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8 Attorneys for Plaintiff(s),
9 CHRIS MARCUS CALKINS, and all others similarly situated

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

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

17 *Plaintiff(s),*

18 vs.

19 UNITED SECURITY SERVICES, INC., an
20 Illinois corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*
22

Case No. 20STCV35391

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

Hearing Date: December 9, 2024
Hearing Time: 10:00 a.m.
Hearing Dept.: SSC-7, The Honorable
Lawrence P. Riff

Action filed: September 16, 2020



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1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF'S MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 2. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Chris Marcus Calkins née Carissa Calkins ("Plaintiff") in his
6 lawsuit against Defendant United Security Services, Inc. ("Defendant"). Plaintiff and Defendant
7 are collectively referred to as the "Parties."

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

10 4. The Class Action and PAGA Settlement and Class Notice (the "Settlement" or
11 "Settlement Agreement") is attached hereto as **Exhibit 1**. The Settlement is written, signed by
12 all necessary Parties, and attached to this declaration as stated above.

13 ***Factual and Procedural Background***

14 5. Defendant provides security guard services to its customers in different industries
15 such as hospitality and entertainment industries Defendant employed Plaintiff as a security guard
16 in California from about December 27, 2019 until March 2, 2020.

17 6. **LWDA Notice.** On July 7, 2020, Plaintiff notified Defendant and the California
18 Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private
19 Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of
20 alleged Labor Code violations committed by Defendant. A true and correct copy of the letter to
21 the LWDA dated July 7, 2020 is attached hereto as **Exhibit 2**.

22 7. **Lawsuit.** On September 16, 2020, Plaintiff filed a Class Action Complaint in the
23 Los Angeles County Superior Court, Case No. 20STCV35391, against Defendant on behalf of
24 himself and others similarly situated, alleging causes of action on a class-wide basis for: (1)
25 Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and
26 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide
27 Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Wage Statement Penalties (Lab. Code §§
28 226 and 226.2); (5) Waiting Time Penalties (Lab. Code §§ 201-203); (6) Unfair Competition



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(Bus. & Prof. Code §§ 17200, et seq.); and (7) Civil penalties under PAGA. On March 26, 2021, Defendant filed an answer to Plaintiff's Complaint. Defendant denies all of Plaintiff's allegations and strongly contends that its wage and hour policies, practices and procedures are fully compliant with all applicable laws. A true and correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Defendant's Answer is attached hereto as **Exhibit 4**.

8. **Investigation.** On November 30, 2021, Plaintiff requested that Defendant informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims. Plaintiff also requested a reasonable, randomly selected sample of Defendant's time, payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiff requested Defendant's written policies applicable to the claims at hand and asked Defendant identify any and all comparable claims against it.

9. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendant produced Plaintiff's entire personnel file (including policies and agreements he signed and acknowledged) and copies of its relevant company written policies.

10. **Sampling.** Plaintiff chose certain months during the relevant period and Defendant produced handwritten time sheets and payroll records and related records for all employee who worked for Defendant during those selected months. Defendant contends that it employed 2,669 putative class members during the relevant time period. There were records for 420 employees in the sample. Defendant, therefore, produced the records of 15.56% of the putative class members.

11. **Plaintiff's Data Analyst.** Plaintiff retained James Toney, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft⁷ Sample Size calculator

⁷ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that is it "database web survey software for gathering information."



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(<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 32.4%, a confidence level of 95%, and a population size of 2,669, the Raosoft Sample Size Calculator recommended a sample of 10. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached as **Exhibit 5**. Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

12. **Mediation.** On July 17, 2023, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Louis Marlin, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement after the mediation session. During the mediation sessions, each side, represented by his / its respective counsel, recognized the risk of an adverse result in the Action. The Parties did not reach a settlement at the mediation but continued their negotiations and ultimately agreed to settle the Action and all other matters pursuant to the terms and conditions of this Settlement Agreement.

13. **Defendant's Financial Condition.** At the mediation, it became clear that Defendant had insufficient resources to cover the full extent of liability. As part of the settlement negotiations, Defendant disclosed its balance sheets, profit and loss statements, bank statements, and related information for 2021, 2022, and 2023. I reviewed the financial records. The information provided was sufficient to demonstrate the financial condition of the Defendant and that it will unlikely be able to afford payment of a larger amount than the Settlement amount. Based on such records, Plaintiff, on his own behalf and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth in the Settlement.

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<http://www.raosoft.com/> . It also advertises, "The parameters of the sample size calculation are something that you choose." <http://www.raosoft.com/suggestreading.html>.



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Similar Actions

14. **Relevant Litigation and Claims.** I am not aware of any class, representative, or other collective action in any other court, in this, or any other jurisdiction, that asserts claims similar to those asserted in this action, on behalf of the class or group of individuals, some or all of whom would also be members of the class to find in this action. I have made a reasonable inquiry of the other members of my law firm and my counsel to determine whether they are aware of any such similar actions. Based on these inquiries, I am aware of no such similar actions. Defendant disclosed that there have not been any comparable claims against it.

Ascertainable and Numerous Class

15. **Ascertainability.** A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information from its records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

16. **Numerosity.** The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that there are approximately 2,669 Class Members. Settlement, §4.1. Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Members to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Class' membership is sufficiently numerous. Additionally, there are 662 Aggrieved Employees for the PAGA Period of July 07, 2019 to June 29, 2023.

Predominant Common Questions

17. A question of law or fact is common to the members of a class if it may be resolved through common proof. In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Member all stem from the same sources. Settlement, §13.1. In this case, there are many predominant common

1 questions. Plaintiff asserts all class members were subject to the same or similar operations and
2 employment policies, practices, and procedures. The claims arise from Defendant's alleged
3 policy-driven failure to pay wages, failure to provide meal periods, failure to authorize and permit
4 rest periods, failure to issue proper wage statements, failure to timely pay wages, and related labor
5 law violations, all of which Plaintiff claims constitute unfair business practices and give rise to
6 PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: : (1)
7 Whether Defendant failed to pay all wages earned to Class Member for all hours worked at the
8 correct rates of pay; (2) Whether Defendant failed to provide the class with all meal and rest
9 periods in compliance with California law; (3) Whether Defendant failed to pay the class one
10 additional hour of pay on workdays it failed to provide the class with one or more meal or rest
11 periods in compliance with California law; (4) Whether Defendant knowingly and intentionally
12 failed to provide the class with accurate wage statements; (5) Whether Defendant willfully failed
13 to provide the class with timely final wages; and (6) Whether Defendant engaged in unfair
14 competition within the meaning of Business and Professions Code section 17200, *et seq.*, with
15 respect to the class.

16 *Typicality*

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

25 *Adequacy*

26 19. The adequacy requirement is met where the plaintiff is represented by counsel
27 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
28 the class's interests. In other words, where the plaintiff has adequate counsel, the plaintiff may



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1 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
2 ability to represent the class.

3 20. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
4 with the absent Settlement Class Members. Plaintiff contends that he is an adequate class
5 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
6 litigation because they all worked for Defendant during the relevant time period, allegedly
7 suffered the same alleged injuries from the same alleged course of conduct, and there is no
8 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff
9 has demonstrated his commitment to the Settlement Class by, among other things, retaining
10 experienced counsel, providing counsel with documents and extensively speaking with them to
11 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
12 well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit
13 had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative. The
14 declaration of Plaintiff Chris Marcus Calkins on this subject will be filed concurrently with this
15 declaration.

16 ***Background of Class Counsel***

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

20 22. In December of 1995, the Supreme Court for the State of California admitted me
21 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
22 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
23 2013, I became admitted to the New York State Bar.

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

28 24. I have tried many cases before California and federal courts, government agencies



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

3 25. 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 Trial:
10 Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego Union-
11 Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias And
12 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 in
18 Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
19 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
20 1999.

21 c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the
22 Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights claims
23 and wrongful termination claims against employer in a month-long jury trial. The jury awarded
24 compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His Job" by
25 Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to Fired
26 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 was
5 litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono Legal
6 Services.

7 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
8 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
9 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 and
12 wrongful termination against his former employer. The Neutral Arbitrator awarded compensatory
13 and liquidated damages. The claims for damages, attorney's fees and costs were resolved shortly
14 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 unpaid
20 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
21 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
22 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

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



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1 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
2 an hourly rate of \$525.00 for my services.

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

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

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

11 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
12 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
13 court on behalf of nonexempt employees).

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

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

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

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

27 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
28 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class



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1 action settlement on behalf of medical devices employees).

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

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

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

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

14 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
15 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
16 on behalf of dairy and agricultural laborers).

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

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

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



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

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

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

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

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

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

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

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



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1 ***Class Action Treatment Is Superior***

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

11 ***The Settlement is Presumptively Fair***

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

23 ***Exposure & Risk Analysis***

24 31. Plaintiff claims that Defendant failed to pay Plaintiff and all Class Members all
25 wages for all hour worked at the correct rates of pay, failed to provide all meal periods, failed to
26 permit and authorize all rest breaks, and related violations. Plaintiff prepared “damages” estimates
27 in advance of the mediation. Plaintiff determined Defendant’s maximum possible exposure for
28 restitution and penalties to be approximately \$18,186,006.66 (consisting of \$1,025,611.98 in



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1 unpaid wages, \$1,026,670.83 in missed meal period premium wages, \$1,769,248.69 in missed
2 rest break premium wages, \$758,400.00 for wage statement penalties, \$9,937,225.16 for waiting
3 time penalties, and \$3,668,850.00 for civil penalties under PAGA. Plaintiff calculated the
4 damages based on the number of workweeks and pay periods provided by Defendant, Plaintiff's
5 reports, and the sample data. True and correct copies of the spreadsheets I prepared for mediation
6 of this Action are collectively attached to this declaration as **Exhibit 6**.

7 32. The estimates are in essence "home run" projections that omit data points that will
8 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
9 involved in litigating this Action. Plaintiff calculated the damages based on the number of
10 workweeks and pay periods provided by Defendant, Plaintiff's reports, and the sample data. *Id.*
11 Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix* campaign and
12 pursue individual release agreements from the Class Members. Plaintiff's Counsel applied
13 discounts to the maximum possible exposure to account for all other risks discussed below. While
14 it is difficult to assign anything but crudely-determined percentages of risk to any of the claims,
15 it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such
16 employees is substantial and alone justifies a significant discount because Defendant would likely
17 by trial have gathered releases from the majority of the Class Members. A settlement for
18 approximately 7.5% of the potential recovery is a proportion substantially in excess of recovery
19 proportions sanctioned by existing case law.⁸

20 33. My initial estimates do not realistically account for the risks outlined below or the
21 risk that a class will not be certified. Therefore, I believe a class settlement for \$350000.00 is fair
22 and reasonable.

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



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1 34. **Risks Associated with Defendant’s Financial Condition.** Defendant’s financial
2 condition was the key factor in reaching this Settlement. Due to Defendant’s financial condition,
3 even if Plaintiff prevailed on all claims at trial, his may never recover the damages due to the risk
4 of insolvency. A very large class action judgment would almost certainly put the company out of
5 business and/or would interfere with the company's ability to carry out its contractual obligations.

6 35. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff’s
7 recovery for unpaid wages would be extremely limited at best, largely because Defendant’s
8 written policies required the employees to record their hours worked and prohibited off-the-clock
9 work. Off-the-clock claims are difficult where a defendant requires in its written policies that all
10 work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226
11 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.*
12 Moreover, while Defendant disputes that off-the-clock work occurred, it contends that any time
13 spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.*
14 (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject
15 to a *de minimis* defense even if compensable. (Stating that “We do not decide whether there are
16 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
17 the time to be recorded.”). Following *Troester*, Defendant contends that the *de minimis* doctrine
18 may apply here because the time spent off the clock were minute and insignificant. Accordingly,
19 a large award of penalties seems unlikely with respect to this claim.

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

1 classwide methodology.

2 37. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's
3 meal period claim. Defendant contends that, to establish a violation for missed meal periods, a
4 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
5 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
6 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is
7 performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
8 or prohibited the employee from taking a proper break, or otherwise failed to release the employee
9 of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a
10 particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D.
11 Cal. 2010) 271 F.R.D. 629, 641. *Id.*

12 38. Defendant contends it did not impede or discourage Plaintiff, or any other
13 employees, from taking their meal or rest periods. Defendant's policies mandate that employees
14 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
15 of their meal breaks each day on their time records. The time records that comprise the random
16 sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were
17 taken. Of the time records that show a late, short or no lunch, individualized evidence may be
18 necessary to determine whether they occurred due to conduct of the Defendant or each of the
19 employees concerned. Accordingly, there is a significant risk that the value of Plaintiff's meal
20 period claim would be substantially reduced at trial.

21 39. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff's rest
22 period claim. Employers are not required to record rest periods and such periods are paid.
23 Defendant contends it provided non-exempt employees the opportunity to take rest periods in
24 accordance with California law. Further, Defendant's written policies on meal and rest periods
25 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
26 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
27 period or that the employer refused to authorize and permit one. Managing such claims at trial
28 has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys



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1 to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw
2 makes such claims risky from a trial management and due process perspective. *See Duran v. U.S.*
3 *Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist
4 to support class certification, it may be possible to manage individual issues through the use of
5 surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382;
6 *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

7 40. **Risks Associated with the Wage Statement Penalty Claims.** Plaintiff also
8 asserts claims for wage statement violations, untimely wage violations, and PAGA penalties.
9 Under Labor Code section 226, wage statements must include various information, including the
10 applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff’s wage
11 statement claim has the same underlying risks as the above claims, as it is derivative of them. On
12 their face, the wage statements issued by Defendant comply with the requirements of Labor Code
13 section 226.

14 41. **Risks Associated with the Waiting Time Penalties Claims.** Without proof
15 willful behavior, Plaintiff will be unable to recover these penalties.

16 42. **Risks Associated With the PAGA Claim.** As the Operative Complaint makes
17 clear, Plaintiff predicates his PAGA claim on the same Labor Code violations as his other
18 claims. Plaintiff’s “damages” spreadsheet, Exhibit 6, states the length of the relevant time period
19 for the PAGA claim and the number of employees allegedly employed during that time period.
20 Plaintiff’s “damages” spreadsheet, Exhibit 6 also states the total amount of civil penalties for
21 which the Defendant is potentially liable if all allegations are proven. As I state above in
22 connection with Plaintiff’s claims for statutory penalties with regard to proof Defendant’s intent,
23 knowledge and willfulness, there are serious risks to proving Defendant acted intentionally,
24 knowingly, and willfully in violating the rights of Class Members under the Labor Code. Plaintiff
25 calculated the agreed-upon amount of civil penalties by considering the risks outlined above and
26 that the Settlement already provides substantial payments for the Labor Code violations that the
27 civil penalties claim is predicated on.

28 43. Regarding PAGA, a court has discretion to award a lesser amount than the



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1 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
2 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has
3 posed valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus,
4 the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
5 consider the maximum civil penalty available to be confiscatory.

6 44. This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and
7 required a significant discount for settlement purposes. For mediation purposes, Plaintiff’s
8 counsel estimated a maximum possible exposure of approximately \$3,668,850.00 in civil
9 penalties. This estimate did not take into account any of the risks discussed above and assumed a
10 violation for every single pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for
11 the same pay period for the same alleged violations of different Labor Code provisions and
12 derivative violations. Although two federal district court decisions held that “stacking” PAGA
13 penalties in this fashion may be appropriate to determine the amount in controversy for purposes
14 of removal jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding
15 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
16 Labor Code provisions. This may be because the PAGA does not provide for what many
17 employers characterize as claim splitting and not merely stacking.

18 45. I am aware of only two significant awards under the PAGA in a contested
19 proceeding.⁹ PAGA penalty awards are often small even for egregious, intentional violations of
20

21 ⁹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
22 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
23 \$18,695,692.58. In this regard, the district court stated,

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



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the Labor Code.¹⁰

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

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

48. While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation

for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

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

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

¹⁰ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



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1 presents significant risks that support a downward departure from Defendant's estimated liability
2 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
3 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
4 taking into account the likelihood of prevailing and other attendant risks. It also represents a fair,
5 adequate, and reasonable compromise amount for these claims and warrants preliminary
6 approval. *Id.*, *Torrison v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
7 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C.*
8 *Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's
9 financial stability "strongly supports the reasonableness of the settlement"); *See Laguna v.*
10 *Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

11 49. Above, Plaintiff lists the maximum amounts recoverable in this action.
12 However, based on the difficulties of proof, the Defendant's defenses, and the other attendant
13 risks I identify above, I estimate the *likely* awards at trial should Plaintiff prevail to be the
14 following amounts:

- 15 a. Unpaid wages and with interest in the amount of \$512,805.99;
- 16 b. Meal period premium wages with interest in the amount of \$513,335.42;
- 17 c. Rest period premium wages with interest in the amount of \$884,624.35;
- 18 d. Statutory pay stub penalties in the amount of \$189,600.00;
- 19 e. Waiting time penalties in the amount of \$2,484,306.29; and
- 20 f. Civil penalties in the amount of \$81,530.00.

21 The total of these amounts is \$4,666,202.04. The Gross Settlement Amount of \$350,000.00 is
22 7.5% of this amount.

23 ***Allocation of the PAGA Payment***

24 50. The settlement of PAGA penalties in the sum of \$10,000.00, of which 75%
25 (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) will be distributed to the Aggrieved
26 Employees, is reasonable and appropriate under the circumstances. The Parties negotiated a good
27 faith amount for PAGA Penalties to be paid to the LWDA and to the Aggrieved Employees. The
28 portion to be paid to the LWDA was not the result of self-interest at the expense of other



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1 Aggrieved Employees.

2 *Attorneys' Fees and Costs*

3 51. I intend to request Class Counsel Attorneys' Fees of \$116,666.00 (one-third of the
4 GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently
5 estimate to be approximately \$11,700.00 and will be no more than \$16,500.00 at the conclusion
6 of matters related to the Settlement. In view of my efforts and risks in pursuing this case these
7 amounts are well within the range of reasonableness and thus warrant this Court's preliminary
8 approval. In addition, based on my experience in wage and hour class action matters, fee awards
9 of approximately one-third of the settlement fund are routinely approved as reasonable. I have
10 been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage
11 and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior
12 Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior
13 Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*,
14 San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v.*
15 *Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-
16 third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court,
17 Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles
18 County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources,*
19 *LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund);
20 *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-
21 third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-
22 third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
23 BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of
24 California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et*
25 *al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal*
26 *Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund);
27 *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third
28 of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund);



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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).

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

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



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

3 54. A true and correct copy of the contingency fee agreement between Plaintiff and
4 Class Counsel is attached to this declaration as **Exhibit 7**. This agreement also explains the fee
5 split agreement between Class Counsel.

6 ***Class Representative Service Payment***

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

22 56. Plaintiff began his investigation and retention of attorneys to pursue the claims at
23 issue on approximately April 8, 2020. Awarding Plaintiff 4.2% of the GSA is entirely reasonable
24 given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In this case,
25 Plaintiff has devoted several hours of his time advancing the interests of the Class Members and
26 also expects to devote additional hours of his time with Class Counsel overseeing the
27 administration of the Settlement if the Court grants final approval of the Settlement. *See generally*
28 Declaration of Chris Marcus Calkins. Plaintiff has done this by, among other things, retaining



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1 experienced counsel, providing them with extensive information about his work history with
2 Defendant and Defendant's policies and practices with respect to the wage and hour claims at
3 issue, assisting them in gathering information, participating in a full day of mediation, foregoing
4 pursuit of his individual claims in favor of a fair class-wide resolution, and being actively involved
5 in the settlement process to ensure a fair result for the Class Members as a whole.

6 57. As Class Representative, Plaintiff agreed to (1) consider the interests of the class
7 just as he would consider his own interests and, in some cases, to put the interests of the class
8 before his own interests; (2) actively participate in the lawsuit, as necessary, by among other
9 things, answering interrogatories, producing documents to Defendant and giving deposition and
10 trial testimony if requested; (3) travel to give such testimony; (4) recognize and accept that any
11 resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be
12 designed in the best interest of the class as a whole; (5) follow the progress of the lawsuit and
13 provide all relevant facts to Class Counsel; (6) champion many other people with similar claims
14 and injuries because of the importance of the case and that necessity that all Class Members
15 benefit from the lawsuit; and (7) fight for a resolution in which the individual recovery to each
16 Class Members, including Plaintiff, may be relatively small. Plaintiff agreed to shoulder all of
17 these responsibilities in exchange for a proportionate share of funds made available for
18 distribution to the Class Members. *See generally* Declaration of Chris Marcus Calkins. Plaintiff
19 had no guarantee of a Class Representative Service Payment. This justifies the Class
20 Representative Service Payment sought.

21 58. In taking the actions outlined above, Plaintiff has exposed himself to significant
22 risks, including the risk that he could have been ordered to pay Defendant's attorneys' fees and
23 costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that
24 he could, in the future, face a potentially hostile work environment and worsened career prospects
25 for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class
26 action lawsuit. Additionally, Plaintiff has exposed himself to the risk that he could end up
27 receiving less than Defendant would have paid him at the beginning of the Action via a C.C.P. §
28 998 offer or other individual settlement offer to drop his class allegations. On many occasions,



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1 California courts have ordered wage and hour plaintiffs and would be class representatives to pay
2 outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

- 3 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
4 March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be
5 paid by employee for employee's unsuccessful suit for unpaid bonuses). A true
6 and correct copy of the court's order is attached to this declaration as **Exhibit 8**.
- 7 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
8 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and
9 costs to employer for unsuccessful suit for unpaid wages). A true and correct copy
10 of the court's order is attached to this declaration as **Exhibit 9**.
- 11 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
12 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs
13 to the employer for unsuccessful suit for unpaid wages and overtime). A true and
14 correct copy of the court's order is attached to this declaration as **Exhibit 10**.
- 15 d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721
16 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay
17 \$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid
18 wages). A true and correct copy of the court's order is attached to this declaration
19 as **Exhibit 11**.

20 Such costs awards are higher than the share of the Net Settlement Amount ("NSA") that Plaintiff
21 stands to receive as a Participating Class Member. It is unfair in view of the substantial risk of an
22 adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for
23 taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high wage
24 earner. Even the lowest of the cost awards listed above would have devastating consequences for
25 Plaintiff in view of his modest earnings.

26 59. As I explain further below, Plaintiff's individual share of the Net Settlement
27 Amount will be less than that of some absent Participating Class Members. Under the Settlement,
28 Participating Class Members will receive a *pro rata* distribution of the Settlement proceeds



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1 proportionate to the period of time he or she worked for Defendant during the Class Period,
2 compared to the total of the total period of time worked by all Participating Class Members during
3 the Class Period, as reflected by Defendant's records. Because Plaintiff may have been employed
4 for a shorter period during the Class Period, some Class Members will have worked more Work
5 Weeks than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did*
6 *not actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when he brought
7 his lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an amount not
8 much greater than an absent Class Members' share of the recovery. To encourage employees like
9 Plaintiff to don the helm of class champions (and thereby advance the important public policies
10 behind class actions), the Court should award something substantial to Plaintiff for his readiness
11 to receive less than absent Class Members while assuming all the risk and delay of payment.

12 60. The average putative class member in this case would be unlikely to pursue
13 individually the claims Plaintiff brought against Defendant because such claims would be too
14 small to justify the cost and the risk. A putative class member will be unlikely to find an attorney
15 who is willing to pursue an individual's claims because the claims are too small to justify the
16 hundreds of hours of legal work necessary to prove each claim. Only the class action vehicle,
17 which allows for the aggregation of hundreds of risky small dollar value claims, makes such
18 claims advantageous for an attorney to pursue on a contingency basis and there can be no class
19 action without a class member assuming the great fiduciary responsibilities of as class
20 representative. This Court should allow the Class Representative Service Payment requested
21 because to do otherwise would discourage employees (and attorneys) from bringing class actions
22 in the first place.

23 61. If would-be class action plaintiffs are not adequately incentivized to advance the
24 public policy behind class actions in court in light of the time and risk it will entail, it is unlikely
25 that they will bring class action lawsuits in the first place. Once employers realize that such
26 lawsuits are unlikely, they will have no incentive to comply with wage and hour laws.

27 62. Plaintiff faced the risk that he could face worsened career prospects for suing a
28 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.



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1 *See generally* Declaration of Chris Marcus Calkins. Because he filed a lawsuit in the California
2 Superior Court, a public record now exists that Plaintiff sued his employer for Labor Code
3 violations – a fact that won’t be lost on prospective employers considering him for a job. Common
4 sense dictates that an employer will think twice about hiring someone who sued his last employer.
5 Legal experts have recognized this fact. Attached to this declaration as **Exhibit 12** is a true and
6 correct copy of the article “Employees: Better Think Twice Before Suing Your Employer (Four
7 Reasons Why).” Attached to this declaration as **Exhibit 13** is a true and correct copy of the article
8 “What To Expect If You Sue Your Employer.” California even has laws to address this risk:
9 Labor Code § 1102.5 prohibits retaliation against employees who speak up about Labor Code
10 violations and Labor Code § 98.6 prohibits discrimination against employees who bring Labor
11 Code violations to the attention of the Labor Commissioner. Thus, the risk to Plaintiff’s future
12 employment shows that the Class Representative Service Payment sought is fair, adequate, and
13 reasonable, and warrants final approval of the Court.

14 63. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
15 made this case possible for a number of reasons. First, Plaintiff challenged his employers on an
16 unlawful practice that led to Defendant paying a large percentage of the unpaid wages in question
17 plus interest to the remainder of its employees – in spite of Defendant’s financial limitations.
18 Plaintiff provided Class Counsel with detailed descriptions of how Defendant’s business operates,
19 the hours and scheduling of employees, and the nature of the work Class Members performed.
20 *See generally* Declaration of Chris Marcus Calkins.

21 64. By agreeing to settle the case in the best interest of the Class Members, Plaintiff
22 has given up the right to pursue individual claims and recover substantially more in unpaid wages,
23 interest, waiting time penalties, pay stub penalties, and civil penalties that he will release as part
24 of the Settlement. Plaintiff did not seek an individual settlement for his claims at all, instead
25 choosing to prosecute the claims on behalf of the Class Members.

26 65. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
27 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
28 Class Members and still Plaintiff achieved a settlement of \$350,000.00. This outstanding result



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calls for significant awards to Plaintiff for making the result possible.

Class Member and Aggrieved Employee Settlement Share Estimates

66. **Individual Class Payments.** At \$16.85 per hour (the average Class Members's hourly wage), the average estimated Individual Class Payment to Participating Class Members is the equivalent of over three (3) hours of unpaid wages (the primary remedies sought) ($\$58.76 / 16.85 = 3.48$ hours). Thus, this is a result the Class can be proud of in view of the significant risks.

67. The Individual Class Payment will be paid to each Class Members based on his or her eligible Work Weeks compared to the total Work Weeks. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. I estimate that there are 30,741 Work Weeks for the Class Period. So, each Work Week has a value of approximately \$5.26 ($\$156,834.00$ Net Settlement Amount / 30,741 Work Weeks = \$5.10). Plaintiff had 9 Work Weeks during the Class Period. Based on this, it is anticipated that Plaintiff Chris Marcus Calkins will receive an Individual Class Payment of approximately \$45.92 as a Participating Class Member ($9 \text{ Work Week} \times \$5.10 = \$45.92$) while the average estimated Individual Class Payment to Participating Class Members will be approximately \$58.76. Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less. The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period) will be approximately \$2,045.10. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be approximately \$5.10. Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less.

68. **Individual PAGA Payments.** I estimate that the average Aggrieved Employees Individual PAGA Payments will be \$3.78. *Id.* Plaintiff's Individual PAGA Payments, his individual share of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employees will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he



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1 or she had with Defendant during the PAGA Period, compared to the total of all paychecks of all
2 Aggrieved Employees during the PAGA Period, as reflected by Defendant's records. Plaintiff
3 estimates that there are 8,153 Aggrieved Employees paychecks for the PAGA Period. So, each
4 Aggrieved Employees paycheck from the PAGA Period has a value of approximately \$0.31
5 ($25\% \text{ of } \$10,000.00 \text{ in PAGA Penalties} / 8,153 \text{ Aggrieved Employees paychecks} = \0.31). It is
6 anticipated that Plaintiff Chris Marcus Calkins will receive an Individual PAGA Payments of
7 approximately \$2.79 as an Aggrieved Employees (9 paychecks during the PAGA Period $\times$ \$0.31
8 paycheck value = \$2.79) while the average estimated Individual PAGA Payments to an Aggrieved
9 Employees will be approximately \$3.78 ($\$2,500.00, 25\% \text{ of PAGA Penalties} / \text{Aggrieved}$
10 $\text{Employees paychecks during the PAGA Period} = \$3.78 \text{ Individual PAGA Payments}$). Some
11 Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive
12 more, and some less. The highest possible Individual PAGA Payments to an Aggrieved
13 Employees (i.e., to those who qualify for all paychecks in the PAGA Period) will be
14 approximately \$78.20. The lowest possible Individual PAGA Payments to an Aggrieved
15 Employees (i.e., to those who qualify for only one paycheck in the PAGA Period) will be
16 approximately \$0.31.

The Notice Packet

17
18 69. The Settlement requires distribution of the Notice by First Class U.S. mail only.
19 Settlement, § 8.4.1. Although there are current employee Class Members, it is uncertain whether
20 Defendant's records of their contact information include email addresses and Class Members,
21 who perform all of their work away from a desk, are not in a position to check their emails. As
22 such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as
23 Exhibits A, B, C, and D to the Settlement) provides Class Members with all pertinent information
24 that they need to fully evaluate their options and exercise their rights under the Settlement.
25 Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is
26 about; (2) who is a Settlement Class Members; (3) how Class Counsel will be paid; (4) how to
27 submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement;
28 (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated;



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(8) how the disputes will be resolved; and (9) the estimated settlement shares for each Class Members. Additionally, the Notice will include the number of eligible Work Weeks a Class Members had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the Parties' proposed Notice Packet fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

70. The Settlement does not require Class Members to submit claims to participate.

71. Each document in the Notice Packet is drafted in a manner that is likely to be readily understood by the members of the Class. The Notice Packet does not contain any Latin terms, legal terms of art, or unfamiliar symbols or abbreviations. The Notice Packet will be provided in English with a Spanish translation

72. As stated above, the Class Notice includes an estimate of the likely recovery by the individual Class Members. It also provides the estimated dollar value of a Work Week and the estimated dollar value of a PAGA Pay Period.

Administrator Duties

73. The duties of the Settlement Administrator are spelled out in the Settlement and in the bid provided by Xpand Legal Consulting LLC a true and correct copy of which is attached hereto as **Exhibit 14**.

Administration Costs

74. With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Xpand Legal Consulting LLC the Parties sought and reviewed bids from other reputable third-party administrators: (A) Phoenix Settlement Administrators = \$20,000.00; (B) ILYM = \$17,850; C) CPT Group, Inc. = \$24,500.00 and D) Simpluris. = \$19,733. A true and correct copy of the bid from Phoenix Settlement Administrators is attached hereto as **Exhibit 15**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 16**. A true and correct copy of the bid from ILYM is attached hereto as **Exhibit 17**. A true and correct copy



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1 of the bid from Simpluris is attached hereto as **Exhibit 18**. The bid provided by Xpand Legal
2 Consulting LLC was the lowest. Thus, the settlement administration costs provision should be
3 given preliminary approval.

4 ***Notice of Settlement to the LWDA***

5 75. Pursuant to Labor Code § 2699(l)(2), Plaintiff has provided notice of this
6 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
7 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 19**.

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

10 Executed on Tuesday, October 29, 2024 at Los Angeles, California.

11 

12 DAVID SPIVAK,
13 Declarant



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EXHIBIT 1

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7 Attorneys for Plaintiff(s),

8 CHRIS MARCUS CALKINS, and all others similarly situated

(Additional attorneys for parties on following page)

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18 vs.

19 UNITED SECURITY SERVICES, INC., an
20 Illinois corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. 20STCV35391

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

Action filed: September 16, 2020

Dept: 7, The Honorable Lawrence
P. Riff

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1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Chris Marcus Calkins née Carissa Calkins (“Plaintiff”) and defendant United
3 Security Services, Inc. (“United Security Services, Inc.”). The Agreement refers to Plaintiff and
4 Defendant collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 United Security Services, Inc. captioned “Carissa Calkins, on behalf of himself, and all others
8 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under
9 the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. United Security Services,
10 Inc., an Illinois corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No.
11 20STCV35391 initiated on September 16, 2020 and pending in Superior Court of the State of
California, County of Los Angeles.

12 1.2. “Administrator” means Xpand Legal Consulting LLC, the neutral entity the Parties
13 have agreed to appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will be
15 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
16 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with Preliminary Approval of the Settlement.

17 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
18 classified as a hourly, non-exempt security guards who worked for Defendant during the PAGA
19 Period.

20 1.5. “Class” means all of Defendant’s hourly, non-exempt California Security guard
21 employees during the Class Period.

22 1.6. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Walter
L. Haines of United Employees Law Group.

23 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
24 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
25 expenses, respectively, incurred to prosecute the Action.

26 1.8. “Class Data” means Class Member identifying information in Defendant’s
27 possession including the Class Member’s name, last-known mailing address, Social Security

number, and number of Class Work Weeks and PAGA Pay Periods.

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

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

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

1.12. “Class Period” means the period from September 16, 2016 to May 31, 2024.

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

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

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

1.16. “Defendant” means named Defendant United Security Services, Inc.

1.17. “Defense Counsel” means Aaron H. Cole and Briana LaBriola of Ogletree Deakins.

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

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

1 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
2 Approval of the Settlement.

3 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final
4 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

5 1.22. “Gross Settlement Amount” means \$350,000.00 which is the total amount
6 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
7 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
8 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
Service Payment and the Administrator’s Expenses.

9 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata
10 share of the Net Settlement Amount calculated according to the number of Class Work Weeks
worked during the Class Period.

11 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
12 25% of the PAGA Penalties calculated according to the number of Class Work Weeks worked
13 during the PAGA Period.

14 1.25. “Judgment” means the judgment entered by the Court based upon the Final
15 Approval.

16 1.26. “LWDA” means the California Labor and Workforce Development Agency, the
17 agency entitled, under Labor Code section 2699, subd. (i).

18 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
LWDA under Labor Code section 2699, subd. (i).

19 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
20 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
21 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
22 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
paid to Participating Class Members as Individual Class Payments.

23 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
24 Settlement by sending the Administrator a valid and timely Request for Exclusion.

25 1.30. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to
26 Participate in Settlement form (Exhibit B), the Class Work Week Dispute form (Exhibit C), and
27 the Objection form (Exhibit D) in English with Spanish translations.

1 1.31. "PAGA Pay Period" means any Pay Period/Class Work Week during which an
2 Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

3 1.32. "PAGA Period" means the period from July 7, 2019 to May 31, 2024.

4 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

5 1.34. "PAGA Notice" means Plaintiff's July 7, 2020 letter to Defendant and the LWDA
6 providing notice pursuant to Labor Code section 2699.3, subd.(a).

7 1.35. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
8 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00) and the
9 75% to LWDA (\$7,500.00) in settlement of PAGA claims.

10 1.36. "Participating Class Member" means a Class Member who does not submit a valid
11 and timely Request for Exclusion from the Settlement.

12 1.37. "Plaintiff" means Chris Marcus Calkins née Carissa Calkins, the named plaintiff
13 in the Action.

14 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
15 of the Settlement.

16 1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary
17 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
18 attached as Exhibit E.

19 1.40. "Released Class Claims" means the claims being released as described in
20 Paragraph 6.2 below.

21 1.41. "Released PAGA Claims" means the claims being released as described in
22 Paragraph 6.2 below.

23 1.42. "Released Parties" means: Defendant and each of its former and present directors,
24 officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,
25 subsidiaries, and affiliates.

26 1.43. "Request for Exclusion" means a Class Member's submission of a written request
27 to be excluded from the Class Settlement signed by the Class Member. An Election Not to
28 Participate in Settlement form is attached as Exhibit B.

1.44. "Response Deadline" means 60 days after the Administrator mails Notice to Class
Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or

1 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
2 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
3 the Response Deadline has expired.

4 1.45. “Settlement” means the disposition of the Action effected by this Agreement and
5 the Judgment.

6 1.46. “Class Work Week” means any week during which a Class Member worked for
7 Defendant for at least one day, during the Class Period.

8 1.47. A Class Work Week Dispute form is attached as Exhibit C.

9 **2. RECITALS.**

10 2.1. On September 16, 2020, Plaintiff commenced this Action by filing a Complaint
11 alleging causes of action against Defendant for failure to pay wages, failure to provide meal
12 periods, failure to authorize and permit rest periods, failure to issue proper wage statements,
13 failure to timely pay wages, and related claims. On September 16, 2020, Plaintiff filed a First
14 Amended Complaint. The First Amended Complaint is the operative complaint in the Action (the
15 “Operative Complaint.”). Defendant denies the allegations in the Operative Complaint, denies
16 any failure to comply with the laws identified in in the Operative Complaint and denies any and
17 all liability for the causes of action alleged.

18 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
19 notice to Defendant and the LWDA by sending the PAGA Notice.

20 2.3. On July 17, 2023, the Parties participated in an all-day mediation presided over
21 by Mr. Louis Marlin Esq. which led to this Agreement to settle the Action.

22 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of
23 comparable employees, the number of workweeks, sample time records, sample payroll records,
24 written policies, financial records, and related information. Plaintiff’s investigation was sufficient
25 to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
26 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
27 130 (“*Dunk/Kullar*”).

28 2.5. The Court has not granted class certification.

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

1
2 **3. MONETARY TERMS.**

3 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
4 Defendant promises to pay \$350,000.00 and no more as the Gross Settlement Amount and to
5 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
6 Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll
7 taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will
8 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
9 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
Gross Settlement Amount will revert to Defendant.

10 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
11 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
the Court in the Final Approval:

12 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
13 Representative of not more than \$15,000.00 (in addition to any Individual Class Payment and any
14 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
15 Member). Defendant will not oppose Plaintiff's request for a Class Representative Service
16 Payment that does not exceed this amount. As part of the motion for final approval of the
17 settlement, Plaintiff will seek Court approval for any Class Representative Service Payments no
18 later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class
19 Representative Service Payment less than the amount requested, the Administrator will retain the
20 remainder in the Net Settlement Amount. The Administrator will pay the Class Representative
21 Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for
employee taxes owed on the Class Representative Service Payment.

22 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
23 33.33%, which is currently estimated to be \$116,666.00 and a Class Counsel Litigation Expenses
24 Payment of not more than \$16,500.00. Defendant will not oppose requests for these payments
25 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
26 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
27 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator

1 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
2 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
3 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
4 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
5 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
6 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
7 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any
division or sharing of any of these Payments.

8 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
9 \$35,000.00 except for a showing of good cause and as approved by the Court. To the extent the
10 Administration Expenses are less or the Court approves payment less than \$35,000.00, the
Administrator will retain the remainder in the Net Settlement Amount.

11 3.2.4. To Each Participating Class Member: An Individual Class Payment
12 calculated by (a) dividing the Net Settlement Amount by the total number of Class Work Weeks
13 worked by all Participating Class Members during the Class Period and (b) multiplying the result
14 by each Participating Class Member's Class Work Weeks.

15 3.2.4.1. Tax Allocation of Individual Class Payments. 20.00% of
16 each Participating Class Member's Individual Class Payment will be allocated to settlement of
17 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
18 reported on an IRS W-2 Form. The 80.00% of each Participating Class Member's Individual
19 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
20 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
21 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
employee taxes owed on their Individual Class Payment.

22 3.2.4.2. Effect of Non-Participating Class Members on Calculation
23 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
24 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

25 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
26 amount of \$10,000.00 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00)
27 allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA

1 Payments.

2 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
3 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties,
4 \$2,500.00, by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
5 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
6 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
Individual PAGA Payment.

7 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
8 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
9 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

10 **4. SETTLEMENT FUNDING AND PAYMENTS.**

11 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of
12 its records to date, Defendant estimates there are 2,669 Class Members who collectively worked
13 a total of 30,741 Class Work Weeks, and 662 of Aggrieved Employees who worked a total 8,153
of PAGA Pay Periods.

14 4.2. Class Data. Not later than 15 days after Defendant receives notice that the Court
15 grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class
16 Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class
17 Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the
18 Class Data only for purposes of this Settlement and for no other purpose, and restrict access to
19 the Class Data to Administrator employees who need access to the Class Data to effect and
20 perform under this Agreement. Defendant has a continuing duty to immediately notify Class
21 Counsel if it discovers that the Class Data omitted class member identifying information and to
22 provide corrected or updated Class Data as soon as reasonably feasible. Without any extension
23 of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and
their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve
any issues related to missing or omitted Class Data.

24 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
25 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
26 taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

27 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant

1 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
2 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
3 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
4 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
5 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
6 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
Payments.

7 4.4.1. The Administrator will issue checks for the Individual Class Payments
8 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
9 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
10 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
11 not cashed by the void date. The Administrator will send checks for Individual Settlement
12 Payments to all Participating Class Members (including those for whom Notice Packet was
13 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
14 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
15 Employees (including those for whom Notice Packet was returned undelivered). The
16 Administrator may send Participating Class Members a single check combining the Individual
Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
must update the recipients' mailing addresses using the National Change of Address Database.

17 4.4.2. The Administrator must conduct a Class Member Address Search for all
18 other Class Members whose checks are returned undelivered without USPS forwarding address.
19 Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the
20 USPS forwarding address provided or to an address ascertained through the Class Member
21 Address Search. The Administrator need not take further steps to deliver checks to Class Members
22 whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a
23 replacement check to any Class Member whose original check was lost or misplaced, requested
by the Class Member prior to the void date.

24 4.4.3. For any Class Member whose Individual Class Payment check or
25 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
26 shall transmit the funds represented by such checks to the California Controller's Unclaimed
27 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to

1 the requirements of California Code of Civil Procedure Section 384, subd. (b).

2 4.4.4. The payment of Individual Class Payments and Individual PAGA
3 Payments shall not obligate Defendant to confer any additional benefits or make any additional
4 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
5 this Agreement.

5 **5. [OMITTED]**

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

10 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
11 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
12 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
13 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
14 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
15 that were, or reasonably could have been, alleged based on facts contained in the Operative
16 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,
17 below ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
18 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
19 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
20 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
21 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
22 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
23 notwithstanding such different or additional facts or Plaintiff's discovery of them.

24 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
25 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
26 and benefits, if any, of section 1542 of the California Civil Code, which reads:

27 **A general release does not extend to claims that the creditor or releasing party does**
28 **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.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties under PAGA stated in the Operative Complaint and Plaintiff's pre-filing letter to the LWDA (attached to the Operative Complaint as Exhibit A) or that reasonably could have been alleged based solely upon the facts alleged in Plaintiff's Operative Complaint and pre-filing letter to the LWDA. Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals. A Preliminary Approval Order form is attached as Exhibit E.

7.1 Defendant's Declaration in Support of Preliminary Approval. Within ten (10) days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

23 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
24 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
25 than 60 days after the full execution of this Agreement; obtaining a prompt hearing date for the
26 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
27 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
28 Approval to the Administrator.

 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person

1 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
2 Preliminary Approval or conditions Preliminary Approval on any material change to this
3 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
4 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
5 otherwise satisfy the Court's concerns.

6 **8. SETTLEMENT ADMINISTRATION.**

7 8.1 Selection of Administrator. The Parties have jointly selected Xpand Legal
8 Consulting LLC to serve as the Administrator and verified that, as a condition of appointment,
9 Xpand Legal Consulting LLC agrees to be bound by this Agreement and to perform, as a fiduciary,
10 all duties specified in this Agreement in exchange for payment of Administration Expenses. The
11 Parties and their Counsel represent that they have no interest or relationship, financial or
12 otherwise, with the Administrator other than a professional relationship arising out of prior
13 experiences administering settlements.

14 8.2 Employer Identification Number. The Administrator shall have and use its own
15 Employer Identification Number for purposes of calculating payroll tax withholdings and
16 providing reports state and federal tax authorities.

17 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
18 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
19 Regulation section 468B-1.

20 8.4 Notice to Class Members.

21 8.4.1 No later than three (3) business days after receipt of the Class Data, the
22 Administrator shall notify Class Counsel that the list has been received and state the number of
23 Class Members, Aggrieved Employees, Class Work Weeks and PAGA Pay Periods in the Class
24 Data.

25 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
26 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
27 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet
28 with Spanish translation, if applicable substantially in the forms attached to this Agreement as
Exhibits A, B, C, and D. The first page of the Class Notice shall prominently estimate the dollar
amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class

1 Member, and the number of Class Work Weeks and PAGA Pay Periods (if applicable) used to
2 calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class
3 Member addresses using the National Change of Address database.

4 8.4.3 Not later than three (3) business days after the Administrator's receipt of
5 any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
6 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
7 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
8 the Notice Packet to the most current address obtained. The Administrator has no obligation to
9 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
10 returned by the USPS a second time.

11 8.4.4 The deadlines for Class Members' written objections, Challenges to Class
12 Work Weeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended
13 an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
14 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
15 extended deadline with the re-mailed Notice Packet.

16 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
17 otherwise discovers any persons who believe they should have been included in the Class Data
18 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
19 or by telephone, and in good faith. in an effort to agree on whether to include them as Class
20 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
21 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
22 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
23 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

24 8.5 Requests for Exclusion (Opt-Outs).

25 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
26 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
27 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
28 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
the Class Member's election to be excluded from the Settlement and includes the Class Member's
name, address and email address or telephone number. To be valid, a Request for Exclusion must

1 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
2 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

3 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
4 because it fails to contain all the information specified in the Class Notice. The Administrator
5 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
6 identity of the person as a Class Member and the Class Member's desire to be excluded. The
7 Administrator's determination shall be final and not appealable or otherwise susceptible to
8 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
9 the Administrator may demand additional proof of the Class Member's identity. The
10 Administrator's determination of authenticity shall be final and not appealable or otherwise
11 susceptible to challenge.

12 8.5.3 Every Class Member who does not submit a timely and valid Request for
13 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
14 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
15 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
16 Participating Class Member actually receives the Class Notice or objects to the Settlement.

17 8.5.4 Every Class Member who submits a valid and timely Request for
18 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
19 or have the right to object to the class action components of the Settlement. Aggrieved Employees
20 are eligible for an Individual PAGA Payment.

21 8.6 Challenges to Calculation of Class Work Weeks. Each Class Member shall have
22 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
23 Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and
24 PAGA Pay Periods (if any) allocated to the Class Member/Aggrieved Employee in the Class
25 Notice. This is also known as a dispute. A Class Work Week/PAGA Pay Periods Dispute form,
26 attached as Exhibit C, may be used for this purpose but is not required. The Class Member may
27 challenge the allocation by communicating with the Administrator via fax, email or mail. The
28 Administrator must encourage the challenging Class Member to submit supporting
documentation. In the absence of any contrary documentation, the Administrator is entitled to
presume that the Class Work Weeks contained in the Class Notice are correct so long as they are
consistent with the Class Data. The Administrator's determination of each Class Member's

1 allocation of Class Work Weeks and/or Pay Periods shall be final and not appealable or otherwise
2 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
3 calculation of Class Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel and
4 the Administrator's determination the challenges.

5 8.7 Objections to Settlement.

6 8.7.1 Only Participating Class Members may object to the class action
7 components of the Settlement and/or this Agreement, including contesting the fairness of the
8 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
9 Litigation Expenses Payment and/or Class Representative Service Payment.

10 8.7.2 Participating Class Members may send written objections to the
11 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
12 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
13 Hearing. A Participating Class Member who elects to send a written objection to the
14 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
15 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An
16 The Objection form attached as Exhibit D may be used for this purpose but is not required.

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

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

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

 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion,

1 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the
2 names and other identifying information of Class Members who have timely submitted valid
3 Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of
4 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
Exclusion from Settlement submitted (whether valid or invalid).

5 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
6 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
7 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
8 Exclusion (whether valid or invalid) received, objections received, challenges to Class Work
9 Weeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class
10 Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include
11 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies
of all Requests for Exclusion and objections received.

12 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
13 authority to address and make final decisions consistent with the terms of this Agreement on all
14 Class Member challenges over the calculation of Class Work Weeks and/or Pay Periods. The
15 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

16 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
17 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
18 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
19 for filing in Court attesting to its due diligence and compliance with all of its obligations under
20 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
21 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
22 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
23 number of written objections and attach the Exclusion List. The Administrator will supplement
its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
for filing the Administrator’s declaration(s) in Court.

24 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
25 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
26 and Defense Counsel with a final report detailing its disbursements by employee identification
27 number only of all payments made under this Agreement. At least 15 days before any deadline

1 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
2 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
3 payments required under this Agreement. Class Counsel is responsible for filing the
4 Administrator's declaration in Court.

5 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on a review of its
6 records to date, Defendant estimates there are 2,669 Class Members who collectively worked a
7 total of 30,741 Work Weeks during the period from September 16, 2016 to July 15, 2023. If the
8 Class Work Weeks during the Class Period exceeds 30,741 by more than 10.00%, the Gross
9 Settlement Amount, including the Class Counsel Fees Payment, the Class Representative Service
10 Payment, and the PAGA Penalties, will increase proportionally according to the number of
11 additional Work Weeks.

12 **10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
13 Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members,
14 Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree
15 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
16 whatsoever, and that neither Party will have any further obligation to perform under this
17 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
18 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
19 Court of its election to withdraw not later than seven (7) days after the Administrator sends the
20 final Exclusion List to Defense Counsel; late elections will have no effect.

21 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
22 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
23 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
24 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for
25 Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later
26 than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense
27 Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve
28 any disagreements concerning the Motion for Final Approval.

1 11.1 Response to Objections. Each Party retains the right to respond to any objection
2 raised by a Participating Class Member, including the right to file responsive documents in Court
3 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
4 accepted by the Court.

5 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
6 Approval on any material change to the Settlement (including, but not limited to, the scope of
7 release to be granted by Class Members), the Parties will expeditiously work together in good
8 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
9 Approval. The Court's decision to award less than the amounts requested for the Class
10 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
11 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
12 modification to the Agreement within the meaning of this paragraph.

13 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
14 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
15 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
16 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

17 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
18 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
19 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
20 respective counsel, and all Participating Class Members who did not object to the Settlement as
21 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
22 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
23 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
24 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
25 Parties' obligations to perform under this Agreement will be suspended until such time as the
26 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
27 the amount of the Net Settlement Amount.

28 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
material modification of this Agreement (including, but not limited to, the scope of release to be
granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless

1 expeditiously work together in good faith to address the appellate court's concerns and to obtain
2 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
3 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
4 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
5 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
6 as long as the Gross Settlement Amount remains unchanged.

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

10 **13. ADDITIONAL PROVISIONS.**

11 13.1 No Admission of Liability, Class Certification or Representative Manageability
12 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
13 claims. Nothing in this Agreement is intended or should be construed as an admission by
14 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant
15 has any liability for any claims asserted; nor should it be intended or construed as an admission
16 by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
17 certification and representative treatment is for purposes of this Settlement only. If, for any reason
18 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant
19 reserves the right to contest certification of any class for any reasons, and Defendant reserves all
20 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
21 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
22 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
23 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
24 Settlement and this Agreement).

25 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
26 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval
27 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
28 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
Agreement directly or indirectly, specifically or generally, to any person, corporation, association,

1 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
2 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
3 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
4 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
5 government agency.

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

14 13.3 No Solicitation. The Parties separately agree that they and their respective
15 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
16 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
17 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
18 obligations owed to Class Members.

19 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
20 Agreement together with its attached exhibits shall constitute the entire agreement between the
21 Parties relating to the Settlement, superseding any and all oral representations, warranties,
22 covenants, or inducements made to or by any Party.

23 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
24 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
25 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
26 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
27 terms of this Agreement including any amendments to this Agreement.

28 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
use their best efforts, in good faith, to implement the Settlement by, among other things,
modifying the Settlement Agreement, submitting supplemental evidence and supplementing
points and authorities as requested by the Court. In the event the Parties are unable to agree upon

1 the form or content of any document necessary to implement the Settlement, or on any
2 modification of the Agreement that may become necessary to implement the Settlement, the
3 Parties will seek the assistance of a mediator and/or the Court for resolution.

4 13.7 No Prior Assignments. The Parties separately represent and warrant that they
5 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
6 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
7 action, or right released and discharged by the Party in this Settlement.

8 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
9 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
10 Settlement be relied upon as such within the meaning of United States Treasury Department
11 Circular 230 (31 CFR Part 10, as amended) or otherwise.

12 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
13 amended, modified, changed, or waived only by an express written instrument signed by all
14 Parties or their representatives, and approved by the Court.

15 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
16 inure to the benefit of, the successors of each of the Parties.

17 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
18 be governed by and interpreted according to the internal laws of the state of California, without
19 regard to conflict of law principles.

20 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
21 preparation of this Agreement. This Agreement will not be construed against any Party on the
22 basis that the Party was the drafter or participated in the drafting.

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

26 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
27 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
28 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
connection with the Settlement, may be used only with respect to this Settlement, and no other
purpose, and may not be used in any way that violates any existing contractual agreement, statute,
or rule of court. Not later than 90 days after the date when the Court discharges the

1 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
2 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
3 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant
4 makes a written request to Class Counsel for the return, rather than the destructions, of Class
5 Data.

6 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
7 is inserted for convenience of reference only and does not constitute a part of this Agreement.

8 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
9 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
10 weekend or federal legal holiday, such date or deadline shall be on the first business day
11 thereafter.

12 13.17 Notice. All notices, demands or other communications between the Parties in
13 connection with this Agreement will be in writing and deemed to have been duly given as of the
14 third business day after mailing by United States mail, or the day sent by email or messenger,
15 addressed as follows:

16 To Plaintiff:
17 David Glenn Spivak, Esq.
18 The Spivak Law Firm
19 8605 Santa Monica Bl
20 PMB 42554
21 West Hollywood, CA 90069
22 david@spivaklaw.com

23 To Defendant:
24 AARON H. COLE, CA Bar No. 236655
25 aaron.cole@ogletree.com
26 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
27 400 South Hope Street, Suite 1200
28 Los Angeles, CA 90071

BRIANA LABRIOLA, CA Bar No. 293548
briana.labriola@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Park Tower, Fifteenth Floor
695 Town Center Drive
Costa Mesa, CA 92626

13.18 Execution in Counterparts. This Agreement may be executed in one or more
counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this

1 Agreement shall be accepted as an original. All executed counterparts and each of them will be
2 deemed to be one and the same instrument if counsel for the Parties will exchange between
3 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
4 the existence and contents of this Agreement.

5 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
6 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
7 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
8 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
9 process.

10 10 / 09 / 2024

11 Dated: October ____, 2024

By: 
CHRIS MARCUS CALKINS née
Carissa Calkins

12
13
14 Dated: October ____, 2024

By: _____

United Security Services, Inc.

17
18 THE SPIVAK LAW FIRM

19 10 / 09 / 2024

20 Dated: October ____, 2024

By: 
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, CHRIS MARCUS
CALKINS, and all others similarly
situated

21
22
23
24 UNITED EMPLOYEES LAW GROUP

25
26 Dated: October ____, 2024

By: _____
WALTER L. HAINES, Attorneys for

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By:

CHRIS MARCUS CALKINS née
Carissa Calkins

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14 Dated: October 10, 2024

By:



Kristin Marano, CFO

United Security Services, Inc.

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18 THE SPIVAK LAW FIRM

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20 Dated: October ____, 2024

By:

DAVID GLENN SPIVAK, Attorneys
for Plaintiff, CHRIS MARCUS
CALKINS, and all others similarly
situated

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24 UNITED EMPLOYEES LAW GROUP

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26 Dated: October ____, 2024

By:

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By: _____

CHRIS MARCUS CALKINS née
Carissa Calkins

14 Dated: October ____, 2024

By: _____

United Security Services, Inc.

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20 Dated: October ____, 2024

By: _____

DAVID GLENN SPIVAK, Attorneys
for Plaintiff, CHRIS MARCUS
CALKINS, and all others similarly
situated

25 UNITED EMPLOYEES LAW GROUP

26 Dated: October 09, 2024

By: _____

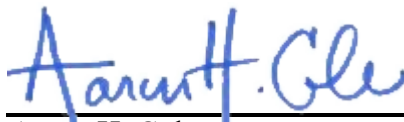

WALTER L. HAINES, Attorneys for

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Plaintiff, CHRIS MARCUS CALKINS,
and all others similarly situated

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

Dated: October 10, 2024

By: 

Aaron H. Cole
Briana LaBriola
Attorneys for Defendant, UNITED
SECURITY SERVICES, INC.

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EXHIBIT A

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The Court has already preliminarily approved the proposed Settlement and approved this Class Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

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

1. WHAT IS THE ACTION ABOUT?

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

1 Defendant strongly denies violating any laws or failing to pay any wages and contends it complied
2 with all applicable laws.

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

4 So far, the Court has made no determination whether Defendant or Plaintiff is correct on the
5 merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an
6 effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather
7 than continuing the expensive and time-consuming process of litigation. The negotiations were
8 successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to
9 jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff
10 and Defendant have negotiated a proposed Settlement that is subject to the Court's Final
11 Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By
12 agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

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

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

20 A. Gross Settlement Amount. Defendant Will Pay \$350,000.00 as the Gross
21 Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement
22 into an account controlled by the Administrator of the Settlement. The Administrator will use the
23 Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class
24 Representative Service Payment, Class Counsel's attorney's fees and expenses, the
25 Administrator's expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final
26 Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment
27 entered by the Court become final. The Judgment will be final on the date the Court enters
28 Judgment, or a later date if Participating Class Members object to the proposed Settlement or the
Judgment is appealed.

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

24 1. Attorney Fees and Costs. Up to \$116,666.00 (33.33% of the Gross
25 Settlement to Class Counsel for attorneys' fees and up to \$16,500.00 for their litigation expenses.
To date, Class Counsel have worked and incurred expenses on the Action without payment.

26 2. Class Representative Service Award. Up to \$15,000.00 as a Class
27 Representative Service Award for filing the Action, working with Class Counsel and representing

1 the Class. A Class Representative Service Award will be the only monies Plaintiff will receive
2 other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

3 3. Administration Expenses. Up to \$35,000.00 to the Administrator for
4 services administering the Settlement.

5 4. PAGA Penalties. Up to \$10,000.00 for PAGA Penalties, allocated 75% to
6 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees
7 based on their PAGA Pay Periods.

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

10 Based on a review of its records to date, Defendant estimates there are 2,669 Class
11 Members who collectively worked a total of 30,741 Class Work Weeks during the period from
12 September 16, 2016 to July 15, 2023. If the Class Work Weeks during the Class Period exceeds
13 30,741 by more than 10%, the Gross Settlement Amount, including the Class Counsel Fees
14 Payment, the Class Representative Service Payment, and the PAGA Penalties, will increase
15 proportionally according to the number of additional Class Work Weeks.

16 C. Net Settlement Distributed to Class Members. After making the above deductions
17 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
18 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
19 Members based on their Class Period Class Work Weeks.

20 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking
21 the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages
22 ("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
23 is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay
24 employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted
25 as penalties rather than wages for tax purposes. The Administrator will report the Individual
26 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
27 Forms.

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

E. Need to Promptly Cash Payment Checks. The front of every check issued for
Individual Class Payments and Individual PAGA Payments will show the date when the check
expires (the void date). If you don't cash it by the void date, your check will be automatically
cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
Fund (https://www.sco.ca.gov/search_upd.html) in your name.

1 If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you
2 should consult the rules of the Fund for instructions on how to retrieve your money. You can
contact the Unclaimed Property Fund at (800) 992-4647.

3 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
4 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
5 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
6 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
7 Member's name, present address, telephone number, and a simple statement electing to be
excluded from the Settlement. You may use the enclosed Election Not To Participate In
8 Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
Members) will not receive Individual Class Payments, but will preserve their rights to personally
9 pursue claims against Defendant for violations of California's labor laws.

10 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
11 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
Individual PAGA Payments and Plaintiff releases Defendant from civil penalties it may owe to
12 the Aggrieved Employees.

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

16 H. Administrator. The Court has appointed a neutral company, Xpand Legal
17 Consulting LLC (the "Administrator") to send this Class Notice, calculate and make payments,
and process Class Members' Requests for Exclusion. The Administrator will also decide Class
18 Member Challenges over Class Work Weeks/PAGA Pay Periods, mail and re-mail settlement
checks and tax forms, and perform other tasks necessary to administer the Settlement. The
19 Administrator's contact information is contained in Section 9 of this Notice.

20 I. Participating Class Members' Release. After the Judgment is final and Defendant
21 has fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under
22 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and
23 each of its ach of its former and present directors, officers, shareholders, owners, members,
attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates for wages based
24 on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the
Action and resolved by this Settlement.
25

26 The Participating Class Members will be bound by the following release:
27

1 All Participating Class Members, on behalf of themselves and their respective
2 former and present representatives, agents, attorneys, heirs, administrators,
3 successors, and assigns, release Released Parties from all claims stated in the
4 Operative Complaint and those based solely upon the facts alleged in the Operative
5 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
6 Participating Class Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and
Housing Act, unemployment insurance, disability, social security, workers'
compensation, or claims based on facts occurring outside the Class Period.

7 J. The PAGA Release. After the Court's judgment is final, and Defendant has paid
8 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff releases all
9 claims for civil penalties that could have been sought by the Labor Commissioner for the
10 violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the
11 claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
Participating Class Member.

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

13 A. Individual Class Payments. The Administrator will calculate Individual Class
14 Payments by (a) dividing the Net Settlement Amount by the total number of Class Work Week
worked by all Participating Class Members, and (b) multiplying the result by the number of Class
Work Week worked by each individual Participating Class Member.

15 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
16 Payments by (a) dividing \$2,500.00 by the total number of PAGA Pay Periods worked by all
Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked
by each individual Aggrieved Employee.

17 C. Class Work Week/PAGA Pay Period Challenges. The number of Class Work
18 Weeks you worked during the Class Period and the number of PAGA Pay Periods you worked
19 during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this
Notice. You have until <<RESPONSE DEADLINE>> to challenge the number of Class Work
20 Weeks and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and
21 sending a letter to the Administrator by email, fax or regular U.S. mail. You can use the enclosed
Dispute form for this purpose. Section 9 of this Notice has the Administrator's contact
22 information.

23 You need to support your challenge by submitting copies of pay stubs or other records.
24 The Administrator will accept Defendant's calculation of Class Work Weeks and/or PAGA Pay
Periods based on Defendant's records as accurate unless you send copies of records containing
contrary information. You should send copies rather than originals because the documents will
25 not be returned to you. The Administrator will resolve Class Work Week and/or PAGA Pay
Period challenges based on your submission and on input from Class Counsel (who will advocate
26 on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's
27 decision is final. You can't appeal or otherwise challenge its final decision.

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5. HOW WILL I GET PAID?

A. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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

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

Email, fax, or mail a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. You may use the enclosed Election Not To Participate In Settlement form for this purpose. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Calkins vs. United Security Services, Inc.*, Case No. 20STCV35391, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. You should send your Request for Exclusion to the Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and approval of Class Counsel litigation fees and expenses and a service award to Plaintiff stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

1 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
2 Final Approval and the requested fees, expenses and enhancement award may wish to object, for
3 example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel
4 or Plaintiff are too high or too low. **The deadline for sending written objections to the**
5 **Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you
6 object to, why you object, and any facts that support your objection. Make sure you identify the
7 Action, *Calkins vs. United Security Services, Inc.*, case no. 20STCV35391, and include your
8 name, current address, telephone number, and approximate dates of employment for Defendant
9 and sign the objection. Section 9 of this Notice has the Administrator's contact information. You
10 may use the enclosed Objection form for this purpose. You should send your objection to the
11 Administrator by email, fax, or send by regular U.S. mail.

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

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

18 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
19 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 7 of the Los
20 Angeles Superior Court, located at Spring Street Courthouse, 312 N Spring St., Los Angeles, CA
21 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement
22 and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the
23 Administrator. The Court will invite comment from objectors, Class Counsel and Defense
24 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
25 or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
26 (<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current
27 information.

28 It's possible the Court will reschedule the Final Approval Hearing. You should check the
Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel
to verify the date and time of the Final Approval Hearing.

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

2 The Agreement sets forth everything Defendant and Plaintiff have promised to do under the
3 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
4 Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE
5 NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator
6 using the contact information listed below, or consult the Superior Court website by going to
7 (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case
8 No. 20STCV35391. You can also make an appointment to personally review court documents in
9 the Clerk's Office at the Spring Street Courthouse by calling <<CLERK OF COURT'S PHONE
10 NUMBER>>.

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

Class Counsel:

Name of Attorney: David Glenn Spivak
Email Address: david@spivaklaw.com
Name of Firm: The Spivak Law Firm
Mailing Address: 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094

Administrator:

Name of Company: Xpand Legal Consulting LLC
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800) 992-4647.

11. WHAT IF I CHANGE MY ADDRESS?

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

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EXHIBIT B

Calkins v. United Security Services, Inc.
Superior Court of the State of California, County of Los Angeles
Case No. 20STCV35391

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

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

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

Calkins v. United Security Services, Inc. Class Action Administrator
c/o ____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved Employee under the Settlement, I will still receive an Individual PAGA Payment.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

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

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EXHIBIT C

1 **CLASS WORK WEEK/PAGA PAY PERIOD DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Los Angeles
4 *Calkins v. United Security Services, Inc.*, Case No. 20STCV35391

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

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

9 XX - XX -

10 The amount of your estimated Individual Class Payment is based upon the number of Class Work
11 Weeks you worked between September 16, 2016 and May 31, 2024. A Class Work Week is
12 defined as any work week in which you worked at least one (1) day as an hourly, non-exempt
13 security guards for United Security Services, Inc. ("Defendant") in California during the calendar
14 week. A Class Work Week is defined as any work week in which you worked at least one (1)
15 day as an hourly, non-exempt security guards for United Security Services, Inc. ("Defendant")
16 in California during the calendar week.

17 The amount of your estimated Individual PAGA Payment is based upon the number of PAGA
18 Pay Periods you worked between July 7, 2019 and May 31, 2024. A PAGA Pay Period is defined
19 as any pay period (workweek) during which you worked for Defendant as an hourly, non-exempt
20 security guards for at least one day during that pay period.

21 The number of Class Work Weeks and PAGA Pay Periods applicable to your claim are set forth
22 below.

23 **YOUR ELIGIBLE CLASS WORK WEEKS**

24 Defendant's records indicate that you worked <<number of Class Work Weeks>> Class Work
25 Weeks between September 16, 2016 and May 31, 2024 and <<number of PAGA Pay Periods>>
26 PAGA Pay Periods between July 7, 2019 through May 31, 2024.

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

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

1 Individual PAGA Payment in the approximate estimated amount of <<\$PAGA Settlement Share
2 Amount>>

3 If you wish to dispute the number of Class Work Weeks and/or PAGA Pay Periods credited to
4 you, or anything else about your employment status, you must complete and return this form by
5 indicating what you believe is incorrect on the blank lines below and return it on or before
6 <<RESPONSE DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with
7 proof of the submission date (such as a postmark or delivery service date stamp). You may use
8 this Class Work Weeks/PAGA Pay Periods Dispute Form for this purpose. You must also send
9 any documents or other information that you contend supports your belief that the information
10 set forth above is incorrect. The Administrator will resolve any dispute based upon Defendant's
11 records and any information you provide. Please be advised that the information on this Class
12 Work Weeks/PAGA Pay Periods Dispute Form is presumed to be correct unless the documents
13 you submit are company records from Defendant.

14 _____
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18 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF CLASS**
19 **WORK WEEKS/PAGA PAY PERIODS, RECEIPT OF A SETTLEMENT PAYMENT,**
20 **OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

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EXHIBIT D

1 **OBJECTION FORM**

2 ***Calkins v. United Security Services, Inc.***
3 **Superior Court of the State California, County of Los Angeles**
4 **Case No. 20STCV35391**

5 Please verify and/or complete any missing identifying information:

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

<<Address2>>

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

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (_____) _____ - _____

10 **THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE**
11 **SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF**
12 **YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS**
13 **FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU**
14 **SHOULD EMAIL IT TO <<_____@_____.COM>>, FAX IT TO <<XXX-XXX-**
15 **XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO**
16 **THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE**
17 **ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.**

18 **IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.**
19 **THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING**
20 **DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR**
21 **THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.**

22 The Court will consider your objection at the Final Approval Hearing if you timely submit it.
23 Include any and all evidence and supporting papers (including, without limitation, all briefs,
24 written evidence, and declarations) that you would like the Court to consider. However, you may
25 speak to the Court at the final approval hearing whether or not you submit a timely objection.

26 [] I OBJECT to the *Calkins v. United Security Services, Inc.* Settlement on the following
27 grounds (if additional space necessary, please include additional sheets of paper):

28 _____

1 [] I am or will be represented by an attorney (provide name and address of attorney on lines
2 below if applicable):

3 _____
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8
9 Executed on _____, 2023

(Signature)

<<Name>>

(Printed Name)

13
14 EMAIL TO THE ADMINISTRATOR: << _____@_____.COM>>

15 FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

16
17 MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
18 POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

19 *Calkins* v. *United Security Services, Inc.* Administrator

[ADDRESS]

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EXHIBIT E

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **(UNLIMITED JURISDICTION)**

11 CARISSA CALKINS, on behalf of himself and
12 all others similarly situated, and as an “aggrieved
13 employee” on behalf of other “aggrieved
14 employees” under the Labor Code Private
Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 UNITED SECURITY SERVICES, INC., an
18 Illinois corporation; and DOES 1–50, inclusive,

19 *Defendant(s).*

Case No. 20STCV35391

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

Action filed: September 16, 2020
Dept: 7, The Honorable
Lawrence P. Riff

20
21
22 The Motion of Plaintiff Chris Marcus Calkins née Carissa Calkins (hereafter referred to
23 as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was
24 considered by the Court, The Honorable Lawrence P. Riff presiding. The Court having considered
25 the Motion, the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement”
26 or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:
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1 1. The Court grants preliminary approval of the Settlement and the Settlement Class
2 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
3 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
4 has determined only that there is sufficient evidence to suggest that the proposed settlement might
5 be fair, adequate, and reasonable, and that any final determination of those issues will be made at
6 the final hearing. The Court will make a determination at the hearing on the motion for final
7 approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement
8 is fair, adequate and reasonable to the Settlement Class.
9

10 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
11 all Defendant’s hourly, non-exempt California security guard employees during the who worked
12 anytime during the Class Period. The “Class Period” shall mean the period of time from
13 September 16, 2016, through May 31, 2024.
14

15 3. Based on a review of its records to date, Defendant estimates there are 2,669 Class
16 Members who collectively worked a total of 30,741 Class Work Weeks during the period from
17 September 16, 2016 to July 15, 2023. If the Class Work Weeks during the Class Period exceeds
18 30,741 by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees
19 Payment, the Class Representative Service Payment, and the PAGA Penalties, will increase
20 proportionally according to the number of additional Work Weeks.
21

22 4. “Effective Date” means the date by when all of the following have occurred: (a)
23 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; (b) the
24 Judgment is final; and (c) Defendant receives notice of the Court’s entry of Judgment on its Order
25 Granting Final Approval of the Settlement. The Judgment is final as of the latest of the following
26 occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court
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enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

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

6. Not later than 15 days after Defendant receives notice that the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under the Settlement Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

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

8. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified

1 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
2 with Spanish translation, if applicable substantially in the forms attached to this order as **Exhibits**
3 **A, B, C, and D**. The first page of the Class Notice shall prominently estimate the dollar amounts
4 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
5 and the number of Class Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
6 amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses
7 using the National Change of Address database.
8

9 9. Not later than three (3) business days after the Administrator’s receipt of any
10 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
11 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
12 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
13 the Notice Packet to the most current address obtained. The Administrator has no obligation to
14 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
15 returned by the USPS a second time.
16

17 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
18 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
19 contact information is Aaron H. Cole, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 400
20 South Hope Street, Suite 1200, Los Angeles, CA, 90071.
21

22 11. The deadlines for Class Members’ written objections, Challenges to Class Work
23 Weeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an
24 additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
25 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
26 extended deadline with the re-mailed Notice Packet.
27

1 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
2 discovers any persons who believe they should have been included in the Class Data and should
3 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
4 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
5 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
6 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
7 requiring them to exercise options under the Settlement Agreement not later than 14 days after
8 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.
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10 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
11 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
12 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
13 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
14 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
15 the Class Member's election to be excluded from the Settlement and includes the Class Member's
16 name, address and email address or telephone number. To be valid, a Request for Exclusion must
17 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
18 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.
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20 14. The Administrator may not reject a Request for Exclusion as invalid because it
21 fails to contain all the information specified in the Class Notice. The Administrator shall accept
22 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
23 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
24 determination shall be final and not appealable or otherwise susceptible to challenge. If the
25 Administrator has reason to question the authenticity of a Request for Exclusion, the
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1 Administrator may demand additional proof of the Class Member's identity. The Administrator's
2 determination of authenticity shall be final and not appealable or otherwise susceptible to
3 challenge.

4 15. Every Class Member who does not submit a timely and valid Request for Exclusion
5 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
6 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
7 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
8 Participating Class Member actually receives the Class Notice or objects to the Settlement.
9

10 16. Every Class Member who submits a valid and timely Request for Exclusion is a
11 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
12 right to object to the class action components of the Settlement. Plaintiff releases all claims for
13 civil penalties that could have been sought by the Labor Commissioner for the violations
14 identified in Plaintiffs pre-filing letter to the LWDA; Plaintiff does not release the claim for wages
15 or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
16 Member.
17

18 17. Challenges to Calculation of Class Work Weeks/PAGA Pay Periods. Each Class
19 Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional
20 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class
21 Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
22 This is also known as a dispute. A Class Work Week/PAGA Pay Period Dispute form, attached
23 as Exhibit C, may be used for this purpose but is not required. The Class Member may challenge
24 the allocation by communicating with the Administrator via fax, email or mail. The Administrator
25 must encourage the challenging Class Member to submit supporting documentation. In the
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1 absence of any contrary documentation, the Administrator is entitled to presume that the Class
2 Work Weeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they
3 are consistent with the Class Data. The Administrator's determination of each Class Member's
4 allocation of Class Work Weeks and/or PAGA Pay Periods shall be final and not appealable or
5 otherwise susceptible to challenge. The Administrator shall promptly provide copies of all
6 challenges to calculation of Class Work Weeks and/or PAGA Pay Periods to Defense Counsel
7 and Class Counsel and the Administrator's determination the challenges.

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

14 19. Participating Class Members may send written objections to the Administrator, by
15 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
16 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
17 Participating Class Member who elects to send a written objection to the Administrator must do
18 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
19 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
20 as Exhibit D may be used for this purpose but is not required.

22 20. Non-Participating Class Members have no right to object to any of the class action
23 components of the Settlement.

24 21. Not later than 14 days before the date by which Plaintiff is required to file the
25 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
26 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
27

compliance with all of its obligations under the Settlement Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

22. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in substantially the form attached as Exhibit B to this Order, the Class Work Weeks and/or PAGA Pay Periods Dispute form in substantially the form attached as Exhibit C to this Order, and the Objection form in substantially the form attached as Exhibit D to this Order.

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

24. The Court approves, for settlement purposes only, Chris Marcus Calkins née Carissa Calkins as the Class Representative.

25. The Court approves Xpand Legal Consulting LLC as the Administrator.

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

27. The Court preliminarily approves the estimated Administrator costs payable to the Administrator subject to final review by the Court.

28. The Court preliminarily approves Plaintiff's Class Representative Service Payment subject to final review by the Court.

1 29. A Final Approval Hearing shall be held on ____ at ____**.m.** in Department 7 of the
2 Superior Court for the State of California, County of Los Angeles, located at the Spring Street
3 Courthouse, 312 N Spring St., Los Angeles, CA 90012 to consider the fairness, adequacy and
4 reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval
5 Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class
6 Representative Service Payment to the Class Representative. The notice of motion and all briefs
7 and materials in support of the motion for final approval of class action settlement and motion for
8 attorneys' fees and litigation costs shall be served and filed with this Court on or before ____.
9 Plaintiff's counsel must give notice to any objecting party of any continuance of the hearing of
10 the motion for final approval.
11

12 30. If for any reason the Court does not execute and file a Final Approval Order and
13 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
14 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
15 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
16 litigation, as more specifically set forth in the Settlement.
17

18 31. The Court expressly reserves the right to adjourn or continue the Final Approval
19 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
20 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
21

22 **IT IS SO ORDERED.**
23

24 _____
25 **DATE**

25 **THE HONORABLE LAWRENCE P.**
26 **RIFF**
27 **SUPERIOR COURT JUDGE**

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EXHIBIT F

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

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

Plaintiff(s),

vs.

UNITED SECURITY SERVICES, INC., an Illinois corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No. 20STCV35391

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed: September 16, 2020
Dept: 7, The Honorable Lawrence P. Riff

This matter came on for hearing on ____ at ____m. in Department 7 of the above-captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$350,000.00 in compromise of all disputed claims on behalf of all Defendant’s hourly, non-exempt California security guard employees during the period of September 16, 2016 to May 31, 2024 (“Settlement Class Period”). All capitalized terms used

1 herein shall have the same meaning as defined in the Settlement.

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

11 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
12 to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary
13 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
14 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
15 Settlement, their right to receive their proportional share of the Settlement, their right to request
16 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
17 person or by counsel at the final approval hearing and be heard regarding final approval of the
18 Settlement. Adequate periods of time were provided by each of these procedures. No member of
19 the Settlement Class presented written objections to the proposed Settlement as part of this notice
20 process, stated an intention to appear, or actually appeared at the final approval hearing.

23 2. For purposes of this Final Order and Judgment, the Class Members are all persons
24

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

1 employed by Defendant in California and classified as an hourly, non-exempt security guard
2 during the Class Period of September 16, 2016 to May 31, 2024.

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

9 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
10 resolution set forth in this Settlement will release and discharge the Released Claims by way of
11 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
12 of any kind by each and all of the Settlement Class Members (including participation to any extent
13 in any representative or collective action) against the Released Parties. This release will not take
14 effect until Defendant has paid the Gross Settlement Amount in full per this Settlement
15 Agreement.
16

17 **PAGA Release.** Plaintiff releases all claims for civil penalties that could have been
18 sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to
19 the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee
20 unless such Aggrieved Employee is a Participating Class Member.
21

22 **"Released Claims"** shall mean all claims stated in the Operative Complaint and based
23 solely on the facts alleged in the Operative Complaint. **"Released Parties"** shall mean Defendant,
24 and each of its ach of its former and present directors, officers, shareholders, owners, members,
25 attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

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

11
12 3. The Court finds and determines that (a) the Settlement Shares to be paid to
13 Participating Class Members and (b) the LWDA payment as civil penalties under the California
14 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
15 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
16 final approval to, and orders the payment of, those amounts be made to the Participating Class
17 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
18 accordance with the terms of the Settlement.

19
20 4. The Court further grants final approval to and orders that the following payments
21 be made in accordance with the terms of the Settlement:

22
23 a. Class Counsel fees & costs of \$116,666.00 in attorneys’ fees and
24 \$16,500.00 in litigation costs to Class Counsel;

25 b. \$15,000.00 as a Class Representative Service Payment award payable to
26 Plaintiff Chris Marcus Calkins née Carissa Calkins for his service as a Class Representative;
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1 c. \$35,000.00 in costs of the Administrator payable to Xpand Legal
2 Consulting LLC for its services as the Administrator; and

3 d. Payment of \$7,500.00 (75% of the (\$10,000.00 PAGA penalty) to the
4 LWDA.

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

11 8. Within 14 calendar days of the Effective Date of Settlement, Defendant shall
12 deposit the Settlement proceeds in an account designated by the Administrator: (i) the total
13 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
14 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
15 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payment, (iv)
16 the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) (i) the
17 total amount of all Individual PAGA Payments to Aggrieved Employees.

18 9. Other than its employer side payroll taxes, Defendant's payment of such sums
19 shall be the sole financial obligation of Defendant under the Settlement, and shall be in full
20 satisfaction of all claims released herein, including, without limitation, all claims for wages,
21 penalties, interest, attorneys' fees, costs and expenses.

22 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
23 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
24 Share check. After the expiration of the 180-day period, on Defendant's behalf, the Administrator
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1 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on
2 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
3 California Unclaimed Property Fund.

4 11. The Parties shall file a final accounting report by _____. A non-appearance case
5 review re submission of a final report is scheduled for ____ at _____.m. in Department 7. The
6 Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final
7 Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue,
8 and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The
9 stipulation shall be signed by counsel for the class and defense counsel in accord with the
10 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
11 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
12 non-appearance hearing for the lodging of the stipulation and proposed order and separate
13 amended judgment is scheduled for ____ at _____.m. in Department 7.

14 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
15 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
16 deposit funds for distribution by the Administrator to Participating Class Members in accordance
17 with the Settlement.

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

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

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

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

15
16
17 17. This document shall constitute a Judgment for purposes of California Rule of
18 Court 3.769(h).

19 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

20
21
22 _____
23 **DATE**

24 _____
25 **THE HONORABLE LAWRENCE P.**
26 **RIFF**
27 **SUPERIOR COURT JUDGE**

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

July 7, 2020

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

RE: *Carissa Calkins / United Security Services, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Carissa Calkins (hereafter “Calkins”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to security guards, and workers employed in comparable positions (hereafter “Aggrieved Employees”) by United Security Services, Inc., an Illinois corporation (hereafter “USSI”), of violations of Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, USSI has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Calkins and the Aggrieved Employees are “employees” within the meaning of Wage Order 4-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

On or about December 27, 2019, USSI first employed Calkins to work in California as a non-exempt, hourly security guard. USSI continuously employed Calkins in California from December 27, 2019 until on or about March 2, 2020, when her employment ended.

At all relevant times, USSI employed Calkins and the other Aggrieved Employees at an hourly rate of pay and issued their paychecks on a weekly basis. At all relevant times, USSI classified Calkins and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, USSI required Calkins and the Aggrieved Employees to perform work while clocked out. USSI maintained a policy whereby it would engage only approximately the first 60 employees to arrive for a given shift. In order to be engaged for work on a given day, USSI's policy required Calkins and the Aggrieved Employees to arrive at USSI's work sites early – often 45 minutes to an hour before the shifts were to begin – in order to be within the first 60 people to arrive. USSI failed to compensate Calkins and the Aggrieved Employees for the time they spent off-the-clock waiting to be selected for work.

Further, at all relevant times, USSI required Calkins and the Aggrieved Employees to perform work off-the-clock at the beginning of their shifts. USSI provided Calkins's and the Aggrieved Employees with schedules indicating shift start and end times. However, although Calkins and the Aggrieved Employees began work at the time listed on USSI's schedules, USSI recorded their start times as beginning approximately 15 minutes after the time listed on the schedules.

USSI also required Calkins and the Aggrieved Employees to perform work off-the-clock at the end of their shifts. USSI shuttled Calkins and the Aggrieved Employees to and from their assigned work stations at the beginning and end of their workdays. At relevant times within the applicable limitations period, USSI did not arrive to shuttle Calkins and the Aggrieved Employees back from their workstations until after the end of their scheduled shifts, often as long as 20 minutes thereafter. On such occasions, USSI recorded Calkins's and the Aggrieved Employees' workdays as ending at the time indicated on the shift schedules, thereby omitting the time during which Calkins and the Aggrieved Employees were required to remain on duty while waiting for USSI's shuttle.

USSI regularly employed Calkins and the Aggrieved Employees to work in excess of eight hours and 12 hours per day. At relevant times within the applicable limitations period, USSI failed to provide Calkins and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked or with a second off-duty, 30-minute meal period before the end of the tenth hour worked. Rather, USSI provided Calkins and the Aggrieved Employees with one meal period every six hours. On occasions in which Calkins and the Aggrieved Employees worked ten or more hours, but less than twelve hours, USSI wholly failed to provide them with a second meal period. USSI further required Calkins and the Aggrieved Employees to remain on the work premises during their rest periods. USSI did not request an exemption from California's rest period law from the Division of Labor Standards Enforcement. Neither Calkins nor any of the Aggrieved Employees entered into a written waiver of their second meal period with USSI.

USSI also failed to pay Calkins and the Aggrieved Employees premium wages for days on which it failed to provide them with all timely meal periods and unrestricted rest periods.

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

- a) USSI failed to provide Calkins and the Aggrieved Employees with all meal periods as required by law;
- b) USSI failed to provide Calkins and the Aggrieved Employees with all rest periods as required by law;
- c) USSI failed to compensate Calkins and the Aggrieved Employees at one hour's pay on days when USSI failed to provide them with one or more meal periods in a workday;

- d) USSI failed to compensate Calkins and the Aggrieved Employees at one hour's pay on days when USSI failed to provide them with one or more rest periods in a workday;
- e) USSI failed to pay Calkins and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;
- f) USSI unlawfully deducted the wages Calkins and the Aggrieved Employees earned, including, but not limited to, minimum and overtime wages;
- g) USSI failed to timely pay Calkins and the Aggrieved Employees all earned and unpaid wages during employment;
- h) USSI failed to provide Calkins and the Aggrieved Employees with accurate and complete wage statements; and
- i) USSI failed to timely pay Calkins and the Aggrieved Employees all earned and unpaid wages at the time of separation of employment.

Accordingly, Calkins now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on USSI's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis." § 1. Occupations covered by the terms "professional, technical, clerical, mechanical, and similar occupations" include, but are not limited to, "guards." § 2(O). At all relevant times during the applicable limitations period, USSI employed Calkins as a security guard. Accordingly,

Calkins and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total number of hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) 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 workday that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

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

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

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

Meal Periods:

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

...

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

California Labor Code § 226.7 states:

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

By failing to provide all timely 30 minute, duty-free meal periods, USSI has intentionally and improperly failed to provide all meal periods free from any work or duties to Calkins and the Aggrieved Employees as required by law. Further, by requiring Calkins and the Aggrieved Employees to remain on work premises during their rest periods, USSI has intentionally and improperly failed to provide Calkins and the Aggrieved Employees with all duty free rest periods.

In failing to do so, USSI violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Calkins seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

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

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

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

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in

the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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

In relevant part, California Labor Code § 510 states,

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

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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

At all relevant times during the applicable limitations period, USSI knowingly failed to pay Calkins and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed off-the-clock at the beginning and end of their shifts.

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

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

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

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

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.

At all relevant times during the applicable limitations period, USSI has illegally and arbitrarily deducted several minutes from the records of Calkins and the Aggrieved Employees of their daily time worked and has reported less hours than Calkins's and the Aggrieved Employees actual hours worked on their wage statements. As a result, USSI collected and received part of Calkins's and the other Aggrieved Employees' wages in violation of California Labor Code § 221.

Accordingly, Calkins seeks civil penalties on behalf of herself and the 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 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 Accurate Written Wage Statements
(Lab. Code § 226)

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

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

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

At relevant times during the applicable limitations period, USSI violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. USSI failed to state in the wage statements it issued to Calkins and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock at the beginning and end of their shifts.

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

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

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

Because of USSI's failure to pay Calkins and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided meal periods within the time periods set by California Labor Code § 204, USSI failed to timely pay all wages due during employment. Accordingly, Calkins seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

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

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

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

Every person employing labor in this state shall:

...

(a) 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.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) 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).

Section 7 of Wage Order 1 states:

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

provided to employees. An accurate production record shall be maintained by the employer.

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

USSI has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, and records pertaining to all unpaid hours worked by Calkins and the Aggrieved Employees. Accordingly, Calkins seeks civil penalties from USSI on behalf of herself and other Aggrieved Employees as follows:

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

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

Under Labor Code § 2019, 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, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay Calkins and the Aggrieved Employees as set forth above, USSI is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Calkins seeks civil penalties from USSI 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 for per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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///

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Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Carissa Calkins
Walter Haines, Esq.

United Security Services, Inc.
c/o Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

EXHIBIT 3

COPY

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5 THE SPIVAK LAW FIRM

6 16530 Ventura Blvd., Suite 203

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8 Telephone (818) 582-3086

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10 Attorneys for Plaintiff,

11 CARISSA CALKINS, and all others similarly situated

12 (Additional attorneys for Plaintiff on following page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 **(UNLIMITED JURISDICTION)**

16 CARISSA CALKINS, on behalf of herself and
17 all others similarly situated, and as an
18 "aggrieved employee" on behalf of other
19 "aggrieved employees" under the labor Code
20 Private Attorneys General Act of 2004,

21 *Plaintiff(s),*

22 vs.

23 UNITED SECURITY SERVICES, INC., an
24 Illinois corporation; and DOES 1-50, inclusive,

25 *Defendant(s).*

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

SEP 16 2020

Sherri K. Carter, Executive Officer/Clerk of Court

By Steven Drew, Deputy

Case No.: **20STCV35391**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
3. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
4. Waiting Time Penalties (Lab. Code §§ 201-203);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
6. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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

3 **INTRODUCTION**

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

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated current and former employees who worked in California as hourly
11 employees, including security guards and other employees of Defendants in comparable
12 positions, at any time during the period beginning four years prior to the filing of this action to
13 the present, for unpaid wages and other related relief. These claims are based on Defendants’
14 alleged (1) failure to provide all rest and meal periods; (2) unlawful collection of wages (wage
15 deductions); (3) failure to provide accurate written wage statements, (4) failure to timely pay
16 wages upon termination of employment, and (5) failure to fairly compete. Additionally, Plaintiff
17 seeks civil penalties under the California Labor Code Private Attorneys General Act, Labor Code
18 §§ 2698, *et seq.* (“PAGA”). Accordingly, Plaintiff now seeks to recover unpaid wages, unlawfully
19 deducted wages, unpaid meal and rest break premium wages, restitution, statutory penalties, civil
20 penalties, and related relief through this class action.

21 **JURISDICTION AND VENUE**

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

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

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

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



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therein.

PARTIES

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

8. Defendant UNITED SECURITY SERVICES, INC. is a corporation organized and existing under the laws of Illinois based on Plaintiff’s information and belief.

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

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

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

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

CLASS ALLEGATIONS

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because



1 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
2 action.

3 14. **Class Definition:** The Class is defined as follows: all individuals Defendants
4 employed in California and paid on an hourly basis, including but not limited to security guards
5 and workers employed in comparable positions, at any time during the period beginning four
6 years prior to the filing of this action and ending on the date that final judgment is rendered in
7 this action.

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

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

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

18 A. Whether Defendants failed to provide the Class with all rest periods as
19 required by section 11 of the Wage Order;

20 B. Whether Defendants failed to provide the Class with all off-duty meal
21 periods as required by section 12 of the Wage Order;

22 C. Whether Defendants failed to compensate the Class Members at one
23 hour's pay on days when Defendants failed to provide them with one or more meal periods in a
24 workday.

25 D. Whether Defendants failed to compensate the Class Members at one
26 hour's pay on days when Defendants failed to provide them with one or more off-duty meal
27 periods in a workday;

28 E. Whether Defendants unlawfully collected wages from the Class;

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

G. Whether Defendants knowingly and intentionally failed to provide the



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1 Class Members with accurate wage statements;

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

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

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

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

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

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

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

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

22 21. **Superiority:** A class action is vastly superior to other available means for fair and
23 efficient adjudication of class' claims and would be beneficial to the parties and the Court. Class
24 action treatment will allow a number of similarly situated persons to simultaneously and
25 efficiently prosecute their common claims in a single forum without the unnecessary duplication
26 of effort and expense that numerous individual actions would entail. In addition, the monetary
27 amounts due to many individual class members are likely to be relatively small and would thus
28 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 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.



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STATEMENT OF FACTS

22. On or about December 27, 2019, Defendants first employed Plaintiff to work in California as a non-exempt, hourly security guard. Defendants continuously employed Plaintiff from that time until on or about March 2, 2020, when her employment ended.

23. At all relevant times, Defendants employed Plaintiff and the Class at an hourly rate of pay and issued their paychecks on a weekly basis. At all relevant times, Defendants classified Plaintiff and the Class as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

24. At all relevant times, Defendants required Plaintiff and the Class to perform work while clocked out. Defendants maintained a policy whereby it would engage only approximately the first 60 employees to arrive for a given shift. In order for Plaintiff and the Class Members to be engaged for work on a given day, Defendant's policy required them to arrive at Defendant's work sites early – often 45 minutes to an hour before the shifts were to begin – in order to be within the first 60 people to arrive. Defendants failed to compensate Plaintiff and the Class for the time they spent off-the-clock waiting to be selected for work.

25. Further, at all relevant times, Defendants required Plaintiff and the Class to perform work off-the-clock at the beginning of their shifts. Defendants provided Plaintiff and the Class with schedules indicating shift start and end times. However, although Plaintiff and the Class began work at the time listed on Defendants' schedules, Defendants recorded their start time as beginning approximately 15 minutes after the time listed on the schedules.

26. Defendants also required Plaintiff and the Class to perform work off-the-clock at the end of their shifts. Defendants shuttled Plaintiff and the Class to and from their assigned work stations at the beginning and end of their workdays. At relevant times within the applicable limitations period, Defendants did not arrive to shuttle Plaintiff and the Class back from their workstations until after the end of their scheduled shifts, often as long as 20 minutes thereafter. On such occasions, Defendants recorded Plaintiff's and the Class Members' workdays as ending at the time indicated on the shift schedules, thereby omitting the time during which Plaintiff and the Class were required to remain on duty while waiting for Defendants' shuttle.

27. Defendants regularly employed Plaintiff and the Class to work in excess of eight hours and 12 hours per day. At relevant times within the applicable limitations period, Defendants failed to provide Plaintiff and the Class with a second off-duty, 30-minute daily meal period



1 before the end of the tenth hour worked. Rather, Defendants provided Plaintiff and the Class with
2 one meal period every six hours. On occasions in which Plaintiff and the Class worked ten or
3 more hours, but less than twelve hours, Defendants wholly failed to provide them with a second
4 meal period. Defendants further required Plaintiff and the Class to remain on the work premises
5 during their rest periods. On information and belief, Defendants did not request an exemption
6 from California's rest period law from the Division of Labor Standards Enforcement. Neither
7 Plaintiff nor any of the Class entered into a written waiver of their second meal period with
8 Defendants.

8 28. Defendants also failed to pay Plaintiff and the Class premium wages for days on
9 which it failed to provide them with all timely meal periods and unrestricted rest periods.

10 29. For the reasons stated herein, Plaintiff alleges the following violations of the
11 California Labor Code and Wage Order:

12 A. Defendants failed to provide Plaintiff and the Class with all off-duty meal
13 periods;

14 B. Defendants failed to provide Plaintiff and the Class with all rest periods as
15 required by law;

16 C. Defendants failed to pay Plaintiff and the Class an additional hour's pay
17 for days on which Defendants failed to provide them with one or more meal periods in a workday;

18 D. Defendants failed to pay Plaintiff and the Class an additional hour's pay
19 for days on which Defendants failed to provide them with one or more rest periods in a workday;

20 E. Defendants unlawfully collected wages due to Plaintiff and the Class;

21 F. Defendants failed to compensate Plaintiff and the Class for all hours
22 worked at the correct rates of pay, including, but not limited to, regular and overtime wages for
23 work they performed off-the-clock at the beginning and end of their shifts;

24 G. Defendants failed to provide Plaintiff and the Class with accurate and
25 complete wage statements;

26 H. Defendants failed to timely pay Plaintiff and the Class all earned and
27 unpaid wages during employment; and

28 I. Defendants failed to timely pay Plaintiff and those Class Members who
are former employees all earned and unpaid wages at the time of separation from employment.

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FIRST CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS
(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

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

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

32. 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.

33. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall 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 shall 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.

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

Rest Periods

(A) “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2)



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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.”

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

Meal Periods

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

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

36. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest 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 period or rest 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



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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 work day that the meal or rest period is not provided.

37. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to 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.

38. 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.

39. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order.

40. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods and rest breaks required by California law.

41. As a result of Defendants' unlawful conduct, Plaintiff and the Class 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.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 221, 510, 1194, 1197, and 1198)

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

44. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code § 221, 510, 1194, 1197, 1198, and the Wage Order.



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

4 46. Section 3 of the Wage Order states:

5 (A) Daily Overtime - General Provisions

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

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

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

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

47. 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.

48. 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



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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.

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

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

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

52. California Labor Code § 221 prohibits an employer from taking deductions from an employee's wages without the employee's express written consent or other legal authority for doing so.

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

54. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class for all hours worked at the correct rates of pay, including but not limited to all regular and overtime wages for work they performed off-the-clock at the beginning and end of their shifts. Further, at all relevant times, Defendants unlawfully collected and received part of Plaintiff's and the Class Members' wages in violation of California Labor Code § 221.

55. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'



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1 failure to compensate the Class for all hours worked at the correct rate of pay as required by
2 California law.

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

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

11 **THIRD CAUSE OF ACTION**

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

13 **(Lab. Code § 226)**

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

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

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

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

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

B. Which deductions the employer made from gross wages to determine the



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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. At all relevant times during the applicable limitations period, Defendants violated
12 Labor Code § 226 because they did not properly and accurately itemize each Class Member’s
13 gross wages earned, net wages earned, the total hours worked, the corresponding number of hours
14 worked at each rate by the employee, and other requirements of California Labor Code § 226.
15 Defendants failed to state in the wage statements they issued to Plaintiff and the Class all their
16 hours worked and wages earned, including but not limited to minimum, regular, and overtime
17 wages for work they performed off-the-clock at the beginning and end of their shifts.

18 63. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
19 all wages owed, including but not limited to, wages. Defendants wholly failed to provide Plaintiff
20 and the Class Members with any written wage statements at all.

21 64. As a result, Defendants have failed to properly and accurately itemize each
22 employee’s gross wages earned, net wages earned, the total hours worked, the corresponding
23 number of hours worked by employees, and other requirements of California Labor Code § 226.
24 As a result, Defendants have violated California Labor Code § 226.

25 65. Defendants’ failure to provide Plaintiff and the Class Members with accurate
26 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
27 the Class with accurate wage statements but intentionally provided wage statements that
28 Defendants knew were not accurate.

66. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the Class have suffered injury. Their legal rights to receive accurate wage statements
were violated and they were misled about the amount of wages they had actually earned and were



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

8 **FOURTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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



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

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

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(By Plaintiff and the Class against all Defendants)

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

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

78. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest period, and pay them all wages earned for all hours worked at the correct rates of pay.

79. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest period, and pay them all wages earned for all hours worked at the correct rates of pay.

80. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the



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1 Class Members have suffered injuries in fact and have lost money or property. Defendants
2 deprived Plaintiff and the Class Members of minimum wages, overtime wages, double-time
3 wages, premium wages for all workdays one or more meal periods was not provided, and
4 premium wages for all workdays a rest period was not provided.

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

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

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

15 **SIXTH CAUSE OF ACTION**

16 **CIVIL PENALTIES**

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

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

19 85. The "Aggrieved Employees" are all members of the above-defined Class whom
20 Defendants employed during the period beginning July 7, 2019 and ending on the date that final
21 judgment is entered in this action.

22 86. Labor Code § 204 states

23 (a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or
24 204.2, earned by any person in any employment are due and payable twice during
25 each calendar month, on days designated in advance by the employer as the
26 regular paydays. Labor performed between the 1st and 15th days, inclusive, of
27 any calendar month shall be paid for between the 16th and 26th day of the month
28 during which the labor was performed, and labor performed between the 16th and
last day, inclusive, of any calendar month, shall be paid between the 1st and 10th
day of the following month. . . .

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



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(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.

87. Defendants paid wages to employees on weekly 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.

88. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

89. 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.

90. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the applicable limitations period in the following amounts: For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

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

B. For violations of California Labor Code § 221, one hundred dollars



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1 (\$100.00) for each aggrieved employee for each initial violation of California Labor Code § 221
2 (if found to be neither willful nor intentional) and two hundred dollars (\$200.00) for each
3 aggrieved employee (if found to be either willful or intentional) and for each subsequent violation
4 of California Labor Code § 221 (regardless of whether they are found to be willful or intentional)
(penalties set by California Labor Code § 225.5).

5 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
6 (\$250.00) for each aggrieved employee for initial violations and one thousand dollars (\$1,000.00)
7 for each aggrieved employee for each subsequent violation (penalty amounts established by
8 California Labor Code § 226.3).

9 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
10 (\$50.00) for each aggrieved employee for initial violations and one hundred dollars (\$100.00)
11 for each aggrieved employee for each subsequent violation, per pay period (penalty amounts
12 established by California Labor Code § 558).

13 E. For violations of California Labor Code § 1174, five hundred dollars
14 (\$500.00) for each aggrieved employee for each violation (penalty amounts established by
15 California Labor Code § 1174.5).

16 F. For violations of California Labor Code § 1197, one hundred dollars
17 (\$100.00) for each aggrieved employee per pay period for each initial and intentional violation
18 and two hundred fifty dollars (\$250.00) for each aggrieved employee per pay period for each
19 subsequent violation (regardless of whether the initial violations were intentionally committed)
(penalty amounts established by California Labor Code § 1197.1).

20 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
21 and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each
22 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
23 for each subsequent violation (penalty amounts established by California Labor Code §
24 2699(f)(2)).

25 91. Plaintiff has complied with the procedures for bringing suit specified in California
26 Labor Code § 2699.3. By letter dated July 7, 2020, Plaintiff filed written notice online with the
27 Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail
28 to Defendants of the specific provisions of the California Labor Code alleged to have been
violated, including the facts and theories to support the alleged violations. Plaintiff accompanied



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1 her individual letter with a fee in the amount of \$75.00. A true and correct copy of Plaintiff's
2 written notice to the LWDA, dated July 7, 2020, is attached hereto as **Exhibit A**. The LWDA
3 has not responded to Plaintiff's letter.

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

7 **PRAYER FOR RELIEF**

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

- 10 A. An order that the action be certified as a class action;
11 B. An order that Plaintiff be appointed class representative;
12 C. An order that counsel for Plaintiff be appointed class counsel;
13 D. Unpaid wages;
14 E. Actual damages;
15 F. Statutory damages;
16 G. Liquidated damages;
17 H. Restitution;
18 I. Declaratory relief;
19 J. Equitable relief;
20 K. Statutory penalties;
21 L. Civil Penalties;
22 M. Pre-judgment and post-judgment interest;
23 N. Costs of suit;
24 O. Interest;
25 P. Reasonable attorneys' fees; and
26 Q. Such other relief as the Court deems just and proper.

27 ///
28 ///
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DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: September 15, 2020

By: 
DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, CARISSA CALKINS
and all others similarly situated



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EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

July 7, 2020

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

RE: *Carissa Calkins / United Security Services, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Carissa Calkins (hereafter “Calkins”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to security guards, and workers employed in comparable positions (hereafter “Aggrieved Employees”) by United Security Services, Inc., an Illinois corporation (hereafter “USSI”), of violations of Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, USSI has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Calkins and the Aggrieved Employees are “employees” within the meaning of Wage Order 4-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

On or about December 27, 2019, USSI first employed Calkins to work in California as a non-exempt, hourly security guard. USSI continuously employed Calkins in California from December 27, 2019 until on or about March 2, 2020, when her employment ended.

At all relevant times, USSI employed Calkins and the other Aggrieved Employees at an hourly rate of pay and issued their paychecks on a weekly basis. At all relevant times, USSI classified Calkins and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, USSI required Calkins and the Aggrieved Employees to perform work while clocked out. USSI maintained a policy whereby it would engage only approximately the first 60 employees to arrive for a given shift. In order to be engaged for work on a given day, USSI's policy required Calkins and the Aggrieved Employees to arrive at USSI's work sites early – often 45 minutes to an hour before the shifts were to begin – in order to be within the first 60 people to arrive. USSI failed to compensate Calkins and the Aggrieved Employees for the time they spent off-the-clock waiting to be selected for work.

Further, at all relevant times, USSI required Calkins and the Aggrieved Employees to perform work off-the-clock at the beginning of their shifts. USSI provided Calkins's and the Aggrieved Employees with schedules indicating shift start and end times. However, although Calkins and the Aggrieved Employees began work at the time listed on USSI's schedules, USSI recorded their start times as beginning approximately 15 minutes after the time listed on the schedules.

USSI also required Calkins and the Aggrieved Employees to perform work off-the-clock at the end of their shifts. USSI shuttled Calkins and the Aggrieved Employees to and from their assigned work stations at the beginning and end of their workdays. At relevant times within the applicable limitations period, USSI did not arrive to shuttle Calkins and the Aggrieved Employees back from their workstations until after the end of their scheduled shifts, often as long as 20 minutes thereafter. On such occasions, USSI recorded Calkins's and the Aggrieved Employees' workdays as ending at the time indicated on the shift schedules, thereby omitting the time during which Calkins and the Aggrieved Employees were required to remain on duty while waiting for USSI's shuttle.

USSI regularly employed Calkins and the Aggrieved Employees to work in excess of eight hours and 12 hours per day. At relevant times within the applicable limitations period, USSI failed to provide Calkins and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked or with a second off-duty, 30-minute meal period before the end of the tenth hour worked. Rather, USSI provided Calkins and the Aggrieved Employees with one meal period every six hours. On occasions in which Calkins and the Aggrieved Employees worked ten or more hours, but less than twelve hours, USSI wholly failed to provide them with a second meal period. USSI further required Calkins and the Aggrieved Employees to remain on the work premises during their rest periods. USSI did not request an exemption from California's rest period law from the Division of Labor Standards Enforcement. Neither Calkins nor any of the Aggrieved Employees entered into a written waiver of their second meal period with USSI.

USSI also failed to pay Calkins and the Aggrieved Employees premium wages for days on which it failed to provide them with all timely meal periods and unrestricted rest periods.

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

- a) USSI failed to provide Calkins and the Aggrieved Employees with all meal periods as required by law;
- b) USSI failed to provide Calkins and the Aggrieved Employees with all rest periods as required by law;
- c) USSI failed to compensate Calkins and the Aggrieved Employees at one hour's pay on days when USSI failed to provide them with one or more meal periods in a workday;

- d) USSI failed to compensate Calkins and the Aggrieved Employees at one hour's pay on days when USSI failed to provide them with one or more rest periods in a workday;
- e) USSI failed to pay Calkins and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;
- f) USSI unlawfully deducted the wages Calkins and the Aggrieved Employees earned, including, but not limited to, minimum and overtime wages;
- g) USSI failed to timely pay Calkins and the Aggrieved Employees all earned and unpaid wages during employment;
- h) USSI failed to provide Calkins and the Aggrieved Employees with accurate and complete wage statements; and
- i) USSI failed to timely pay Calkins and the Aggrieved Employees all earned and unpaid wages at the time of separation of employment.

Accordingly, Calkins now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on USSI's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis." § 1. Occupations covered by the terms "professional, technical, clerical, mechanical, and similar occupations" include, but are not limited to, "guards." § 2(O). At all relevant times during the applicable limitations period, USSI employed Calkins as a security guard. Accordingly,

Calkins and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total number of hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) 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 workday that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

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

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

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

Meal Periods:

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

...

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

California Labor Code § 226.7 states:

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

By failing to provide all timely 30 minute, duty-free meal periods, USSI has intentionally and improperly failed to provide all meal periods free from any work or duties to Calkins and the Aggrieved Employees as required by law. Further, by requiring Calkins and the Aggrieved Employees to remain on work premises during their rest periods, USSI has intentionally and improperly failed to provide Calkins and the Aggrieved Employees with all duty free rest periods.

In failing to do so, USSI violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Calkins seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

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

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

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

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in

the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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

In relevant part, California Labor Code § 510 states,

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

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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

At all relevant times during the applicable limitations period, USSI knowingly failed to pay Calkins and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed off-the-clock at the beginning and end of their shifts.

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

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

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

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

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.

At all relevant times during the applicable limitations period, USSI has illegally and arbitrarily deducted several minutes from the records of Calkins and the Aggrieved Employees of their daily time worked and has reported less hours than Calkins's and the Aggrieved Employees actual hours worked on their wage statements. As a result, USSI collected and received part of Calkins's and the other Aggrieved Employees' wages in violation of California Labor Code § 221.

Accordingly, Calkins seeks civil penalties on behalf of herself and the 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 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 Accurate Written Wage Statements
(Lab. Code § 226)

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

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

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

At relevant times during the applicable limitations period, USSI violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. USSI failed to state in the wage statements it issued to Calkins and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock at the beginning and end of their shifts.

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

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

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

Because of USSI's failure to pay Calkins and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided meal periods within the time periods set by California Labor Code § 204, USSI failed to timely pay all wages due during employment. Accordingly, Calkins seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

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

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

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

Every person employing labor in this state shall:

...

(a) 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.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) 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).

Section 7 of Wage Order 1 states:

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

provided to employees. An accurate production record shall be maintained by the employer.

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

USSI has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, and records pertaining to all unpaid hours worked by Calkins and the Aggrieved Employees. Accordingly, Calkins seeks civil penalties from USSI on behalf of herself and other Aggrieved Employees as follows:

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

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

Under Labor Code § 2019, 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, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay Calkins and the Aggrieved Employees as set forth above, USSI is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Calkins seeks civil penalties from USSI 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 for per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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Conclusion

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

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Carissa Calkins
Walter Haines, Esq.

United Security Services, Inc.
c/o Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

EXHIBIT 4

1 Christopher P. Wesierski [Bar No. 086736]
cwesiwerski@wzllp.com

2 Christian C.H. Counts [Bar No. 208363]
ccounts@wzllp.com

3 WESIERSKI & ZUREK LLP
 29 Orchard Road
 4 Lake Forest, California 92630
 Telephone: (949) 975-1000
 5 Facsimile: (949) 756-0517

6 Attorneys for Defendant UNITED
 SECURITY SERVICES, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES

11 CARISSA CALKINS, on behalf of herself
 and all others similarly situated, and as an
 12 "aggrieved employee" on behalf of the
 other "aggrieved employees" under the
 13 labor Code Private Attorneys General Act
 of 2004

14 Plaintiffs,

15 vs.

16 UNITED SECURITY SERVICES, INC.,
 17 an Illinois Corporation; and DOES 1-50,
 inclusive,

18 Defendants.

CASE NO. 20STCV35391

Assigned for All Purposed To:
 Hon. Amy D. Hogue
 Department 7

**ANSWER OF UNITED SECURITY
 SERVICES, INC. TO COMPLAINT**

Action Filed: 09/16/2020
 Trial Date: None Set

21 Defendant United Security Services, Inc. ("this answering Defendant"), hereby
 22 answers the complaint filed by plaintiff Carissa Calkins ("Plaintiff"), and asserts its
 23 affirmative defenses as follows:

ANSWER TO COMPLAINT

25 Defendant hereby answers the complaint pursuant to Code of Civil Procedure
 26 § 431.30(d) and denies, generally and specifically, each and every, all and singular,
 27 allegation contained in the complaint. Defendant further specifically denies that Plaintiff
 28 was damaged in the amount alleged, or in any other amount, or in any manner whatsoever,

1 by any act or omission on the part of this answering Defendant.

2 **AFFIRMATIVE DEFENSES**

3 As for its separate affirmative defenses, this answering Defendant alleges as
4 follows:

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Failure to State a Claim)**

7 1. As a separate and first affirmative defense to the Complaint, and to the
8 purported causes of action set forth therein, this answering Defendant alleges that the
9 Complaint fails to state facts sufficient to constitute a cause of action.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **(All Obligations Performed)**

12 2. As a separate and second affirmative defense to the Complaint and each
13 purported cause of action contained therein, this answering Defendant alleges that this
14 answering Defendant has fully and/or substantially performed any and all obligations it
15 may have had to Plaintiff.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Attorneys Fees Barred)**

18 3. As a separate and third affirmative defense to the Complaint and each
19 purported cause of action contained therein, this answering Defendant alleges that
20 Plaintiff's claim for attorneys' fees is barred by the provisions of California Code of Civil
21 Procedure § 1021 and *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(Business Judgment)**

24 4. As a separate and fourth affirmative defense to the Complaint and each
25 purported cause of action contained therein, this answering Defendant alleges that the
26 actions taken by this answering Defendant were the exercise of reasonable business
27 judgment.

28

FIFTH AFFIRMATIVE DEFENSE

(Compliance with the Law)

5. As a separate and fifth affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that the actions taken by this answering Defendant were in full compliance with the law.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

6. As a separate and sixth affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that Plaintiff is barred in whole or in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

7. As a separate and seventh affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that Plaintiff's claims, if any, are barred for their failure, and/or the failure of the persons and/or entities acting on her behalf, to mitigate any purported damages.

EIGHTH AFFIRMATIVE DEFENSE

(Justification/Excuse)

8. As a separate and eighth affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that by virtue of the acts of the Plaintiff, and/or the persons and/or entities acting on her behalf, Plaintiff is barred from prosecuting the purported causes of action set forth in the Complaint because the acts and/or omissions alleged in the Complaint were justified and/or excused.

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NINTH AFFIRMATIVE DEFENSE

(Laches)

9. As a separate and ninth affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that Plaintiff is barred in whole or in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

10. As a separate and tenth affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that Plaintiff lacks standing to prosecute the purported claims set forth in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

(Mistake)

11. As a eleventh separate and affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that Plaintiff is barred from recovering on the claims in its Complaint on the grounds of mistake.

TWELFTH AFFIRMATIVE DEFENSE

(Punitive Damages Barred)

12. As a separate and twelfth affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that Plaintiff's alleged claim for punitive damages is barred by the provisions of California Civil Code Sections 3294 and 3295.

THIRTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

13. As a separate and thirteenth affirmative defense to the Complaint and each purported cause of action contained therein, this answering Defendant alleges that the purported causes of action asserted in the Complaint are barred by such statutes of limitation as may be applicable, including, but not limited to, California Code of Civil

1 Procedure sections 335, 337, 338, 339, and 340, Labor Code §§ 203(b), and Business &
2 Professions Code §17208.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 **(Unclean Hands)**

5 14. As a separate and fourteenth affirmative defense to the Complaint and each
6 purported cause of action contained therein, this answering Defendant alleges that Plaintiff
7 is barred in whole or in part from prosecuting the purported causes of action set forth in the
8 Complaint by the doctrine of unclean hands.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Waiver)**

11 15. As a separate and fifteenth affirmative defense to the Complaint and each
12 purported cause of action contained therein, this answering Defendant alleges that Plaintiff
13 is barred in whole or in part from prosecuting the purported causes of action set forth in the
14 Complaint by the doctrine of waiver.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 **(Ongoing Investigation)**

17 16. As a separate and sixteenth affirmative defense to the Complaint and each
18 purported cause of action contained therein, this answering Defendant alleges that it has
19 not yet completed a thorough investigation or study or completed the discovery of all the
20 facts and circumstances of the subject matter of the Complaint and, accordingly, reserve
21 the right to amend, modify, revise or supplement its answer and to plead such other
22 defenses and take such other further actions as it may deem proper and necessary in its
23 defense upon completion of said investigation and/or study.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 **(This Action Is Not Appropriate for Class Action)**

26 17. As a separate and seventeenth affirmative defense to the Complaint and each
27 purported cause of action contained therein, Defendant alleges that neither the Complaint
28 nor any of the causes of action alleged are appropriate as a class action.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Plaintiff Is Not Representative of the “Class”)

18. As a separate and eighteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is not representative of the purported “class.”

NINETEENTH AFFIRMATIVE DEFENSE

(Common Questions Do Not Predominate)

19. As a separate and nineteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the questions of law and fact common to the class, if any, do not predominate over questions affecting the purported individual class members.

TWENTIETH AFFIRMATIVE DEFENSE

(Common Questions Do Not Predominate)

20. As a separate and twentieth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the questions of law and fact common to the class, if any, do not predominate over questions affecting the purported individual class members.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Class Action Not “Superior”)

21. As a separate and twenty-first affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that a class action is not “superior” to other methods available for adjudicating the purported controversy.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Class Membership Requires Individualized Inquiry)

22. As a separate and twenty-second affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff’s definition of the purported class is insufficient in that it requires an individualized analysis of each putative class member’s claim file as a precondition of class membership.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Breaks Voluntarily Waived)

23. As a separate and twenty-third affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges it provided Plaintiff and the putative class with duty free rest and meal breaks but upon information and belief, Plaintiff and the putative class waived the opportunity to have a duty-free break.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(De Minimis And Neutral Rounding)

24. As a separate and twenty-fourth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that any rounding applied to time recording or payroll systems was neutral and any variance caused in payroll was de minimis.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Plaintiff Cannot Recover Civil Penalties)

25. As a separate and twenty-fifth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff cannot recover penalties pursuant to the Labor Code, including but not limited to sections 201, 202, 203, 204, 221, 225.5, 226(a), 226.3, 226.7, 510, and 512.

WHEREFORE, Defendant prays that:

1. Plaintiff take nothing by reason of her Complaint;
2. Plaintiff's Complaint be dismissed with prejudice;
3. Defendant recover its reasonable attorneys' fees.
4. Defendant recover its costs of suit; and

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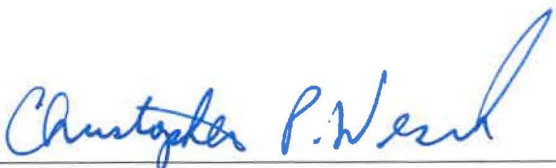
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5. Defendant be awarded such further relief as the Court deems just and proper.
DATED: March 25, 2021

WESIERSKI & ZUREK LLP

By: 
Christopher P. Wesierski
Attorneys for Defendant UNITED SECURITY
SERVICES, INC.

STATE OF CALIFORNIA, COUNTY OF ORANGE


Jennifer A Purcell

EXHIBIT 5



Sample size calculator

What margin of error can you accept?

5% is a common choice

32 %

The margin of error is the amount of error that you can tolerate. If 90% of respondents answer *yes*, while 10% answer *no*, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55.

Lower margin of error requires a larger sample size.

What confidence level do you need?

Typical choices are 90%, 95%, or 99%

95 %

The confidence level is the amount of uncertainty you can tolerate. Suppose that you have 20 yes-no questions in your survey. With a confidence level of 95%, you would expect that for one of the questions (1 in 20), the percentage of people who answer *yes* would be more than the margin of error away from the true answer. The true answer is the percentage you would get if you exhaustively interviewed everyone.

Higher confidence level requires a larger sample size.

What is the population size?

If you don't know, use 20000

2669

How many people are there to choose your random sample from? The sample size doesn't change much for populations larger than 20,000.

What is the response distribution?

Leave this as 50%

50 %

For each question, what do you expect the results will be? If the sample is skewed highly one way or the other, the population probably is, too. If you don't know, use 50%, which gives the largest sample size. See below under **More information** if this is confusing.

Your recommended sample size is

10

This is the minimum recommended size of your survey. If you create a sample of this many people and get responses from everyone, you're more likely to get a correct answer than you would from a large sample where only a small percentage of the sample responds to your survey.

Online surveys with **Vovici** have completion rates of 66%!

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	9.62%	6.67%	5.33%	Your sample size would need to be	7	10	17

Save effort, save time. **Conduct your survey online with Vovici.**

More information

If 50% of all the people in a population of 20000 people drink coffee in the morning, and if you were repeat the survey of 377 people ("Did you drink coffee this morning?") many times, then 95% of the time, your survey would find that between 45% and 55% of the people in your sample answered "Yes".

The remaining 5% of the time, or for 1 in 20 survey questions, you would expect the survey response to more than the margin of error away from the true answer.

When you survey a sample of the population, you don't know that you've found the correct answer, but you do know that there's a 95% chance that you're within the margin of error of the correct answer.

Try changing your sample size and watch what happens to the *alternate scenarios*. That tells you what happens if you don't use the recommended sample size, and how M.O.E and confidence level (that 95%) are related.

To learn more if you're a beginner, read **Basic Statistics: A Modern Approach** and **The Cartoon Guide to Statistics**. Otherwise, look at the **more advanced books**.

In terms of the numbers you selected above, the sample size n and margin of error E are given by

$$x = Z(c/100)^2 r(100-r)$$

$$n = N x / ((N-1)E^2 + x)$$

$$E = \text{Sqrt}[(N - n)x / n(N-1)]$$

where N is the population size, r is the fraction of responses that you are interested in, and $Z(c/100)$ is the **critical value** for the confidence level c .

If you'd like to see how we perform the calculation, view the page source. This calculation is based on the [Normal distribution](#), and assumes you have more than about 30 samples.

About **Response distribution**: If you ask a random sample of 10 people if they like donuts, and 9 of them say, "Yes", then the prediction that you make about the general population is different than it would be if 5 had said, "Yes", and 5 had said, "No". Setting the response distribution to 50% is the most conservative assumption. So just leave it at 50% unless you know what you're doing. The sample size calculator computes the critical value for the normal distribution. Wikipedia has good articles on statistics.

How do you like this web page? ☐ Good as-is ☐ Could be even better

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EXHIBIT 6

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Case title:	Calkins v. United Security Services, Inc.
Case no.:	20STCV35391
Court:	Los Angeles
Judge:	The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Saturday, September 17, 2016
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, September 17, 2017
Lab.Code § 2699 (civil penalties) period begins:	Monday, July 8, 2019
Lab.Code § 226 (pay stub penalties) period begins:	Tuesday, September 17, 2019
LWDA Notice:	Tuesday, July 7, 2020
Lawsuit:	Wednesday, September 16, 2020
Sample begin:	
Sample end:	
Sample calendar days:	
Mediation:	Monday, July 17, 2023
Anticipated Settlement Period end date:	Monday, July 17, 2023
Settlement Period to Sample Period:	

Numbers highlighted in green were calculated based on the electronic records
Numbers highlighted in yellow were provided by Defendant
Numbers highlighted in blue are based on assumptions or Plaintiff and PCM reports

Classes / Groups sizes

UCL Class Members:	2,669
UCL Workweeks:	30,741
UCL Wage Statements:	30,741
UCL Workdays:	108,147
Waiting Time Penalties Class Members:	2,563
PAGA Aggrieved Employees:	662
PAGA Wage Statements:	8,153
Wage Statement Class Members:	662
Wage Statement Class Wage Statements:	7,915

Averages

Average Hourly Rate:	\$ 16.85
Average Overtime Rate:	\$ 25.28
Average Doubletime Rate:	\$ 33.70

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Average Work Hours Per Day:	7.67
Average Work Hours Per Week:	34.70
Average Workdays Per Week:	4.00
Paycycle:	Weekly
Paychecks Per Year:	52

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Case title:	Calkins v. United Security Services, Inc.
Case no.:	20STCV35391
Court:	Los Angeles
Judge:	The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject:	Unpaid wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	16.85
Unpaid hours per pay week:		2.00
Actionable workweeks:		30,741
Percentage of shifts with violation:		90%
Interest:		10%
Unpaid wages:	\$	1,025,611.98

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Case title: Calkins v. United Security Services, Inc.
Case no.: 20STCV35391
Court: Los Angeles
Judge: The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject: **Unprovided Meal Periods**
Authority: Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	\$	16.85
Actionable workdays:		108,147
>>Percentage qualifying for meal periods:		93.90%
Violation rate (%)		60.00%

Meal period premium wages:	\$	1,026,670.83
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Case title: Calkins v. United Security Services, Inc.
Case no.: 20STCV35391
Court: Los Angeles
Judge: The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject: **Unprovided Rest Periods**
Authority: Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	16.85
Actionable workdays:		108,147
>>Percentage qualifying for rest periods:		97.09%
Violation rate (%)		100.00%

Rest period premium wages:	\$	1,769,248.69
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Confidential Settlement Communication

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Case title:	Calkins v. United Security Services, Inc.
Case no.:	20STCV35391
Court:	Los Angeles
Judge:	The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226

Wage Statement Class Members:	662
Wage Statement Class Wage Statements:	7,915
Initial penalty:	\$ 50.00
Subsequent penalty:	\$ 100.00
Statutory wage statement penalties:	\$ 758,400.00

Confidential Settlement Communication

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Case title:	Calkins v. United Security Services, Inc.
Case no.:	20STCV35391
Court:	Los Angeles
Judge:	The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:	2,563
Days waiting:	30
Average Hourly Rate:	\$ 16.85
Average Overtime Rate:	\$ 25.28
Average Doubletime Rate:	\$ 33.70
Average Work Hours Per Day:	7.67
Regular Hours Per Day:	7.67
Overtime Hours Per Day:	-
Doubletime Hours Per Day:	-
Waiting time penalties:	\$ 9,937,225.16

Confidential Settlement Communication

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Case title:	Calkins v. United Security Services, Inc.
Case no.:	20STCV35391
Court:	Los Angeles
Judge:	The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil		Pay periods		Total
	Penalty Statute	Initial penalty			
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	8,153	\$	815,300.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	8,153	\$	407,650.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	8,153	\$	815,300.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 2699	\$ 100.00	8,153	\$	815,300.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	8,153	\$	815,300.00
Total:				\$	3,668,850.00

Confidential Settlement Communication

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Case title:	Calkins v. United Security Services, Inc.
Case no.:	20STCV35391
Court:	Los Angeles
Judge:	The Honorable Lawrence P. Riff, Dept. SSC-007
Page subject:	Totals
Authority:	Various

Restitution		Reduction		Demand
Unpaid wages:	\$ 1,025,611.98	50%	\$	512,805.99
Meal period premium wages:	\$ 1,026,670.83	50%	\$	513,335.42
Rest period premium wages:	\$ 1,769,248.69	50%	\$	884,624.35
Restitution subtotal:	\$ 3,821,531.51		\$	1,910,765.75
Penalties				
Statutory wage statement penalties:	\$ 758,400.00	75%	\$	189,600.00
Waiting time penalties:	\$ 9,937,225.16	75%	\$	2,484,306.29
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 815,300.00	90%	\$	81,530.00
Meal periods Lab.Code § 512):civil penalties:	\$ 407,650.00	100%	\$	-
Rest periods (Lab.Code § 1198):civil penalties:	\$ 815,300.00	100%	\$	-
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 815,300.00	100%	\$	-
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 815,300.00	100%	\$	-
Penalties subtotal:	\$ 14,364,475.16		\$	2,755,436.29
Grand total:	\$ 18,186,006.66		\$	4,666,202.04

EXHIBIT 7



SPIVAK LAW

ATTORNEY CONSULTATION AND FEE CONTRACT FOR CONTINGENCY CASES

THIS FEE CONTRACT FOR CONTINGENCY CASES ("Contract") is made on April 10, 2020, in Encino, between **Carissa Calkins** hereinafter referred to as "Client," and The Spivak Law Firm of Los Angeles County, CA and United Employees Law Group, PC of Orange County, CA hereinafter referred to as "Attorney."

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

I. PURPOSE OF REPRESENTATION

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

class action claims and Private Attorneys General Act representative claims against United Security Services Inc. and related entities for unpaid off the clock work

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

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

II. ATTORNEY'S FEE AND EXPENSES

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

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

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

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

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

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

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

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

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

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

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

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

CM (Client initials here)

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

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

CM (Client initials here) DS (Attorney initials here)

III. APPROVAL NECESSARY FOR SETTLEMENT

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

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

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

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

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

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

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

IV. REPRESENTATIONS

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

V. DEDUCTION OF EXPENSES

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

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

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

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

VI. COOPERATION OF CLIENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



_____ (Client initials here)

VII. CALIFORNIA LAW TO APPLY

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

VIII. PARTIES BOUND

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

IX. LEGAL CONSTRUCTION

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

X. PRIOR AGREEMENTS SUPERSEDED

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

XI. RESOLUTION OF DISPUTES BY ARBITRATION

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

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

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

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

CM (Client initials here) DS (Attorney initials here)

TAX DISCLOSURE AND ACKNOWLEDGMENT:

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

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

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

XII. DISCLAIMER OF GUARANTEE

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

XIII. DISCHARGE AND WITHDRAWAL

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

XIV. EFFECTIVE DATE

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

Carissa Calkins

4/10/2020

Page 10 of 13

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

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

SIGNED on Apr 10, 2020



Carissa Calkins

SIGNED on 04 / 27 / 2020

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STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

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

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

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

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

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

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

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

lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about the possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of the lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

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

SIGNED on Apr 10, 2020



Carissa Calkins

SIGNED on 04 / 27 / 2020

The Spivak Law Firm



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EXHIBIT 8

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “**prevailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings; these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine " " "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." " " (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (*Code Civ. Proc.*, § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount *plaintiffs are entitled to*

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

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EXHIBIT 9

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC-09-484879). | Nov. 30, 2011.

Attorneys and Law Firms

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Wesley Jerome Fastiff, Michael Gayland Pedhirney, Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

NEEDHAM, J.

***1** Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent's motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant's unpaid wages claim and her constructive termination claim, for which no attorney's fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was "owed wages" and was "owed for accrued paid time off," and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu's "conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment." In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and "reasonable attorney's fees, pursuant to [Labor Code Section 218.5](#)." Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not **prevail** on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the **prevailing** party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the **prevailing** party and entitled to recover its fees and costs under [Labor Code section 218.5](#). Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under [Labor Code section 218.5](#), which authorizes recovery by the **prevailing** party, because her action was for overtime wages governed by [Labor Code section 1194](#), which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) [Labor Code section 218.5](#) was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under [Labor Code Section 218.5](#)

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to [Labor Code section 218.5](#).³ [Section 218.5](#) provides in pertinent part: "In any action brought for the *nonpayment of wages*, fringe benefits, or health and welfare or pension fund contributions, the court *shall* award reasonable attorney's fees and costs to the **prevailing** party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of [section 218.5](#) was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to [Labor Code \[sections\] 226.7 and 227.3](#)." [Section 226.7](#) refers to pay for time worked during mandated meal periods, and [section 227.3](#) refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the **prevailing** party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. ([Code Civ. Proc. § 1032, subd. \(a\)\(4\)](#).)

Third, Maria expressly requested attorney fees and costs pursuant to [section 218.5](#) upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley, supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 10

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,

v.

SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

***1** Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc., §§ 473, 1008.](#)) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code, § 218.5.](#)) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

*2 On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order...” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F] ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List .)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

***5** That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*).)

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”, italics added].)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

***9** After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

^[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

***10** This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here—that an employer's agreement to compensate employees for the inconvenience of being on call “automatically render[s] the time spent on standby ‘working time’....” (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide “at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work” but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: “In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action.”⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a “one-way” fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: “[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit.”

*11 Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) “would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for ‘wages....’ [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... ‘California courts have long recognized [that] wage and hour laws “concern not only health and welfare of the workers themselves, but also the public health and general welfare.” ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to ‘encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.’ [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims.” (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted “working” under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

- ¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.
- ² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare [English v. Ikon Business Solutions, Inc.](#) (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with [Avila v. Chua](#) (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)
- ³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.
- ⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.
- ⁵ All further statutory references are to the Labor Code.

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EXHIBIT 11

2009 WL 4718721

Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

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Kimberley Ann Worley, [Stephen R. Holden](#), Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

***1** On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8–11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11–12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipli[cation of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in* *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. See Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 12

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid *legal* claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

***Most people consider a lawsuit an "act of war."** They probably *were* on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. *AWKWARD!* No wonder they've turned on you.

***Some employees really, sincerely do believe the company was in the right.** Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really *were* very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

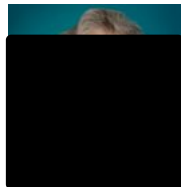
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably *don't* have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents **employees** in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

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Tags: [employee lawsuits](#)

EXHIBIT 13

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

Follow Janice Harper on Twitter: www.twitter.com/Janice_Harper

6 people are discussing this article with **11 comments**

Comments are closed on this entry.

Highlighted Most Recent Oldest Most Faved My Conversations

Pippen
287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

FAVE SHARE MORE

DHC

SUPER USER · 56 Fans

1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

FAVE SHARE MORE

kjk326

2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

FAVE SHARE MORE

ARTICLE AUTHOR

Janice Harper

HUFFPOST BLOGGER · 218 Fans

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

FAVE SHARE MORE

3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

FAVE SHARE MORE

Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the argument that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 14

XPAND

Case Name:

Calkins v. United Security

Date:

May 29, 2024

Client Name:

Emily Houg Ly

Client Email:

emily@spivaklaw.com

Xpand Contact:

Jonathan Paul

Xpand Contact Email Address:

jonathan@xpandlegal.com

Xpand Contact Phone Number:

310.948.7117

**Cost Estimate for Legal Administration Services*

**Pricing Good for 90 Days*

**Assumes Scope Within - Additional Services Priced Accordingly*

Key Assumptions Used for Pricing

Class Size	2,669
Undeliverable Mail (estimated %)	10%
Forwarded Mail (estimated %)	5%
Toll Free Telephone Support	Yes
Website	Yes
Spanish Translation	Yes
National Change of Address (NCOA)	Yes
Wage Tax Reporting	Yes
Number of States for Tax Reporting	1
Number of Payment Distributions	1
Tax Reporting Years	1
	Government
Remaining Funds After Distribution	Recipient

Case Setup

Service	Type	Cost Per Piece	Volume	Total
Project Manager - Case Setup, Document Review & Timeline	Hourly	\$125.00	1	\$125.00
Data Analyst - Data Analysis, Formatting, Uploading to Database*	Hourly	\$120.00	1	\$120.00
NCOA (Includes CASS & LACS)	Flat Fee	\$233.59	1	\$233.59
Spanish Translation	Flat Fee	\$500.00	1	\$500.00
Toll Free Telephone Support	Flat Fee	\$750.00	1	\$750.00
Static Website	Flat Fee	\$200.00	1	\$200.00
Total				\$1,928.59

**Xpand assumes mailing data will be provided in Microsoft Excel or other usable format and will not require substantial manipulation. Additional formatting and manipulation will be billed at \$125/hour.*

Notification

Service	Type	Cost Per Piece	Volume	Total
Print & Mail Notice Package	Per Piece	\$0.75	2,669	\$2,001.75
USPS First Class Mail - 1oz	Per Piece	\$0.61	2,669	\$1,628.09
Submission Processing (Opt Outs, Disputes, Objections)	Hourly	\$70.00	3	\$210.00
Undeliverable Mail Processing	Per Piece	\$0.95	267	\$253.56
Address Trace Undeliverable Mail	Per Piece	\$0.95	267	\$253.56
Remail Notice Package (Undeliverable & Forwards)	Per Piece	\$1.25	347	\$433.71
Total				\$4,780.66

Project Management

Service	Type	Cost Per Piece	Volume	Total
Project Manager - Client Inquiries, General Oversight & Management	Hourly	\$100.00	3	\$300.00
Status Reporting (Ongoing & Final)	Hourly	\$60.00	2	\$120.00
Declaration (Final Approval & Payment)	Hourly	\$100.00	2	\$200.00
Executive Oversight	Hourly	\$200.00	1	\$200.00
Total				\$820.00

Distribution

Service	Type	Cost Per Piece	Volume	Total
Project Manager - Setup & Preparation	Hourly	\$125.00	1	\$125.00
Data Analyst - Payment File Production & Quality Review	Hourly	\$100.00	1	\$100.00
Print & Mail Payments	Per Piece	\$0.75	2,669	\$2,001.75
USPS First Class Mail - 1oz	Per Piece	\$0.60	2,669	\$1,601.40
Undeliverable Payment Processing	Per Piece	\$0.90	267	\$240.21
Address Trace Undeliverable Mail	Per Piece	\$0.90	267	\$240.21
Remail Payments (Undeliverable & Forwards)	Per Piece	\$1.00	347	\$346.97
Reminder Postcard Mailing	Per Piece	\$0.90	267	\$240.21
Tax ID Setup & Shutdown	Flat Fee	\$200.00	1	\$200.00
Qualified Settlement Fund (QSF) Creation, Reporting & Closure	Hourly	\$125.00	3	\$375.00
QSF Monthly Fees & Account Reconciliation	Per Piece	\$100.00	3	\$300.00
Process Remaining Funds	Flat Fee	\$200.00	1	\$200.00
Total				\$5,970.75

Total Case Cost - Flat Fee: \$13,500.00

Terms & Conditions

All services to be provided by Xpand Legal (hereinafter, "Xpand") to Client shall be subject to the following Terms and Conditions of this Agreement:

- **Services:** Subject to the terms hereof, Xpand 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 referenced and in accordance of the Court's direction. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not include any services not referenced in the request for proposal. These services do not constitute legal services or advice. Xpand is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.
- **Charges for Services:** Charges to the Client for services shall be on a time and materials basis at our prevailing rates and are subject to change. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to Xpand. Actual fees charged by Xpand to Client may be greater or less than the estimate, and Client shall be responsible for the payment of all charges and expenses in accordance with Section 3 below. Charges incurred related to 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. Xpand may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.
- **Payment of Charges:** Xpand will process payment of charges once payments are made to class members and counsel in accordance with direction from the court. However, decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement or case status, do not affect the Client's liability to Xpand for payment of services. Services are not provided on a contingency fee basis.
- **Indemnification:** Client will indemnify and hold Xpand (and the officers, employees, affiliates and agents harmless against any Losses incurred by Xpand, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any aspect of the project by Xpand in accordance with Client's instructions.
- **Confidentiality:** Xpand maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of data provided to Xpand by Client or another party to the action. Should Xpand 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, Xpand will notify the Client, unless prohibited by applicable law. The Client will have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse Xpand 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 Xpand 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, Xpand will not be liable for breach of said obligation.
- **Data Rights:** Xpand does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by Xpand in the ordinary course of business in the performance of this Agreement.
- **Document Retention:** Unless directed otherwise in writing by Client, Xpand will maintain documents 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:** Xpand is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of Xpand to the Client shall not exceed the total amount billed to the Client for the 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 Xpand. 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. Xpand may terminate this Agreement at will (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. The Client is obligated to pay for all Services at the time of termination under this paragraph; no deferral period shall take place.
- **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 Xpand 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 Xpand of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond Xpand's reasonable control, then such performance shall be excused and this Agreement, at Xpand'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 either party in exercising any right will operate as a waiver of, or impair, any 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 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.
- **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

EXHIBIT 15



May 29, 2024

CASE ASSUMPTIONS

Class Members	2,669
Opt Out Rate	1%
Opt Outs Received	44
Total Class Claimants	2,625
Subtotal Admin Only	\$22,116.11

Flat Fee Total \$20,000.00

For 2,669 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Calkins v, United Security, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Houny Ly
Firm: The Spivak Law Firm
Contact Number: (818) 205-9033
Email: emily@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **2,669** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

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*	\$100.00	1	\$100.00
Call Center & Long Distance	\$2.00	374	\$747.32
NCOA (USPS)	\$533.80	1	\$533.80
Total			\$1,781.12

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Language Translation	\$1,000.00	1	\$1,000.00
Data Merge & Duplication Scrub	\$0.10	2,669	\$266.90
Notice Packet & Opt-Out Form	\$1.25	2,669	\$3,336.25
Estimated Postage (up to 2 oz.)*	\$0.81	2,669	\$2,161.89
Static Website	\$200.00	1	\$200.00
Check Cashing Reminder Postcard Postage Included	\$0.60	486	\$291.60
Total			\$7,456.64

* 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	2		\$110.00
Skip Tracing Undeliverables	\$1.00	400		\$400.35
Remail Notice Packets	\$1.30	397		\$516.56
Estimated Postage	\$0.87	397		\$345.69
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$1,472.60

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	6		\$330.00
Deficiency & Dispute Letters	\$10.00	44		\$440.00
Case Manager	\$85.00	5		\$425.00
			Total	\$1,545.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	15		\$2,025.00
Mail Class Checks *	\$0.75	2,625		\$1,968.75
Estimated Postage	\$0.64	2,625		\$1,680.00
			Total	\$6,268.75

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



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	2		\$230.00
Remail Checks (Postage Included)	\$2.00	321		\$642.00
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$3,592.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$22,116.11



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 16

CASE NAME: CALKINS V. UNITED SECURITY

Requesting Attorney: Emily Houg Ly

Plaintiff or Defense: Plaintiff

Firm Name: Spivak Law

Telephone: (818) 205-9033

Email: emily@spivaklaw.com

Date: May 29, 2024

Prepared By: Timothy Phillips

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Direct Number: (818) 415-2703

Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 2,669

Opt-Out Filing Rate: 1.5%

No. of Checks Issued: 2,629

Language Translation Services: Yes

Settlement Website: Static Website

Notice Procedures: Mail

Undeliverable Mail Rate: 8%

Payment Option: Check

Unclaimed Funds: SCO

Postage Total: \$4,881.51

Grand Total: \$34,417.82

CPT'S DISCOUNTED FEE: \$24,500.00

The services and numbers reflected herein are estimates based on the information provided by counsel at the time of this Bid. If the actual services and numbers are different, our cost estimate will change accordingly. Client expressly acknowledges and agrees that estimated fees and costs may fluctuate and agrees to pay for any such increases to such estimates as if set forth herein.

The attached Terms and Conditions are included as part of and incorporated by reference to our cost proposal. By accepting our cost proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies; this process is designed to achieve a higher success percentage in delivering the Class Notice. Each Class Member will receive a unique mailing ID that will be utilized for all administrative purposes. If necessary, CPT will translate the court approved Notice documents and opt-out form into Spanish. The Settlement website will publish the full Notice and all relevant case documents for downloading.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	7	\$665.00
Programming: Data Base Setup	\$150.00	7	\$1,050.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Sub Total:			\$3,415.00

DIRECT MAIL NOTIFICATION

CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. A detailed notice and a one-page opt-out form will be mailed in English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$250.00	1	\$250.00
XML Lex ID Skip Trace	\$0.75	267	\$200.25
Print & Mail Notice Packets	\$1.50	2,669	\$4,003.50
First-Class Postage (up to 2 oz.)*	\$0.88	2,669	\$2,348.72
Sub Total:			\$6,992.47

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 8% of the notices are returned as undeliverable. Upon notification from USPS, CPT performs a skip trace to locate a current address. Typically, 70% of the undeliverable notice packets are eligible for remail with an updated address.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	4	\$240.00
Update Undeliverable Mail Database	\$0.50	214	\$107.00
Skip Trace for Best Address	\$1.00	190	\$190.00
Print & Remail Notice Packets	\$1.50	150	\$225.00
First-Class Postage (up to 2 oz.)	\$0.88	150	\$132.00
Sub Total:			\$894.00

OPT-OUT PROCESSING

CPT will thoroughly examine the submissions to identify and remove any duplicates, fraudulent responses, or otherwise invalid submissions. CPT will process and verify opt-outs, objections, and other responses submitted by class members. Deficient responses will be sent a follow-up notice, offering the class member a chance to cure.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	7	\$1,050.00
Project Manager: Validate Opt-Outs	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out Processing	\$2.50	40	\$100.09
Print & Mail Deficiency/Dispute Notices	\$1.50	3	\$4.50
First-Class Postage (up to 1 oz.)	\$0.68	3	\$2.04
Review & Process Deficiency Responses	\$10.00	2	\$20.00
Sub Total:			\$1,331.63

CLASS MEMBER SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	534	\$1,602.00
Sub Total:			\$1,902.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	2,629	\$262.90
Sub Total:			\$697.90

DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon Final Approval, CPT will perform the required settlement payment calculations, and once approved by the parties, CPT will issue a (MICR) check to all eligible claimants. CPT will also issue an IRS Form 1099 and/or IRS Form W2 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds. All Class members who do not cash a check will be sent a check reminder postcard.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	6	\$900.00
Project Manager: Correspondence w/Parties	\$95.00	3	\$285.00
Programming: Setup & Printing of Checks	\$150.00	4	\$600.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	2,629	\$6,572.41
First-Class Postage (up to 1 oz.)	\$0.64	2,629	\$1,682.54
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	131	\$65.72
Skip Trace for Best Address	\$1.00	131	\$131.45
Remail Undeliverable Checks	\$2.50	120	\$300.00
First-Class Postage (up to 1 oz.)	\$0.68	120	\$81.60
Re-Issue Checks as Required	\$5.00	106	\$530.00
First-Class Postage (up to 1 oz.)	\$0.68	106	\$72.08
Check Reminder Postcard	\$0.40	1,972	\$788.69
Postage for Check Reminder Postcard	\$0.53	1,045	\$553.86
Sub Total:			\$15,263.35

TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations.

All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Sub Total:			\$3,040.00

*CPT will file Federal and California taxes in accordance with current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	552	\$82.80
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.68	1	\$8.68
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$881.48

Total Administration Costs: \$34,417.82

Courtesy Discount: -\$9,917.82

CPT'S DISCOUNTED FLAT FEE: \$24,500.00

TERMS AND CONDITIONS

These Terms and Conditions (“**Terms and Conditions**”) are made a part of, and incorporated by reference into, any Bid presented by CPT Group, Inc. (“**CPT**”) to Client. Each of Client and CPT is a “**Party**” to this Agreement, and collectively, the “**Parties**”.

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) “**Agreement**” means these Terms and Conditions and the Bid.
 - c) “**Applicable Laws**” means all applicable local, state and federal laws, ordinances, rules and regulations.
 - d) “**Approved Bank**” means any financial institution that is insured by the Federal Deposit Insurance Corporation.
 - e) “**Bid**” means a proposal, statement of work, order form, and/or schedule for Services (including any and all addendums, exhibits, or amendments thereto) provided by CPT to Client.
 - f) “**Case**” means the case referred to in the attached Bid and/or the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the caption of the applicable Court Order.
 - g) “**Class**” means Members and putative Members collectively.
 - h) “**Client**” means the party or parties engaging CPT for Services as set forth in the Bid, namely Plaintiff Counsel and/or Defense Counsel.
 - 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(s) 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) “**Member**” means an individual who is eligible under the Case or Class to receive a communication about their pending legal rights under the matter and/or designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons or other parties in the representative action so designated or addressed therein.
 - o) “**Member Content**” means all Member written document communications relating to the Case, including claim forms, opt-out forms, and/or objections, which may contain Member Data.
 - p) “**Member Data**” means proprietary or personal data regarding Members under this Agreement.
 - q) “**Parties To The Case**” shall mean collectively Defendant(s) and Plaintiff(s) as defined in the Settlement Agreement or Court Order.
 - r) “**Plaintiff**” means the named party and/or parties in the Case who are bringing the action.
 - s) “**Plaintiff Counsel**” means the attorney(s) of record for Plaintiff(s) in the Case, and/or upon certification by the Court the attorney(s) of record designated to represent the Class.
 - t) “**Products**” means any and all CPT Services and work product resulting from Services.
 - u) “**Qualified Settlement Fund**” or “**QSF**” means a bank account established pursuant to U.S. Department of Treasury Regulations §1468B-1.
 - v) “**Service**” means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Members; (ii) setting up a QSF with an Approved Bank; (iii) management of disbursement of funds from the QSF 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.
 - 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 Members.
 - x) “**Settlement Amount**” means the total dollar amount agreed to between Parties To The Case to resolve the Case to mutual satisfaction.
 - y) “**Software**” means any and all of CPT’s software applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - z) “**Transmission Methods**” means the secure authorized manner to send Member Data and/or Wire Information as specified on a schedule or exhibit hereto.
 - aa) “**Term**” means the period commencing on the date set forth on the Bid and continuing until the date of final judgment (if a settlement) or upon completion of all Services as set forth in the Bid.
 - bb) “**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 and use Member Data for the purposes permitted under this Agreement and shall only transmit Member Data and/or Wire Information to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Member Data provided under this Agreement. Client further warrants that any Member Data, Wire Information, or other content, data, materials or information it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect Member 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. CPT Obligations. CPT will (i) maintain appropriate safeguards designed to protect Member Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Member 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 Parties To The Case, Members, Plaintiff Counsel or Defense Counsel as applicable.
4. Security. Client and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any Member Data in its possession or control under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such Member Data; (c) protect against unauthorized access to or use of such Member Data that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such Member Data in connection with its disposal.
- a) Incident Notification. In the event a Party discovers that Member Data relating to the Case is the subject of (i) any unauthorized acquisition, loss, access or use and/or (ii) an actual or suspected breach concerning such Party’s systems (items (i) and/or (ii) a “**Security Incident**”), or a Party has a reasonable belief that a Security Incident has occurred or is at risk of occurring, such Party will promptly but no later than forty-eight (48) hours of its discovery of such circumstances, inform the other Parties in the event of such Security Incident, and shall utilize best efforts to assist the other Parties to mitigate the effects of such Security Incident.
 - b) Response Procedures. In the event of a Security Incident, the breached party shall (i) cooperate with any reasonable investigation concerning the Security Incident by the other Parties, regulators and/or law enforcement; and (ii) cooperate with the other Parties to comply with Applicable Laws concerning such Security Incident, including any notification to affected individuals. The Parties acknowledge that the breached party in any Security Incident shall be the Party responsible for

- any and all remedies and costs under Applicable Laws concerning such Security Incident, unless such breach occurred due to another Party's actions hereunder, in which instance such party shall be comparatively responsible for all remedies and costs. In no event will any Party serve notice or otherwise publicize a Security Incident without the prior written consent of the other Parties. The Parties shall reasonably cooperate and coordinate with each other to respond to the Security Incident, including with regard to the content of notification to affected individuals.
6. Qualified Settlement Fund Account. When the Case has a Settlement Amount CPT shall be authorized to establish one or more QSF bank accounts at an Approved Bank if and as applicable to the Services as set forth in the Bid. The amounts held at the Approved Bank under this Agreement are at the sole risk of Defendant. 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 for Services is as stated on the Bid, and Client agrees to pay CPT in the amounts set forth on the Bid. Client will be invoiced per the schedule set forth in the Bid, and payment of fees will be due within 30 days after the date of the invoice, except where the Bid or terms of the Settlement Agreement or Court Order expressly prescribes other payment dates. All fees set forth in a Bid 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% per month (or the highest rate allowable by law, whichever is lower) on the outstanding balance from the date due until the date of actual payment, which such late charge(s) may be charged against the QSF account if incurred in connection with Services provided pursuant to administration of a settlement. 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. . In connection with CPT's administration of a QSF, unless otherwise stated in the Settlement Agreement or Court Order concerning disbursement of unclaimed funds in the QSF account, CPT reserves the right, after one (1) year of issuance of disbursements to Members, to classify any remaining balance in such QSF account as additional administrative fees payable to CPT until such time as the QSF account balance becomes zero (\$0.00), and thereafter close such account.
 8. Term and Termination.
 - a) Term. The Term is set forth in the Bid. 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 written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally inputted into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member 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.
 9. Confidentiality. Each Party 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. CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member 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 Member 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 GROSS NEGLIGENCE OR 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 FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE 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 the 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, 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 as set forth on the Bid 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 may use subcontractors to perform Client-specific Services; provided however, that 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) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 17

Case Name: CALKINS v. UNITED SECURITY

Wednesday, May 29, 2024

Requesting Attorneys Name:	Emily HOUNG Ly
E-Mail:	emily@spivaklaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

Estimate For Administrative Solutions: Class & PAGA

KEY ASSUMPTIONS	
Total Number of Class Members	2,669
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	Yes
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$650.00
Project Management & Noticing:	\$3,830.00
Notification & Mailing:	\$5,180.95
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$7,174.05
Case Conclusion:	\$1,015.00

Total ILYM Fees & Expenses: \$17,850.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: CALKINS v. UNITED SECURITY

Wednesday, May 29, 2024

Requesting Attorneys Name: Emily Houg Ly

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

*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 \$650.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$500.00	1	\$500.00
Toll Free Customer Service Representative	Flat Fee	\$550.00	1	\$550.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$3,830.00

NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$0.90	2,669	\$2,402.10
USPS First Class Postage	Per Piece	\$0.88	2,669	\$2,348.72
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$1.00	320	\$320.28
Storage, Photocopies, Deliveries	Flat Fee	\$109.85	1	\$109.85

Subtotal \$5,180.95

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: CALKINS v. UNITED SECURITY

Wednesday, May 29, 2024

Requesting Attorneys Name: Emily Hough Ly

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Check, Stub & Release - Print & Mail (W-2/1099)	Per Check	\$0.60	2,669	\$1,601.40
USPS First Class Postage	Per Piece	\$0.64	2,669	\$1,708.16
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$0.90	214	\$192.17
Reminder Postcard for Uncashed Checks	Per Piece	\$0.80	934	\$747.32
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$7,174.05

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds to the State	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$1,015.00

Total ILYM Fees & Expenses: \$17,850.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 18



Reference No. 20240529-PJI-02

May 29, 2024

Emily HOUNG Ly
The Spivak Law Firm
1801 Century Park East, 25th Floor
Los Angeles, CA 90067

RE: Calkins v. United Security

Dear Emily,

Thank you for this opportunity to provide a quote for your above-captioned settlement. Using the parameters you described, Simpluris' total estimated cost is \$24,733. As a courtesy, we are applying a \$5,000 discount, for a discounted total of \$19,733.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Patrick J. Ivie".

PATRICK J. IVIE
Chief Revenue Officer

m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com



3194-C Airport Loop Drive, Costa Mesa, CA 92626
www.simpluris.com | 1 (800) 779 - 2104

Estimate Number:	20240529-PJI-02	Prepared By:	Patrick J. Ivie
Estimate Date:	5/29/2024	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	8/27/2024	Email:	pivie@simpluris.com

Client Contact
Attorney: **Emily Houny Ly**
Firm: The Spivak Law Firm
Email: emily@spivaklaw.com

Opposing Counsel Contact
Attorney:
Firm:
Email:

**Case Name: Calkins v. United Security
Class and PAGA Settlement**

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	2,669	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN/SP	Average Call Length:	4 Minutes
Reminder Mailing:	N/A	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months		

Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$90.00	3	\$270.00
Case Document Web Postings	\$225.00	1	\$225.00
Database Manager - Initial Data Analysis	\$105.00	4	\$420.00
Total:			\$915.00

Notice and Communications

- Spanish Translation of the class Notice
- 14 page Notice Packet: Opt-Out Form, Dispute Form & Objection Form, sent by First Class US Mail, in English and Spanish
- Single Postcard Reminder Mailing

Category	Unit Value	# of Units	Total
Spanish Translations - assuming 7,000 words	\$0.20	7,000	\$1,400.00
Bilingual Notice Packet - assuming 28 images	\$2.88	2,669	\$7,686.72
Postage	\$0.57	2,669	\$1,521.33
NCOA/CASS/LACS	\$0.14	2,669	\$373.66
Undeliverable Processing and Skip Trace	\$0.22	267	\$58.74
Remail Notice (assuming 85% skip trace success)	\$3.88	227	\$880.57
Remail Postage	\$0.62	227	\$140.71
Single Postcard Reminder Mailing	\$0.13	2,669	\$346.97
Postage	\$0.43	2,669	\$1,147.67
Mailing Supervisor	\$45.50	4	\$182.00
Total:			\$13,738.37

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 4-minute calls

Category	Unit Value	# of Units	Total
Call Center Set Up	\$400.00	1	\$400.00
Toll Free Monthly Maintenance	\$90.00	9 Months	\$810.00
IVR (includes toll-free number charges)	\$15.00	8	\$120.00
Subtotal			\$1,330.00

Administration

- Process incoming class and counsel communications, opt-outs, disputes, and objections

Category	Unit Value	# of Units	Total
Database Manager	\$105.00	3	\$315.00
Project Manager	\$90.00	3	\$270.00
Dispute Processing	\$2.45	133	\$326.95
Opt-out Processing	\$2.45	27	\$66.15
Reporting to Counsel (hours)	\$100.00	5	\$500.00
Total:			\$1,478.10

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed funds will be sent to the California Controller's Unclaimed Property Fund
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	4	\$500.00
Disbursement Manager - Data Validation	\$80.00	4	\$320.00
Setup Banking Account/QSF	\$350.00	1	\$350.00
QSF Monthly Reconciliation and Maintenance	\$75.00	9	\$675.00
Print & Mail Distribution Check and Tax Docs	\$0.45	2,669	\$1,201.05
Postage	\$0.57	2,669	\$1,521.33
Process Returned Checks (assuming 5%)	\$0.10	134	\$13.40
Skip Trace Search Undeliverable Checks	\$0.12	134	\$16.08
Remail Checks (includes postage)	\$1.60	134	\$214.40
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$750.00	1	\$750.00
Distribution Manager	\$80.00	3	\$240.00
Total:			\$6,801.26

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$105.00	2	\$210.00
Clerical-Clean Up Any Misc.	\$40.00	2	\$80.00
Project Manager-Wrap-up Final Issues	\$90.00	2	\$180.00
Total:			\$470.00

Total Estimated Cost of Administration:	\$24,733
Less Client Courtesy Discount:	-\$5,000
Discounted Total:	\$19,733

Terms and Conditions

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

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris 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 compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

EXHIBIT 19