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5 Attorneys for Plaintiffs VIVIAN LY, WENDY
MACIEL, and RENE PALACIOS, on behalf of
6 themselves and others similarly Aggrieved Employees.

7
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SACRAMENTO**

10 VIVIAN LY, on behalf of herself and
others similarly situated,

11 Plaintiff,

12 v.

13 PRIME COMMS RETAIL, LLC, a
14 Delaware limited liability company; and
DOES 1 through 50, inclusive,

15 Defendants.
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Case No. 34-2020-00281668

**DECLARATION OF DAVID MARA, ESQ. IN
SUPPORT OF PLAINTIFFS' MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: November 16, 2021

Time: 9:00 a.m.

Place: Dept. 54

Reservation No. 2591498

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs in this matter. I am
3 duly admitted to practice before all the courts of the state of California. The following facts
4 are within my personal knowledge and, if called to testify, I could and would competently
5 testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and
9 cases alleging violations of the Private Attorneys General Act of 2004 ("PAGA").
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court,
11 Case No. GIC834348, which was the underlying case in the California Supreme Court's
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
13 which the California Supreme Court delineated the scope of employer obligations to provide,
14 and employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California ("CAOC") in the
16 recent decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.*
17 (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest
18 breaks is not considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the
20 California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and
21 wage and hour class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff's counsel in a host of other class actions involving violations of
24 California's wage and hour laws. For example, I have been and am involved as counsel for
25 plaintiffs in the following sampling of class action cases involving wage and hour violations
26 under California law: *Davis v. Apria Healthcare Group* (Case No. 37-2015-00007743);
27 *Norona v. B&G Delivery System, Inc.* (Case No. RG1577005); *Perez v. City of San Diego*
28 (Case No. 37-2014-00016621); *Cuellar-Ramirez v. US Foods, Inc.* (Case No. RG15770766);

1 *Peron v. The Vons Companies, Inc.* (Case No. 15-cv-01567-L-JMA); *Hilderbrand v. LinkUs*
2 *Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific Pulmonary Services* (Case No.
3 CGC-15-547564); *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011); *Eure*
4 *v. Dotson v. Asbury Environmental Services* (Case No. RG16842620); *Spikes v. Bear*
5 *Trucking, Inc.* (Case No. 16CECG02389); *Reynoso v. Benjamin's Transfer, Inc.* (Case No.
6 FCS048845); *Montes v. Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-
7 00028950-CU-OE-CTL); *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-
8 00206727); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-
9 OE-CTL); *Martin v. Sysco Central California, Inc.* (Case No. 9000052).

10 9. Mara Law Firm, PC (formerly The Turley & Mara Law Firm, APLC) devotes a significant
11 portion of its practice specifically to wage and hour class actions. A majority of the cases I
12 handle are wage and hour class actions and actions filed pursuant to the Private Attorneys
13 General Act of 2004 ("PAGA"). Mr. Crawford solely handles wage and hour class actions and
14 PAGA actions. Mara Law Firm, PC, has been appointed class counsel in numerous federal
15 and state class actions. Mara Law Firm, PC, and its lawyers have handled over three hundred
16 and fifty (350) class action and PAGA lawsuits. Mara Law Firm, PC, and its lawyers have
17 successfully settled over one hundred (100) cases over a period of approximately fifteen (15)
18 years, resulting in the recovery of millions of dollars for class members.

19 10. Mara Law Firm, PC, is well versed in wage and hour class action law. Specifically, Mara Law
20 Firm, PC, has obtained class certification and has been certified as class counsel in the
21 following cases: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior
22 Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; YRC*
23 *Worldwide, Inc.* (Central District of California, Case No. 12-cv-01374-TJH); *John Martin v.*
24 *Sysco Corporation; Sysco Central California, Inc.* (Eastern District of California, Case No.
25 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.*
26 (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San Diego
27 County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL), and *Miguel Hernandez v.*
28 *MJ Industries, Inc.; MJ Tank Lines, Inc.* (San Diego County Superior Court, Case No. 37-

2017-00003218-CU-OE-CTL).

11. In addition, Mara Law Firm, PC, filed and fully briefed class certification motions before the following cases were settled: *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724); *Rick Frieri v. Sysco Corporation; Sysco San Diego, Inc.* (Southern District of California, Case No. 16-cv-1432-JLS-NLS); *Alberto Solano and Damon Randall v. Professional Auto Transport, Inc.* (San Bernardino County Superior Court, Case No. CIVDS1619020); *Richard Terry v. Hoovestol, Inc.* (Northern District of California, Case No. 3:16-cv-05183-JST); and *Kristina McConville v. Renzenberger, Inc.* (Central District of California, Case No. 2:17-cv-02972-FMO-JC).

12. I have litigated over three hundred and fifty (350) class action and PAGA lawsuits. I have been litigating wage and hour class action lawsuits for approximately sixteen (16) years. I graduated from California Western School of Law and was admitted to practice law in California in May 2004. I primarily handle wage and hour class actions and PAGA actions. I am the president of Mara Law Firm, PC.

13. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County Superior Court, Case No. GIC834348) which was the underlying case in the California Supreme Court's landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer obligations to provide, and employee rights to receive, meal and rest periods under California law. I also wrote the Amicus Curiae brief on behalf of Consumer Attorneys of California ("CAOC") in the decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not considered duty-free). I also wrote the Amicus Curiae brief on behalf of CAOC in the matter currently pending before the California Supreme Court, *Frlekin v. Apple, Inc.* (Cal. S. Ct. No. S243805).

14. I oversee all aspects of the class action and PAGA action cases Mara Law Firm, PC, handles. I also write a wide range of motions and argue at a wide range of hearings. I review and edit motions written by the associates at Mara Law Firm, PC; develop strategies with associates at

1 Mara Law Firm, PC, in how to best litigate each case; review and edit discovery that is sent
2 out to employers; review and edit clients' discovery responses; draft and revise complaints;
3 draft and revise retainers sent to clients; communicate with clients; communicate with class
4 members; communicate with defense counsel; communicate with co-counsel; review
5 documents produced by employers; conduct investigations into potential cases; research and
6 stay up to date in relevant law; attend mediations; draft, review, and revise settlement
7 agreements; and oversee all day to day matters in cases.

8 15. I have been named as class counsel in the following certified cases as a result of the court
9 granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.*
10 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*
11 *Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case No. 12-cv-
12 01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.* (Eastern
13 District of California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner*
14 *Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287);
15 *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-
16 00016621-CU-OE-CTL); and *Miguel Hernandez v. MJ Industries, Inc.; MJ Tank Lines, Inc.*
17 (San Diego County Superior Court, Case No. 37-2017-00003218-CU-OE-CTL).

18 16. Matthew Crawford is an associate at the Mara Law Firm. Mr. Crawford has been a member of
19 the California Bar since 2016. Mr. Crawford received his training in wage and hour class
20 action and PAGA lawsuits while at Mara Law Firm, PC. Mr. Crawford routinely writes and
21 opposes motions and argues at hearings, drafts and revises discovery propounded on
22 employers; communicates with clients; communicates with class members; communicates
23 with defense counsel; drafts and revises notices to the Labor and Workforce Development
24 Agency pursuant to the PAGA; creates exhibits for use in cases; reviews documents produced
25 by employers; deposes employer witnesses; defends client depositions; attends mediations;
26 drafts, reviews, and revises settlement agreements; drafts, reviews, and revises settlement
27 approval motions; argues at hearings on settlement motions; and oversees day to day work.

28 17. Tony Roberts was an associate at the Mara Law Firm. Mr. Roberts has been a member of the

1 California Bar since 2017. Mr. Roberts received his training in wage and hour class action and
2 PAGA lawsuits while at Mara Law Firm, PC. Mr. Roberts routinely writes and opposes
3 motions and argues at hearings, drafts and revises discovery propounded on employers;
4 communicates with clients; communicates with class members; communicates with defense
5 counsel; drafts and revises notices to the Labor and Workforce Development Agency pursuant
6 to the PAGA; creates exhibits for use in cases; reviews documents produced by employers;
7 deposes employer witnesses; defends client depositions; attends mediations; drafts, reviews,
8 and revises settlement agreements; drafts, reviews, and revises settlement approval motions;
9 argues at hearings on settlement motions; and oversees day to day work.

10 18. I devoted 110 hours to this case. The following is a summary of my tasks and the activities I
11 performed in this litigation: pre-filing investigation and legal research; initial communications
12 with Plaintiff Maciel; interviews of aggrieved employees; research and investigation in
13 California's ever-evolving wage and hour laws regarding compensation, overtime, meal and
14 rest periods, itemized wage statements, waiting time penalties, reimbursement of business
15 expenses, etc.; investigation into Defendants' pay-structures, policies, and, where applicable,
16 for its non-exempt employees; meetings with Plaintiff Maciel; review and revise notice to the
17 LWDA, draft and file pleadings; numerous inner-office conferences, conferences with co-
18 counsel, and conferences with Defendants' counsel regarding a variety of issues throughout
19 the litigation, mediation, and settlement; assist in drafting discovery requests for documents
20 and information needed prior to mediation; analyze records produced by Defendants relating
21 to its policies, pay-structures, and time keeping; review and revise mediation brief and
22 exposure model; prepare for and attend mediation; continued negotiation discussions with
23 mediator and Defendants until settlement was reached; edit, review, and negotiate
24 memorandum of understanding; edit, review, and negotiate long-form settlement agreement;
25 draft, review, and edit approval motion; draft declaration in support of approval motion.

26 19. My hourly rate is \$750. Based on my hourly rate and the hours expended thus far (110), my
27 fee is \$82,500, which was reasonable and necessary to the successful litigation of this matter.

28 20. Mr. Crawford devoted 47 hours to this case. The following is a summary of his tasks and

activities performed in the litigation of this matter: communicating with Plaintiff Maciel; numerous inner-office conferences, conferences with co-counsel, and conferences with Defendants' counsel regarding a variety of issues throughout the litigation, mediation, and settlement; draft joint case management statements; attendance at case management conferences; draft and revise Second Amended Complaint and stipulation for leave to amend; draft, review, and revise settlement approval motion; review settlement approval paperwork; appear at settlement approval hearing.

21. Mr. Crawford's hourly rate is \$500. Based on his hourly rate and the hours expended (47), his lodestar fee is \$23,500, which was reasonable and necessary to the successful litigation of this matter.

22. Mr. Roberts devoted 41 hours to this case. The following is a summary of his tasks and activities performed in the litigation of this matter: communicating with Plaintiff Maciel; draft notice to the LWDA; assist in drafting discovery requests for documents and information needed prior to mediation; analyze records produced by Defendants relating to its policies, pay-structures, and time keeping; review and revise mediation brief and exposure model; prepare for mediation; numerous inner-office conferences, conferences with co-counsel, and conferences with Defendants' counsel regarding a variety of issues throughout the litigation, mediation, and settlement; draft joint case management statements; attendance at case management conferences.

23. Mr. Robert's hourly rate is \$450. Based on his hourly rate and the hours expended (41), his lodestar fee is \$18,450, which was reasonable and necessary to the successful litigation of this matter.

24. In addition, my firm seeks reimbursement of the litigation costs and expenses of up to \$3,042.18. These costs were all reasonable and necessary to the prosecution of this case and the results achieved and are fair, reasonable, and unopposed by Defendant.

25. The proposed settlement is the product of serious, informed, non-collusive negotiations, has no obvious defects, does not improperly grant preferential treatment to the PAGA representative or segments of the aggrieved employees and falls within the range of fair and

1 reasonable settlements. I believe that this non-reversionary settlement is in the best interests of
2 the settlement group as fair, reasonable, and adequate. Therefore, I recommend approval of
3 the settlement.

4 26. A true and correct copy of the Parties' Joint Stipulation and Settlement Agreement
5 ("Settlement Agreement") is attached as **Exhibit 1**.

6 27. A true and correct copy of the Summary of Time and Costs is attached hereto as **Exhibit 2**.

7 28. A proposed settlement must be submitted to the LWDA. Cal. Lab. Code § 2699(l)(2). On
8 January 4, 2020, Plaintiff uploaded the Settlement Agreement. A true and correct copy of the
9 filing receipt from this upload is attached hereto as **Exhibit 3**. A true and correct copy of an
10 email from the LWDA confirming that the upload was received is attached hereto as **Exhibit 4**.

11 29. On June 30, 2020, Maciel provided written notice to the LWDA via online submission, with a
12 copy by certified mail to Defendants Prime Communications, L.P., Spring Communications
13 Holding, Inc., Spring Communications Parent, Inc., Prime Acquisition Company, LLC, Prime
14 Communications of California, LLC, and Spring Communications Holding, LLC, notifying
15 the LWDA that Maciel intended to pursue a PAGA claim based on Defendants' alleged
16 failure to: (1) pay straight time wages, minimum wages and overtime wages owed for off-the-
17 clock work; (2) properly calculate the regular rate of pay during those pay periods in which
18 aggrieved employees had worked overtime hours and had been paid bonuses, commissions, or
19 other forms of remuneration s; (3) provide all required meal periods; (4) provide all required
20 rest breaks; (5) timely pay wages owed upon separation of employment; (6) provide accurate
21 wage statements; (7) issue semi-monthly payments of wages; (8) adopt a compliant sick
22 pay/paid time off policy; and (9) reimburse aggrieved employees for necessary business
23 expenditures (uniforms, cell phone usage, and electricity). The LWDA did not respond to this
24 letter or otherwise indicate that it intended to investigate Maciel's allegations. A true and
25 correct copy of Plaintiff Maciel's notice is attached as **Exhibit 5**.

26 30. On July 15, 2020, Ly provided written notice to the LWDA via online submission, with a
27 copy by certified mail to Prime Comms Retail, LLC, notifying the LWDA that Ly intended to
28 pursue a PAGA claim based on Defendants' alleged failure to: (1) pay straight time wages,

1 minimum wages and overtime wages owed for off-the-clock work (and auto-deduct during
2 meal periods); (2) properly calculate the regular rate of pay during those pay periods in which
3 aggrieved employees had worked overtime hours and had been paid bonuses, commissions, or
4 other forms of remuneration; (3) provide all required meal periods; (4) provide all required
5 rest breaks; (5) unlawful collection of wages because of the meal auto-deduct policy; (6)
6 reimburse aggrieved employees for necessary business expenditures (uniforms and cell phone
7 usage); (7) provide accurate wage statements; (8) issue semi-monthly payments of wages; (9)
8 keep records showing payroll records and hours worked daily by the aggrieved employees;
9 and (10) timely pay wages owed upon separation of employment. The LWDA did not respond
10 to this letter or otherwise indicate that it intended to investigate Ly's allegations. A true and
11 correct copy of Plaintiff Laciél's notice is attached as **Exhibit 6**.

12 31. A true and correct copy of Plaintiff Laciél's amended notice is attached as **Exhibit 7**.

13 32. On May 21, 2019, Palacios filed a PAGA-only lawsuit in Riverside County Superior Court,
14 Case No. RIC 1902996 (the "Palacios Action") based on his PAGA notice dated March 19,
15 2019, and filed an amended complaint on March 17, 2020, dismissing prior-named defendants
16 GameStop Corp. dba GameStop Corp and Cesar Yanez-Canton and amending claims for
17 victim specific relief under Labor Code sections 558 and 1197.1 in light of the California
18 Supreme Court's decision in *ZB, N.A.v. Superior Court of San Diego County* (2019) 8 Cal.5th
19 175. On July 10, 2020, Ly filed a class action in Sacramento County Superior Court, Case No.
20 34-202000281668 (the "Ly Action"); on November 10, 2020, Ly amended her complaint to
21 include a PAGA cause of action based on her PAGA notice dated June 30, 2020. On
22 September 9, 2020, Maciel filed a PAGA-only action in San Diego County Superior Court,
23 Case No. 37-2020-00031569-CU-OE-CTL (the "Maciel Action") based on her PAGA notice
24 dated July 15, 2020.

25 33. In conjunction with this settlement, the parties stipulated to the filing of a Second Amended
26 Complaint in the Ly Action to consolidate the matters for settlement purposes, which was
27 filed on August 25, 2021.

28 34. Through discovery, Plaintiffs sought numerous documents and substantial amounts of data

1 that were needed to evaluate the case. These documents included requests for time and wage
2 records for the Aggrieved Employees, employee handbooks in place during the statutory
3 period, any policies regarding meal breaks, rest breaks, the payment of wages, and employee
4 training in place during the statutory period. Plaintiffs also requested data surrounding the
5 number of shifts, workweeks, and pay periods worked by the Aggrieved Employees during
6 the relevant time period, to establish a potential exposure model.

7 35. After the Parties had agreed to attend mediation, Defendants produced hundreds of pages of
8 documents and thousands of lines of data, including time and payroll records, employee
9 handbooks, and other employee policies. Furthermore, Plaintiffs reviewed data relating to the
10 size and scope of the Aggrieved Employees that permitted an evaluation of Plaintiffs' state-
11 wide claims.

12 36. On April 9, 2021, the Parties attended mediation with the respected wage and hour mediator
13 Lynn Frank. The matter did not settle at this mediation. However, the Parties continued
14 settlement negotiations with the assistance of Ms. Frank. After these continued arm's-length
15 negotiations, the Parties reached an agreement in principle. Thereafter, the Parties drafted and
16 signed a Memorandum of Understanding, detailing the principal settlement terms, which were
17 later memorialized in the Settlement Agreement the Parties now ask the Court to approve.

18 37. Here, Plaintiffs contend that Defendants required Plaintiffs and the Aggrieved Employees to
19 spend many hours after they had already clocked out performing duties for their employer
20 which therefore subjected them to their employer's control, such as answering texts, emails,
21 and/or GroupMe application chats. These mandatory work tasks were performed off the clock,
22 and as a result, Plaintiffs and the Aggrieved Employees were not compensated for this time.

23 38. Defendants argue that beyond the limited accusations of Plaintiffs, there is no evidence that
24 Aggrieved Employees performed *any* work-related tasks for which they were not
25 compensated. Defendants claim that it has strict policies prohibiting off the clock work and
26 requiring that all work time must be recorded. Defendants further contends that there is no
27 evidence of any kind of uniform practice or policy for employees to perform work off the
28 clock, and, in fact, Defendants have uniform practices and policies *forbidding* employees from

1 working off the clock.

2 39. Plaintiffs contend Defendants paid commissions and bonus but did not factor these extra
3 forms of remuneration into the regular rate of pay for purposes of calculating overtime
4 compensation. Plaintiff alleges that it appears from the data provided that Defendants simply
5 multiplied the Aggrieved Employees' base rates of pay by one-half to calculate the overtime
6 rate and did not recalculate the base rate as a regular rate of pay. Therefore, Plaintiffs argue
7 that Aggrieved Employees who received commissions and bonuses are owed additional
8 overtime compensation in the pay period these payments were received.

9 40. Defendants contend they properly paid the Aggrieved Employees overtime wages for all
10 overtime hours worked. More specifically, Defendants contend they properly included
11 bonuses and commissions when calculating the Aggrieved Employees' regular rates of pay,
12 and therefore all overtime pay was properly calculated and paid. Defendants contend that
13 although the bonuses and commission payments were one lump sum on the Aggrieved
14 Employees' wage statements, this sum includes both the commission amount **and** the
15 additional overtime wages owed. Said differently, Defendants issued one payment to
16 employees that includes **both** the commission or bonus amount being paid as well as the
17 additional overtime wages owed based upon the regular rate of pay. Defendants contend its
18 expert's analysis confirms this. Defendants further contends that it is unaware of any case law
19 that states overtime wages based upon the regular rate of pay must be paid separate and apart
20 from the shift differential or bonus payment. Defendants therefore contend that Plaintiffs'
21 overtime claims have no merit whatsoever because the additional overtime wages were paid to
22 the Aggrieved Employees and Plaintiffs cannot show otherwise.

23 41. From the data provided by Defendants, Plaintiffs' expert was able to determine that in 50.9%
24 of all pay periods at issue at the time of mediation, Defendants' records reflected a meal
25 period for an Aggrieved Employee that was either shorter than 30 minutes, provided late (after
26 the end of the 5th hour of work), or not at all. When an employer fails to provide time records
27 showing a meal break was taken in compliance with California law, a rebuttable presumption
28 arises that the employee was not offered such a break. *Donohue v. AMN Services, LLC* (2021)

1 11 Cal.5th 58, 74–76. Plaintiffs contend that Defendants have no evidence that would permit
2 them to rebut the presumption that the Aggrieved Employees were not provided with meal
3 periods in compliance with California law during the majority of the pay periods at issue, and
4 that Plaintiffs would be successful in bringing a motion for summary judgment on the issue.

5 42. Defendants state they provide Aggrieved Employees with meal periods compliant with
6 California law and *Brinker*, and that it clearly communicates to Aggrieved Employees these
7 rights. Defendants point out that under *Brinker*, they need not police the Aggrieved
8 Employees and whether they actually take compliant meal periods, and that their obligation
9 under the law is satisfied simply when they provide and make available those meal periods.
10 Defendants further argue that they would be able to produce numerous valid meal period
11 waivers that would account for many of the “violations” complained of and would also be
12 able to provide declarations from numerous Aggrieved Employees explaining that it was their
13 individual choice to take a short or late meal period, or that they decided not to take one at all.
14 Because each employee would have to testify as to these issues, individual issues would
15 render any PAGA trial unmanageable.

16 43. Here, Plaintiffs maintain that Defendants do not have any formal written meal or rest period
17 policies. Plaintiffs contend that Defendants’ lack of a written rest period policy authorizing
18 breaks is a de facto violation under *Brinker* and its progeny. Furthermore, Plaintiffs contend
19 that Defendants actively discourage the Aggrieved Employees from taking rest periods and
20 tells them they shouldn’t take them at all. Defendants sole concern is for the profit margins of
21 its business, not for the well-being of its employees. Even if the Aggrieved Employees are
22 able at some point in their shift are able to manage some semblance of a rest period, they
23 certainly are not provided with, nor are they able to, take a 10-minute rest period for every
24 four hours worked or major fraction thereof.

25 44. Defendants argue that the Aggrieved Employees were unquestionably provided with legally
26 compliant rest periods. First, Defendant points out that nothing under California law requires
27 an employer to adopt a written rest period policy, only that such rest periods be provided in
28 the manner required under *Brinker* and *Augustus*. Second, Defendants argue that they *never*

1 restrict the Aggrieved Employees from taking compliant rest periods. Defendants claim that
2 they have no policy or practice that prevents the Aggrieved Employees from taking rest
3 periods in compliance with California law, that no one is disciplined for taking rest periods,
4 and that any PAGA trial would be unmanageable because the Court would have to ask each
5 and every Aggrieved Employee whether they thought they were not permitted to take rest
6 breaks.

7 45. Plaintiffs further contend that Defendants' wage statements fail to properly itemize the total
8 hours worked, making it impossible to promptly and easily determine the actual regular hours
9 and overtime hours each Aggrieved Employee worked during the pay period. Plaintiffs allege
10 that Defendants' wage statements list an incorrect total combined regular and overtime hours
11 worked. Actually adding an Aggrieved Employees' regular and overtime hours together yields
12 a different result than what is on the wage statement.

13 46. Defendants argue that the holding in *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir.
14 2014) 554 Fed. Appx. 661, 662 refutes this argument and is more applicable to the wage
15 statements at issue. In *Hernandez*, the court granted summary judgment in the defendant
16 employer's favor. The *Hernandez* court found that that the plaintiff employee only needed to
17 "subtract his regular hours from total hours to determine overtime hours worked during the
18 pay period. Similarly, he can add the two component overtime rates to determine his overall
19 overtime rate." *Hernandez, supra*, 554 Fed. App. at 662. Just as in *Hernandez*, the Aggrieved
20 Employees can simply perform basic math, adding their regular hours worked and their
21 overtime hours worked together to accurately determine how many hours they worked in the
22 pay period.

23 47. Plaintiffs also allege wage statement violations derivative of their claims for unpaid wages,
24 the failure to provide meal periods, and the failure to provide rest periods. Should those claims
25 fail, any claims for wage statement violations under this theory of liability would also fail.

26 48. Plaintiff contends that Defendant fails to reimburse the Aggrieved Employees for business
27 expenses associated with the use of their personal cell phones and maintaining their uniforms.
28 As Defendants require the Aggrieved Employees to use their personal cell phones in the

1 discharge of their duties, tthe Aggrieved Employees incur reimbursable electricity costs for
2 having to charge their personal cell phones at their residences and the for the payment of their
3 monthly cell phone bill. The Aggrieved Employees are also required to purchase various
4 items as a part of their uniforms, such as shirts, sweaters, and name tags, and are required to
5 maintain uniforms and launder uniforms without reimbursement.

6 49. Defendant refutes these allegations by pointing out that Defendant does, in fact, explicitly
7 authorize the reimbursement of necessary business expenses. Furthermore, Defendant claims
8 it actively discourages employees from using their personal cell phones for business purposes
9 but permits such employees to do so should they so choose for their personal convenience.
10 Thus, any employee's use of their personal cell phone in the discharge of their duties is an
11 individual choice, not one mandated by Defendant, and would not constitute a reimbursable
12 business expense under California law. Additionally, Defendant contends that nothing the
13 Aggrieved Employees are required to purchase for their uniforms is so out of the ordinary that
14 Defendant would bear responsibility for those costs (*see Townley v. BJ's Restaurants,*
15 *Inc.* (2019) 37 Cal.App.5th 179), nor do their uniforms require any special care or laundering
16 that would prevent the Aggrieved Employees from just throwing it in with the rest of their
17 laundry.

18 50. Defendants maintain a "Sales Incentive Plan" that provides the Aggrieved Employees with
19 commissions and/or bonuses based on sales goals and quotas reached. However, the document
20 itself does not specify "the method by which the commissions shall be computed and paid."
21 Therefore, it does not comply with § 2751.

22 51. Defendants deny these allegations and argue that the document is not silent on this point,
23 clearly points the Aggrieved Employee to where they can obtain the information concerning
24 the specific calculations of your commission and/or bonus, the products and services on which
25 they are based, and applicable sales goals and quotas, which is readily available to the
26 Aggrieved Employees at the time they are provided with the "Sales Incentive Plan." Further,
27 Defendants point out that Plaintiffs have not cited to any authority that stands for the
28 proposition that contracts such as these must explicitly state the method by which

1 commissions are computed and paid as opposed to referencing a readily obtainable outside
2 source.

3 52. Here, Defendants sick leave policy directs employees to “Follow the Dependability and
4 Attendance Policy.” This policy makes clear that Defendants expect all of its employees to be
5 dependable, and issues like excessive absenteeism will be subject to disciplinary action up to
6 and including termination of employment. Although Defendants policy provides exceptions
7 for pre-approved time off and protected leaves of absence, referencing the attendance policy
8 with respect to sick leave at the very minimum created confusion that employees could be
9 disciplined for taking too much sick leave or requesting too much sick pay (that they had
10 earned), but at worst, was Defendants intentionally discouraging the Aggrieved Employees of
11 exercising their rights under California law.

12 53. Defendants deny that their sick leave policy violates the law in any possible way. Defendants
13 policy *explicitly* exempts pre-approved time off and protected leaves of absence, like paid sick
14 leave, from its attendance policy. Defendant argues it is permitted to both have a compliant
15 sick leave policy *and* maintain an attendance policy that punishes employees for violations
16 outside of instances involving protected leaves of absence. Furthermore, Defendants contend
17 that no employee has *ever* been punished for using their earned paid sick leave, and would be
18 able to provide numerous declarations from the Aggrieved Employees stating that they did not
19 read Defendants’ policies as discouraging them from taking their paid sick leave, any PAGA
20 trial would be unmanageable, as the Court would have to ask every Aggrieved Employee how
21 they interpreted the policies.

22 54. Defendant also argues that should litigation continue, it will bring a motion challenging the
23 manageability of trial as Defendant does not believe that this case can be tried manageably
24 and will require the testimony of every individual aggrieved employee. Furthermore, while
25 Defendant does not concede that any of its wage and hour policies are unlawful, Defendant
26 claims that any challenges Plaintiff has posed to these policies are easily refuted by how they
27 are implemented in practice; as a result, no Aggrieved Employee has suffered any damages.

28 55. Plaintiff responds by pointing out that this is a PAGA action for civil penalties on behalf of

1 the State of California, not a class action seeking redress for the individual damages suffered
2 by class members. Whereas in a class action, injury and damages must be proven, albeit on a
3 class-wide, not individualized basis - in a PAGA action, civil penalties can be assessed *even*
4 *where there is no injury suffered from an unlawful policy.*

5 56. Arguing, here, that Plaintiff will have to prove that employees actually suffered damages
6 consistent with Defendant's policies is nothing different than arguing that Plaintiff has to
7 prove an unlawful policy *and* injury under it. After *Kim v. Reins*, that position is categorically
8 false. Whereas, in a class action, injury would have to be proven, the PAGA action here for
9 Defendant's maintenance of unlawful policies is "*not* to redress employees' injuries" under
10 the policy.

11 57. The settlement was reached as a result of arm's-length negotiations. Though cordial and
12 professional, the settlement negotiations have been, at all times, adversarial and non-collusive
13 in nature. At the mediation and in the discussions that followed, counsel for the Parties
14 conducted extensive arm's length settlement negotiations until the settlement was reached.

15 58. The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
16 reaching the proposed settlement, and engaged in sufficient investigation, research and
17 discovery to support the settlement. The significant amount of discovery, the production and
18 analysis of hundreds of documents and thousands of lines of data, and protracted settlement
19 negotiations through the mediations and in the discussions that followed were the substantial
20 bases upon which the Parties' "clear view of the strengths and weaknesses of their cases" was
21 made possible.

22 59. Based upon the data provided by Defendants prior to mediation, Plaintiffs had determined that
23 there were approximately 2,281 Aggrieved Employees who worked approximately 67,751 pay
24 periods from March 12, 2018, through April 9, 2021.

25 60. The PAGA allows the private enforcement of certain California Labor Code sections relating
26 to wage and hour violations. PAGA Section 2699(f)(2) reads, in part, as follows:
27 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
28 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
period for each subsequent violation.

California courts have interpreted this language to require notice to the employer that an initial violation occurred before penalties for subsequent violations could be assessed. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Under *Amaral*, “subsequent” has a special meaning within the California Labor Code that triggers heightened statutory penalties only after an employer has learned that its conduct violates the Labor Code—that is, pursuant to *Amaral*, courts may reject a purely chronological understanding of the term “subsequent” and interpret its use in California Labor Code to require that “the employer has been notified that it is violated a Labor Code provision” before higher penalties are triggered. *Amaral*, 163 Cal.App.4th at 1157, 1207–09. Thus, Defendant’s *maximum* exposure under §2699(f)(2) is \$52,201,400:

\$100 x 1 PAGA Violation of Labor Code § 1194 x 67,751 pay periods = \$6,775,100

\$100 x 1 PAGA Violation of Labor Code § 510 x 13,188¹ pay periods = \$1,318,800

\$100 x 1 PAGA Violation of Labor Code § 512 x 34,162 pay periods² = \$3,416,200

\$100 x 1 PAGA Violation of Labor Code § 226.7 x 66,603 pay periods³ = \$6,660,300

\$100 x 1 PAGA Violation of Labor Code § 204 x 67,751 pay periods = \$6,775,100

\$100 x 1 PAGA Violation of Labor Code § 226 x 67,751 pay periods = \$6,775,100

\$100 x 1 PAGA Violation of Labor Code § 203 x 1,555 former employees = \$155,500

\$100 x 1 PAGA Violation of Labor Code § 2802 x 67,751 pay periods = \$6,775,100

\$100 x 1 PAGA Violation of Labor Code § 2751 x 67,751 pay periods = \$6,775,100

\$100 x 1 PAGA Violation of Labor Code § 233 x 67,751 pay periods = \$6,775,100

Maximum Exposure= \$52,201,400

61. In exploring the settlement of any PAGA action, the critical fact that the Court is permitted discretion to award a “lesser amount than the maximum penalty amount” must be heavily taken into consideration. *Lab. Code*. § (e)(2). Unlike the underlying violations upon which the

¹ Plaintiffs’ expert identified 13,188 pay periods in which the company failed to pay the proper regular rate of pay affecting overtime premium wages.

² Plaintiffs’ expert identified 34,162 pay periods in which Defendants’ records evidenced noncompliant meal periods.

³ Plaintiffs’ expert identified 66,603 pay periods in which Defendants’ records contained shifts exceeding 3.5 hours, triggering the requirement that a rest period be provided during that shift.

1 Plaintiffs seek to impose PAGA civil penalties, there is no set amount the Court must levy on
2 an employer Defendant it finds to have violated the underlying claims. Under “the facts and
3 circumstances of the particular case,” the Court is permitted wide discretion to slash civil
4 penalty amounts. This discretion and how a particular court will exercise it is always an
5 unknown variable in predicting the dollar outcome of any PAGA action when evaluating
6 settlement. Under its wide discretion to award lesser amounts, a Court could side with the
7 PAGA Plaintiffs’ claim and proof that the underlying Labor Code rights were violated but
8 decide to substantially moderate the imposition of PAGA penalties for those violations.

9 62. Based on this blind spot of how the Court would exercise its discretion in addition to the
10 likelihood the Court would side with Plaintiffs on the underlying Labor Code violations,
11 Plaintiffs necessarily and substantially had to discount the settlement value off of the full
12 PAGA penalty amounts. As discussed earlier, Defendants argue its meal and rest policies and
13 practices track the Labor Code and Wage Order requirements and the standards articulated in
14 *Brinker* and *Augustus*. Likewise, Defendants argue it pays its employees for all time worked
15 and has policies strictly prohibiting off-the-clock work of any kind. Further, Defendants argue
16 it maintains a uniform policy and practice of reimbursing employees for business expenses,
17 maintains a complaint sick leave policy, and maintains a lawful commission agreement. Thus,
18 even if Defendants were proven wrong on these fronts and ultimately found to have violated
19 the underlying Labor Code claims, the court could find a good faith reliance on *Brinker*,
20 *Augustus*, and other governing authorities justifiably instructed Defendants’ actions and
21 thereby impose a massive reduction of PAGA penalties akin to the Courts in *Kaanaana* and
22 *Carrington*.

23 63. Using the recent appellate decisions in *Kaanaana* and *Carrington* as a gauge of potential
24 reduction of PAGA penalties in the event Plaintiffs were to prevail on proving violation of the
25 underlying claims for meal/rest breaks, unpaid wages, and reimbursement of business
26 expenses, Plaintiffs factored in an average of the reductions in those two cases in valuing the
27 likely extent of PAGA exposure here, or 6.6% total PAGA exposure (*Kaanaana* – 13% and
28 *Carrington* .2% divided by two equals 6.6%). Based on the 67,751 estimated pay periods

involved at mediation, a realistic exposure for PAGA penalties if Plaintiffs prevailed on the merits of proving underlying violations and after the Court's reduction would be \$3,445,292.

64. Good faith settlement negotiations, after considerable discovery, investigation, and litigation, necessarily had to focus on amounts far less than that realistic exposure. The proposed PAGA settlement here of \$1,500,000, which takes into account the realistic exposure, the very real impediments of succeeding on the merits, the risk of further litigation, and, even if Plaintiffs succeeded on the merits, persuading against an even more robust discount than the average used here, reflects an appropriate, balanced, and reasonable settlement value of the PAGA claims. The settlement amount is 43.5% of the realistic value of the claims and fits squarely within the "remedial purpose" of PAGA of enforcing compliance with important employee protections in the Labor Code and Wage Order.

65. Here, PAGA Counsel applies for an award of attorneys' fees in the sum of \$500,000 (which is 33.33% of the GSA). The requested fee falls in the mid-range of percentage class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates PAGA Counsel for their efforts, as well as the result achieved for the benefit of the State of California and the Aggrieved Employees.

66. PAGA Counsel has worked 578.6 hours to date on this case and have calculated the lodestar fee on those hours at \$398,174 at rates reflecting those currently earned in the marketplace, which would require a modest 1.26 multiplier.

67. All of the work and tasks performed by PAGA Counsel were reasonable and necessary to the prosecution of this case and are reflected in the result achieved.

68. As discussed above, this was a highly-contested matter which required a significant amount of time and labor. PAGA Counsel had to investigate and analyze hundreds of pages of documents and thousands of lines of data. In addition, PAGA Counsel had to marshal the evidence in a manner in which it could be adjudicated manageably on behalf of all the Aggrieved Employees, an endeavor which cannot be underscored. So often, lawyers unskilled in PAGA wage and hour cases do not pay attention to or put the work into how the evidence

1 must be presented for adjudication on a representative basis. Strong PAGA cases perish in the
2 hands of inexperienced counsel because the case has not been worked up to succeed in
3 demonstrating manageability. PAGA Counsel here has considerable experience in PAGA
4 litigation and, from the beginning of the case, is marshalling the evidence with a sharp focus
5 on representative proof needed for the matter to make it to trial. This case was no different.
6 Throughout the matter, as evidence was being gathered through documents and witness
7 interviews, Plaintiff were reducing the data to a “living trial plan.” This filtering of
8 voluminous evidence into representative proof while keeping an eye on the merits of the
9 litigation resulted in a considerable amount of attorney time and skill.

10 69. Most importantly, all services were performed by PAGA Counsel on a contingent basis. Both
11 California and federal courts recognize that attorneys should be compensated for taking on
12 such contingent risks and provided with financial incentives to enforce important rights and
13 protections like those at issue in this case. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24
14 Cal.4th at 1132-33. Here, PAGA Counsel bore the risk that, in spite of all of their efforts and
15 skill employed, there may be no recovery. Thus, a risk multiplier is appropriate.

16 70. PAGA Counsel’s hourly rates are between \$450 and \$795 and are in line with rates typically
17 approved in wage and hour class action and PAGA litigation and which rates have been
18 approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda,
19 Orange and San Diego County Superior Courts.

20 71. A true and correct copy of the Westlaw Court’s Express’s Legal Billing Report, Volume 14,
21 Number 3, California Region for December 2012 is attached as **Exhibit 8**.

22 72. A true and correct copy of the Declaration of Richard M. Pearl in *Hohnbaum v. Brinker*
23 *Restaurant Corp.* SDSC GIC834348 is attached as **Exhibit 9**.

24 73. A true and correct copy of the 2012 National Law Journal Survey of Hourly Billing Rates for
25 Partners and Associates is attached as **Exhibit 10**.

26 74. PAGA Counsel’s skill and experience support their hourly rates. Their practice is limited
27 exclusively to litigation, focusing on the representation of employees in wage and hour class
28 action and PAGA matters. As prominent attorneys in the field of wage and hour employment

1 litigation, Plaintiff's counsel continually monitors the prevailing market rates charged by both
2 defense and plaintiff law firms and set the billing rates of their attorneys and paralegals/law
3 clerks to be consistent with the prevailing market rates in the private sector for attorneys and
4 staff of comparable skill, qualifications and experience. Other wage and hour attorneys
5 working as class counsel before California courts charge comparable if not higher rates.

6 75. In determining a lodestar fee, reasonable hours include, in addition to time spent during
7 litigation, the time spent before the action was filed, including time spent interviewing clients,
8 investigating the facts and the law, and preparing the initial pleadings.⁴ Further, the fee award
9 should include fees incurred to establish and defend the attorneys' fee claim. PAGA Counsel
10 has expended a total of 578.6 hours on this case. The work performed by PAGA Counsel in
11 order to achieve a settlement that will provide valuable consideration to the State of California
12 and the Aggrieved Employees is summarized by PAGA Counsel in the Mara Declaration
13 submitted herewith.

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

16
17 Dated: October 22, 2021



18
19 _____
David Mara, Esq.

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27 _____
28 ⁴ See *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

Exhibit 1

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Attorneys for Defendants

(Additional Plaintiffs' Counsel listed on next page)

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

VIVIAN LY, RENE PALACIOS, and
WENDY MACIEL, on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

PRIME COMMS RETAIL, LLC, a Delaware
limited liability company; SPRING
COMMUNICATIONS HOLDING, INC.,
SPRING COMMUNICATIONS HOLDING,
LLC., PRIME COMMUNICATIONS OF
CALIFORNIA, LLC, a Delaware limited
liability company; and DOES 2 through 50,
inclusive

Defendants.

Case No. 34-2020-00281668

Assigned for All Purposes To:
Hon. Gerrit W. Wood
Dept.: 31

**PAGA SETTLEMENT AGREEMENT AND
RELEASE**

Date filed: July 10, 2020
Trial date: Not yet set

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12 Attorneys for Plaintiff RENE PALACIOS, on behalf of
13 himself and others similarly aggrieved

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18 Attorneys for Plaintiff WENDY MACIEL, on behalf of
19 herself and others similarly aggrieved

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1 had worked overtime hours and had been paid bonuses, commissions, or other forms of
2 remuneration s; (3) provide all required meal periods; (4) provide all required rest breaks; (5)
3 timely pay wages owed upon separation of employment; (6) provide accurate wage statements; (7)
4 issue semi-monthly payments of wages; (8) adopt a compliant sick pay/paid time off policy; and
5 (9) reimburse aggrieved employees for necessary business expenditures (uniforms, cell phone
6 usage, and electricity). The LWDA did not respond to this letter or otherwise indicate that it
7 intended to investigate Maciel's allegations.

8 On July 15, 2020, Ly provided written notice to the LWDA via online submission, with a
9 copy by certified mail to Prime Comms Retail, LLC, notifying the LWDA that Ly intended to
10 pursue a PAGA claim based on Defendants' alleged failure to: (1) pay straight time wages,
11 minimum wages and overtime wages owed for off-the-clock work (and auto-deduct during meal
12 periods); (2) properly calculate the regular rate of pay during those pay periods in which aggrieved
13 employees had worked overtime hours and had been paid bonuses, commissions, or other forms of
14 remuneration; (3) provide all required meal periods; (4) provide all required rest breaks; (5)
15 unlawful collection of wages because of the meal auto-deduct policy; (6) reimburse aggrieved
16 employees for necessary business expenditures (uniforms and cell phone usage); (7) provide
17 accurate wage statements; (8) issue semi-monthly payments of wages; (9) keep records showing
18 payroll records and hours worked daily by the aggrieved employees; and (10) timely pay wages
19 owed upon separation of employment. The LWDA did not respond to this letter or otherwise
20 indicate that it intended to investigate Ly's allegations.

21 On May 21, 2019, Palacios filed a PAGA-only lawsuit in Riverside County Superior Court,
22 Case No. RIC 1902996 (the "Palacios Action") based on his PAGA notice dated March 19, 2019,
23 and filed an amended complaint on March 17, 2020, dismissing prior-named defendants
24 GameStop Corp. dba GameStop Corp and Cesar Yanez-Canton and amending claims for victim-
25 specific relief under Labor Code sections 558 and 1197.1 in light of the California Supreme
26 Court's decision in *ZB, N.A. v. Superior Court of San Diego County* (2019) 8 Cal.5th 175. On July
27 10, 2020, Ly filed a class action in Sacramento County Superior Court, Case No. 34-2020-
28 00281668; on November 10, 2020, Ly amended her complaint to include a PAGA cause of action

1 based on her PAGA notice dated June 30, 2020. On September 9, 2020, Maciel filed a PAGA-only
2 action in San Diego County Superior Court, Case No. 37-2020-00031569-CU-OE-CTL (the
3 “Maciel Action”) based on her PAGA notice dated July 15, 2020.

4 Plaintiff Palacios propounded initial discovery on defendant Spring Communications
5 Holdings, Inc., and the Parties agreed to mediate the PAGA action with the Hon. Jay C. Gandhi
6 (ret.) of JAMS on October 7, 2020. However, the mediation did not take place and Defendant
7 substituted in new counsel, who notified counsel for Palacios of the Ly and Maciel matters.

8 All Parties then agreed to pursue private mediation with Lynn S. Frank of Frank Feder
9 Mediators. In advance of mediation, Defendants produced significant discovery informally for a
10 representative sample of 93 aggrieved employees, plus the three representative plaintiffs. The
11 mediation took place on April 9, 2021. Although the matter did not resolve at mediation, the
12 Parties were able to reach this Agreement because of mediation and arm’s-length negotiations.

13 Plaintiffs and their counsel believe this settlement is fair, reasonable, adequate, and in the
14 best interests of the alleged aggrieved employees and the State of California.

15 **DEFINITIONS**

16 The following definitions are applicable to this Agreement. Definitions contained
17 elsewhere in this Agreement will also be effective.

18 1. “Action” is the anticipated consolidated action, *Vivian Ly v. Prime Comms Retail,*
19 *LLC, et al.*, Sacramento County Superior Court, Case No. 34-2020-00281668.

20 2. “Aggrieved Employees” are all current and former nonexempt persons employed
21 by named Defendants in California at any time from March 12, 2018, through the date of approval
22 of the PAGA settlement. Defendants’ personnel databases indicate that there are 2,281 Aggrieved
23 Employees March 12, 2018, through November 20, 2020.

24 3. “Agreement” means this PAGA Settlement Agreement and Release.

25 4. “Consolidated Complaint” means the anticipated Second Amended Consolidated
26 Complaint to be entered in the *Ly* action adding all Plaintiffs, all Defendants who employed
27 allegedly aggrieved employees, and the additional theories for PAGA penalty claims from the
28 *Palacios* and *Maciel* actions after Ly’s class allegations have been dismissed. The Consolidated

1 Complaint shall be a PAGA-only action. Upon the filing of the Second Amended Consolidated
2 Complaint, Plaintiff Palacios shall dismiss the Palacios Action without prejudice and Plaintiff
3 Maciel shall dismiss the Maciel Action without prejudice, with both dismissals to be completed
4 and granted before the motion for approval of this Settlement shall be filed.

5 5. "Court" is the Sacramento County Superior Court.

6 6. "Defendants" are Prime Comms Retail, LLC; Spring Communications Holding,
7 Inc. dba SC Spring Communications Holding, Inc.; Prime Communications of California, LLC;
8 and Spring Communications Holdings, LLC.

9 7. "Effective Date" means the date the court approves this Settlement.

10 8. "Employee Amount" means twenty-five percent (25%) of the PAGA Penalty Fund,
11 which is to be paid to the Employees as described herein.

12 9. "Gross Settlement Amount" means the total consideration of \$1,500,000 for
13 resolution of the *Palacios*, *Ly*, and *Maciel* PAGA actions.

14 10. "Individual Settlement Payment" is the payment of \$30,000 to Plaintiffs, \$10,000
15 to each named Plaintiff (Ly, Palacios, and Maciel) in consideration for Plaintiffs releasing their
16 non-PAGA claims that could be pursued in arbitration, which will be paid from the Gross
17 Settlement Amount.

18 11. "Initial Payment" means payment of PAGA penalties to the Aggrieved Employees,
19 Individual Settlement Payments, attorney's fees and costs, and Settlement Administrator costs.

20 12. "Judgment" is the order and judgment approving the Settlement in the Action.

21 13. "LWDA" means the California Labor Workforce Development Agency.

22 14. "PAGA Penalty Fund" means the Gross Settlement Amount less the Individual
23 Settlement Payments, attorney's fees and costs, and Settlement Administrator costs.

24 15. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California
25 Labor Code § 2698, *et seq.*

26 16. "PAGA Recovery Period" is the period from March 12, 2018, through the date of
27 approval of the Settlement.

28 17. "Pay Periods" means, for any Aggrieved Employee, the number of pay periods

1 during which he, she, or they worked at least part of one day for Defendants during the PAGA
2 Recovery Period, as identified in Defendants' personnel database. A pay period shall consist of
3 two workweeks.

4 18. "Plaintiffs" are Vivian Ly, René Palacios, and Wendy Maciel.

5 19. "Plaintiffs' Counsel" is David Yeremian & Associates, Inc., Law Offices of Kevin
6 T. Barnes, Sansanowicz Law Group, P.C., the Law Offices of Raphael A. Katri, and Mara Law
7 Firm, PC.

8 20. "Secondary Payment" means payment of PAGA penalties to the LWDA, which
9 shall be seventy-five percent (75%) of the PAGA Penalty Fund.

10 21. "Settlement" is the settlement on the terms set forth in this Agreement.

11 22. "Settlement Administrator" is Rust Consulting, Inc., a third-party settlement
12 administrator approved by the Parties for the purposes of administering this Settlement.

13 23. "Total Pay Periods" means the aggregate number of Pay Periods for all Aggrieved
14 Employees during the PAGA Recovery Period. Defendants' personnel database indicates that
15 there are approximately 67,751 Total Pay Periods from March 12, 2018 through April 9, 2021.

16 **TERMS OF THE AGREEMENT**

17 24. Non-Admission of Liability. The Parties enter this Settlement to resolve the
18 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
19 litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that
20 they violated any federal, state, or local law; violated any regulations or guidelines promulgated
21 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
22 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
23 engaged in any other unlawful conduct with respect to the Aggrieved Employees. Neither this
24 Settlement, nor any of its terms or provisions, nor any of the negotiations connected with it, will
25 be construed as an admission or concession by Defendants of any such violations or failures to
26 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
27 Settlement, this Settlement and its terms and provisions will not be offered or received as evidence
28 in any action or proceeding to establish any liability or admission on the part of Defendants or to

1 establish the existence of any condition constituting a violation of, or a non-compliance with,
2 federal, state, local or other applicable law.

3 25. Monetary Consideration. Defendants will pay a total of One Million, Five Hundred
4 Thousand Dollars (\$1,500,000) (the “Gross Settlement Amount”), on a non-reversionary basis,
5 which shall be in full and final satisfaction of the following: all payments to Aggrieved
6 Employees, the payment to the LWDA, Plaintiffs’ Counsel’s attorney’s fees and costs as approved
7 by the Court, the Individual Settlement Payments, and the reasonable fees and costs of the
8 Settlement Administrator. All amounts to be paid to the Settlement Administrator, Plaintiffs, their
9 counsel, and the Aggrieved Employees shall be paid within 60 days of approval. All amounts to be
10 paid to the LWDA shall be paid within one year of approval.

11 a. Individual Settlement Payments. Plaintiffs shall be allocated \$10,000 apiece
12 from the Gross Settlement Amount as consideration for their individual non-PAGA claims, which
13 could be pursued in arbitration. Each Individual Settlement Payment shall be allocated as thirty-
14 three percent (33%) wages, for which an IRS Form W-2 shall be issued and all applicable
15 withholdings and payroll taxes taken, and sixty-seven percent (67%) attributed to interest and
16 penalties, for which an IRS Form 1099 shall be issued and no withholdings will be taken.
17 Plaintiffs will be solely and legally responsible to pay all applicable taxes on the payments made
18 pursuant to this paragraph and will hold Defendants harmless from any claim or liability for taxes,
19 penalties, or interest arising from the payments.

20 26. Approval Procedure.

21 a. Plaintiff Ly shall dismiss her class claims. Upon dismissal of the class
22 claims, plaintiff Ly and defendant Prime Comms Retail, LLC shall stipulate for leave to amend
23 Ly’s complaint with the Consolidated Complaint. Upon the filing of the Consolidated Complaint,
24 the Parties shall immediately seek a hearing for Court approval of this Agreement.

25 b. California Labor Code § 2699(l) requires that the Court review and approve
26 any penalties sought as part of a proposed settlement agreement pursuant to PAGA. All amounts
27 and procedures described in this Settlement Agreement herein will be subject to Court approval.
28 Plaintiff will seek approval of the Settlement in Sacramento County Superior Court pursuant to

1 Labor Code § 2699.

2 c. Concurrent with the filing of the motion for settlement approval:

3 i. Plaintiffs' Counsel will serve a copy of this Agreement and their
4 motion for settlement approval on the LWDA pursuant to Labor Code § 2699(1)(2).

5 ii. Plaintiffs' Counsel will file a motion for an award of attorney's fees
6 of not more than 33.33 % of the Gross Settlement Amount in attorney's fees, plus actual litigation
7 costs of up to \$30,000. Defendants will not oppose the reasonableness of these requests and will
8 take no position on the motion. The Parties agree that the Court's approval of attorney's fees and
9 costs is not a material condition of the Settlement and is to be considered by the Court separate
10 and apart from the fairness, reasonableness, and adequacy of the Settlement. Plaintiffs and
11 Plaintiffs' Counsel will not have the right to revoke this Settlement in the event the Court does not
12 approve the award of attorney's fees and costs. However, Plaintiffs retain their right to appeal any
13 decision by the Court regarding the award of attorney's fees and costs.

14 iii. The Parties will present an agreed form of a proposed Judgment to
15 the Court for its consideration. The Court will enter a Judgment approved by it.

16 d. Within ten (10) days after entry of Judgment, Plaintiffs' Counsel will serve
17 a copy of the Judgment on the LWDA pursuant to Labor Code section 2699(1)(3).

18 e. If the Court does not approve the Settlement, the Parties shall request leave
19 and jointly attempt to modify this Settlement to obtain the Court's approval. If those efforts prove
20 unsuccessful: (1) this Agreement will be void *ab initio*; (2) this Agreement, and all
21 communications regarding this Agreement, will be inadmissible in any proceeding pursuant to
22 California Evidence Code section 1152; and (3) the Parties will cooperate and take all necessary
23 steps to reset the Action for trial.

24 27. Distribution.

25 a. No later than ten (10) calendar days after the Effective Date, Defendants'
26 counsel will email to the Settlement Administrator an electronic spreadsheet containing, for each
27 Employee, his, her, or their name, last-known address, last-known telephone number, social
28 security number, dates of employment, and number of Pay Periods from March 12, 2018, through

1 April 9, 2021, and through the date of approval as reflected in Defendants' personnel database.
2 Promptly after receiving the spreadsheet and prior to mailing any payments to the Aggrieved
3 Employees, the Settlement Administrator will run the Aggrieved Employees' addresses through
4 the U.S. Postal Service's National Change of Address database for information to update and
5 correct any known or identifiable address changes.

6 b. Promptly thereafter, but no later than forty-five (45) calendar days after the
7 Effective Date, Defendants will wire the Initial Payment amount to the Settlement Administrator.

8 c. No later than sixty (60) calendar days after the Effective Date, the
9 Settlement Administrator will pay: (1) payments to Aggrieved Employees (to be allocated as
10 described below) from the Employee Amount for civil penalties; (2) the Individual Settlement
11 Payments to Plaintiffs; (3) the awarded attorney's fees and costs to Plaintiffs' Counsel; and (4) the
12 awarded Settlement Administrator costs to the Settlement Administrator.

13 d. No later than three hundred fifty (350) calendar days after the Effective
14 Date, Defendants will wire the Secondary Payment to the Settlement Administrator.

15 e. No later than three hundred sixty-five (365) calendar days after the
16 Effective Date, the Settlement Administrator will pay the Secondary Payment to the LWDA.

17 f. Defendants certify that the number of pay periods for all Aggrieved
18 Employees from March 12, 2018 through April 9, 2021, is 67,751 (the "Certified Pay Period
19 Amount"). If the actual number of pay periods for all Aggrieved Employees from March 12, 2018
20 through April 9, 2021 should exceed the Certified Pay Period Amount by more than five percent
21 (5%), such that the total number of pay periods through April 9, 2021 submitted to the Claims
22 Administrator exceeds 71,140 pay periods, Plaintiffs in their sole discretion shall be able to void
23 this Agreement.

24 g. Because this is a PAGA settlement and not a class action, the Parties agree
25 that Aggrieved Employees do not have the right to exclude themselves from the Settlement. Upon
26 the Effective Date, the Aggrieved Employees will be bound by the terms of the Settlement,
27 regardless of whether they negotiate their settlement checks. The Parties further agree that, absent
28 an order by the Court granting leave to intervene, Aggrieved Employees do not have standing to

1 object to the Settlement or appeal any Judgment.

2 h. The Settlement Administrator will allocate the Employee Amount to each
3 Aggrieved Employee on a pro rata basis, based on that individual's Pay Periods divided by the
4 Total Pay Periods.

5 i. No later than sixty (60) days after the Effective Date, the Settlement
6 Administrator will mail a settlement check, along with a letter (a proposed draft is attached hereto
7 as **Exhibit A**) explaining the settlement payment, to each Aggrieved Employee. If any settlement
8 check is returned as undeliverable, the Settlement Administrator will use reasonable skip-trace
9 methods to locate a new address. If any Aggrieved Employees does not cash his, her, or their
10 settlement check after 180 days has lapsed after the Effective Date, those funds will be deposited
11 with a mutually agreed upon cy pres. No residual will revert to Defendants under any
12 circumstance.

13 j. The entirety of the payments to the LWDA and the Aggrieved Employees
14 will be treated as civil penalties for purposes of IRS reporting, for which IRS Forms 1099-MISC
15 will be issued. All Parties represent they have not received, and will not rely on, advice or
16 representations from other Parties or their agents regarding the tax treatment of payments under
17 this Settlement.

18 k. The payments made to the Aggrieved Employees under this Agreement, as
19 well as any other payments made pursuant to this Settlement, will not be utilized to calculate any
20 additional benefits under any benefit plans for which any Aggrieved Employee may be eligible,
21 including, but not limited to: (i) profit-sharing plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock
22 purchase plans, (v) vacation plans, (vi) sick leave plans, (vii) PTO plans, and (viii) any other
23 benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights,
24 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit
25 plans.

26 l. The Settlement Administrator will be paid for the reasonable costs of
27 administration of the Settlement and calculation and distribution of payments, up to a maximum of
28 \$30,000. These costs, which will be paid from the Gross Settlement Amount, will include, *inter*

1 *alia*, the required tax reporting on settlement payments, the issuing to Plaintiffs, Aggrieved
2 Employees, and Plaintiffs' Counsel any 1099 and/or other tax forms as may be required by law for
3 all amounts paid pursuant to this Agreement, preparing, distributing, and tracking settlement check
4 letters to Aggrieved Employees, calculating and distributing all payments to be made pursuant to
5 the Settlement, calculating and making the payments with respect to Defendants' share of payroll
6 taxes on the individual settlement payment (if any), and providing reports and declarations.

7 28. Release.

8 a. Upon the Effective Date, Plaintiffs, the State of California, and all the
9 Aggrieved Employees, fully release and discharge Defendants, and each of their officers,
10 directors, employees, agents, shareholders, parents, subsidiaries, insurers, representatives,
11 successors, assigns, and attorneys ("Releasees") from any and all claims, rights, or causes of
12 action for civil penalties, attorney's fees, and costs under California Labor Code sections 2698, *et*
13 *seq.* predicated on the alleged California Labor Code violations (including California Labor Code
14 §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 233, 234, 246, 246.5, 510, 512, 558, 558.1,
15 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2751, and 2802) either: (i)
16 asserted in the Consolidated Complaint, or (ii) arising from, or derivative of, the claims or
17 allegations asserted in the Plaintiffs' written notices to the LWDA, complaints, and Consolidated
18 Complaint ("Released Claims"). The Released Claims include all claims for penalties, attorney's
19 fees, litigation costs, interest, and any other relief available under PAGA as well as claims under
20 the Industrial Welfare Commission Wage Orders or other regulations or provisions of law
21 Plaintiffs allege in the Consolidated Complaint or alleged in their respective PAGA notices. The
22 period of this Release shall be for the PAGA Recovery Period. The *res judicata* effect of the
23 Judgment will be the same as that of the Release. This waiver and release will be final and binding
24 on the Effective Date and will have every preclusive effect permitted by law.

25 b. On the Effective Date, and as a condition of receiving any portion of the
26 Individual Settlement Payments, Plaintiffs will agree to the additional following General Release:
27 In consideration of Defendants' promises and agreements as set forth herein, Plaintiffs hereby
28 fully release Defendants from any and all Released Claims and also generally release and

1 discharge Defendants from any and all claims, demands, obligations, causes of action, rights, or
2 liabilities of any kind which have been or could have been asserted against Defendants arising
3 before the signing of this Agreement. This general release includes, but is not limited to claims
4 arising out of or relating to Plaintiffs' employment by Defendants, including but not limited to any
5 and all claims for violation of any section of the California Labor Code and/or Wage Orders;
6 violation of the Fair Labor Standards Act ("FLSA"); failure to pay wages, benefits, vacation pay,
7 severance pay, final pay, or other compensation of any sort; fraud; intentional or negligent
8 misrepresentation; breach of contract; promissory estoppel; retaliation; violation of public policy;
9 breach of implied covenant of good faith and fair dealing; defamation; unlawful effort to prevent
10 employment; sexual harassment; discrimination on the basis of race, color, sex, national origin,
11 ancestry, religion, age, disability, handicap, medical condition, marital status or any other
12 protected class; any claim under the Fair Credit Reporting Act, California Consumer Credit
13 Reporting Agencies Act, California Investigative Consumer Reporting Agencies Act, or other laws
14 regarding background checks; any claim under Title VII of the Civil Rights Act of 1964 (Title VII,
15 as amended), 42 U.S.C. §§ 2000, *et seq.*; the Americans with Disabilities Act ("ADA"), the Age
16 Discrimination in Employment Act ("ADEA"), the Older Workers Benefit Protection Act
17 ("OWBPA"), 29 U.S.C. § 626(f); the California Fair Employment and Housing Act ("FEHA"), or
18 California Government Code §§ 12940 *et seq.*; violation of the Consolidated Omnibus Budget
19 Reconciliation Act of 1985 ("COBRA"); violation of the Occupational Safety and Health Act
20 ("OSHA") or any other health and/or safety laws, statutes or regulations; violation of the
21 Employment Retirement Income Security Act of 1974 ("ERISA"); violation of the Internal
22 Revenue Code; any other claim arising from employment; or other common law or tort matters
23 and all other claims under federal, state, or local law. This release specifically includes all claims,
24 demands, obligations and/or causes of action for damages, restitution, penalties, injunctive or
25 equitable relief, interest, and attorney's fees and costs (except provided by the Settlement
26 Agreement) relating to or in any way connected with the matters referred to herein, whether
27 known or suspected to exist or specifically or particularly described herein. Specifically, Plaintiffs
28 waive all rights and benefits afforded by California Civil Code Section 1542, which provides:

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

6 29. Miscellaneous.

7 a. The Parties and their respective counsel will maintain the Agreement as
8 confidential and not publicly disclose the same (including electronically, by way of any web page,
9 blog, tweet, social media, or other electronic means) except for the specific exceptions stated
10 herein or as ordered by the Court. This provision shall not apply to or limit the public filing of
11 motions or other case materials in the Action related to seeking and obtaining Court approval of
12 the Settlement, attorney's fees and costs of Plaintiffs' Counsel, and the other relief set forth in this
13 Settlement. The Parties understand and agree that there may be media coverage of the settlement
14 not initiated by Plaintiff or Defendants, directly or indirectly, because of the public filings.
15 Notwithstanding the foregoing, both before and following the execution of this Agreement by the
16 Parties and their respective counsel, the Parties agree that no party shall issue any press release to
17 the news media, nor shall any party communicate in any way with news media concerning the
18 Settlement or the Action except in response to specific questions, which responses shall be limited
19 to a statement that "this litigation has been resolved to the satisfaction of all Parties" and then refer
20 media to court filings. Plaintiffs' Counsel may also refer to this Settlement, after the filing of the
21 motion for settlement approval, in other court filings where prior experience is discussed. Nothing
22 in this paragraph shall prevent Defendants from disclosing and discussing information concerning
23 the Settlement prior to the filing of the settlement approval motion either internally among
24 company management or to the extent that Defendants believe that doing so is required under
25 applicable laws, rules, or regulations, such as in public filings or in communicating with investors.
26 Nothing in this paragraph shall restrict Defendants from communicating with its current
27 employees about its pay practices or any changes thereto. Nothing in this paragraph shall restrict
28 Plaintiffs' Counsel from communicating with Aggrieved Employees about the Settlement in their

1 role as Plaintiffs' Counsel or limit the right of Defendants to disclose the terms and circumstances
2 of the settlement to employees who have responsibility for overseeing or managing Defendants'
3 litigation, law firms that represent Defendants, or persons who have an obligation to be informed
4 about Defendants' litigation. For purposes of this section, media includes all print and digital
5 media, including but not limited to newspapers, newsletters, magazines, articles, radio, blogs,
6 websites, and social media sites.

7 b. The Parties agree to fully cooperate with each other to accomplish the terms
8 of this Agreement, including but not limited to executing such documents as may be reasonably
9 necessary to implement the terms of the Settlement.

10 c. The Parties agree that the terms and conditions of this Agreement are the
11 result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement
12 shall not be construed in favor of or against any of the Parties by reason of their participation in
13 the drafting of this Agreement. The Parties acknowledge that they have been represented by
14 counsel throughout all negotiations that preceded the execution of this Agreement, and that this
15 Agreement has been executed with the consent and advice of counsel.

16 d. Except as set forth above, if the Court or, in the event of an appeal, any
17 appellate court modifies any material aspect of this Settlement, including but not limited to any
18 judicial findings included therein, Plaintiffs or Defendants may terminate this Settlement as set
19 forth below. The Parties acknowledge and agree that any modification to the terms of this
20 Settlement relating to the scope of the release, or to Defendants' financial obligations, shall be
21 deemed a material modification constituting grounds for cancellation or termination of the
22 Settlement. Within fifteen (15) days of the Settlement Administrator receiving notice from any
23 party of such termination or failure, the Settlement Administrator shall provide the Parties with a
24 report of all Settlement Administrator Costs incurred. The party terminating the Settlement will be
25 responsible for paying any Settlement Administrator Costs already incurred. If the Parties
26 mutually terminate the Settlement, Plaintiffs will be responsible for paying fifty percent (50%) of
27 any Settlement Administrator Costs already incurred and Defendants will be responsible for
28 paying fifty percent (50%) of any Settlement Administrator Costs already incurred.

1 e. This Agreement shall be subject to and governed by the laws of the State of
2 California and subject to the exclusive and continuing jurisdiction of the Sacramento County
3 Superior Court pursuant to Code of Civil Procedure section 664.6. After entry of judgment, the
4 Court will have exclusive and continuing jurisdiction solely for purposes of addressing settlement
5 administration matters and such post-judgment matters as may be appropriate under court rules or
6 as set forth in this Agreement.

7 f. This Agreement may not be changed, altered, or modified, except in writing
8 and signed by counsel for the Parties and approved by the Court.

9 g. This Agreement contains the entire agreement between the Parties
10 concerning the subject matter hereof and supersedes all prior and contemporaneous agreements
11 and understandings, whether oral or written.

12 h. The Parties and their counsel represent, covenant, and warrant that they
13 have not directly or indirectly assigned, transferred, or purported to assign or transfer to any
14 person or entity any portion of any liability, claim, demand, action, cause of action or right herein
15 released and discharged.

16 i. This Agreement shall be binding upon and inure to the benefit of the Parties
17 and their respective heirs, trustees, executors, administrators, successors and assigns.

18 j. This Agreement may be executed in counterparts. All executed counterparts
19 and each of them, including facsimile, electronic and scanned copies of the signature page, will be
20 deemed to be one and the same instrument. The individuals signing below warrant that they have
21 authority to enter into this Agreement on behalf of the party for which that individual signs.

22 k. The Parties agree to waive appeals, except as explicitly stated herein.
23 However, either party may appeal any court order that materially alters the Agreement's terms.

24 l. No waiver of any condition or covenant contained in this Agreement or
25 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
26 constitute a further waiver by such party of the same or any other condition, covenant, right or
27 remedy.

28 m. In the event of any breach of this Agreement, or any dispute arising from or

1 relating to the interpretation of or performance under this Agreement, the prevailing party in such
2 dispute will be entitled to its reasonable costs and attorney's fees.

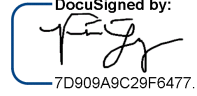
3
4 IN WITNESS THEREOF, the Parties have caused this Agreement to be executed as of the
5 date below.

6 **SIGNATURES**

7 **READ CAREFULLY BEFORE SIGNING**

8
9 **PLAINTIFFS**

10
11 Dated: July 26, 2021

12 By _____
13 Plaintiff/Representative Vivian Ly

14 Dated: _____, 2021

15 By _____
16 Plaintiff/Representative René Palacios

17 Dated: _____, 2021

18 By _____
19 Plaintiff/Representative Wendy Maciel

20 **DEFENDANTS**

21 Dated: _____, 2021

22 By _____
23 Company Representative

1 relating to the interpretation of or performance under this Agreement, the prevailing party in such
2 dispute will be entitled to its reasonable costs and attorney's fees.

3
4 IN WITNESS THEREOF, the Parties have caused this Agreement to be executed as of the
5 date below.

6 **SIGNATURES**

7 **READ CAREFULLY BEFORE SIGNING**

8
9 **PLAINTIFFS**

10
11 Dated: _____, 2021

By _____
Plaintiff/Representative Vivian Ly

12
13 7/22/2021

14 Dated: _____, 2021

By _____
Plaintiff/Representative René Palacios

DocuSigned by:

René Palacios

4E0706B42FFF4F3...

15
16 Dated: _____, 2021

By _____
Plaintiff/Representative Wendy Maciel

17
18
19 **DEFENDANTS**

20
21 Dated: _____, 2021

By _____
Company Representative

1 relating to the interpretation of or performance under this Agreement, the prevailing party in such
2 dispute will be entitled to its reasonable costs and attorney's fees.

3
4 IN WITNESS THEREOF, the Parties have caused this Agreement to be executed as of the
5 date below.

6 **SIGNATURES**

7 **READ CAREFULLY BEFORE SIGNING**

8
9 **PLAINTIFFS**

10
11 Dated: _____, 2021

By _____
Plaintiff/Representative Vivian Ly

12
13
14 Dated: _____, 2021

By _____
Plaintiff/Representative René Palacios

15
16 Dated: 7/21/2021, 2021

By Wendy Maciel
Plaintiff/Representative Wendy Maciel

17
18
19 **DEFENDANTS**

20
21 Dated: _____, 2021

By _____
Company Representative

1 relating to the interpretation of or performance under this Agreement, the prevailing party in such
2 dispute will be entitled to its reasonable costs and attorney's fees.

3
4 IN WITNESS THEREOF, the Parties have caused this Agreement to be executed as of the
5 date below.

6 **SIGNATURES**

7 **READ CAREFULLY BEFORE SIGNING**

8
9 **PLAINTIFFS**

10
11 Dated: _____, 2021

By _____
Plaintiff/Representative Vivian Ly

12
13
14 Dated: _____, 2021

By _____
Plaintiff/Representative René Palacios

15
16 Dated: _____, 2021

By _____
Plaintiff/Representative Wendy Maciel

17
18
19 **DEFENDANTS**

20 Dated: 7/30, 2021

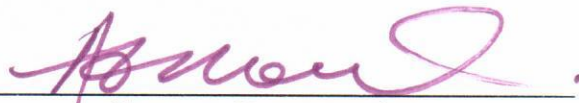
By 
Company Representative

Exhibit A

_____, 2021

[NAME]
[ADDRESS]

Re: *Vivian Ly v. Prime Comms Retail, LLC, et al.*, Case No. 34-2020-00281668
Superior Court of the State of California, County of Sacramento

Dear [NAME],

As the Settlement Administrator in *Vivian Ly v. Prime Comms Retail, LLC, et al.*, Sacramento County Superior Court Case No. 34-2020-00281668 (“Ly”), we are writing to inform you that you are entitled to payment pursuant to the settlement of this lawsuit. Your settlement check is enclosed along with the appropriate IRS Form.

Background

Ly is a lawsuit filed on July 10, 2020, in Sacramento County Superior Court involving plaintiff Vivian Ly (“Plaintiff”). Plaintiff claims that defendant Prime Comms Retail, LLC (“PCR”) violated California law by failing to: (1) pay straight time wages, minimum wages and overtime wages owed for off-the-clock work (and auto-deduct during meal periods); (2) properly calculate the regular rate of pay during those pay periods in which aggrieved employees had worked overtime hours and had been paid bonuses, commissions, or other forms of remuneration; (3) provide all required meal periods; (4) provide all required rest breaks; (5) unlawful collection of wages because of the meal auto-deduct policy; (6) reimburse aggrieved employees for necessary business expenditures (uniforms and cell phone usage); (7) provide accurate wage statements; (8) issue semi-monthly payments of wages; (9) keep records showing payroll records and hours worked daily by the aggrieved employees; and (10) timely pay wages owed upon separation of employment. The lawsuit sought civil penalties pursuant to California’s Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of all current and former nonexempt persons employed by PCR in California.

The Ly action is joined by plaintiffs René Palacios (“Palacios”) and Wendy Maciel (“Maciel”) (collectively with Ly, “Plaintiffs”), and adds defendants Spring Communications Holding, Inc. dba SC Spring Communications Holding, Inc.; Prime Communications, L.P.; Spring Communications Parent, Inc.; Prime Acquisition Company, LLC.; Prime Communications of California, LLC; and Spring Communications Holdings, LLC (collectively with PCR, “Defendants”)

Terms of the Settlement

The parties reached an agreement to settle the lawsuit. On _____ 2021, the Honorable Gerrit W. Wood, Sacramento County Superior Court Judge, approved the settlement. The settlement resolves all claims that Defendants are liable for civil penalties under PAGA for the alleged violations. The settlement includes all current and former nonexempt persons employed by PCR in California at any time from March 12, 2018, through the date of approval of the PAGA settlement (“Aggrieved Employees”). This settlement does not resolve any other claims for any other employees.

The gross PAGA settlement amount of \$1,500,000 includes the following: (1) individual settlement payment amounts of \$10,000 apiece to each of the plaintiffs (\$30,000 total) for release of

their individual non-PAGA claims that could have been pursued through arbitration; (2) attorneys' fees and litigation costs; (3) settlement administrator fees; and (4) a payment to California's Labor Workforce Development Agency ("LWDA") in accordance with California law. After deducting these amounts, a portion of the settlement amount, \$910,000, was available for distribution to the Employees.

No Admission of Liability

By agreeing to settle this action, Defendants are not admitting liability for any of the allegations or claims and deny such liability. Defendants agreed to settle the case as part of a compromise with Plaintiffs. Counsel for Plaintiffs believe that the claims have merit but recognize that the risk and expense of continued litigation justify settlement. Counsel for Plaintiffs believe the settlement is fair, adequate, reasonable, and in the best interests of the State of California and the Aggrieved Employees.

Your Payment Under the Settlement

Pursuant to the terms of the settlement, all Aggrieved Employees are eligible for a payment. Each Aggrieved Employee's individual share of the settlement is based on the number of two-week pay periods during which the Aggrieved Employee worked at least one workday for Defendants in California during the period from March 12, 2018, through the date of approval. Based on records maintained by Defendants, you worked a total number of _____ pay periods and your individual settlement payment is \$_____.

Other Information

If you have any questions regarding how your settlement payment was calculated, changes of name, changes of address, etc., please contact the Settlement Administrator Rust Consulting, Inc. at [EMAIL] or [PHONE NUMBER]. If you have any questions that relate solely to the legal issues in the lawsuit, please contact one of the following attorneys. If you have questions about the tax treatment of this payment, please consult your tax advisor or accountant.

David Yeremian
Roman Shkodnik
David Yeremian & Associates, Inc.
Telephone: (818) 230-8380
david@yeremianlaw.com
roman@yeremianlaw.com

Attorneys for Plaintiff Vivian Ly

Kevin T. Barnes
Gregg Lander
Law Offices of Kevin T. Barnes
(323) 549-9100
barnes@kbarnes.com

Leonard H. Sansanowicz
Sansanowicz Law Group, P.C.
(323) 677-0200
leonard@law-slg.com

Attorneys for Plaintiff René Palacios

David Mara
Mara Law Firm, PC
(619) 234-2833
dmara@maralawfirm.com

Attorneys for Plaintiff Wendy Maciel

Very truly yours,

[Settlement Administrator]

Exhibit 2

SUMMARY OF TIME AND COSTS
Vivian Ly v. Prime Comms Retail, LLC
 Sacramento County Case No. 34-2020-00281668

Attorneys' Hours: 198
Lodestar Fees: \$ 124,450.00
Costs: \$ 3,042.18

As of October 22, 2021

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
MARA LAW FIRM, PC				
David Mara	2004 (17)	110	\$750	\$82,500
Matthew Crawford	2016 (5)	47	\$500	\$23,500
Tony Roberts	2017 (4)	41	\$450	\$18,450
MARA LAW FIRM, PC TOTAL:		198		\$124,450

LITIGATION EXPENSES	
MARA LAW FIRM, PC	\$3,042.18
TOTAL COSTS	\$3,042.18

Vivian Ly v. Prime Comms Retail, LLC
Sacramento County Superior Court Case No. 34-2020-00281668

Costs Summary

Attorney Service:	\$	110.00
Court Fees:	\$	1,838.25
Mediation:	\$	1,000.00
Legal & Factual Investigation	\$	93.93
TOTAL COSTS	\$	<u>3,042.18</u>

Exhibit 5

David Mara
Grace Campbell
Jamie Serb
Taylor Hanks
Jill Vecchi
Joann B. Gerrity
Matthew Crawford
Tony Roberts
Nikki Trenner



2650 Camino Del Rio North
Suite 205, San Diego, CA 92108
Phone: (619) 234-2833
Fax: (619) 234-4048

MaraLawFirm.com

June 30, 2020

Via Upload to the LWDA Website

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

TO: California Labor and Workforce Development Agency and Prime Communications, L.P.; Spring Communications Holding, Inc.; Spring Communications Parent, Inc.; Prime Acquisition Company, LLC; Prime Communications of California, LLC; Spring Communications Holding, LLC.

FROM: *Ms. Wendy Maciel, on behalf of herself, others similarly situated, and the general public v. Prime Communications, L.P.; Spring Communications Holding, Inc.; Spring Communications Parent, Inc.; Prime Acquisition Company, LLC; Prime Communications of California, LLC; Spring Communications Holding, LLC.*

Factual Statement and Theories of Labor Code Violations

Wendy Maciel was formerly employed by Prime Communications, L.P.; Spring Communications Holding, Inc.; Spring Communications Parent, Inc.; Prime Acquisition Company, LLC; Prime Communications of California, LLC; Spring Communications Holding, LLC. (including, but not limited to, any related entity, any parent, Subsidiary or Affiliate thereof or any successor in interest of any of the foregoing) ("Prime") as a retail sales consultant and retail store manager in Los Angeles, California, and she worked for Prime within the last year ending her employment on or around July 1, 2019. Prime has over 8,000 employees and 2,000 stores. In 2019 the company helped over 40 million customers and sold over 3.5 million devices and 3.5 million accessories. Per Prime's website, Prime is the largest AT&T authorized retailer in North America. Prime's values include driving sales, respecting others, instilling simplicity, voicing ideas, and expecting greatness. The problem is that, in its sales driving culture, Prime fails to obey California's Labor Code.

Ms. Maciel gives notice of her intent to file a lawsuit for violation of the Private Attorneys General Act of 2004 ("PAGA") for Prime's failure to comply with California's wage and hour requirements on behalf of herself and similarly aggrieved employees.

I. Prime Failed to Pay Straight, Regular Rate Wages for All Work Performed

Prime has a continuous policy of not paying Ms. Maciel and the aggrieved employees for all hours worked. Prime has not paid for all the time Ms. Maciel and the aggrieved employees worked throughout the day. Including, but not limited to, time spent working through meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of their employer and/or otherwise had work duties. Ms. Maciel and the aggrieved employees are always subjected to Prime's control throughout the workday, even during unpaid periods of the workday.

Prime committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Ms. Maciel and the aggrieved employees. Prime acted with malice or in conscious disregard of Ms. Maciel's and the aggrieved employees' rights.

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a representative of the people of the State of California—will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510 and 1194.

II. Prime Failed to Pay Employees the Applicable Minimum Wage

Pursuant to Cal. Lab. Code § 1197.1, “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

Industrial Welfare Commission Order No. 4-2001 § 4(B) states “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Ms. Maciel and the aggrieved employees, such as those who ended their employment with Prime during the last year, were entitled to be paid the minimum wage for all time worked. By failing to pay for all work performed, including time spent subject to Prime's control, Prime's compensation to Ms. Maciel and the aggrieved employees fell below the applicable minimum wage.

Prime has not paid for all the time Ms. Maciel and the aggrieved employees worked throughout the day. Including, but not limited to, time spent working through meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of their employer and/or otherwise had work duties. Ms. Maciel and aggrieved employees are always subjected to Prime's control throughout the workday, even during unpaid periods of the workday.

Ms. Maciel and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a representative of the people of the State of California—will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code §§ 1197.1, 1199, and Industrial Welfare Commission Order No. 4-2001 § 4(B).

III. Prime Failed to Pay Overtime and/or Doubletime

It is fundamental that an employer must pay its employees for all time worked. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

Cal. Lab. Code § 510 dictates that 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.

Prime failed to pay overtime when Ms. Maciel and the aggrieved employees worked over eight (8) hours per day and when Ms. Maciel and the aggrieved employees worked over 40 hours per week. Ms. Maciel and the aggrieved employees frequently worked over 8 hours per day or over 40 hours per week. Prime did not have a policy to pay overtime when employees worked over 8 hours per day but less than 40 hours per week.

Employees have been subject to Prime's control pre-shift, post-shift, and during unpaid meal periods resulting in unpaid overtime where they are not getting paid, which, when working overtime eligible shifts results in underpaid overtime compensation.

Prime failed to pay Ms. Maciel and the aggrieved employees at the appropriate rate of pay, such as overtime pay. Specifically, Prime failed to incorporate bonuses, split shift premiums, fringe benefits, commissions, and/or sales incentives into overtime pay calculations. In every pay period during the relevant statute of limitations, Ms. Maciel and the aggrieved employees did not earn at least one-and-a-half times the minimum wage nor did they earn more than half their income in the form of commissions.

Ms. Maciel and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a representative of the people of the State of California—will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

IV. Prime Failed to Provide Meal Periods

Under Cal. Lab. Code § 512 no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

Prime has a consistent policy and/or practice of not providing meal periods to Ms. Maciel and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Prime's business model was such that Ms. Maciel and the aggrieved employees were assigned too much work that could not be reasonably completed in their assigned shift. The result is that Prime employees routinely and regularly are forced to eat their meals while working.

Prime has a consistent policy and/or practice of not providing meal periods to Ms. Maciel and all aggrieved employees and/or providing compensation in lieu thereof. As a matter of policy and practice, Prime does not provide employees with full 30-minute meal periods for each day worked where they are free from Prime's control. Ms. Maciel and aggrieved employees are always subjected to Prime's control throughout the workday, even during mandated breaks and meal periods.

As a matter of policy and practice, Prime does not provide 30-minute meal periods before the end of the fifth hour. As a matter of policy and practice, Prime does not provide a full 30-minute 2nd meal period when employee shifts eclipse 10-hours wherein employees are free from Prime's control. Prime does not provide a second 30-minute meal periods before the end of the tenth hour. Due to the thrust of business, Prime's policies and practices encourage employees to stay working and/or under Prime's control, as opposed to encouraging the rest and nourishment meal periods are designed to provide. As a matter of policy and practice, Prime fails to relinquish all control over employees to permit them with reasonable opportunities to take meal periods.

By failing to provide statutory first and/or second meal periods, and by failing to correctly provide compensation for unprovided meal periods, as alleged above, Prime willfully violated Cal. Lab. Code §§ 226.7 and 512. Prime has failed to provide Ms. Maciel and the aggrieved employees one additional hour of pay at their regular rate of compensation for each workday a meal or rest period was not provided pursuant to Cal. Lab. Code §226.7(c).

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store

managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a non-exempt employee who unlawfully was deprived of first and second meal periods—is an aggrieved employee with standing to bring an action under the PAGA. Ms. Maciel satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code §§ 226.7 and 512.

V. Prime Failed to Provide Rest Periods

Prime has a consistent policy and/or practice of not providing duty-free and/or control-free net ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Ms. Maciel and the aggrieved employees.

Industrial Welfare Commission Order No. 4-2001 § 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week 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.”

Prime has had a consistent policy and/or practice of not providing rest periods to Ms. Maciel and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Ms. Maciel and the aggrieved employees work up to twelve (12) hour shifts but did not receive first, second, third, or fourth rest breaks.

As a matter of policy and practice, Prime does not authorize and permit employees to take net ten-minute rest breaks every four hours or major fraction thereof. Prime’s policies and practices encourage production over breaks. Likewise, Prime’s policies and practices fail to relinquish all control over employees during breaks. In sum, this time is counted as part of employees’ rest period, even though they remain subject to Prime’s control, thereby denying Ms. Maciel and the aggrieved employees of the right to be completely free from employer control under California law.

Alternatively, Prime has a consistent policy and/or practice of not providing net ten-minute rest breaks to Ms. Maciel and all aggrieved employees and/or providing compensation in lieu thereof. Ms. Maciel and the aggrieved employees are required to work through rest periods to complete the demanding duties required by Prime, thereby denying them their right to be completely free from employer control under California law. As a matter of policy and practice, Prime does not authorize and permit employees to take duty-free rest breaks.

Prime breached the duty to provide rest periods to employees by imposing a continuous and consistent policy requiring employees to remain under its control during breaks. Subjecting aggrieved employees to control during breaks violates Labor Code section 226.7’s and Wage Order 4-2001’s requirement that rest periods, like meal periods, be free of all employer restraints and controls. Employees working time-qualifying shifts, then, have not received compliant rest periods and have been entitled to the Labor Code section 226.7 premiums.

By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided periods, as alleged above, Prime willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 4-2001 section 12(A).

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest periods—is an aggrieved employee with standing to bring an action under the PAGA. Ms. Maciel satisfied all prerequisites to serve as representatives of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 and Industrial Welfare Commission Order No. 4-2001 § 20 for violations of Cal. Lab. Code § 226.7 and Industrial Welfare Commission Order No. 4-2001 § 12(A).

VI. Prime Failed to Pay Wages Due at Termination and During Employment

Prime willfully failed to pay, in a timely manner, wages owed to the aggrieved employees who left Prime’s employ or who were terminated.

The aggrieved employees who ended their employment with Prime during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours’ 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.

During the relevant time period, Prime intentionally and willfully failed to pay the aggrieved employees who are no longer employed by Prime their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Prime’s employ. For example, Prime failed to pay all sales incentives and bonuses earned at the time of termination or within a time required under California Law. Prime required Ms. Maciel and the aggrieved employees to wait to be paid their commissions and/or bonuses until the next regular sales incentive pay date occurring well after seventy-two (72) hours of their leaving Prime’s employ.

Prime’s failure the aggrieved employees who are no longer employed by Prime their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Prime’s employ, is in violation of Cal. Lab. Code §§ 201 and 202.

Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, 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 is commenced; but the wages shall not continue for more than thirty (30) days.

Prime forced Ms. Maciel and all formerly employed aggrieved employees to forfeit commissions, bonuses, and/or sales incentives upon termination. Prime's forfeiture provisions in its commission agreements are unenforceable and unconscionable. And, Prime failed to pay Ms. Maciel and all formerly employed aggrieved employees all commission withheld or forfeited after termination. The forfeiture provision is a commercially unreasonable forfeiture clause, exacting a penalty far more than any potential detriment suffered by Prime.

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a representative of the people of the State of California—will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Cal. Lab. Code § 2699.5 for violations of sections 201 through 203.

VII. Prime's Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Cal. Lab. Code § 226(a) requires Prime to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Ms. Maciel and the aggrieved employees.

Cal. Lab. Code § 226 subdivision (a) requires Prime, at the time of each payment of wages, “furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee...”

Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

Prime has knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a). on every wage statement provided to Plaintiff and the other aggrieved employees.

Prime knowingly and intentionally failed to accurately itemize the gross wages earned, bonuses,

commissions, and/or sales incentives on Ms. Maciel's and the aggrieved employees' wage statements.

In every pay period during the period of the relevant statute of limitations, Prime knowingly and intentionally did not itemize the total hours worked on wage statements as Cal. Lab. Code § 226 (a), requires. In every pay period during the period of the relevant statute of limitations, Prime knowingly and intentionally did not include the total hours worked on wage statements and failed to include this information accurately. Prime therefore knowingly and intentionally failed to itemize the total hours worked on Ms. Maciel's and the aggrieved employees' wage statements.

The total regular and overtime hours listed in Prime's wage statements, when added together, do not sum up to the total hours worked by the employee during the pertinent time period. Without additional information regarding the wage statement, an employee cannot simply 'arrive at the sum of hours worked.' Thus, Prime's wage statement do not comply with Cal. Lab. Code § 226(a)(2).

Prime have a uniform policy of deducting 30-minutes each workday from Ms. Maciel and the aggrieved employees' wages for meal periods, even though Ms. Maciel and the aggrieved employees were working and/or under Prime's control during and throughout the time period of the deduction. Prime violated the Labor Code section 226, subdivision (a) requirement of itemizing all deductions from wages. As Prime knew or had reason to know Ms. Maciel and the aggrieved employees were working and/or under Prime's control during meal periods, Prime knowingly and intentionally failed to comply Cal. Lab. Code § 226(a). Likewise, Prime knowingly and intentionally did not include, on Ms. Maciel's and the aggrieved employees' wage statements, net wages on wage statements and failed to itemize net wages accurately.

Moreover, in every pay period, Prime has a consistent policy and/or practice of not itemizing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee or providing accurate rates as well as the corresponding number of hours worked at each rate.

In every pay period during the period of the relevant statute of limitations, Prime knowingly and intentionally did not include the name of the legal entity that is the employer thereby failing to furnish accurate itemized statements. *See, e.g.*, Cal. Lab. Code 226(a)(8). Ms. Maciel and the aggrieved employees could not promptly and easily determine the employer's name from the wage statements alone.

Prime has knowingly and intentionally failed to properly itemize the overtime rate and hours worked, making it impossible to determine the correct pay rate promptly and easily with the corresponding hours and pay. Ms. Maciel's and the aggrieved employees' wage statements incorrectly show the overtime rate and incorrectly show the number of overtime hours worked at a different number of hours than worked by the employee during the pay period. Thus, if the employee were to add together the hours listed in the line items for regular and overtime hours, the total is incorrect because it exceeds the total number hours actually worked by the employee during the pay period. As such, Prime's wage statement does not comply with Labor Code Section 226(a)(9) which requires an itemized statement to show 'all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.'" The coding on Prime's cannot be said to clearly engage the employee's use of simple

math to understand the rates of pay and total hours worked itemized on the wage statements. Prime's wage statements here confuse and mislead Ms. Maciel and the aggrieved employees as to what the rates of pay and total hours worked are, a confusion that does not disappear by itemizing the total hours worked on the wage statements.

In every pay period during the period of the relevant statute of limitations, Prime knowingly and intentionally did not include Ms. Maciel's and the aggrieved employees net wages on wage statements and failed to itemize this amount accurately. In every pay period during the period of the relevant statute of limitations, Prime knowingly and intentionally did not include all deductions on Ms. Maciel's and the aggrieved employees' wage statements and/or failed to itemize deductions accurately. In every pay period during the period of the relevant statute of limitations, Prime knowingly and intentionally did not include the inclusive dates for which the employees are paid or the last for digits of the aggrieved employees social security number or an employee identification number and/or failed to itemize this information accurately.

In every pay period during the period of the relevant statute of limitations, Prime knowingly and intentionally fails to itemize on employee wage statements the amount of paid sick leave/paid time off employees have available.

Throughout the statutory period, as a result of the knowing and intentional failure by Prime to comply with itemized employee wage statement provisions, Ms. Maciel and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a non-exempt employee who Prime failed to provide accurate and itemized wage statements—is an aggrieved employee with standing to bring an action under the PAGA. Ms. Maciel satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 226.

VIII. Prime Failed to Pay Employees Two Times Per Month

Section 204(a) of the *California Labor Code* requires that all wages 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.

Prime has a consistent policy and/or practice of failing to pay Ms. Maciel and the aggrieved employees all wages earned twice per month. By failing to pay employees all wages earned twice per month, Prime willfully violated the provisions of *Labor Code* section 204(a).

Prime has a consistent policy and/or practice of failing to pay Ms. Maciel and the aggrieved employees all bonuses, commissions, and/or earning sales incentives earned twice per month. By failing to pay employees all wages earned twice per month, Prime willfully violated the provisions

of *Labor Code* section 204(a).

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a non-exempt employee that Prime failed to pay all wages earned twice per month—is an aggrieved employee with standing to bring an action under the PAGA. Ms. Maciel satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 204.

IX. Prime Failed to Provide Paid Sick Days

Section 246(a)(1) of the Labor Code states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

Section 233(c) of the Labor Code states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.” Section 233(d) of the Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

Section 234 further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

Prime failed to provide Ms. Maciel and the aggrieved employees with paid sick days in compliance with Section 246 and Section 246.5. Prime has a policy and practice which denied Ms. Maciel and the aggrieved employees from accruing paid sick days after having been employed by Prime for 30 or more days. Prime has a policy and practice which denied Ms. Maciel and the aggrieved employees of using their paid sick days after having been employed by Prime for 90 or more days.

Further, Prime has adopted a policy and practice that denies Ms. Maciel and the aggrieved employees the ability to use their sick days in compliance with Labor Code Sections 233 and 246.5. For example, Prime threatens to discipline or discharge its employees for failing to provide Prime with sufficient advanced notice of their intent to use their paid sick days in clear violation of Labor Code Section 234. Ms. Maciel and the aggrieved employees were entitled to actual damages or one day’s pay pursuant to Labor Code Section 233(d).

Prime’s sick pay policy fails to pay sick pay for all appropriate and protected purposes enumerated

in Labor Code sections 233, 234, 246, and 246.5, and Prime fails to itemize the amount of accrued/available sick leave employees have on wage statements each pay period.

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 233, 234, 246, and 246.5.

XI. Prime Failed to Reimburse Employees for Business Expenses

Section 2802(a) of the *Labor Code* requires “[a]n employer [to] indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

Ms. Maciel and the aggrieved employees incurred expenses in the discharge of their duties without receiving reimbursement from Prime. Expenses include, but are not limited to, electricity costs for having to charge company equipment at their residences and the cellular phone costs for having to use their personal cell phones for completing employment duties. Also, Ms. Maciel and the aggrieved employees are required to maintain uniforms and launder uniforms in completing employment duties without reimbursement.

Labor Code section 2802(a) entitles Ms. Maciel and the aggrieved employees to reimbursement for said necessary expenditures, plus interest and expenses.

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or similar job designations, and all other similarly situated non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel is an aggrieved employee with standing to bring an action under the PAGA. Furthermore, Ms. Maciel satisfies all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 2802(a).

XII. Prime Underpaid Employees Every Pay Period

Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Labor Code section 2699(f)(2). In the alternative to the penalties above, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations pursuant to this

chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2) should such provision be applicable.

Section 558(a) of the *California Labor Code* subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for every pay period for which the employee was underpaid, which includes the underpaid wages related to each violation.

Every pay period, Prime failed to pay employees the legal minimum wage in violation of *California Labor Code* section 1197.1, and employees are entitled to underpaid wages pursuant to Section 558(a).

For every pay period, Prime has a continuous policy of not paying Ms. Maciel and the aggrieved employees for all hours worked. This includes, but is not limited to, rounding, before “shifts” start, after “shifts” end, deducting thirty minutes (30) for on-duty meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of employer and/or otherwise had work duties. Employees are entitled to underpaid wages pursuant to Section 558(a).

Every pay period, Prime failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over 40 hours per week in violation of *California Labor Code* section 510, and employees are entitled to underpaid overtime wages pursuant to Section 558(a).

Every pay period, Prime has a consistent policy and/or practice of not providing meal periods to Ms. Maciel and all aggrieved employees and/or providing compensation in lieu thereof in violation of *California Labor Code* section 512, and employees are entitled to underpaid meal period premium wages pursuant to Section 558(a).

Every pay period, Prime has a consistent policy and/or practice of not providing rest periods to Ms. Maciel and the aggrieved employees and/or providing compensation in lieu thereof, and employees are entitled to underpaid rest period premium wages pursuant to Section 558(a).

Ms. Maciel and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Ms. Maciel and all the non-exempt hourly retail sales consultants, retail store managers, and/or all other non-exempt hourly employees who are presently or formerly employed by Prime and/or its subsidiaries or affiliated companies and/or predecessors in California.

Ms. Maciel—as a non-exempt aggrieved employee who unlawfully was underpaid every pay period during her employment—is an aggrieved employee and has standing to bring an action under the PAGA. Ms. Maciel satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code* section 558(a) for violations of *Labor Code* sections 510 and 512 and California’s labor laws.

Conclusion

If after 65 days from the date of this letter, the LWDA does not act or declines to intervene, Ms. Maciel will file a complaint alleging PAGA violations, as described above.

Respectfully submitted,
MARA LAW FIRM, PC



Tony Roberts, Esq.

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SPRING COMMUNICATIONS HOLDING, LLC
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PRIME ACQUISITION COMPANY, LLC
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PRIME COMMUNICATIONS OF CALIFORNIA, LLC

Attention Farid Virani
12550 Reed Road, Suite 100
Sugar Land, Texas 77478

ATTN: PAGA ADMINISTRATOR
California Labor and Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Via Web Submission and Certified Mail

Exhibit 6

THE LAW OFFICES OF

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July 15, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

(by certified mail to Prime Comms Retail, LLC)

Prime Comms Retail, LLC
Capitol Corporate Services, Inc., Agent for Service of Process
455 Capitol Mall Complex, Suite 217
Sacramento, CA 95814
Certified Mail Tracking Number: 7019 2970 0001 5087 7843

Prime Comms Retail, LLC
12550 Reed RD. STE. 100
Sugar Land, TX 77478
Certified Mail Tracking Number: 7019 2970 0001 5087 7850

**Re: Labor Code § 2699 Penalties
*Ly v. Prime Comms Retail, LLC***

Gentlepersons:

This office represents Plaintiff Vivian Ly (“Plaintiff”) and other aggrieved employees (collectively “Aggrieved Employees”) for the violation of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

Plaintiff wishes to bring a representative action on behalf of herself and the State of California against Defendants Prime Comms Retail, LLC, a Delaware limited liability corporation, and DOES 1 through 50 inclusive (defendants being referred to herein collectively as “Defendants”).

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* We herein set forth the facts and theories of California

Labor Code violations which we Defendants engaged in with respect to our client and all of their California employees.

Relevant Facts

Plaintiff and Aggrieved Employees were employed by Defendants as non-exempt employees. Plaintiff is also informed and believes that there are other aggrieved employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Defendant would automatically deduct 30 minutes of wages from Aggrieved Employees for alleged meal periods which Aggrieved Employees were continuously denied. Accordingly, Aggrieved Employees were required to work during their meal periods without pay. Thus, Aggrieved Employees were required to work hours without wages.

Additionally, Aggrieved Employees were forced to use a timeclock that would often malfunction and not record Aggrieved Employees actual time worked. As a result Aggrieved Employees were only paid for their scheduled hours and not the actual hours worked. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also failed to pay Aggrieved Employees proper overtime wages. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not always paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants had a common policy and/or practice of denying Aggrieved Employees proper meal periods. Specifically, employees were required to work through their meal periods which they were consistently denied as they had to assist customers during their meal periods. Moreover, as discussed above, Defendants had a common policy and/or practice of automatically deducting 30 minutes of wages for alleged meal periods, which Aggrieved Employees were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess

of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders.

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Moreover, Aggrieved Employees were not paid for whatever rest breaks they were provided.

Defendants also had a common policy and/or practice of unlawfully collecting or receiving wages from Aggrieved Employees. As discussed above, Defendants would automatically deduct 30 minutes of vested wages from Aggrieved Employees for alleged meal periods which they were denied. Moreover, Defendants also had a common policy and/or practice of understating the hours worked by Aggrieved Employees.

Defendants had a common policy and practice of failing to reimburse Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, purchasing uniforms (shirts, sweaters, and name tags) and cell phone usage which was necessary to perform their duties under Defendants' employ which was used throughout the course of Aggrieved Employees' duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above. Moreover, Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

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Aggrieved Employees complain of the following violations:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he 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.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Defendant would automatically deduct 30 minutes of wages from Aggrieved Employees for alleged meal periods which Aggrieved Employees were continuously denied. Accordingly, Aggrieved Employees were required to work during their meal periods without pay. Furthermore, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Aggrieved Employees were forced to use a timeclock that would often malfunction and not record Aggrieved Employees actual time worked were only paid for their scheduled hours and not the actual hours worked. Additionally, Defendant also had a common policy and/or practice of understating the hours worked by Aggrieved Employees. Thus, Aggrieved Employees were required to work hours without wages. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Plaintiff and Aggrieved Employees seek to recover penalties. Plaintiff and the Aggrieved Employees are entitled to recover the unpaid minimum wages, liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions.

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not always paid overtime wages for hours worked in excess of 8 hours a day in violation of Labor Code § 510 and applicable Wage Orders. As discussed above Aggrieved Employees were only paid for their scheduled hours and not the actual hours worked. Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received

nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours and ten (10) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes for the first (5) hours and for the tenth hour as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Specifically, employees were required to work through their meal periods which they were consistently denied. Moreover, as discussed above, Defendants had a common policy and/or practice of automatically deducting 30 minutes of wages for alleged meal periods, which Aggrieved Employees were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Moreover, Aggrieved Employees were not paid for whatever rest breaks they were provided. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, “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.” As discussed above, Defendants unlawfully received and/or collected wages from Employees by implementing a policy of automatically deducting 30 minutes worth of vested wages, from Employees, for alleged meal periods which they were consistently denied, as well as by understating the hours worked by Aggrieved Employees. In light of the forgoing, Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants’ employ. Specifically, Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, purchasing uniforms (shirts, sweaters, and name tags) and cell phone usage which was necessary to perform their duties under Defendants’ employ which was used throughout the course of Aggrieved Employees’ duties under Defendants’ employ in violation of Labor Code § 2802. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees’ wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above. Please see true and correct copy of Plaintiff’s wage statement attached hereto as “Exhibit 1.”

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Plaintiff and Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Section 1174 requires employers to keep records showing payroll records and the hours worked daily by and the wages paid to employees. Failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages fur and owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Unfair Competition Under Business and Professions Code § 17200, *et seq.*

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

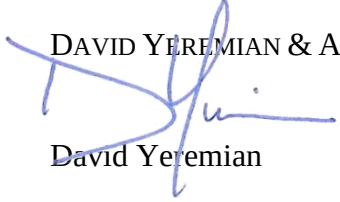
We are constrained to move forward with the filing of this complaint, alleging the causes of action discussed herein, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

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Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and Aggrieved Employees should include them as a § 2699 claim in an amended complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Enclosures:

Cc: Above listed Defendants by Certified Mail

EXHIBIT 1

Earnings Statement

VIVIAN LY

Pay Date:01/10/2020

Period Start:12/21/2019

Period End:01/03/2020

Company: OVI14 - SPRING COMMUNICATIONS HOLDINGS LLC

12550 REED RD STE 100

SUGAR LAND TX 77478 (281) 240-7800

Emp #: A9PU

Dept: 60240 - Store

Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date
Earnings				
Regular	14.50	55.85	809.83	809.83
Overtime	21.75	1.12	24.36	24.36
CA Break Pay	14.50	1.00	14.50	14.50
CA Commission Adv OT	0.02	0.08	0.00	0.06
Sales Incentive			5.50	214.00
Gross		58.05	854.19	1062.75
W/H Taxes				
Federal W/H(S/0)			0.00	0.00
Medicare			12.39	15.41
Social Security			52.96	65.89
California State W/H(H/2)			0.00	0.00
CaliforniaSDI Tax			8.54	10.63
Deductions				
Net Pay			780.30	970.82
Net Pay Distribution				
Direct Deposit Net Check			780.30	970.82

SPRING COMMUNICATIONS HOLDINGS LLC

12550 REED RD STE 100

SUGARLAND, TX 77478

Dept: 60240

Net Pay:

Seven Hundred Eighty And 30/100 Dollars

VIVIAN LY

8344 HONEYCOMB WAY

SACRAMENTO, CA 95828

Voucher No. 226911920DD

DATE: 01/10/2020

780.30

For Record Purposes Only

NON-NEGOTIABLE

Exhibit 7

THE LAW OFFICES OF

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM

March 4, 2021

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

(by certified mail to Prime Comms Retail, LLC)

Prime Comms Retail, LLC
Capitol Corporate Services, Inc., Agent for Service of Process
455 Capitol Mall Complex, Suite 217
Sacramento, CA 95814
Certified Mail Tracking Number: 7019 2970 0000 5058 2861

Prime Comms Retail, LLC
12550 Reed RD. STE. 100
Sugar Land, TX 77478
Certified Mail Tracking Number: 7019 2970 0000 5058 2878

Spring Communications Holdings LLC
12550 Reed RD. STE. 100
Sugar Land, TX 77478
Certified Mail Tracking Number: 7019 2970 0000 5058 2878

Re: Labor Code § 2699 Penalties
Ly v. Prime Comms Retail, LLC
Case No. 34-2020-00281668
LWDA Case No. LWDA-CM-797139-20

Gentlepersons:

This office represents Plaintiff Vivian Ly (“Plaintiff”) and other aggrieved employees (collectively “Aggrieved Employees”) for the violation of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

Plaintiff wishes to bring a representative action on behalf of herself and the State of California against Defendants Prime Comms Retail, LLC, a Delaware limited liability corporation, Spring Communications Holdings LLC, a business of unknown entity, and DOES 1 through 50 inclusive (defendants being referred to herein collectively as “Defendants”).

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we Defendants engaged in with respect to our client and all of their California employees.

Relevant Facts

Plaintiff and Aggrieved Employees were employed by Defendants as non-exempt employees. Plaintiff is also informed and believes that there are other aggrieved employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Defendant would automatically deduct 30 minutes of wages from Aggrieved Employees for alleged meal periods which Aggrieved Employees were continuously denied. Accordingly, Aggrieved Employees were required to work during their meal periods without pay. Thus, Aggrieved Employees were required to work hours without wages.

Additionally, Aggrieved Employees were forced to use a timeclock that would often malfunction and not record Aggrieved Employees actual time worked. As a result Aggrieved Employees were only paid for their scheduled hours and not the actual hours worked. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also failed to pay Aggrieved Employees proper overtime wages. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not always paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants had a common policy and/or practice of denying Aggrieved Employees proper meal periods. Specifically, employees were required to work through their meal periods which they were consistently denied as they had to assist customers during their meal periods. Moreover, as discussed above, Defendants had a common policy and/or practice of automatically deducting 30 minutes of wages for alleged meal periods, which Aggrieved Employees were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders.

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Moreover, Aggrieved Employees were not paid for whatever rest breaks they were provided.

Defendants also had a common policy and/or practice of unlawfully collecting or receiving wages from Aggrieved Employees. As discussed above, Defendants would automatically deduct 30 minutes of vested wages from Aggrieved Employees for alleged meal periods which they were denied. Moreover, Defendants also had a common policy and/or practice of understating the hours worked by Aggrieved Employees.

Defendants had a common policy and practice of failing to reimburse Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, purchasing uniforms (shirts, sweaters, and name tags) and cell phone usage which was necessary to perform their duties under Defendants' employ which was used throughout the course of Aggrieved Employees' duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay

for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above. Moreover, Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Aggrieved Employees complain of the following violations:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he 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.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Defendant would automatically deduct 30 minutes of wages from Aggrieved Employees for alleged meal periods which Aggrieved Employees were continuously denied. Accordingly, Aggrieved Employees were required to work during their meal periods without pay. Furthermore, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Aggrieved Employees were forced to use a timeclock that would often malfunction and not record Aggrieved Employees actual time worked were only paid for their scheduled hours and not the actual hours worked. Additionally, Defendant also had a common policy and/or practice of understating the hours worked by Aggrieved Employees. Thus, Aggrieved Employees were required to work hours without wages. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Plaintiff and Aggrieved Employees seek to recover penalties. Plaintiff and the Aggrieved Employees are entitled to recover the unpaid minimum wages, liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions.

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generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

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Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours and ten (10) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes for the first (5) hours and for the tenth hour as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Specifically, employees were required to work through their meal periods which they were consistently denied. Moreover, as discussed above, Defendants had a common policy and/or practice of automatically deducting 30 minutes of wages for alleged meal periods, which Aggrieved Employees were consistently denied. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

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Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, “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.” As discussed above, Defendants unlawfully received and/or collected wages from Employees by implementing a policy of automatically deducting 30 minutes worth of vested wages, from Employees, for alleged meal periods which they were consistently denied, as well as by understating the hours worked by Aggrieved Employees. In light of the forgoing, Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants’ employ. Specifically, Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, purchasing uniforms (shirts, sweaters, and name tags) and cell phone usage which was necessary to perform their duties under Defendants’ employ which was used throughout the course of Aggrieved Employees’ duties under Defendants’ employ in violation of Labor Code § 2802. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees’ wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Aggrieved Employees were confusing and required

Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above. Please see true and correct copy of Plaintiff's wage statement attached hereto as "Exhibit 1."

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Plaintiff and Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Section 1174 requires employers to keep records showing payroll records and the hours worked daily by and the wages paid to employees. Failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Unfair Competition Under Business and Professions Code § 17200, et seq.

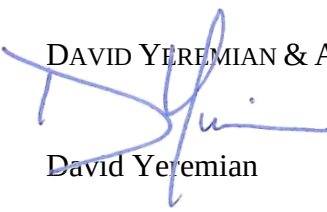
Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

We are constrained to move forward with the filing of this complaint, alleging the causes of action discussed herein, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and Aggrieved Employees should include them as a § 2699 claim in an amended complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Enclosures:

Cc: Above listed Defendants by Certified Mail

EXHIBIT 1

Earnings Statement

VIVIAN LY

Pay Date:02/12/2020

Period Start:12/01/2019

Period End:12/31/2019

Company: 0VI14 - PRIME COMMS RETAIL LLC

12550 REED RD STE 100

SUGAR LAND TX 77478 (281) 240-7800

Emp #: A9PU

Dept: 60240 - Store

Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date
Earnings				
Regular	14.50	0.00	0.00	2673.23
Overtime	21.75	0.00	0.00	33.50
CA Break Pay	14.50	0.00	0.00	29.00
CA Commission Adv OT	2.57	1.12	2.88	2.94
Sales Incentive			668.00	882.00
Gross		1.12	670.88	3620.67
W/H Taxes				
Federal W/H(S/0)			0.00	0.00
Medicare			9.73	52.50
Social Security			41.59	224.47
California State W/H(H/2)			0.00	0.00
CaliforniaSDI Tax			6.71	36.21
Deductions				
Net Pay			612.85	3307.49
Net Pay Distribution				
Direct Deposit Net Check			612.85	3307.49

Voucher No. 232140729DD

A/C:3685

PRIME COMMS RETAIL LLC

12550 REED RD STE 100

SUGARLAND, TX 77478

DATE: 02/12/2020

Voucher No. 232140729DD

Dept: 60240

Net Pay:

Six Hundred Twelve And 85/100 Dollars

612.85

VIVIAN LY

For Record Purposes Only

NON-NEGOTIABLE

Pay Date:01/10/2020

Period Start:12/21/2019

Period End:01/03/2020

Company: 0VI14 - SPRING COMMUNICATIONS HOLDINGS LLC

12550 REED RD STE 100

SUGAR LAND TX 77478 (281) 240-7800

Emp #: A9PU

Dept: 60240 - Store

Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date
Earnings				
Regular	14.50	55.85	809.83	809.83
Overtime	21.75	1.12	24.36	24.36
CA Break Pay	14.50	1.00	14.50	14.50
CA Commission Adv OT	0.02	0.08	0.00	0.06
Sales Incentive			5.50	214.00
Gross		58.05	854.19	1062.75
W/H Taxes				
Federal W/H(S/0)			0.00	0.00
Medicare			12.39	15.41
Social Security			52.96	65.89
California State W/H(H/2)			0.00	0.00
CaliforniaSDI Tax			8.54	10.63
Deductions				
Net Pay			780.30	970.82
Net Pay Distribution				
Direct Deposit Net Check			780.30	970.82

Voucher No. 226911920DD

A/C:3685

SPRING COMMUNICATIONS HOLDINGS LLC

12550 REED RD STE 100

SUGARLAND, TX 77478

DATE: 01/10/2020

Voucher No. 226911920DD

Dept: 60240

Net Pay:

Seven Hundred Eighty And 30/100 Dollars

780.30

VIVIAN LY

For Record Purposes Only

****NON-NEGOTIABLE****

Exhibit 8

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY REGION, BY FIRM

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Gibson Dunn & Crutcher, LLP	3
Kornfeld, Nyberg, Bendes & Kuttner, P.C.	4
Loeb & Loeb	4
Pachnis & Stang Ziehl Young Jones & Weintraub	4-5
Paul Hastings LLP	5
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Torres LLP	7

California Report

FIRM		GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Akin Gump Strauss Hauer & Feld LLP	Partner	1993	1993	CA	\$ 825.00	8.10	\$ 6,682.50
	David P. Simonds	1993	1993	CA	\$ 725.00	2.60	\$ 1,885.00
	Senior Counsel Edward P. Christian	1993	1993	CA	\$ 725.00	10.70	\$ 8,567.50
		TOTAL					
DLA Piper LLP	Partner	1999	1999	CA	\$ 790.00	0.60	\$ 474.00
	Nate McQuirk	1979	1979	CA	\$ 780.00	39.40	\$ 30,732.00
	Partner	1999	1999	CA	\$ 780.00	90.30	\$ 68,176.50
	Richard Yankovich	1999	1999	CA	\$ 780.00	90.30	\$ 68,176.50
	Partner	2000	2000	CA	\$ 765.00	1.30	\$ 765.00
	Ann Lawrence	2000	2000	CA	\$ 765.00	1.30	\$ 765.00
	Partner	1998	1998	CA	\$ 650.00	12.70	\$ 8,255.00
	Heather Dunn	1998	1998	CA	\$ 650.00	12.70	\$ 8,255.00
	Partner	2002	2002	CA	\$ 640.00	3.10	\$ 1,984.00
	Jeffrey D. Aaronson	2002	2002	CA	\$ 640.00	3.10	\$ 1,984.00
	Of Counsel	2004	2004	CA	\$ 630.00	170.00	\$ 107,100.00
	Ben Gipson	2004	2004	CA	\$ 630.00	170.00	\$ 107,100.00
	Associate	2008	2008	CA	\$ 510.00	67.00	\$ 34,170.00
Gibson Dunn & Crutcher, LLP	Associate	2011	2011	CA	\$ 470.00	1.80	\$ 846.00
	Diana M. Melzer	2011	2011	CA	\$ 470.00	1.80	\$ 846.00
	Associate	2000	2000	CA	\$ 400.00	4.10	\$ 1,640.00
	Thia Bhanthall	2000	2000	CA	\$ 400.00	4.10	\$ 1,640.00
		TOTAL					\$ 254,254.00
Gibson Dunn & Crutcher, LLP	Associate	2010	2010	CA	\$ 445.00	18.20	\$ 8,544.00
	Virginia Pitt	2010	2010	CA	\$ 445.00	18.20	\$ 8,544.00
	Associate	2011	2011	CA	\$ 395.00	12.60	\$ 4,977.00
	Matthew Bouslog	2011	2011	CA	\$ 395.00	12.60	\$ 4,977.00
		TOTAL					\$ 13,521.00

U.S.B.C New York Southern
Private Airline Corp (12-11343 REG)

From the fee application covering
July 1, 2012 through October 31, 2012

NLI Ranking: 40
Firm Size: 791

U.S.B.C Delaware
Trident Microsystems, Inc. (12-10063 CSS)

From the fee application covering
October 1, 2012 through October 31, 2012

NLI Ranking: 2
Firm Size: 3,348

U.S.B.C New York Southern
LightSquared, Inc (12-12080 SCC)

From the fee application covering
October 1, 2012 through October 31, 2012

NLI Ranking: 21
Firm Size: 1,039

California Report

FIRM

Kornfield, Nyberg, Bander & Kuhrer, P.C.,
Partner Eric A. Nyberg
Paraprofessional Nancy L. Nyberg

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1987	1987	CA	\$ 425.00	15.90	\$ 7,182.50
		CA	90.00	0.30	24.00
				17.20	\$ 7,206.50
TOTAL					

U.S.B.C California Northern
Hawrey LLP(41-34376-DJ)
From the fee application covering
August 1, 2012 through August 31, 2012

NLJ Ranking: n/a
Firm Size: 3

FIRM

Loeb & Loeb
Partner Lance N. Jurich
Partner Christopher W. Campbell
Associate Ryan M. Audin
Associate Jeanna C. Wanless
Paraprofessional S. Steadman

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1987	1987	CA	\$ 695.00	1.50	\$ 1,320.50
1999	2000	CA	550.00	46.20	30,030.00
2007	2007	CA	550.00	122.30	67,255.00
1993	1993	CA	435.00	18.20	7,917.00
			280.00	0.20	52.00
TOTAL					\$ 105,584.50

U.S.B.C California Central
American Medical Technologies(8-12-12339-MW)

From the fee application covering
July 1, 2012 to September 30, 2012

NLJ Ranking: 144
Firm Size: 301

FIRM

Pachtulski Stang Ziehl Young Jones & Weintraub
Of Counsel James K. T. Hunter
Partner Samuel R. Matzel
Of Counsel Jeffrey Kandell
Partner Mahira S. Pagay
Partner Scotta McFarland
Of Counsel Mary Lane
Partner Nina Hong
Associate Teddy M. Kapur
Librarian Leslie A. Forrester
Paraprofessional Felice Harrison

GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
1976	1976	CA	\$ 745.00	0.10	\$ 74.50
1985	1985	CA	725.00	40.90	29,552.50
1984	1984	CA	615.00	0.50	307.50
1997	1997	CA	615.00	1.80	1,107.00
1980	1980	CA	615.00	47.80	29,397.00
1976	1976	CA	595.00	3.80	2,261.00
1995	1995	CA	595.00	0.50	297.50
2004	2006	CA	495.00	8.40	4,158.00
			295.00	1.10	324.50
			275.00	23.00	6,325.00
TOTAL					\$ 73,904.50

U.S.B.C California Central
American Medical Technologies(8-12-12339-MW)

From the fee application covering
July 1, 2012 to July 31, 2012

NLJ Ranking: n/a
Firm Size: 55

California Report

FIRM:
Pecholski & Stang Ziehl Young Jones & Weintraub

	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	1979	1979	CA	\$ 975.00	0.80	\$ 780.00
Partner	1982	1983	CA	\$ 875.00	12.80	\$ 11,200.00
Of Counsel	1975	1976	CA	\$ 745.00	4.00	\$ 2,980.00
Partner	1983	1983	CA	\$ 745.00	50.80	\$ 37,846.00
Partner	1983	1984	CA	\$ 725.00	11.10	\$ 8,047.50
Of Counsel	1987	1987	CA	\$ 675.00	15.80	\$ 10,462.50
Of Counsel	1987	1987	CA	\$ 595.00	5.20	\$ 3,094.00
Of Counsel	1980	1980	CA	\$ 575.00	4.30	\$ 2,472.50
Associate	2004	2010	CA	\$ 525.00	31.00	\$ 16,275.00
Paraprofessional				265.00	2.50	\$ 862.50
Paraprofessional				265.00	7.70	\$ 2,040.50
Paraprofessional				265.00	1.00	\$ 265.00
Case Management				185.00	5.40	\$ 993.00
Case Management				185.00	0.40	\$ 74.00
TOTAL					152.50	\$ 57,198.50

FIRM:
Paul Hastings LLP

	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	1976	1976	CA	\$ 840.00	15.80	\$ 13,272.00
Of Counsel	1983	1983	CA	\$ 785.00	132.40	\$ 115,062.00
Associate	2006	2006	CA	\$ 715.00	31.10	\$ 19,126.50
Associate	2007	2008	CA	\$ 575.00	181.70	\$ 104,477.50
Associate	2009	2009	CA	\$ 485.00	87.10	\$ 42,243.50
Associate	2010	2010	CA	\$ 385.00	57.00	\$ 37,345.00
Associate	2010	2010	CA	\$ 385.00	160.20	\$ 81,577.00
TOTAL					725.30	\$ 393,203.50

FIRM:
Seyfarth Shaw LLP

	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Counsel	1996	1996	CA	\$ 580.00	2.40	\$ 1,832.00
Partner	1985	1985	CA	\$ 820.00	1.50	\$ 930.00
Counsel	1997	1997	CA	\$ 540.00	55.60	\$ 30,564.00
TOTAL					60.50	\$ 33,416.00

U.S.B.C Delaware
Trident Microsystems, Inc. (12-10089 (CSS))

From the fee application covering
September 1, 2012 through September 30, 2012

N.J. Ranking: n/a
Firm Size: 55

U.S.B.C New York Southern
AMR Corporation (11-15463 (SHL))

From the fee application covering
July 1, 2012 through July 31, 2012

N.J. Ranking: 30
Firm Size: 851

U.S.B.C New York Southern
Grubb & Ellis Company (12-10085 (MG))

From the fee application covering
July 2, 2012 through October 31, 2012

N.J. Ranking: 50
Firm Size: 733

California Report

FIRM Sidley Austin LLP

	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	1995	1995	CA	\$ 875.00	18.10	\$ 12,217.50
Associate	2010	2010	CA	450.00	117.50	53,065.00
Associate	2011	2011	CA	355.00	41.00	14,555.00
TOTAL					177.00	\$ 79,827.50

U.S.B.C Delaware
Tribune Company, et al. (08-13144 FJCJ)

From the fee application covering
September 1, 2012 through September 30, 2012

NLI Ranking: 10
Firm Size: 1,592

Tenys LLP

Partner	1983	1983	CA	\$ 995.00	5.50	\$ 5,472.50
Partner	1974	1974	CA	995.00	0.40	398.00
Partner	1977	1977	CA	810.00	0.50	405.00
Associate	2008	2008	CA	695.00	21.10	14,564.50
Associate	2007	2007	CA	565.00	110.00	62,150.00
Associate	2008	2008	CA	500.00	0.50	250.00
Library				355.00	0.80	284.00
Law Clerk				395.00	43.90	13,389.50
Paraprofessional				250.00	28.20	7,332.00
Paraprofessional					210.90	\$ 104,345.50
TOTAL						

U.S.B.C Delaware
Nettel Networks Inc. (09-10138)

From the fee application covering
August 1, 2012 through October 31, 2012

NLI Ranking: n/a
Firm Size: 236

Westlaw Court Express

LEGAL BILLING REPORT

VOLUME 14, NUMBER 3

December 2012

CA REGION

BY BILLING RATE

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Partner	John Cameron	1983	1983	CA	\$ 995.00	5.50	\$ 5,472.50
Partner	Shelia Block	1974	1974	CA	\$ 995.00	0.40	398.00
Partner	Richard M. Pachulski	1979	1979	CA	\$ 975.00	0.80	780.00
Partner	Ira D. Kharasch	1982	1982	CA	\$ 875.00	12.80	11,200.00
Partner	J. A. Latham Jr.	1978	1978	CA	\$ 840.00	15.80	13,272.00
Partner	David P. Stronids	1983	1983	CA	\$ 825.00	9.10	6,682.50
Partner	Michael Rotszala	1977	1977	CA	\$ 810.00	0.50	405.00
Partner	Nate McKittick	1989	1989	CA	\$ 780.00	0.60	474.00
Partner	Richard Yankeiwich	1979	1979	CA	\$ 760.00	39.40	30,732.00
Partner	Ana Lawton	1989	1989	CA	\$ 755.00	50.30	68,176.50
Of Counsel	Jennifer S. Baldocchi	1983	1983	CA	\$ 755.00	152.40	115,062.00
Of Counsel	James K.T. Hunter	1976	1976	CA	\$ 745.00	0.10	74.50
Of Counsel	James K.T. Hunter	1976	1976	CA	\$ 745.00	4.00	2,980.00
Partner	John D. Fiero	1989	1989	CA	\$ 745.00	50.80	37,846.00
Senior Counsel	Edward P. Christian	1985	1985	CA	\$ 725.00	2.60	1,885.00
Partner	Samuel R. Malzel	1985	1985	CA	\$ 725.00	40.90	29,632.50
Partner	Bruce Grohschal	1983	1984	CA	\$ 725.00	11.10	8,077.50
Partner	Heather Dunn	2000	2000	CA	\$ 705.00	1.30	916.50
Partner	Lance N. Jurth	1987	1987	CA	\$ 695.00	1.90	1,320.50
Associate	Jessica Bullock	2003	2003	CA	\$ 695.00	21.10	14,684.50
Counsel	Ellen Sueda	1983	1983	CA	\$ 675.00	2.40	1,632.00
Of Counsel	Henry Hochman	1987	1987	CA	\$ 675.00	16.50	10,462.50
Partner	Max C. Fischer	1985	1985	CA	\$ 675.00	18.10	12,217.50
Partner	Jeffrey D. Karsonson	1988	1988	CA	\$ 650.00	12.70	8,255.00
Partner	Christopher W. Campbell	1989	1989	CA	\$ 650.00	46.20	30,030.00
Of Counsel	Ben Gibson	2002	2002	CA	\$ 640.00	3.10	1,984.00
Associate	Bertrand Pan	2004	2004	CA	\$ 630.00	170.00	107,100.00
Partner	Colleen M. Regan	1985	1985	CA	\$ 620.00	1.50	930.00
Of Counsel	Jeffrey Kamel	1984	1984	CA	\$ 615.00	0.50	307.50
Partner	Malhar S. Pargy	1984	1987	CA	\$ 615.00	1.60	1,107.00
Partner	Scott McFarland	1980	1980	CA	\$ 615.00	47.80	29,337.00
Associate	Melinda A. Gordon	2009	2009	CA	\$ 615.00	31.10	19,126.50
Of Counsel	Mary Lane	1976	1976	CA	\$ 595.00	3.90	2,261.00
Partner	Nina Hong	1986	1986	CA	\$ 595.00	0.90	535.50
Of Counsel	Gabriele Rohrer	1997	1997	CA	\$ 595.00	5.20	3,094.00

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
Of Counsel	Pachulski Stang Ziehl Young Jones & Weintraub	1980	1980	CA	\$ 575.00	4.30	\$ 2,472.50
William Ramseyer	Paul Hastings LLP	2007	2008	CA	\$ 575.00	191.70	104,477.50
Robert E. Zivier	Tony's LLP	2007	2007	CA	\$ 555.00	110.00	62,150.00
Adam Siverts	Loeb & Loeb	2007	2007	CA	\$ 550.00	122.30	67,265.00
Ryan M. Aulich	Seyfarth Shaw LLP	1997	1997	CA	\$ 40.00	56.60	30,854.00
Holger Basch	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2010	CA	\$ 525.00	31.00	16,275.00
John W. Lucas	DLA Piper LLP	2008	2008	CA	\$ 510.00	87.00	34,170.00
Diana M. Malzer	Tony's LLP	2008	2008	CA	\$ 500.00	0.50	250.00
Madhew Akoy	Pachulski Stang Ziehl Young Jones & Weintraub	2004	2008	CA	\$ 495.00	8.40	4,158.00
Teddy M. Kumar	Paul Hastings LLP	2009	2009	CA	\$ 485.00	87.10	42,243.00
Liam M. Paez	DLA Piper LLP	2011	2011	CA	\$ 470.00	1.80	846.00
Natasha Hsieh	Sidley Austin LLP	2010	2010	CA	\$ 450.00	117.50	53,055.00
Michael T. Gustafson	Gibson Dunn & Crutcher, LLP	2010	2010	CA	\$ 445.00	19.20	8,544.00
Virginia FRI	Loeb & Loeb	1993	1993	CA	\$ 435.00	18.20	7,917.00
Jeanne C. Wanlass	Kornfield, Nyberg, Bendes & Kuhner, P.C.	1987	1987	CA	\$ 425.00	16.90	7,182.50
Eric A. Nyberg	DLA Piper LLP	2000	2000	CA	\$ 400.00	4.10	1,640.00
Tina Bhattachal	Gibson Dunn & Crutcher, LLP	2011	2011	CA	\$ 395.00	12.60	4,577.00
Matthew Bourisog	Paul Hastings LLP	2010	2010	CA	\$ 385.00	97.00	37,545.00
Ji Hae Kim	Paul Hastings LLP	2010	2010	CA	\$ 385.00	160.20	61,677.00
Marlo C. Ortega	Sidley Austin LLP	2011	2011	CA	\$ 355.00	41.00	14,555.00
Francis S. Lum	Tony's LLP	2000	2000	CA	\$ 305.00	0.80	264.00
Clare Mauro	Tony's LLP	2000	2000	CA	\$ 305.00	43.90	13,389.50
Bradley Tordick	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 295.00	1.10	324.50
Leslie A. Forrester	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 275.00	23.00	6,325.00
Paraprofessional Felicia Harrison	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	2.50	662.50
Paraprofessional Patricia Cuniff	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	7.70	2,040.50
Paraprofessional Louise Tuzchak	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 265.00	1.00	265.00
Paraprofessional Cheryl A. Krotts	Loeb & Loeb	2000	2000	CA	\$ 260.00	0.20	52.00
Paraprofessional S. Steadman	Tony's LLP	2000	2000	CA	\$ 260.00	28.20	7,352.00
Paraprofessional Dianna Rajah	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 185.00	5.40	595.00
Case Manager Sharita Filman	Pachulski Stang Ziehl Young Jones & Weintraub	2000	2000	CA	\$ 185.00	0.40	74.00
Case Manager Dina K. Whaley	Kornfield, Nyberg, Bendes & Kuhner, P.C.	2000	2000	CA	\$ 80.00	0.30	24.00
Paraprofessional Nancy L. Nyberg							

Exhibit 9

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Additional Counsel Listed After Signature Page
Attorneys for Plaintiffs and the certified Class

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

ADAM HOHNBAUM, ILLYA HAASE,
ROMEO OSORIO, AMANDA JUNE RADER,
and SANTANA ALVARADO and ROES 1
through 500, Inclusive on behalf of themselves
and all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

BRINKER RESTAURANT CORPORATION,
BRINKER INTERNATIONAL, INC. and
BRINKER INTERNATIONAL PAYROLL
COMPANY, LP a Delaware Corporation; and
DOES 1 through 500, Inclusive

Defendants.

CASE NO.: GIC834348

CLASS ACTION

DECLARATION OF RICHARD M.
PEARL IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR FINAL
APPROVAL AND OF CLASS ACTION
SETTLEMENT AND MOTION FOR
AWARD OF ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
SERVICE PAYMENTS, AND CLAIMS
ADMINISTRATION EXPENSES

Date: December 12, 2014

Time: 1:30 p.m.

Dept.: C-69

Judge: Hon. Katherine A. Bacal

Complaint Filed: August 16, 2004

1 I, RICHARD M. PEARL, hereby declare the following:

2 1. I am a member in good standing of the California State Bar. I am in
3 private practice as the principal of my own law firm, the Law Offices of Richard
4 M. Pearl, in Berkeley, California. I specialize in issues related to court-awarded
5 attorneys' fees, including the representation of parties in fee litigation and
6 appeals, serving as an expert witness, and serving as a mediator and arbitrator in
7 disputes concerning attorneys' fees and related issues. In this case, I have been
8 asked by Plaintiffs' counsel to render my opinion on the reasonableness of the
9 hourly rates they are requesting in this matter. I make this Declaration in Support
10 of Plaintiffs' Motion for Award of Reasonable Attorneys' Fees.

11 **Professional Background**

12 1. Briefly summarized, my background is as follows: I am a 1969
13 graduate of Boalt Hall School of Law, University of California, Berkeley,
14 California. I took the California Bar Examination in August 1969 and passed it in
15 November of that year, but because I was working as an attorney in Atlanta,
16 Georgia for the Legal Aid Society of Atlanta (LASA), I was not admitted to the
17 California Bar until January 1970. I worked for LASA until summer of 1971,
18 when I then went to work in California's Central Valley for California Rural Legal
19 Assistance, Inc. (CRLA), a statewide legal services program. From 1977 to 1982,
20 I was CRLA's Director of Litigation, supervising more than fifty attorneys. In
21 1982, I went into private practice, first in a small law firm, then as a sole
22 practitioner. Martindale Hubbell rates my law firm "AV." I also have been
23 selected as a Northern California "Super Lawyer" in Appellate Law for 2005,
24 2006, 2007, 2008, 2010, 2011, 2012, 2013, and 2014. A copy of my current
25 Resume is attached hereto as Exhibit A.

26 2. Since 1982, my practice has been a general civil litigation and
27 appellate practice, with an emphasis on cases and appeals involving court-awarded
28 attorneys' fees. I also am the author of *California Attorney Fee Awards* (3d ed.

1 Cal. CEB 2010) and its February 2011, 2012, 2013, and March 2014 Supplements,
2 as well as all its previous editions and annual supplements. California appellate
3 courts have cited this treatise on more than 35 occasions. *See, e.g., Graham v.*
4 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 576, 584; *Lolley v. Campbell* (2002)
5 28 Cal.4th 367, 373; *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259; *Syers*
6 *Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698, 700. I also have
7 lectured and written extensively on court-awarded attorneys' fees. I have been a
8 member of the California State Bar's Attorneys' Fees Task Force and have
9 testified before the State Bar Board of Governors and the California Legislature on
10 attorneys' fee issues. In addition, I authored a federal manual on attorneys' fees
11 entitled *Attorneys' Fees: A Legal Services Practice Manual*, published by the
12 Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in
13 Volume 2 of CEB's *Wrongful Employment Termination Practice*, 2d Ed. (1997).

14 3. More than 90% of my practice is devoted to issues involving court-
15 awarded attorneys' fees. I have been counsel in over 180 attorneys' fee
16 applications in state and federal courts, primarily representing other attorneys. I
17 also have briefed and argued more than 40 appeals, at least 25 of which have
18 involved attorneys' fees issues. I have successfully handled five cases in the
19 California Supreme Court involving court-awarded attorneys' fees: (1) *Maria P. v.*
20 *Riles* (1987) 43 Cal.3d 1281, a landmark early decision on the scope of California
21 Code of Civil Procedure section 1021.5; (2) *Delaney v. Baker* (1999) 20 Cal.4th
22 23, which held that heightened remedies, including attorneys' fees, are available in
23 suits against nursing homes under California's Elder Abuse Act; (3) *Ketchum v.*
24 *Moses* (2001) 24 Cal.4th 1122, which held, *inter alia*, that contingent risk
25 multipliers remain available under California attorney fee law, despite the United
26 States Supreme Court's contrary ruling on federal law (note that in *Ketchum*, I was
27 primary appellate counsel in the Court of Appeal and "second chair" in the
28 Supreme Court); (4) *Flannery v. Prentice* (2001) 26 Cal.4th 572, which held that in

1 the absence of an agreement to the contrary, statutory attorneys' fees belong to the
2 attorney whose services they are based upon; and (5) *Graham v. DaimlerChrysler*
3 *Corp.* (2004) 34 Cal.4th 553, which held, *inter alia*, that the "catalyst" theory was
4 still valid under California law despite federal Supreme Court authority to the
5 contrary. I also represented and argued on behalf of *amicus curiae* in
6 *Conservatorship of McQueen* (2014) 59 Cal.4th 602, and, along with Richard
7 Rothschild, filed an *amicus curiae* brief in *Vasquez v. State of California* (2009) 45
8 Cal.4th 243. I also have handled numerous other appeals involving attorney's fees,
9 including: *Davis v. City & County of San Francisco* (9th Cir. 1992) 976 F.2d 1536;
10 *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470; *Moore v. Bank of America* (9th
11 Cir. 2007) 245 Fed.Appx. 613; *Velez v. Wynne* (9th Cir. 2007) 2007
12 U.S.App.LEXIS 2194; *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523
13 F.3d 973; *Center for Biological Diversity v. County of San Bernardino* (2010) 185
14 Cal.App.4th 866; and *Environmental Protection Information Center v. California*
15 *Dept. of Forestry & Fire Protection et al* (2010) 190 Cal.App.4th 217. For an
16 expanded list of my representative decisions, see Exhibit A.

17 4. I also have been retained by various governmental entities, including
18 the State of California, at my then current rates to consult with them regarding their
19 affirmative attorney fee claims.

20 5. I am frequently called upon to opine about the reasonableness of
21 attorneys' fees, and numerous federal and state courts have cited my testimony on
22 that issue favorably. The reported cases referencing my testimony include the
23 following California appellate courts: *Laffite v. Robert Half Int'l* (2014)
24 __Cal.App.4th __, 2014 Cal.App.LEXIS 1059; *In re Tobacco Cases I* (2013) 216
25 Cal.App.4th 570; *Heritage Pacific Financial LLC v. Monroy* (2013) 215
26 Cal.App.4th 972, 1009; *Children's Hospital & Medical Center v. Bonta* (2002) 97
27 Cal.App.4th 740; *Wilkinson v. South City Ford* (2010) 2010 Cal.App.Unpub.
28 LEXIS 8680; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628

1 (anti-SLAPP case). My declaration also has been favorably referenced by the
2 following federal courts: *Prison Legal News v. Schwarzenegger* (9th Cir. 2010)
3 608 F.3d 446, 455, in which the expert declaration referred to in that opinion is
4 mine; *Antoninetti v. Chipotle Mexican Grill, Inc.* (9th Cir. 2012) Order filed Dec.
5 26, 2012; *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D.Cal. 2013) No. M
6 07-1827 SI, MDL, No. 1827, Report and Recommendation of Special Master re
7 Motions for Attorneys' Fees etc., filed Nov. 9, 2012, adopted in relevant part, 2013
8 U.S.Dist.LEXIS 49885; *Rosenfeld v. United States Dept. of Justice* (N.D. Cal.
9 2012) 904 F.Supp.2d 988; *Stonebrae v. Toll Bros.* (N.D. Cal. 2011) 2011
10 U.S.Dist.LEXIS 39832, at *9 (thorough discussion), *aff'd* (9th Cir. 2013) 2013
11 U.S.App.LEXIS 6369; *Hajro v. United States Citizenship & Immigration Service*
12 (N.D.Cal 2012) 900 F.Supp.2d 1034, 1054; *Armstrong v. Brown* (N.D. Cal. 2011)
13 2011 U.S.Dist.LEXIS 87428; *Californians for Disability Rights, Inc. v. California*
14 *Dept. of Transportation* (N.D. Cal. 2010) 2010 U.S.Dist.LEXIS 141030; *Prison*
15 *Legal News v. Schwarzenegger* (N.D. Cal. 2008) 561 F.Supp.2d 1095 (an earlier
16 motion); *Oberfelder v. City of Petaluma* (N.D. Cal. 2002) 2002 U.S.Dist.LEXIS
17 8635, *aff'd* (9th Cir. 2003) 2003 U.S.App.LEXIS 11371; *Bancroft v. Trizechahn*
18 *Corp.*, C.D. Cal. No. CV 02-2373 SVW (FMOx), Order Granting Reasonable
19 Attorneys' Fees etc., filed Aug. 14, 2006; *Willoughby v. DT Credit Corp.*, C.D.
20 Cal. No. CV 05-05907 MMM (Cwx), Order Awarding Reasonable Attorneys' Fees
21 After Remand, filed July 17, 2006; *A.D. v. California Highway Patrol* (N.D.Cal.
22 2009) 2009 U.S.Dist.LEXIS 110743, *rev's'd on other grounds* (9th Cir. 2013) 712
23 F.3d 446, *reaffirmed and additional fees awarded on remand* at 2013
24 U.S.Dist.LEXIS 169275; *National Federation of the Blind v. Target Corp.*
25 (N.D.Cal. 2009) 2009 U.S.Dist.LEXIS 67139. In addition, numerous trial courts
26 have relied upon my testimony in unpublished fee orders.

27 6. I also have extensive experience litigating the merits of class actions,
28 including numerous housing, government benefits, and consumer class actions.

1 See, e.g., *Employment Dev. Dept. v. Superior Court (Boren)* (1981) 30 Cal.3d 256.

2 I also have represented Class Counsel on their fee requests in numerous highly-
3 contested class actions, including *Davis v. City & County of San Francisco, supra*,
4 *Duran v. First National Bank*, Alameda County Superior Court No. 2001-035537,
5 and *Molina, et al. v. Lexmark International, et al.*, Los Angeles County Superior
6 Court No. BC339177.

7 7. In this matter, I have reviewed several documents from the underlying
8 litigation and fee motion, including the entire Motion for Preliminary Approval, as
9 well as the declarations of Plaintiffs' principal counsel filed in support of the
10 instant motion. I also have discussed the case with class counsel Julie Corbo-
11 Ridley.

12 **PLAINTIFFS' ATTORNEYS' HOURLY RATES ARE**
13 **REASONABLE**

14 8. Through my writing and practice, I have become knowledgeable
15 about the non-contingent market rates charged by attorneys in California and
16 elsewhere. I have obtained this knowledge in several ways: (1) by handling
17 attorneys' fee litigation; (2) by preparing expert declarations in numerous cases;
18 (3) by discussing fees with other attorneys; (4) by obtaining declarations regarding
19 prevailing market rates in cases in which I represent attorneys seeking fees; and (5)
20 by reviewing attorneys' fee applications and awards in other cases, as well as
21 surveys and articles on attorneys' fees in the legal newspapers and treatises.

22 9. I am aware of the hourly rates being requested by Plaintiffs' attorneys
23 in this case, their experience and qualifications, the nature of the work performed,
24 and the results achieved. Under California law, Plaintiff's attorneys are entitled to
25 their requested rates if those rates are "within the range of reasonable rates charged
26 by and judicially awarded comparable attorneys for comparable work." *Children's*
27 *Hosp. & Med. Ctr. v. Bonta [CHMC]* (2002) 97 Cal.App.4th 740, 783. In my
28 opinion, the information about non-contingent hourly rates I have gathered, some

1 of which is summarized below, shows that the rates requested by Plaintiffs'
2 counsel in this matter are well within the range of the non-contingent market rates
3 charged by California and San Diego attorneys of reasonably comparable
4 experience, skill, and expertise for reasonably comparable services. I base that
5 opinion in large part on the following data:

6 **Court Awards**

7 10. Several of the Plaintiffs' law firms have had the hourly rates requested
8 here, or their equivalent rates in prior years, approved by the courts in other class
9 actions. For example, Hurst & Hurst's rates were found reasonable in *Serochi v.*
10 *Bosa Development California II, Inc., et al.*, San Diego Superior Court Case No.:
11 37-2009-00096686-CU-BT-CTL. Similarly, Ms. Lorens's 2012 rate of \$795/hour
12 was approved in November 2012 in *Hoch v. Rockin' Baja Coastal Cantina, et al.*,
13 San Diego Superior Court Case No. 37-2012-00095176-CU-OE-CTL/*Mojica v.*
14 *Rockin' Baja Coastal Cantina, et al.*, San Diego Superior Court Case No. 37-2012-
15 00091490-CU-OE-CTL. This is highly probative evidence of the reasonableness
16 of their rates in subsequent reasonably similar cases.

17 11. Counsel's rates are also consistent with the following court awards
18 from the Southern District of California¹:

19 (1) In *Hartless v. Clorox*, 273 F.R.D. 630, 644 (S.D. Cal. 2011), the
20 Court found, *inter alia*, that class counsel's requested rates were consistent with
21 the hourly rates found reasonable in numerous other class actions and with rates
22 charged by other firms in the San Diego area, including rates of \$795 per hour for a
23 25-year attorney and \$675 per hour for an experienced partner. 273 F.R.D. at 644.

24
25 ¹ In my experience, for purposes of the hourly rates charged and found reasonable by the courts,
26 the differences between types of class actions (i.e. wage and hour class actions versus consumer
27 class actions) are not significant, either factually or legally. See, e.g., *Heritage Pacific Financial,*
28 *LLC v. Monroy*, 215 Cal.App.4th 972, 1009 (2013); *Camacho v. Bridgeport Financial, Inc.*, 523
F.3d 973, 979 (9th Cir. 2008).

1 Given the rate increases that have occurred over the ensuing three years, counsel's
2 rates here are certainly within the same range.

3 (2) In *Shames v. Hertz Corp.*, 2012-2 Trade Case. (CCH) ¶78,120 (S.D.
4 Cal. 2012), the Court, relying on *Hartless*, found that plaintiffs' San Diego
5 Counsel there were comparable in skill and experience to the attorneys whose rates
6 were found reasonable in *Hartless*. At *59-61.

7 (3) In *Briarwood Capital LLC v. HCC Investors LLC*, San Diego
8 Superior Court No. GIC877446, on March 30, 2011, the court (Judge William R.
9 Nevitt Jr.) found that the 2009 hourly rates charged by the San Diego office of
10 Bernstein Litowitz Berger & Grossman LLP -- \$725 for partners, \$490-550 for
11 associates -- were reasonable.

12 (4) Similarly, in the same case, the court found that the 2009 rates
13 charged by the Century City office of O'Melveny & Myers LLP, including rates of
14 \$860-950 for a 36-37 year attorney and \$700-710 for 16-18 year attorneys also
15 were reasonable for San Diego litigation. Again, given the rate increases that have
16 occurred over the past three years, Plaintiffs' attorneys' current rates here are in the
17 same range as those found reasonable in *Briarwood Capital*.

18 (5) In *Atlas v. Accredited Home Lenders Holdings, Co.* Case No. 07-
19 CV-488-H-CAB (S.D. Cal. 2009), the court (Judge Marilyn Huff) found the 2009
20 rates charged by Bernstein Litowitz's San Diego office reasonable. Again, those
21 rates ranged from \$490 to \$550 for associates, and \$725 for a partner.

22 (6) In *In re Virgil's Tours*, Case No. 08-30659 (Bank. N.D. Cal. 2008),
23 the court found reasonable the 2008 rates requested by Morrison & Foerster LLP's
24 San Diego office. Those rates ranged from \$600 to \$675 for partners, from \$350 to
25 \$485 for associates, and from \$220 to \$245 for paralegals.

26 (7) In *Qualcomm, Inc. v. Broadcom, Inc.* Case No. 05-CV-1958-B,
27 2008 WL 2705161 (S.D. Cal. 2008), the court found the 2007 hourly rates
28 requested by Wilmer Cutler, Pickering, Hale & Dorr LLP reasonable for San

1 Diego-based litigation. Those rates ranged from \$45 to \$300 for staff and
2 Paralegals, from \$275 to \$505 for associates and counsel, and from \$435 to \$850
3 for partners.

4 12. In addition to local courts, the following hourly rates have been
5 found reasonable by various California courts for reasonably similar services:

6 **2014**

7 (1) *IPVX Patent Holdings, Inc. v. Voxernet LLC*, N.D. Cal. No.
8 5:13-CV-01708-HRL, a patent infringement case, in which the court found the
9 following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
<u>2014</u>	
45	\$750
35	750
23	725
19	695
5	400
3	350
Paralegal	125
<u>2013</u>	
18	\$755
11	595
2	425
<u>2012</u>	
40	\$865
17	755
10	595
1	375

23 (2) *Doe v. United Healthcare Insurance Co., et al.*, C.D. Cal. No.
24 SACV 13-0864 DOC(JPRx), Order Granting Attorney's Fees and Costs, filed
25 October 15, 2014, a multi-Plaintiff consumer action, in which the court found the
26 following hourly rates reasonable:

<u>Whatley Kallas</u>	
<u>Years of Experience</u>	<u>Rate</u>
36	\$950

1 **Whatley Kallas**

2 Years of Experience Rate

3 27 900

4 32 800

5 33 750

6 21 700

7 10 600

8 4 400

9 2 375

10 Paralegal 225

11 Intern 125

12 **Consumer Watchdog**

13 35 \$925

14 19 650

15 4 425

16 (3) *Rose v. Bank of America Corp.*, N.D. Cal. No. 5:11-CV-02390-
17 EJD; 5:12 CV-04009-EJD, Order Granting Motion for Final Approval of
18 Settlement; Granting in Part and Denying in Part Motion for Attorney's Fees and
19 Costs, filed August 29, 2014, a consumer class action involving the Bank's loan
20 servicing calls, in which the court found the following hourly rates reasonable:

21 Partners: \$775-350

22 Associates: \$525-325

23 (4) *Carpio v. California Department of Social Services, Los Angeles*
24 *County Superior Court*, No. BS 135127, Order Granting Petitioner's Motion For
25 Attorney's Fees, filed July 24, 2014, a government benefits writ of mandate, in
26 which the court found the following hourly rates reasonable:

27 Years Rate

28 39 \$750

 35 730

 13 500

 8 460

 6 440

(5) *Cornell v. City & County of San Francisco*, San Francisco County

1 Superior Court No. CGC-11-509240, Order Granting Motion for Reasonable
2 Attorneys' Fees, Subject to Modifications, filed May 15, 2014, an individual police
3 misconduct/employment action, in which the court found the following hourly
4 rates reasonable, plus a 1.25 lodestar multiplier for merits work:

<u>Years of Experience</u>	<u>Rate</u>
45	\$750
35	750
23	725
19	695
5	400
3	350
Paralegal	125

11 **2013 Rates**

12 (1) *Ellis v. Costco Wholesale Corp.*, N.D. Cal. No. C04-3341 EMC,
13 Order Granting Motion for Final Approval of Class Action Settlement, filed May
14 27, 2014, an employment class action, in which the court found the following
15 hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
38	\$700
35	825
30	650-825
29	875
19	725
9	500
8	460
7	425-575
6	435
3	315
Paralegals	155-295
Law Clerks	185-275

25 (2) *In re Pacific Bell Late Fee Litigation*, Contra Costa County Superior
26 Ct. No. MSC10-00840, Order Awarding Attorneys' Fees, Costs and Expenses and
27 Authorizing Payment of Incentive Award to the Class Representative, filed
28 October 18, 2013, a consumer class action, in which the court found the following

hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
17	\$850
16	680
11 (partner)	680
36	675
32	675
28 (assoc.)	620
4	400
3	390
Paralegals and Litigation Support	160-180

(3) *Reuters America LLC v. The Regents of the Univ. of Calif.*, Alameda County Superior Court No. RG12-613664, Order Granting in Part Motion of Petitioner for Attorneys' Fees filed May 2, 2013, reversed on the merits sub nom *Regents of U.C. v. Superior Court* (2014) 222 Cal.App.4th 383, a California Public Records Act action, in which the trial court found the following hourly rates reasonable, before applying a 1.3 lodestar multiplier:

<u>Years of Experience</u>	<u>Rate</u>
31	\$785
27	600
6	400

(4) *Recouvreur v. Carreon* (N.D. Cal. 2013) 940 F.Supp.2d 1063, a Lanham Act/ sanctions fee motion, in which the court found the following hourly rate reasonable:

<u>Years of Experience</u>	<u>Rate</u>
20+	\$700

2012 Rates

(1) *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D.Cal. 2013) No. M 07 1827 SI, MDL, No. 1827, an antitrust class action, in which the court found the following hourly rates reasonable:

Zelle Hofman

<u>Bar Admission</u>	<u>Rate</u>
1967	\$1000
1978	861
2001	619
2002	525
2005	500
2006	472
2009	417

Steyer, Lowenthal et al.

<u>Bar Admission</u>	<u>Rate 2012</u>	<u>Rate 2011</u>	<u>Rate 2010</u>
1981	\$820	\$770	\$730
1995	660	640	590
2007	380	360	320
2008	380	360	320
1982	750	710	680
Paralegal	190		

Cooper & Kirkham

<u>Bar Admission</u>	<u>Rates 2010-2012</u>
1964	\$950
1975	825
2001	550

(2) *Rosenfeld v. United States Dept. of Justice* (N.D. Cal. 2012) 904 F.Supp.2d 988, a Freedom of Information Act action, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
28	\$700
21	550
1	200
Law students	160-180

(3) *Williams v. H&R Block Enterprises, Inc.*, Alameda County Superior Ct. No. RG08366506, Order of Final Approval and Judgment filed November 8, 2012, a wage and hour class action, in which the court found the following hourly

1 rates reasonable:

<u>Year of Bar Admission</u>	<u>Rate</u>
1970	\$785
1976	775
1981	750
1993	650-700
1994-1997	500-650
2004	500
2005	470
2006	445-475
2007	450
2008	400
2009	350

11 (4) *American Civil Liberties Union v. Drug Enforcement Administration*,
12 N.D. Cal. No. C-11-01977 RS, Order Granting Motion for Attorneys' Fees and
13 Litigation Costs Pursuant to 5 U.S.C. §552, filed November 8, 2012, a Freedom of
14 Information Act case, in which the court found the following hourly rates
15 reasonable:

<u>Year of Bar Admission</u>	<u>Rate</u>
1970	\$700
1996	595
1999	575
Law Clerks	150

20 (5) *Luquetta v. The Regents of the Univ. of California*, San Francisco
21 Superior Ct. No.CGC-05-443007, Order Granting Plaintiff's Motion for Common
22 Fund Attorneys' Fees and Expenses, filed October 31, 2012, a class action to
23 recover tuition overcharges, in which the court found the following hourly rates
24 reasonable:

<u>Year of Bar Admission</u>	<u>Rate</u>
1977	\$850
1986	785
1991	750
1994	700
1998	625

2000	570
2001	550
2002	520
Law Clerks	250
Paralegals	215

(6) *Davis v. Prison Health Services* (N.D. Cal. 2012) 2012 U.S. Dist. LEXIS 138556, an individual Fair Employment and Housing Act case, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
33	\$750
29	675
4	300
6	265

2011 Rates

(1) *Pierce v. County of Orange* (C.D. Cal. 2012) 905 F.Supp.2d 1017, a civil rights class action brought by pre-trial detainees, in which the court approved a lodestar, including appellate fees, based on the following 2011 rates:

<u>Years of Experience</u>	<u>Rate</u>
42	\$850
32	825
23	625
18	625
Law Clerks	250
Paralegals	250

(2) *Davis v. Prison Health Services* (N.D. Cal. 2012) 2012 U.S. Dist. LEXIS 138556, an individual Fair Employment and Housing Act case, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
33	\$750
29	675
4	300
6	265

(3) *Holloway et. al. v. Best Buy Co., Inc.* (N.D. Cal. 2011) No. 05-5056

1 PJH, Order dated November 9, 2011, a class action alleging that Best Buy
2 discriminated against female, African American and Latino employees by denying
3 them promotions and lucrative sales positions, in which the court approved a
4 lodestar award based on the following rates:

<u>Years of Experience</u>	<u>Rate</u>
37	\$825
Associates	
8	490
6	405
Law Clerks	225
Paralegals	215

10 (3) *Molina, et al. v. Lexmark International, et al.*, Los Angeles County
11 Superior Court No. BC339177, Order Granting Petitioners' Motion for Attorneys'
12 Fees and Costs in the Amount of \$5,722,008.07, filed October 28, 2011, *aff'd*
13 (2013) 2013 Cal.App.Unpub. LEXIS 6684, a class action to recover forfeited
14 vacation pay, in which the court found the following hourly rates reasonable
15 (before applying a 2.0 multiplier):

<u>Years of Experience</u>	<u>Rate</u>
42	\$675
25	550
24	655-675
23	625
20	550
17	600
9	475
6	350
Paralegals	210
Paralegals	210

23 **2010 Rates**

24 (1) *Californians for Disability Rights, Inc., et al. v. California*
25 *Department of Transportation, et al.* (N.D.Cal. 2010) 2010 U.S.Dist.LEXIS
26 141030, adopted by Order Accepting Report and Recommendation filed February
27 2, 2011, a disability-access class action, in which the court found the following
28

2010 hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
49	\$835
34	730
26	740
25	730
19	660
10	570
9	560
7	535
6	500
5	475
3	350
2	290
1	225-265
Senior Paralegals	265
Law Clerks	175
Case Clerks	165

Rate Information from Surveys

12. I also base my opinion on several credible surveys of legal rates, including the following:

- The 2014 *Laffey Matrix* is a survey of District of Columbia hourly rates that is often relied upon in other jurisdictions, with appropriate adjustments for differences in income levels, to determine reasonable hourly rates. See, e.g., *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 695. A copy of that survey is attached hereto as Exhibit B. It shows that for attorneys with 20+ years out of law school, the prevailing market in the period between June 1, 2013, and May 31, 2014 was \$771 per hour. For lawyers with 11-19 years out of law school, the prevailing rate for the same period was \$640 per hour. The difference in the Local Pay Tables for the Washington D.C. area and the San Diego-Carlsbad-San Marcos areas are de minimis -- .03%.

- 1 • On January 13, 2014, the National Law Journal published an article
2 about its most recent rate survey. That article included a chart listing
3 the billing rates of the 50 firms that charge the highest average hourly
4 rates for partners. A true and correct copy of that article is attached
5 hereto as Exhibit C. Of the 50 firms listed, several have offices in the
6 San Diego area and many others have significant litigation experience
7 in this area. And, although the rates that Plaintiffs' counsel are
8 requesting here are significantly *lower* than many of the rates charged
9 by the top 50 firms, the NLJ chart does show the *range* of rates
10 charged for similar services, which *is* the applicable standard. *See*
11 *CHMC*, 97 Cal.App.4th at 783.
- 12 • In an article entitled "On Sale: The \$1,150-Per Hour Lawyer,"
13 written by Jennifer Smith and published in the Wall Street Journal on
14 April 9, 2013, the author describes the rapidly growing number of
15 lawyers billing at \$1,150 or more revealed in public filings and major
16 surveys. A true and correct copy of that article is attached hereto as
17 Exhibit D. The article also notes that in the first quarter of 2013, the
18 50 top-grossing law firms billed their partners at an *average* rate
19 between \$879 and \$882 per hour.
- 20 • In an article published April 16, 2012, the Am Law Daily described
21 the 2012 Real Rate Report, an analysis of \$7.6 billion in legal bills
22 paid by corporations over a five-year period ending in December
23 2011. A true and correct copy of that article is attached hereto as
24 Exhibit E. That article confirms that the rates charged by experienced
25 and well-qualified attorneys have continued to rise over the five-year
26 period between 2006 and 2011, particularly in large urban areas. It
27 also shows, for example, that the top quartile of lawyers bill at an
28 *average* of "just under \$900 per hour."

Altshuler Berzon LLP**

Paralegals	215
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Arnold Porter LLP

<u>2013 Rates:</u>	Average Partner	\$815
	Highest Partner	950
	Lowest Partner	670
	Average Associate	500
	Highest Associate	610
	Lowest Associate	345

The Arns Law Firm LLP **

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	37	\$950
	Law Clerks	165

Bernstein Litowitz Borger & Grossman LLP
(San Diego Office) *, **

<u>2009 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	\$725
	Associates	490-550

Bingham McCutchen

<u>2013 Rates:</u>	Average Partner	\$795
	Highest Partner	1,080
	Lowest Partner	670
	Average Associate	450
	Highest Associate	605
	Lowest Associate	185

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	30	\$780

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	13	\$655
	4	480
	2	400

Blood Hurst & O'Reardon *, **

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	22	\$655
	17	585

Blood Hurst & O'Reardon*, **

6	510
5	410
1	305
Paralegals	260

Burson & Fisher**

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	16	\$680-850
	11	680
	4	400
	3	390
	2	375
	1	300
	Law Clerks	225
	Litigation Support Specialists	180

Chavez & Gertler*

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	33	\$750
	29	725
	32	675
	21	575
	11	535
	7	475
	Legal Assistant	185

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	32	\$725
	28	700
	10	550
	9	510
	5	425
	Paralegals	225

Coblentz Patch & Duffy

<u>2013 Rates:</u>	<u>Year of Bar Admission</u>	<u>Rate</u>
	1979	\$720
	1994	575
	2008	320
	Paralegals/Case Clerks	295

Cohelan Khoury & Singer

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	38	\$750
	28	750
	11	400
	Paralegal	170

Cooper & Kirkham

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	48	\$950
	37	825
	11	600

Covington Burling

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	28	\$750
	16	670
	14	670
	7	510
	2	375
	5	490
	Litigation Support	110-355

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	27	\$730
	15	632-650
	13	650

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	26	\$710
	14	640
	12	600
	9	565
	7	550
	5	425
	3	390
	1	320

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	25	\$710
	13	640
	11	575-600
	8	550-565

Covington Burling

6	525-550
4	390-425
2	350-390

Farella Braun & Martell LLP

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	31	\$715

Fenwick & West

<u>2014 Rates</u>	<u>Years of Experience</u>	<u>Rate</u>
	45	\$750
	35	750
	23	725
	19	695
	5	400
	3	350
	Paralegal	125
<u>2013 Rates</u>	18	\$755
	11	595
	2	425
<u>2012 Rates</u>	40	\$865
	17	755
	10	595
	1	375

Furth Firm LLP**

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	51	\$875
	39	750
	38	600
	33	775
	25	550
	23	650
	21	625
	19	610
	18	600
	17	585
	16	570
	15	560

Furth Firm LLP**

14	550
13	525
12	515
11	510
10	505
9	500
7	460
4	435
Law Clerks	125-260

Gibson Dunn & Crutcher LLP

<u>2013 Rates:</u>	Average Partner	\$980
	Highest Partner	1,800
	Lowest Partner	765
	Average Associate	590
	Highest Associate	930
	Lowest Associate	175

Goldstein, Borgen, Dardarian & Ho**

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	33	\$795
	27	750
	8	500
	4	395
	3	350
	1	300
	Law Clerks/Paralegals	160-250

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	42	\$785
	36	750
	31	700
	18	650

	Associates	
	7	470
	6	445
<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	41	\$725
	35	725

Goldstein, Borgen, Dardarian & Ho**

30	700
24	650
18	600
17	600
16	550

2010 Rates:

Years of Experience Rate

Partners

40	\$700
34	700
29	675
23	625
17	575
16	575

Of Counsel

40	725
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Associates

15	\$500
11	440
6	375
5	365
4	355
3	340
2	325
1	305

Law Clerks

Paralegals	195
	150-225

Greenberg, Traurig, LLP

2010 Rates:

<u>Years of Experience</u>	<u>Rate</u>
22	\$850

Greines, Martin, Stein & Richland

2012 Rates:

<u>Years of Experience</u>	<u>Rate</u>
41	\$850
29	850
23	650
18	500
Law Clerks	100

**Hadsell, Stormer, Keeny, Richardson &
Renick****

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	38	\$825
	33	775
	22-23	625
	17	600
	12	525
	10	425
	4	275
	3	250

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	36	\$800
	31	750
	20-21	600
	15	575
	10	475-500
	8	425
	4	325
	2	275
	1	250

Hausfeld LLP**

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	45	\$985
	37	935-895
	15	610-510
	14	600
	7	490
	3	370
	Paralegals	300-320
	Law Clerks	325

Irell & Manella

<u>2013 Rates:</u>		
	Average Partner	\$890
	Highest Partner	975
	Lowest Partner	800
	Average Associate	535
	Highest Associate	750
	Lowest Associate	395

1 **Janssen Malloy LLP**

2 **2014 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
33	\$775
Paralegals	175

4 **Jones Day**

5 **2013 Rates:**

Average Partner	\$745
Highest Partner	975
Lowest Partner	670
Average Associate	435
Highest Associate	775
Lowest Associate	205

9 **Kaye, McLane, Bednarski & Litt ****

10 **2013 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
11 44	\$925
12 27	725
13 24	725
14 7	525
15 5	475

15 **Keker & Van Nest, LLP**

16 **2010 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
17 Partners	
32	\$775
Other Partners	525-975
Associates	340-500
Paralegals/Support Staff	120-260

20 **Kemnitzer, Barron & Krieg**

21 **2014 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
22 38	\$750
23 32	750
24 8	475
25 3	350
Senior Paralegal	250

26 **Kiesel, Boucher, Larson LLP *, ****

27 **2012 Rates:**

<u>Years of Experience</u>	<u>Rate</u>
28 Partners	
27-28	\$890

Kiesel, Boucher, Larson LLP *, **

Associates 625-325

Kingsley & Kingsley**

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	14	\$655
	8	475-515
	7	475
	6	485
	5	375
	3	350
	2	300

Kirkland & Ellis

<u>2013 Rates:</u>		
	Average Partner	\$825
	Highest Partner	995
	Lowest Partner	670
	Average Associate	540
	Highest Associate	715
	Lowest Associate	235

Knapp, Petersen & Clarke

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	36	\$753
	9	554
	6	383

Knobbe Martin Olson & Bear LLP

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	\$395-710
	Associates	285-450

Latham & Watkins

<u>2013 Rates:</u>		
	Average Partner	\$990
	Highest Partner	1,100
	Lowest Partner	670
	Average Partner	895
	Average Associate	605
	Highest Associate	725
	Lowest Associate	465

Lewis Feinberg Lee, Renaker & Jackson,
P.C.**

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	38	\$825
	29	750
	24	725
	21	700
	8	450
	7	425
	3	375
	Senior Paralegals	250
	Law Clerks	225

Litt, Estuar, & Kitson, LLP**

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	42	\$825
	18	625
	17	625
	5	425
	3	375
	Senior Paralegals	125-235
	Law Clerks	225

Manatt, Phelps & Phillips

<u>2013 Rates:</u>	<u>Average Partner</u>	<u>\$740</u>
	Highest Partner	795
	Lowest Partner	670
	Lowest Partner	640
<u>2010 Rates:</u>	Partners	525-850
	Associates	200-525

McKenna Long & Aldridge LLP

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	30	\$775
	9	650

McKenna Long & Aldridge LLP

5	420
Litigation Support Mgr.	350
Paralegals	225

Minami Tamaki LLP

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	36	\$750
	15	525
	5	395
	Paralegals	175

Morrison Foerster LLP

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Average Partner	\$865
	Highest Partner	1,195
	Lowest Partner	670
	Lowest Partner	595
	Average Associate	525
	Highest Associate	725
	Lowest Associate	230

<u>2011 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	22	\$775
	11	625
	10	620
	1	335

<u>2009 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	24	\$750

O'Melveny & Myers

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Average Partner	\$715
	Highest Partner	950
	Lowest Partner	615

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	12	\$695
	4	495

Patton Boggs

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
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Patton Boggs

Partners	
14	\$830
29	750
20	750
33	700
27	700
13	575
24	550
14	530
Of Counsel	
30	600
15	500
Associates	
9	450
7	425
3	340
2	315
Senior Paralegals	200-265
Paralegals	170

Pillsbury Winthrop Shaw Pittman LLP

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Average Partner	\$865
	Highest Partner	1,070
	Lowest Partner	670
	Average Associate	520
	Highest Associate	860
	Lowest Associate	375
<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	30	\$705-775
	Other Partners	595-965
	Associates	320-650
	Paralegals/Support Staff	85-380

Quinn Emanuel Urquhart & Sullivan

<u>2013 Rates:</u>	Average Partner	\$915
	Highest Partner	1,075
	Lowest Partner	810
	Average Associate	410

Quinn Emanuel Urquhart & Sullivan

Highest Associate	675
Lowest Associate	320

Reed Smith LLP

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partner	
	36	\$830
	30	805
	17	610-615
	14	570
	Associates	
	8	450-535
	6	495

Robbins Geller Rudman & Dowd LLP *, **

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	26	\$695
	19	575
	Associates	535-345
	Paralegals	295

Rosen, Bien, Galvan & Grunfeld LLP

<u>2013 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	51	\$875
	33	780
	29	660
	16	630
	Of Counsel	
	30	580
	Associates	
	20	550
	10	480
	9	465
	8	445-450
	7	440
	6	435
	5	405
	4	375

Rosen, Bien, Galvan & Grunfeld LLP

3	355
Paralegals	220-280
Litigation Support/ Paralegal clerk	170
Law Clerk/Students	250
Word Processing	80

2012 Rates:

Years of Experience Rate

Partners

50	\$860
32	760
28	640
15	610

Of Counsel

29	570
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Associates

19	540
10	470
9	460
7	400
6	400
5	380
4	360
3	340

Paralegals 215-280

Litigation Support/ 150

Paralegal clerk

Law Clerk/Students 240

Word Processing 80

2011 Rates:

Years of Experience Rate

Partners

49	\$840
31	740
27	625
14	590

Of Counsel

28	540
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Associates

18	525
11	465
10	450

Rosen, Bien, Galvan & Grunfeld LLP

9	440
8	420
6	385
5	365
4	350
3	325
2	315
Paralegals	205-275
Litigation Support/ Paralegal clerk	140-220
Law Clerk/Students	225
Word Processing	75

2010 Rates:

Years of Experience Rate

Partners

48	\$800
30	700
26	575
13	560
Of Counsel	
27	520

Associates

17	510
13	490
9	430
8	415
7	390
5	360
3	325
1	285
Paralegals	200-275
Litigation Support/ Paralegal clerk	135-220
Law Clerk/Students	190
Word Processing	70

Rudy, Exelrod, Zieff & Lowe LLP

2010 Rates:

Years of Experience Rate

Partners

42	\$725
32	725

Rudy, Exelrod, Zieff & Lowe LLP

15	625
Associates	
21	495
13	485
8	450

**Schneider Wallace Cottrell Brayton Konecky
LLP****

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	13-22	\$750
	Associates/Of Counsel	575
	20	535-345
	37	295
	10-13	650
	0-3	350-475
	Paralegals/Law Clerks	135-300

**Schonbrun, DeSimone, Seplow, Harris &
Hoffman****

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	27	\$695
	22	630

Sheppard, Mullin, Richter & Hampton

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	\$495-820
	Associates	270-620

Sidley Austin

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	33	\$900
	Senior Partners	1,100
	Legal Assistants	120-280

Skadden, Arps, Slate, Meagher & Flom

<u>2013 Rates:</u>	<u>Average Partner</u>	<u>\$1,035</u>
	Highest Partner	1,150
	Lowest Partner	845

1 **Skadden, Arps, Slate, Meagher & Flom**

Average Associate	620
Highest Associate	845
Lowest Associate	340

4 **Spiro Moore LLP****

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	30+	\$700
	17	600

8 **Law Offices of Michael D. Thamer**

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	31	\$775

10 **Townsend and Townsend and Crew**

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	\$470-475
	Associates	260-460

14 **Wilson Sonsini Goodrich & Rosati PC**

<u>2010 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	28	\$875
	Other Partners	650-975
	Associates	290-610
	Paralegals/Litigation	120-300
	Support	

19 **Zelle Hofmann Voelbel & Mason, LLP****

<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	Up to \$950
	Associates	Up to \$540
	Paralegals	Up to \$290
	Law Clerks	Up to \$250
<u>2012 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	Partners	
	38	\$800
	26	685
	23	650
	22	640
	Associates	
	9	500

1 **Zelle Hofmann Voelbel & Mason, LLP****

2	4	435
3	3	415
4	2	405
5	1	395
6	Paralegals	210-290

7 13. The declaration of San Diego attorneys Vincent J. Bartolotta and
8 Timothy Blood, filed with this motion, also support the rates requested here. All of
9 this evidence shows that Plaintiffs' requested rates are well within the range of
10 rates charged in this forum by comparably qualified and experienced attorneys for
11 comparably difficult work.

12 14. In my experience, fee awards are almost always determined based on
13 current rates, *i.e.*, the attorney's rate at the time a motion for fees is made, rather
14 than the historical rate at the time the work was performed. This is a common and
15 accepted practice to compensate attorneys for the delay in being paid. The hourly
16 rates set forth above are those charged where full payment is expected promptly
17 upon the rendition of the billing and without consideration of factors other than
18 hours and rates. If any substantial part of the payment were to be deferred for any
19 substantial period of time, for example, the fee arrangement would be adjusted
20 accordingly to compensate the attorneys for those factors.

21 15. If called as a witness, I could and would competently testify from my
22 personal knowledge to the facts stated herein. I declare under penalty of perjury
23 that the foregoing is true and correct. Executed this 25th day of November 2014, in
24 Berkeley, California.

25 

26 Richard M. Pearl

1 **ADDITIONAL COUNSEL FOR PLAINTIFFS AND THE CERTIFIED CLASS**

2 Timothy D. Cohelan (Bar No. 60827)

3 Michael D. Singer (Bar No. 115301)

4 COHELAN KHOURY & SINGER

5 605 "C" Street, Suite 200

6 San Diego, CA 92101

7 Telephone: (619) 595-3001

EXHIBIT A

RESUME OF RICHARD M. PEARL

RICHARD M. PEARL
LAW OFFICES OF RICHARD M. PEARL
1816 Fifth Street
Berkeley, CA 94710
(510) 649-0810
(510) 548-5074 (facsimile)
rpearl@interx.net (e-mail)

EDUCATION

University of California, Berkeley, B.A., Economics (June 1966)
Boalt Hall School of Law, Berkeley, J.D. (June 1969)

BAR MEMBERSHIP

Member, State Bar of California (admitted January 1970)
Member, State Bar of Georgia (admitted June 1970) (inactive)
Admitted to practice before all California State Courts; the United States Supreme Court; the United States Court of Appeals for the District of Columbia and Ninth Circuits; the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, for the District of Arizona, and for the Northern District of Georgia; and the Georgia Civil and Superior Courts and Court of Appeals.

EMPLOYMENT

LAW OFFICES OF RICHARD M. PEARL (April 1987 to Present): Civil litigation practice (AV rating), with emphasis on court-awarded attorney's fees, class actions, and appellate practice. Selected Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, and 2014.

QUALIFIED APPELLATE MEDIATOR, APPELLATE MEDIATION PROGRAM, Court of Appeal, First Appellate District (October 2000 to 2013) (program terminated).

ADJUNCT PROFESSOR, HASTINGS COLLEGE OF THE LAW (January 1988 to Present): Teach Public Interest Law Practice, a 2-unit course that focuses on the history, strategies, and issues involved in the practice of public interest law.

PEARL, McNEILL & GILLESPIE, Partner (May 1982 to March 1987): General civil litigation practice, as described above.

RICHARD M. PEARL

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CALIFORNIA RURAL LEGAL ASSISTANCE, INC. (July 1971 to September 1983) (part-time May 1982 to September 1983):

Director of Litigation (July 1977 to July 1982)

Responsibilities: Oversaw and supervised litigation of more than 50 attorneys in CRLA's 15 field offices; administered and supervised staff of 4-6 Regional Counsel; promulgated litigation policies and procedures for program; participated in complex civil litigation.

Regional Counsel (July 1982 to September 1983 part-time)

Responsibilities: Served as co-counsel to CRLA field attorneys on complex projects; provided technical assistance and training to CRLA field offices; oversaw CRLA attorney's fee cases; served as counsel on major litigation.

Directing Attorney, Cooperative Legal Services Center (February 1974 to July 1977) (Staff Attorney February 1974 to October 1975)

Responsibilities: Served as co-counsel on major litigation with legal services attorneys in small legal services offices throughout California; supervised and administered staff of four senior legal services attorneys and support staff.

Directing Attorney, CRLA McFarland Office (July 1971 to February 1974) (Staff Attorney July 1971 to February 1972)

Responsibilities: Provided legal representation to low income persons and groups in Kern, King, and Tulare Counties; supervised all litigation and administered staff of ten.

HASTINGS COLLEGE OF THE LAW, Instructor, Legal Writing and Research Program (August 1974 to June 1978)

Responsibilities: Instructed 20 to 25 first year students in legal writing and research.

CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD, Staff Attorney, General Counsel's Office (November 1975 to January 1976, while on leave from CRLA)

Responsibilities: Prosecuted unfair labor practice charges before Administrative Law Judges and the A.L.R.B. and represented the A.L.R.B. in state court proceedings.

ATLANTA LEGAL AID SOCIETY, Staff Attorney (October 1969 to June 1971)

Responsibilities: Represented low-income persons and groups as part of 36-lawyer legal services program located in Atlanta, Georgia.

RICHARD M. PEARL

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PUBLICATIONS

Pearl, *California Attorney Fee Awards, Third Edition* (Cal. Cont. Ed. Bar 2010) and February 2011, 2012, 2013, and 2014 Supplements

Pearl, *California Attorney Fee Awards, Second Edition* (Cal. Cont. Ed. Bar 1994), and 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 Supplements

Graham v. DaimlerChrysler Corp. and *Tipton-Whittingham v. City of Los Angeles*, Civil Litigation Reporter (Cal. Cont. Ed. Bar Feb. 2005)

Current Issues in Attorneys' Fee Litigation, California Labor and Employment Law Quarterly (September 2002 and November 2002)

Flannery v. Prentice: Shifting Attitudes Toward Fee Agreements and Fee-Shifting Statutes, Civil Litigation Reporter (Cal. Cont. Ed. Bar Nov. 2001)

A Practical Introduction to Attorney's Fees, Environmental Law News (Summer 1995)

Wrongful Employment Termination Practice, Second Edition (Cal. Cont. Ed. Bar 1997) (co-authored chapter on "Attorney Fees")

California Attorney's Fees Award Practice (Cal. Cont. Ed. Bar 1982) (edited), and 1984 through 1993 Supplements

Program materials on attorney fees, prepared as panelist for CEB program on Attorneys' Fees: Practical and Ethical Considerations in Determining, Billing, and Collecting (October 1992)

Program materials on Attorney's Fees in Administrative Proceedings: California Continuing Education of the Bar, prepared as panelist for CEB program on Effective Representation Before California Administrative Agencies (October 1986)

Program materials on Attorney's Fees in Administrative Proceedings: California Continuing Education of the Bar, prepared as panelist for CEB program on Attorneys' Fees: Practical and Ethical Considerations (March 1984)

Settlers Beware/The Dangers of Negotiating Statutory Fee Cases (September 1985) Los Angeles Lawyer

Program Materials on Remedies Training (Class Actions), sponsored by Legal Services Section, California State Bar, San Francisco (May 1983)

RICHARD M. PEARL

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Attorneys' Fees: A Legal Services Practice Manual (Legal Services Corporation 1981)

PUBLIC SERVICE

Member, Attorneys' Fee Task Force, California State Bar

Chairperson, Board of Directors, California Rural Legal Assistance Foundation

REPRESENTATIVE REPORTED CASES

Alcoser v. Thomas

(2011) 2011 Cal.App.Unpub.LEXIS 1180

Boren v. California Department of Employment

(1976) 59 Cal.App.3d 250

Cabrera v. Martin

(9th Cir. 1992) 973 F.2d 735

Camacho v. Bridgeport Financial, Inc.

(9th Cir. 2008) 523 F.3d 973

Campos v. E.D.D.

(1982) 132 Cal.App.3d 961

Center for Biological Diversity v. County of San Bernardino

(2010) 185 Cal.App.4th 866

Committee to Defend Reproductive Rights v. A Free Pregnancy Center

(1991) 229 Cal.App.3d 633

David C. v. Leavitt

(D. Utah 1995) 900 F.Supp. 1547

Delaney v. Baker

(1999) 10 Cal.4th 23

Employment Development Dept. v. Superior Court (Boren)

(1981) 30 Cal.3d 256

Environmental Protection Information Center, Inc. v. Pacific Lumber Co.

(N.D. Cal. 2002) 229 F. Supp.2d 993, *aff'd* (9th Cir. 2004) 103 Fed. Appx. 627

Center for Biological Diversity

(2010)

Center for Biological Diversity

RICHARD M. PEARL

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Representative Reported Cases (cont.)

Flannery v Prentice

(2001) 26 Cal. 4th 572

Graham v. DaimlerChrysler Corp.

(2004) 34 Cal. 4th 553

Horsford v. Board of Trustees of Univ. of Calif.

(2005) 132 Cal.App.4th 359

Ketchum v. Moses

(2001) 24 Cal.4th 1122

Kievian v. Dahlberg Electronics

(1978) 78 Cal.App.3d 951, cert. denied (1979)
440 U.S. 951

Lealao v. Beneficial California, Inc.

(2000) 82 Cal.App.4th 19

Lewis v. California Unemployment Insurance Appeals Board

(1976) 56 Cal.App.3d 729

Local 3-98 etc. v. Donovan

(N.D. Cal. 1984) 580 F.Supp. 714,
Aff'd (9th Cir. 1986) 792 F.2d 762

Mangold v. California Public Utilities Commission

(9th Cir. 1995) 67 F.3d 1470

Maria P. v. Riles

(1987) 43 Cal.3d 1281

Martinez v. Dunlop

(N.D. Cal. 1976) 411 F.Supp. 5,
aff'd (9th Cir. 1977) 573 F.2d 555

McQueen, Conservatorship of

(2014) 59 Cal.4th 602 (argued for *amici curiae*)

McSomebodies v. Burlingame Elementary School Dist.

(9th Cir. 1990) 897 F.2d 974

RICHARD M. PEARL

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Representative Reported Cases (cont.)

McSomebodies v. San Mateo City School Dist.
(9th Cir. 1990) 897 F.2d 975

Molina v. Lexmark International
(2013) 2013 Cal.App. Unpub. LEXIS 6684

Moore v. Bank of America
(9th Cir. 2007) 2007 U.S. App. LEXIS 19597

Moore v. Bank of America
(S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 904

Mora v. Chem-Tronics, Inc.
(S.D. Cal. 1999) 1999 U.S. Dist. LEXIS 10752,
5 Wage & Hour Cas. 2d (BNA) 1122

Nadaf-Rahrov v. Nieman Marcus Group
(2014) 2013 Cal.App. Unpub. LEXIS 6975

Pena v. Superior Court of Kern County
(1975) 50 Cal.App.3d 694

Ponce v. Tulare County Housing Authority
(E.D. Cal 1975) 389 F.Supp. 635

Ramirez v. Runyon
(N.D. Cal. 1999) 1999 U.S. Dist. LEXIS 20544

Rubio v. Superior Court
(1979) 24 Cal.3d 93 (amicus)

Sokolow v. County of San Mateo
(1989) 213 Cal. App. 3d 231

S.P. Growers v. Rodriguez
(1976) 17 Cal.3d 719 (amicus)

Tongol v. Usery
(9th Cir. 1979) 601 F.2d 1091,
on remand (N.D. Cal. 1983) 575 F.Supp. 409,
revs'd (9th Cir. 1985) 762 F.2d 727

RICHARD M. PEARL

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Representative Reported Cases (cont.)

Tripp v. Swoap

(1976) 17 Cal.3d 671 (amicus)

United States (Davis) v. City and County of San Francisco

(N.D. Cal. 1990) 748 F.Supp. 1416, *aff'd in part*
and revs'd in part sub nom Davis v. City and County
of San Francisco (9th Cir. 1992) 976 F.2d 1536,
modified on rehearing (9th Cir. 1993) 984 F.2d 345

United States v. City of San Diego

(S.D.Cal. 1998) 18 F.Supp.2d 1090

Vasquez v. State of California

(2008) 45 Cal.4th 243 (amicus)

Velez v. Wynne

(9th Cir. 2007) 2007 U.S. App. LEXIS 2194

REFERENCES

Furnished upon request.

September 2014

Furnished upon request

10/1/2011

EXHIBIT B

LAFFEY MATRIX

History

Easy Link

Expert Opinion

See the Matrix

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Year	Adjustmt Factor**	Paralegal/ Law Clerk	Years Out of Law School *				
			1-3	4-7	8-10	11-19	20 +
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of

practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT C

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

The National Law Journal

January 13, 2014 Monday

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**THE NATIONAL
LAW JOURNAL**

Section: NLJ'S **BILLING SURVEY**; Pg. 1; Vol. 36; No. 20

Length: 1860 words

Byline: KAREN SLOAN

Body

As recently as five years ago, law partners charging \$1,000 an hour were outliers. Today, four-figure hourly rates for in-demand partners at the most prestigious firms don't raise eyebrows-and a few top earners are closing in on \$2,000 an hour.

These rate increases come despite hand-wringing over price pressures from clients amid a tough economy. But ever-rising standard billing rates also obscure the growing practice of discounts, falling collection rates, and slow march toward alternative fee arrangements.

Nearly 20 percent of the firms included in The National Law Journal's annual survey of large law firm billing rates this year had at least one partner charging more than \$1,000 an hour. Gibson, Dunn & Crutcher partner Theodore Olson had the highest rate recorded in our survey, billing \$1,800 per hour while representing mobile satellite service provider LightSquared Inc. in Chapter 11 proceedings.

Of course, few law firm partners claim Olson's star power. His rate in that case is nearly the twice the \$980 per hour average charged by Gibson Dunn partners and three times the average \$604 hourly rate among partners at NLJ 350 firms. Gibson Dunn chairman and managing partner Ken Doran said Olson's rate is "substantially" above that of other partners at the firm, and that the firm's standard rates are in line with its peers.

"While the majority of Ted Olson's work is done under alternative billing arrangements, his hourly rate reflects his stature in the legal community, the high demand for his services and the unique value that he offers to clients given his extraordinary experience as a former solicitor general of the United States who has argued more than 60 cases before the U.S. Supreme Court and has counseled several presidents," Doran said.

In reviewing billing data this year, we took a new approach, asking each firm on the NLJ 350-our survey of the nation's 350 largest firms by attorney headcount-to provide their highest, lowest and average billing rates for associates and partners. We supplemented those data through public records. All together, this year's survey includes information for 159 of the country's largest law firms and reflects billing rates as of October.

The figures show that, even in a down economy, hiring a large law firm remains a pricey prospect. The median among the highest partner billing rates reported at each firm is \$775 an hour, while the median low partner rate is \$405. For associates, the median high stands at \$510 and the low at \$235. The average associate rate is \$370.

Multiple industry studies show that law firm billing rates continued to climb during 2013 despite efforts by corporate counsel to rein them in. TyMetrix's 2013 Real Rate Report Snapshot found that the average law firm billing rate increased by 4.8 percent compared with 2012. Similarly, the Center for the Study of the Legal Profession at the Georgetown University Law Center and Thomson Reuters Peer Monitor found that law firms increased their rates by an average 3.5 percent during 2013.

Richard Pearl

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

Of course, rates charged by firms on paper don't necessarily reflect what clients actually pay. Billing realization rates-which reflect the percentage of work billed at firms' standard rates- have fallen from 89 percent in 2010 to nearly 87 percent in 2013 on average, according to the Georgetown study. When accounting for billed hours actually collected by firms, the realization rate falls to 83.5 percent.

"What this means, of course, is that- on average-law firms are collecting only 83.5 cents for every \$1.00 of standard time they record," the Georgetown report reads. "To understand the full impact, one need only consider that at the end of 2007, the collected realization rate was at the 92 percent level."

In other words, law firms set rates with the understanding that they aren't likely to collect the full amount, said Mark Medice, who oversees the Peer Monitor Index. That index gauges the strength of the legal market according to economic indicators including demand for legal services, productivity, rates and expenses. "Firms start out with the idea of, 'I want to achieve a certain rate, but it's likely that my client will ask for discounts whether or not I increase my rate,'" Medice said.

Indeed, firms bill nearly all hourly work at discounts ranging from 5 percent to 20 percent off standard rates, said Peter Zeughauser, a consultant with the Zeughauser Group. Discounts can run as high as 50 percent for matters billed under a hybrid system, wherein a law firm can earn a premium for keeping costs under a set level or for obtaining a certain outcome, he added. "Most firms have gone to a two-tier system, with what is essentially an aspirational rate that they occasionally get and a lower rate that they actually budget for," he said.

Most of the discounting happens at the front end, when firms and clients negotiate rates, Medice said. But additional discounting happens at the billing and collections stages. Handling alternative fee arrangements and discounts has become so complex that more than half of the law firms on the Am Law 100-NLJ affiliate The American Lawyer's ranking of firms by gross revenue-have created new positions for pricing directors, Zeughauser said.

THE ROLE OF GEOGRAPHY

Unsurprisingly, rates vary by location. Firms with their largest office in New York had the highest average partner and associate billing rates, at \$882 and \$520, respectively. Similarly, TyMetrix has reported that more than 25 percent of partners at large New York firms charge \$1,000 per hour or more for contracts and commercial work.

Washington was the next priciest city on our survey, with partners charging an average \$748 and associates \$429. Partners charge an average \$691 in Chicago and associates \$427. In Los Angeles, partners charge an average \$665 while the average associate rate is \$401.

Pricing also depends heavily on practice area, Zeughauser and Medice said. Bet-the-company patent litigation and white-collar litigation largely remain at premium prices, while practices including labor and employment have come under huge pressure to reduce prices.

"If there was a way for law firms to hold rates, they would do it. They recognize how sensitive clients are to price increases," Zeughauser said. But declining profit margins-due in part to higher technology costs and the expensive lateral hiring market-mean that firms simply lack the option to keep rates flat, he said.

BILLING SURVEY METHODOLOGY

The National Law Journal's survey of billing rates of the largest U.S. law firms provides the high, low and average rates for partners and associates.

The NLJ asked respondents to its annual survey of the nation's largest law firms (the NLJ 350) to provide a range of hourly billing rates for partners and associates as of October 2013.

For firms that did not supply data to us, in many cases we were able to supplement billing-rate data derived from public records.

In total, we have rates for 159 of the nation's 350 largest firms.

Richard Pearl

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

Rates data include averages, highs and low rates for partners and associates. Information also includes the average full-time equivalent (FTE) attorneys at the firm and the city of the firm's principal or largest office.

We used these data to calculate averages for the nation as a whole and for selected cities.

Billing Rates at the Country's Priciest Law Firms

Here are the 50 firms that charge the highest average hourly rates for partners.

Billing Rates at the Country's Priciest Law Firms

FIRM NAME		LARGEST AVERAGE		PARTNER ASSOCIATE		AVERAGE	HIGH	LOW	AVERAGE	HIGH	LOW
		U.S. OFFICE*	FULL-TIME EQUIVALENT ATTORNEYS*	HOURLY RATES	HOURLY RATES						
* Full-time equivalent attorney numbers and the largest U.S. office are from the NLJ 350 published in April 2013. For complete numbers, please see NLJ.com .											
** Firm did not exist in this form for the entire year.											
Debevoise & Plimpton	New York	615	\$1,055	\$1,075	\$955	\$490	\$760	\$120			
Paul, Weiss, Riffkind, Wharton & Garrison	New York	803	\$1,040	\$1,120	\$760	\$600	\$760	\$250			
Skadden, Arps, Slate, Meagher & Flom	New York	1,735	\$1,035	\$1,150	\$845	\$620	\$845	\$340			
Fried, Frank, Harris, Shriver & Jacobson	New York	476	\$1,000	\$1,100	\$930	\$595	\$760	\$375			
Latham & Watkins	New York	2,033	\$990	\$1,110	\$895	\$605	\$725	\$465			
Gibson, Dunn & Crutcher	New York	1,086	\$980	\$1,800	\$765	\$590	\$930	\$175			
Davis Polk & Wardwell	New York	787	\$975	\$985	\$850	\$615	\$975	\$130			
Willkie Farr & Gallagher	New York	540	\$950	\$1,090	\$790	\$580	\$790	\$350			
Cadwalader, Wickersham & Taft	New York	435	\$930	\$1,050	\$800	\$605	\$750	\$395			
Weil, Gotshal & Manges	New York	1,201	\$930	\$1,075	\$625	\$600	\$790	\$300			
Quinn Emanuel Urquhart & Sullivan	New York	697	\$915	\$1,075	\$810	\$410	\$675	\$320			
Wilmer Cutler Pickering Hale and Dorr	Washington	961	\$905	\$1,250	\$735	\$290	\$695	\$75			
Dechert	New York	803	\$900	\$1,095	\$670	\$530	\$735	\$395			
Andrews Kurth	Houston	348	\$890	\$1,090	\$745	\$528	\$785	\$265			
Hughes Hubbard & Reed	New York	344	\$890	\$995	\$725	\$555	\$675	\$365			
Irell & Manella	Los Angeles	164	\$890	\$975	\$800	\$535	\$750	\$395			
Proskauer Rose	New York	746	\$880	\$950	\$725	\$465	\$675	\$295			
White & Case	New York	1,900	\$875	\$1,050	\$700	\$525	\$1,050	\$220			

Richard Pearl

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

FIRM NAME	LARGEST U.S. OFFICE*	AVERAGE FULL-TIME EQUIVALENT ATTORNEYS*	PARTNER ASSOCIATE HOURLY HOURLY RATES RATES					
			AVERAGE	HIGH	LOW	AVERAGE	HIGH	LOW
Morrison & Foerster	San Francisco	1,010	\$865	\$1,195	\$595	\$525	\$725	\$230
Pillsbury Winthrop Shaw Pittman	Washington	609	\$865	\$1,070	\$615	\$520	\$860	\$375
Kaye Scholer	New York	414	\$860	\$1,080	\$715	\$510	\$680	\$320
Kramer Levin Naftalis & Frankel	New York	320	\$845	\$1,025	\$740	\$590	\$750	\$400
Hogan Lovells	Washington	2,280	\$835	\$1,000	\$705	-	-	-
Kasowitz, Benson, Torres & Friedman	New York	365	\$835	\$1,195	\$600	\$340	\$625	\$200
Kirkland & Ellis	Chicago	1,517	\$825	\$995	\$590	\$540	\$715	\$235
Cooley	Palo Alto	632	\$820	\$990	\$660	\$525	\$630	\$160
Arnold & Porter	Washington	748	\$815	\$950	\$670	\$500	\$610	\$345
Paul Hastings	New York	899	\$815	\$900	\$750	\$540	\$755	\$335
Curtis, Mallet-Prevost, Colt & Mosle	New York	322	\$800	\$860	\$730	\$480	\$785	\$345
Winston & Strawn	Chicago	842	\$800	\$995	\$650	\$520	\$590	\$425
Bingham McCutchen	Boston	900	\$795	\$1,080	\$220	\$450	\$605	\$185
Akin Gump Strauss Hauer & Feld	Washington	806	\$785	\$1,220	\$615	\$525	\$660	\$365
Covington & Burling	Washington	738	\$780	\$890	\$605	\$415	\$565	\$320
King & Spalding	Atlanta	838	\$775	\$995	\$545	\$460	\$735	\$125
Norton Rose Fulbright	N/A**	N/A**	\$775	\$900	\$525	\$400	\$515	\$300
DLA Piper	New York	4,036	\$765	\$1,025	\$450	\$510	\$750	\$250
Bracewell & Giuliani	Houston	432	\$760	\$1,125	\$575	\$440	\$700	\$275
Baker & McKenzie	Chicago	4,004	\$755	\$1,130	\$260	\$395	\$925	\$100
Dickstein Shapiro	Washington	308	\$750	\$1,250	\$590	\$475	\$585	\$310
Jenner & Block	Chicago	432	\$745	\$925	\$565	\$465	\$550	\$380
Jones Day	New York	2,363	\$745	\$975	\$445	\$435	\$775	\$205
Manatt, Phelps & Phillips	Los Angeles	325	\$740	\$795	\$640	-	-	-
Seward & Kissel	New York	152	\$735	\$850	\$625	\$400	\$600	\$290
O'Melveny & Myers	Los Angeles	738	\$715	\$950	\$615	-	-	-
McDermott Will & Emery	Chicago	1,024	\$710	\$835	\$525	-	-	-
Reed Smith	Pittsburgh	1,468	\$710	\$945	\$545	\$420	\$530	\$295
Dentons	N/A**	N/A**	\$700	\$1,050	\$345	\$425	\$685	\$210
Jeffer Mangels Butler & Mitchell	Los Angeles	126	\$690	\$875	\$560	-	-	-
Sheppard, Mullin,	Los Angeles	521	\$685	\$875	\$490	\$415	\$535	\$275

Richard Pearl

\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow.

FIRM NAME	LARGEST U.S. OFFICE*	AVERAGE FULL-TIME EQUIVALENT ATTORNEYS*	PARTNER ASSOCIATE HOURLY RATES		ASSOCIATE HOURLY RATES		AVERAGE LOW	AVERAGE HIGH	LOW
			AVERAGE	HIGH	AVERAGE	HIGH			
Richter & Hampton	Angeles								
Alston & Bird	Atlanta	805	\$675	\$875	\$495	\$425	\$575	\$280	

THE FOUR-FIGURE CLUB

These 10 firms posted the highest partner billing rates.

Gibson, Dunn & Crutcher	\$1,800
Dickstein Shapiro	\$1,250
Wilmer Cutler Pickering Hale and Dorr	\$1,250
Akin Gump Strauss Hauer & Feld	\$1,220
Kasowitz, Benson, Torres & Friedman	\$1,195
Morrison & Foerster	\$1,195
Skadden, Arps, Slate, Meagher & Flom	\$1,150
Baker & McKenzie	\$1,130
Bracewell & Giuliani	\$1,125
Paul, Weiss, Rifkind, Wharton & Garrison	\$1,120

THE FOUR-FIGURE CLUB

Contact Karen Sloan at ksloan@alm.com

SATELLITE TECHNOLOGY (67%); SUPREME COURTS (63%)

Classification

Company: GIBSON DUNN & CRUTCHER LLP (93%); LIGHTSQUARED INC (83%)

Language: ENGLISH

Publication-Type: Newspaper

Industry: NAICS541110 OFFICES OF LAWYERS (93%); SIC8111 LEGAL SERVICES (93%); NAICS517410 SATELLITE TELECOMMUNICATIONS (83%); NAICS334220 RADIO & TELEVISION BROADCASTING & WIRELESS COMMUNICATIONS EQUIPMENT MANUFACTURING (83%)

Subject: POLLS & SURVEYS (90%); LEGAL SERVICES (90%); MAJOR US LAW FIRMS (90%); LAW FIRM BILLABLE RATES (90%); LAWYERS (89%); LAW PRACTICE (89%); LAW FIRM BILLABLE HOURS (78%); ECONOMIC CONDITIONS (76%); CORPORATE COUNSEL (73%); US CHAPTER 11 BANKRUPTCY (73%); LAW COURTS & TRIBUNALS (68%);

Geographic: UNITED STATES (92%)

Load-Date: January 13, 2014

Richard Pearl

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EXHIBIT D

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April 16, 2012 5:20 PM

When It Comes to Billing, Latest Rate Report Shows the Rich Keep Getting Richer

Posted by Sara Randazzo

Hourly rates just keep rising—and the best-paid lawyers are raising their rates faster than everyone else.

Those are two of the key findings contained in the [2012 Real Rate Report](#), an analysis of \$7.6 billion in legal bills paid by corporations over a five-year period ending in December 2011. The report, released Monday, is the second such collaboration between TyMetrix, a company that manages and audits

legal bills for corporate legal departments, and the Corporate Executive Board.

Many of the new rate report's findings echo those contained in the 2010 study, including the fact that rates keep going up, almost across the board, and that the cost of a given matter can vary dramatically depending on a law firm's size and location and its relationship with a particular client.

At the same time, this year's study shows that the legal sector is becoming increasingly bifurcated, with top firms raising rates faster than those at the bottom of the market and large firms charging a premium price based purely on their size.

"What it's really showing is that there's an increased premium being paid for experience and expertise," says Julie Peck, vice president of strategy and market development at TyMetrix. "Some parts of the lawyer market are able to raise rates much more quickly, and are more impervious to economic forces than others."

To compile the current rate report, TyMetrix received permission from its clients to examine legal fees billed to 62 companies across 17 industries including energy, finance, retail, technology, insurance, and health care. The bills, which represent the amount actually paid by the companies in question rather than the amount initially charged, came from more than 4,000 firms in 84 metropolitan areas around the country. Every firm on the 2011 Am Law 100 is represented in the data.

The report's key data points include:

A Widening Gap: Hourly rates charged by lawyers in the legal sector's upper echelon grew faster between 2009 and 2011 than those charged by lawyers toiling on the lower rungs. Particularly striking was the jump in associate rates billed by those falling in the report's top quartile: 18 percent on average, to just over \$600 per hour. Rates billed by top quartile partners, meanwhile, rose 8 percent, to just under \$900 per hour. In the bottom quartile, associate rates rose 4 percent and partner rates rose 3 percent during the same period.

The Recession's (Minor) Toll: Even amid the economic downturn, the cost of an hour of a lawyer's time continued to rise faster than key measures of inflation. That said, the legal industry wasn't completely immune to the broader economy's slowdown. After rising 8.2 percent between 2007 and 2008, hourly rates rose just 2.3 percent in 2009. Law firms bounced back a bit last year, with rates climbing 5.1 percent, to an average of \$530 an hour.

Location Counts: Not surprisingly, lawyers working in major metropolitan areas—where, as the rate report notes, rents are typically higher—are the priciest. An address in Boston, Chicago, Los Angeles, San Francisco, or Washington, D.C., alone adds about \$161 to the hourly rate charged by an individual lawyer. Those six cities and Baltimore, Houston, Philadelphia, and San Jose are the ten U.S. markets with the highest hourly rates. With an average partner rate topping \$700 per hour and average associate rate of more than \$450 per hour, New York is the most expensive market in the country. The least expensive? Riverside, California, where the average partner bills at under \$250 per hour and associates bill at just over \$300 an hour.

In the Minority: A small group of lawyers—12 percent—bucked the trend toward higher fees and actually lowered rates between 2009 to 2011—and 3 percent trimmed rates by \$50 or more per hour. (Most of those in the rate-cutting camp were based outside the big six markets identified above.) At the other end of the spectrum, 52 percent of lawyers increased rates by between \$25 and \$200 or more per hour. Another 18 percent increased rates by less than \$25 per hour, and the final 18 percent held rates steady.

First-Year Blues: Even before the recession hit, clients balked at paying for what they considered on-the-job training for first-year associates. The latest rate report is likely to reinforce that reluctance, given its finding that using entry-level lawyers adds as much as 20 percent to the cost of a legal matter. The report offers evidence that firms may be accommodating clients on this front: The percentage of bills attributed to entry-level associates dropped from 7 percent in 2009 to 2.9 percent last year.

Ties That Bind: The more work one firm handles for a client—and the longer the client relationship extends—the higher the average rate the firm charges. For companies that paid one firm \$10 million or more in a single year, the average hourly rate paid was \$553 in 2011. By comparison, clients that limited their spending on an individual firm to \$500,000 paid that firm an average of \$319 per hour.

Four-Digit Frontier: Data has consistently shown that many lawyers hesitate to charge more than \$1,000 an hour, and in 2011 just under 3 percent of the lawyers covered by the rate report had broken that barrier. Of those, the vast majority were working in the six main legal markets identified above and 60 percent of the time, they billed in increments of one hour or less.

Playing Favorites: Across all practice areas, 90 percent of lawyers charged different clients different rates for similar types of work. (The figure for mergers and acquisitions lawyers was 100 percent.) The differences from client to client can be extreme, and were even more pronounced in the current report than in the 2010 edition. Rates charged by intellectual property specialists, for instance, had a median variance of 23.1 percent, while lawyers doing commercial and contract work showed a 18.7 percent median difference.

Who's Doing What? A closer look at law firm bills for work performed on litigation and intellectual property assignments shows that the kind of timekeeper billing on a matter varies by practice type. On patent matters, the report shows, 47 percent of hours billed on average are attributed to paralegals, and 37 percent by partners. By comparison, paralegals account for just 8 percent of the work done on labor and employment litigation hours, while partners handle 45 percent.

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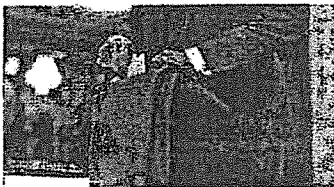
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By JENNIFER SMITH

Top partners at leading U.S. law firms are charging more than ever before, yet those hourly rates aren't all they appear to be.



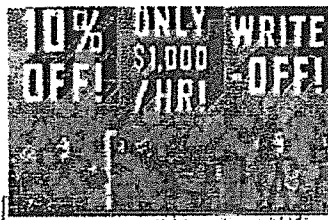
Top partners at leading U.S. law firms are charging more than ever — routinely \$1,150 or more an hour — but after discounts and write-offs the nosebleed rates aren't all they appear to be. Jennifer Smith reports. Photo: Getty Images.

Having blown past the once-shocking price tag of \$1,000 an hour, some sought-after deal, tax and trial lawyers are commanding hourly fees of \$1,150 or more, according to an analysis of billing rates compiled from public filings.

But, as law firms boost their standard rates, many are softening the blow with widespread discounts and write-offs, meaning fewer clients are paying full freight. As a result, law firms on

average are actually collecting fewer cents on the dollar, compared with their standard, or "rack," rates, than they have in years.

Think of hourly fees "as the equivalent of a sticker on the car at a dealership," said legal consultant Ward Bower, a principal at Altman Weil Inc. "It's the beginning of a negotiation.... Law firms think they are setting the rates, but clients are the ones determining what they're going to pay."



James Kobaczewski

the firm's database billed at that level in the first quarter of 2013, up from 158 a year earlier.

Star lawyers still can fetch a premium, and some of them won't budge on price. The number of partners billing \$1,150-plus an hour has more than doubled since this time last year, according to Valeo Partners, a consulting firm that maintains a database of legal rates pulled from court filings and other publicly disclosed information. More than 320 lawyers in

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That glided circle includes tax experts such as Christopher Roman of King & Spalding LLP and Todd Maynes of Kirkland & Ellis LLP, intellectual-property partner Nader A. Mousavi of Sullivan & Cromwell LLP, and deal lawyers such as Kenneth M. Schneider of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Those lawyers and their firms either declined to comment or didn't reply to requests for comment.

When corporate legal departments need a trusted hand to fend off a hostile takeover or win a critical court battle, few general counsels will nitpick over whether a key lawyer is charging \$900 an hour or \$1,150 an hour. But for legal matters where their future isn't on the line, companies are pushing for—and winning—significant price breaks.

"We almost always negotiate rates down from the rack rates," said Randal S. Milch, general counsel for phone giant Verizon Communications Inc. [VZ +0.29%] The result, he said, is a "not-insignificant discount."

For the bread-and-butter work that many big law firms rely on, haggling has become the norm. Many clients grew accustomed to pushing back on price during the recession and continue to demand discounts.

Some companies insist on budgets for their legal work. If a firm billing by the hour exceeds a set cap, lawyers may have to write off some of that time.

Other clients refuse to work with firms who don't discount, lopping anywhere from 10% to 30% off their standard rates. Some may grant rate increases to individual partners or associates they deem worthy. Another tactic: locking in prices with tailored multiyear agreements with formulas governing whether clients grant or refuse a requested rate increase.

In practical terms, that means the gap between law firms' sticker prices and the amount of money they actually bill and collect from their clients is wider than it has been in years.

According to data collected by Thomson Reuters Peer Monitor, big law firms raised their average standard rate by about 9.3% over the past three years. But they weren't able to keep up on the collection side, where the increase over the same period was just 6%. Firms that used to collect on average about 92 cents for every dollar of standard time their lawyers worked in 2007, before the economic downturn, now are getting less than 85 cents. "That's a historic low," said James Jones, a senior fellow at the Center for the Study of the Legal Profession at Georgetown Law.

To be sure, things have certainly picked up some since the recession, when some clients flat-out refused to pay rate increases.

In the first quarter of 2013, the 50 top-grossing U.S. law firms boosted their partner rates by as much as 5.7%, billing on average between \$879 and \$882 an hour, according to Valeo Partners. Rates for junior lawyers, whose labors have long been a profit engine for major law firms, jumped even more.

While some clients resisted using associate lawyers during the downturn, refusing to pay hundreds of dollars an hour for inexperienced first- or second-year attorneys, the largest U.S. law firms have managed to send the needle back up again. This year, for the first time, the average rate for associates with one to four years of experience rose to \$500 an hour, according to Valeo.

The increases continue the upward trend of 2012, when legal fees in general rose 4.8% and associate billing rates rose by 7.4%, according to a coming report by TyMetrix Legal Analytics, a unit of Wolters Kluwer, [WKL.AE +0.95%] and CEB, a research and advisory-services company. Those numbers are based on legal-spending data from more than 17,000 law firms.

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More than a dozen leaders at major law firms declined to discuss rate increases on the record, though some said privately that the increase in associate rates could be caused in part by step increases as junior lawyers gain in seniority.

Joe Sims, an antitrust partner at Jones Day and former member of the firm's partnership committee, said clients don't mind paying for associates, as long as they feel they are getting their money's worth.

Sophisticated clients, he said, tend to focus on the overall price tag for legal work, not on individual rates. "They are more concerned about how many people are working on the project and the total cost of the project," Mr. Sims said. "Clients want value no matter who is on the job."

While a handful of elite lawyers have successfully staked out the high end—the deal teams at Wachtell, Lipton, Rosen & Katz, for example—legal experts say that client pressure to control legal spending means most law firms must be considerably more flexible on price.

"There will always be some 'bet the company' problem where a client will not quibble about rates," said Mr. Jones, the Georgetown fellow. "Unfortunately, from the law firms' standpoint, that represents a small percentage of the work."

Write to Jennifer Smith at jennifer.smith@wsj.com

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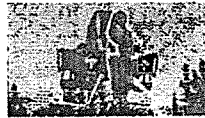
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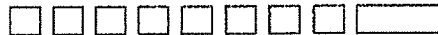
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