redlines of MX PAG approval	0.08	\$ 350.00	\$ 28.00

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
5/9/2022	Breck Oyama (13th Year Paralegal)	review/snooze emails	0.08	\$ 300.00	\$ 24.00
5/9/2022	Breck Oyama (13th Year Paralegal)	review emails, save docs, check w/ SP re final version, email DGS re ETA	0.17	\$ 300.00	\$ 51.00
5/10/2022	Daniela Linares (1st Year Intake Assistant)	look up CMC for cl. chat w BO re mx. call to cl. lvm	0.33	\$ 150.00	\$ 49.50
5/10/2022	Daniela Linares (1st Year Intake Assistant)	fwd vm to FV	0.08	\$ 150.00	\$ 12.00
5/10/2022	Daniela Linares (1st Year Intake Assistant)	call w cl re cmc email	0.08	\$ 150.00	\$ 12.00
5/12/2022	Emily Ly (1st Year Paralegal)	Circulated TR and calenared.	0.25	\$ 150.00	\$ 37.50
5/19/2022	Breck Oyama (13th Year Paralegal)	save/circulate MO, prep notice entry	0.33	\$ 300.00	\$ 99.00
5/19/2022	Christina Prejean (4th Year Attorney)	Reviewed Court's Minute Order, signed notice entry	0.08	\$ 350.00	\$ 28.00
TOTAL PRE-MULTIPLIER LODESTAR AS OF 5/19/2022			276.70		\$ 109,429.50

EXHIBIT 20

TSLF COSTS VELEZ

Date	Expense Type	Expense Description	Expense Amount
6/4/2018	Postage	Postage May 2018	\$ 3.40
11/2/2018	Postage	Postage October 2018	\$ 1.84
11/9/2018	Lexis/Westlaw	Lexis usage Oct 2018	\$ 4.64
12/26/2018	LWDA Filing Fee	Check no. 6203 paid to lwda	\$ 75.00
1/2/2019	Lexis/Westlaw	Lexis usage Dec 2018	\$ 48.03
2/4/2019	Postage	Postage December 2018	\$ 46.38
2/27/2019	Attorney Service-Filing & Service	Onelegal invoice # [REDACTED] filing fee \$435 and complex fee \$1000	\$ 1,652.36
3/1/2019	Attorney Service-Filing & Service	onelegal invoice # [REDACTED]	\$ 40.00
3/1/2019	Attorney Service-Filing & Service	onelegal invoice # [REDACTED]	\$ 75.00
3/4/2019	Lexis/Westlaw	Lexis usage Feb 2019	\$ 16.44
3/6/2019	Photocopies	printing re notice	\$ 2.50
4/5/2019	Postage	Postage March 2019	\$ 16.24
4/10/2019	Attorney Service-Filing & Service	onelegal invoice # [REDACTED]	\$ 79.75
4/16/2019	Spanish Interpreter/Translator	Translating Services, LLC - services to send client	\$ 67.00
5/1/2019	Lexis/Westlaw	Westlaw usage April 2019	\$ 8.68
5/15/2019	Conference Room	Akardin invoice [REDACTED]	\$ 7.46
5/30/2019	Photocopies	May 2019 Photocopies	\$ 3.50
6/5/2019	Postage	Postage for May 2019	\$ 1.30
6/5/2019	CourtCall appearance	courtcall [REDACTED]	\$ 94.00
6/20/2019	Record request fees	sac court download, order # [REDACTED]	\$ 2.00
7/1/2019	Postage	Postage for June 2019	\$ 2.30
7/1/2019	Attorney Service-Filing & Service	onelegal invoice # [REDACTED] and jury fee \$150	\$ 214.95
8/9/2019	Photocopies	FORM ROGS GEN x4 (9/each) FORM ROGS EMPLOYMENT x3 (9/each) R4P FINAL AND DRAFT x8 (15/each) SPECIAL ROGS FINAL AND DRAFT x 8 (5/each) POS x14 (1/each)	\$ 59.25
9/4/2019	Postage	Postage for Aug 2019	\$ 7.25
10/9/2019	Attorney Service-Filing & Service	one legal invoice # [REDACTED]	\$ 80.66
10/17/2019	Photocopies	printing stip for dismissal of k. catchot	\$ 1.00
11/4/2019	Postage	Postage Sept 2019	\$ 0.50
2/19/2020	Conference Room	Mediation Conference Room (Regus Offices-Encino) Confirmation Codes: [REDACTED] [REDACTED] Total: \$738.35 Total for Plaintiff: \$369.18 (Split 50/50 with Defendant) CANCELLED 03/24/20	\$ -

TSLF COSTS VELEZ

Date	Expense Type	Expense Description	Expense Amount
3/11/2020	Attorney Service-Filing & Service	One legal order #: REDACTED	\$ 101.50
3/11/2020	CourtCall appearance	CourtCall Appearance ID REDACTED cancelled (3/18)	\$ -
4/1/2020	Postage	Postage Mar 2020	\$ 1.00
4/29/2020	Spanish Interpreter/Translator	DayTranslations INVOICE # REDACTED	\$ 1,360.35
4/8/2020	Mediator fees	Mediation fee to Marc Feder, dgs electronic payment 04/08/20	\$ 5,000.00
4/21/2020	Record request fees	Sac Document Order Conf # REDACTED	\$ 26.80
4/22/2020	Record request fees	Sac Document Order Conf # REDACTED	\$ 40.00
4/23/2020	Photocopies	****Konica Printer photocopies through 4/23/20	\$ 111.00
4/27/2020	Data Analysis	Micah Hirschman INVOICE # REDACTED	\$ 438.00
5/1/2020	Postage	Postage Apr 2020	\$ 0.65
5/20/2020	Record request fees	Sac Order Confirmation Number is: REDACTED	\$ 2.00
5/28/2020	CourtCall appearance	Courtcall REDACTED cancelled 6/4 (Zoom instead)	\$ -
6/23/2020	Data Analysis	Elliott Powell data analysis; Paypal	\$ 500.00
8/3/2020	Postage	Postage July 2020	\$ 21.60
8/5/2020	LWDA Filing Fee	Lwda Filing fee Torrez	\$ 75.00
8/18/2020	Data Analysis	Elliott Powell extra time on Analysis; Paypal	\$ 50.00
9/1/2020	Postage	Postage Aug 2020	\$ 0.50
9/17/2020	Attorney Service-Filing & Service	Rapidlegal # REDACTED	\$ 67.11
10/2/2020	Lexis/Westlaw	Westlaw usage Sept 2020	\$ 5.67
11/2/2020	Lexis/Westlaw	Westlaw Oct 2020	\$ 28.71
12/1/2020	Lexis/Westlaw	Westlaw usage Nov 2020	\$ 3.60
3/9/2021	Record request fees	Sac download order # REDACTED	\$ 2.00
4/1/2021	Postage	Postage Mar 2021	\$ 1.22
8/11/2021	Record request fees	Sac Court download # REDACTED	\$ 4.00
8/19/2021	Attorney Service-Filing & Service	onelegal # REDACTED	\$ 69.49
11/18/2021	Photocopies	printing docs for filing (5 pages)	\$ 1.25
12/3/2021	Postage	Postage Nov 2021	\$ 1.46
1/26/2022	Spanish Interpreter/Translator	Translating Services, LLC Invoice REDACTED	\$ 300.00
2/18/2022	Record request fees	Sac Court download MO, order # REDACTED	\$ 2.00
2/21/2022	Postage	Letterstream REDACTED	\$ 2.08
2/21/2022	Postage	Letterstream REDACTED	\$ 2.52

TSLF COSTS VELEZ

Date	Expense Type	Expense Description	Expense Amount
3/29/2022	Attorney Service-Filing & Service	rapidlegal # [REDACTED]	\$ 207.02
4/14/2022	Attorney Service-Filing & Service	Rapidlegal # [REDACTED]	\$ 188.43
4/26/2022	Postage	Letter Stream invoice # [REDACTED]	\$ 9.07
5/2/2022	Lexis/Westlaw	Lexis usage Apr 2022	\$ 19.53
5/19/2022	Postage	Letter Stream invoice # [REDACTED]	\$ 6.27
5/23/2022	Spanish Interpreter/Translator	Day Translations invoice # [REDACTED]	\$ 179.48
5/23/2022	Spanish Interpreter/Translator	Translating Services, LLC invoice # [REDACTED]	\$ 150.00
5/23/2022	Lexis/Westlaw	Westlaw Usage May 2022	\$ 45.38
TBD	Attorney Service-Filing & Service	<i>Estimated attorney service charges for filing motion for PAGA Settlement</i>	\$ 538.72
TBD	Attorney Service-Filing & Service	<i>Estimated attorney service charges for filing notice of entry of order</i>	\$ 70.00
TBD	Attorney Service-Filing & Service	<i>Estimated attorney service charges for filing final accounting declarations</i>	\$ 210.00
The Spivak Law Firm Costs Through 6/3/2022			\$ 11,636.12
The Spivak Law Firm Estimated Future Costs			\$ 818.72
TOTAL COSTS THROUGH FINAL ACCOUNTING OF SETTLEMENT			\$ 12,454.84

EXHIBIT 21



CASE ASSUMPTIONS

Class Members	819
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	819
Subtotal Admin Only	\$9,083.62

Value Pricing Total \$6,000.00

For 819 Class Members

Pricing Good for Scope of Estimate Only

May 25, 2022

Case: Velez v. GH Foods, PAGA Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: Breck Oyama
 Firm: The Spivak Law Firm
 Contact Number: (818) 582-3039
 Email: boyama@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 **819** 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	\$2.50	86		\$215.00
NCOA (USPS)	\$130.00	1		\$130.00
Total				\$895.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage / Spanish Translation / CA Check Postcard

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Spanish Translation	\$150.00	1		\$150.00
Data Merge & Duplication Scrub	\$0.09	819		\$73.71
Notice and Check Packet	\$0.95	819		\$778.05
Estimated Postage (up to 1 oz.)*	\$0.51	819		\$417.69
State of California Check Cashing	\$0.60	63		\$37.80
Reminder Postcard (Postage Included)				
Total				\$1,557.25

* 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	5		\$275.00
Skip Tracing Undeliverables	\$0.75	68		\$51.00
Remail Notice Packets	\$0.50	65		\$32.50
Estimated Postage	\$0.53	65		\$34.45
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$442.95

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Dispute Processing	\$50.00	1		\$50.00
Case Associate	\$55.00	8		\$440.00
Case Manager	\$85.00	5		\$425.00
			Total	\$1,065.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	6		\$810.00
			Total	\$1,715.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	4		\$460.00
Remail Undeliverable Checks (Postage Included)	\$1.50	156		\$233.42
Case Associate	\$55.00	5		\$275.00
Reconcile Uncashed Checks	\$85.00	6		\$510.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$400.00	1		\$400.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Contolers Office	\$500.00	1		\$500.00
Estimated <u>89</u> Total Class Members				
Total				\$3,408.42

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$9,083.62



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 22

Case Name: Velez v. GH Foods

Tuesday, May 24, 2022

Requesting Law Firm:	The Spivak Law Firm
Contact:	Breck Oyama
E-Mail:	boyama@spivaklaw.com
ILYM Contact:	Sean Hartranft
E-Mail:	Sean@ilymgroupclassaction.com
Contact Number:	949.690.2564

ASSUMPTIONS	
Total Number of Aggrieved Employees	819
Certified Spanish Translation	Yes
Remail of Undeliverables	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	4	\$600.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	7	\$840.00
Toll-Free Telephone Support	Flat Rate	\$175.00	1	\$175.00
NCOA	Flat Rate	\$125.00	1	\$125.00
Certified Spanish Translation	Flat Rate	\$750.00	1	\$750.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$2,490.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	5	\$750.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	5	\$625.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$2.00	819	\$1,638.00
USPS First Class Postage	Per Piece	\$0.55	819	\$450.45
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	164	\$409.50
Preparation of Taxes	Hourly	\$125.00	10	\$1,250.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$6,622.95

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	4	\$400.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	3	\$375.00

Subtotal \$1,525.00

WILL NOT EXCEED: \$10,637.95

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 23



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: Velez v GH Foods

Date: May 25, 2022

PAGA Disbursement Only

Requesting Attorney: **Breck Oyama**

* Class Members: **819**

Plaintiff or Defense: **Plaintiff**

Postage Total: **\$545.50**

Firm Name: **The Spivak Law**

Grand Total: **\$13,910.60**

Telephone: **(818) 582-3039**

***** DISCOUNTED FLAT FEE: \$10,000.00**

Email: boyama@spivaklaw.com

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / NCOA / TFN Establish, Setup & Support / Spanish Translation

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	7	\$665.00
System Programming/Data Base Setup	\$150.00	7	\$1,050.00
Project Manager-Notice Format	\$95.00	1	\$95.00
NCOA	\$150.00	1	\$150.00
Call Center Support	\$3.00	164	\$492.00
Spanish Translation	\$750.00	1	\$750.00
Total			\$3,202.00

* Up to 120 days after disbursement

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	819	\$163.80
Total			\$598.80

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Notice, Checks/1099's

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Notice, Checks & 1099	\$3.00	819	\$2,457.00
Estimated Postage (up to 1 oz.)	\$0.58	819	\$475.02
Total			\$4,772.02

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	9	\$45.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	66	\$82.50
Remail Undeliverable Checks	\$3.00	66	\$198.00
Estimated Postage (up to 1 oz.)	\$0.58	75	\$43.50
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
Project Supervisor - Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$750.00	1	\$750.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$3,119.00

*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	172	\$25.80
Project Manager - Fall Reporting	\$95.00	2	\$190.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.50	1	\$8.50
Check Reissues - Winter/Spring QTR	\$5.00	17	\$86.00
1st Class Postage for Reissues	\$0.58	17	\$9.98
Project Manager - June Remittance	\$95.00	2	\$190.00
Project Supervisor- June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.50	1	\$8.50
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$2,218.78

Grand Total: \$13,910.60

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.