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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF YOLO**
11 **(UNLIMITED JURISDICTION)**

12 JENICA COLE, SHAUNA ADAMS,
13 KASSANDRA MENDIVIL, RICHARD
14 BAUTISTA, MICHAEL NEVAREZ, JOE
15 NUNEZ, and HUNTER MEELEE, on behalf of
16 themselves and all others similarly situated, and
as “aggrieved employees” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 STRATEGIC GREEN PARTNERS LLC
20 DOING BUSINESS AS AUTHENTIC 760, a
21 California limited liability company; IGS
22 SOLUTIONS LLC, a California limited
23 liability company; SHRYNE GROUP, INC., a
24 California corporation; STIIIZY, LLC, a
25 California limited liability company;
26 IRONWORKS COLLECTIVE, INC., DOING
BUSINESS AS BLAZE, a California
27 corporation; TONY HUANG, an individual;
and DOES 1–50, inclusive,

28 *Defendant(s).*

Case No. CV2021-0426

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFFS
KASSANDRA MENDIVIL, RICHARD
BAUTISTA, JENICA COLE, SHAUNA
ADAMS, MICHAEL NEVAREZ, JOE
NUNEZ, AND HUNTER MEELEE’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: February 9, 2024

Hearing Time: 9:00 a.m.

Hearing Dept.: 14, The Honorable David
Rosenberg

Action filed: March 12, 2021

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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF PLAINTIFFS' MOTION**
2 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Cassandra Mendivil ("Plaintiff Mendivil") in her claims against
6 Defendants Strategic Green Partners LLC doing business as Authentic 760, IGS Solutions LLC,
7 Shryne Group, Inc., STIIZY, LLC, and Ironworks Collective, Inc., doing business as Blaze
8 (collectively "Defendants"). Collectively, the "Plaintiffs" are Cassandra Mendivil, Richard
9 Bautista, Jenica Cole, Shauna Adams, Michael Nevarez, Joe Nunez, and Hunter Meelee. Plaintiffs
10 and Defendants are collectively referred to as the "Parties."

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

13 3. The Class Action and PAGA Settlement Agreement and Class Notice (the
14 "Settlement") is attached hereto as **Exhibit 1**.

15 ***Factual and Procedural Background***

16 4. Defendants are cannabis growers and retailers. Defendants employed Plaintiff
17 Mendivil as an assistant manager from about February 12, 2020 until April 27, 2020.

18 5. On September 21, 2020, Plaintiff Mendivil notified Defendants and the California
19 Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private
20 Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of
21 alleged Labor Code violations committed by Defendants. A true and correct copy of the letter to
22 the LWDA dated September 21, 2020 is attached hereto as **Exhibit 2**. On November 24, 2020,
23 January 6, 2021, March 18, 2021, January 3, 2022, and January 21, 2022, Plaintiffs Michael
24 Nevarez, Jenica Cole and Shauna Adams, Hunter Meelee, Richard Bautista, and Joe Nunez,
25 respectively, notified Defendants and the LWDA of alleged Labor Code violations. True and
26 correct copies of the letters to the LWDA dated November 24, 2020, January 6, 2021, March 18,
27 2021, January 3, 2022, and January 21, 2022, are collectively attached hereto as **Exhibit 3**. On
28 December 22, 2023, Plaintiffs Jenica Cole and Shauna Adams notified the LWDA and
 Defendants in writing of all alleged Labor Code violations committed by Defendants (and subject
 to release per ¶ 1.40 of the Settlement), including Labor Code sections 201, 201.5, 202, 203, 204,
 221, 226, 226.7, 227.3, 232, 233, 246, 246.5, 248, 248.2, 351, 353, 432, 510, 512, 551, 552, 1174,

1 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2699, 2800, 2802, 2804, 2810.5, 6300, 6400,
2 6401, 6402, and 6403. A true and correct copy of the letter to the LWDA dated December 22,
3 2023 is attached hereto as **Exhibit 4**.

4 6. On December 1, 2020, Plaintiff Mendivil filed a Class Action Complaint in the
5 Los Angeles County Superior Court, Case No. 20STCV45949, against Defendants on behalf of
6 herself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure
7 to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2)
8 Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods
9 (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5)
10 Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code
11 §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.). On June 3, 2022,
12 Plaintiff Mendivil filed her First Amended Complaint adding a claim under the Labor Code
13 Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). On March 2,
14 2021, Defendants filed an answer to Plaintiff Mendivil’s First Amended Complaint. Defendants
15 deny all of Plaintiffs’ allegations and strongly contend that their wage and hour policies, practices
16 and procedures are fully compliant with all applicable laws. A true and correct copy of the
complaint is attached hereto as **Exhibit 5**. A true and correct copy of Plaintiff Mendivil’s First
Amended Complaint is attached hereto as **Exhibit 6**.

17 7. On March 12, 2021, Plaintiffs Jenica Cole and Shauna Adams commenced this
18 Action by filing a Complaint alleging a claims pursuant to PAGA against Defendants for failure
19 to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure
20 to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
21 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
22 and related claims. A true and correct copy of the Cole and Adams Complaint is attached hereto
23 as **Exhibit 7**. On November 13, 2023, Plaintiffs Jenica Cole and Shauna Adams filed a First
24 Amended Complaint adding the other Plaintiffs and Defendants as parties and alleging causes of
25 action against Defendants for failure to pay employees all earned wages, failure to pay overtime,
26 failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify
27 and/or reimburse for business expenses, failure to issue proper wage statements, failure to
28 maintain accurate employment and/or payroll records, failure to provide payroll records, failure
to provide access to personnel files, failure to timely pay wages, failure to pay gratuities, unlawful

1 tip collection, failure to pay vacation pay, failure to provide sick leave and sick pay including
2 COVID-19 sick leave and sick pay, failure to provide sick leave without precondition, failure to
3 provide seating, failure to provide a place of employment that was safe and healthful, wrongful
4 termination for failure to obtain business use vehicle insurance, retaliation for whistleblower
5 complaints under California Labor Code section 1102.5 for failure to obtain business use vehicle
6 insurance, failure to provide one day's rest in seven days, and unfair competition under Business
7 & Professions Code sections 17200, *et seq.* The First Amended Complaint consists of all theories
8 of recovery subject to release under ¶ 1.39 of the Settlement. A true and correct copy of the Cole
9 and Adams First Amended Complaint is attached hereto as **Exhibit 8**. The First Amended
10 Complaint is the operative complaint in this Action (the "Operative Complaint."). Defendants
11 deny the allegations in the Operative Complaint, deny any failure to comply with the laws
12 identified in the Operative Complaint, deny any and all liability for the causes of action alleged,
13 and deny that Plaintiffs have suffered any damages. *Id.*

14 8. The Parties thereafter engaged in an informal, voluntary exchange of information
15 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
16 produced Plaintiffs' entire personnel files (including policies and agreements they signed and
17 acknowledged), copies of their relevant company written policies, time-keeping records, email
18 messages, and paycheck data and records for the putative class, and more detailed time and
19 payroll data for a random sample of putative class members specifically selected by Plaintiffs'
20 counsel. Plaintiffs prepared "damages" estimates in advance of the mediation. In advance of the
21 mediation, Plaintiffs determined Defendants' maximum exposure for restitution and penalties to
22 be approximately \$134,889,551.60 (consisting of \$3,457,984.86 in unpaid wages, \$3,009,632.79
23 in missed meal period premium wages, \$9,122,602.13 in missed rest break premium wages,
24 \$4,321,650.00 for wage statement penalties, \$10,403,865.72 for waiting time penalties, and
25 \$99,781,600.00 for civil penalties). Plaintiffs calculated the damages based on the number of
26 workweeks and pay periods provided by Defendants, Plaintiffs' reports, and the sample data, in
27 consultation with their statistician expert. True and correct copies of the spreadsheets Plaintiffs
28 prepared for mediation of this Action are collectively attached to this declaration as **Exhibit 9**.

9. On June 15, 2022, following much of the foregoing informal discovery and
exchange of information, the Parties participated in a mediation session presided over by Mediator
Steven Pearl, an experienced class action mediator. During the mediation, the Parties had a full

1 day of productive negotiations and reached agreement on a class-wide settlement during the
2 second mediation session. During the mediation session, each side, represented by their respective
3 counsel, recognized the risk of an adverse result in the Action and, following a proposal
4 recommended by the mediator for the material terms of the Settlement, agreed to settle the Action
5 and all other matters covered by this Agreement pursuant to the terms and conditions of this
6 Agreement. After further negotiations over the terms of the long-form Settlement Agreement, the
7 Parties executed the Settlement on September 22, 2023.

8 10. At the mediation, it became clear that that Defendants had insufficient resources
9 to cover the full extent of liability. My research shows that Defendants are heavily leveraged and
10 are obligated to make onerous interest payments each month. The information provided was
11 sufficient to demonstrate the financial condition of the Defendants and their owners. Based on
12 such records, each Plaintiff, on his/her own behalf and on behalf of the Class Members, has agreed
13 to settle the lawsuit on the terms set forth in the Settlement.

14 ***Ascertainable and Numerous Class***

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

20 12. The Settlement Class has sufficiently numerous members to render joinder
21 impractical. No set number is required as a matter of law to maintain a class action. The California
22 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
23 approximately 4,761 Class Members. Each Plaintiff maintains that it would be impractical and
24 economically inefficient to require each Settlement Class Member to separately maintain an
25 individual action or be joined as a named plaintiff in this action. In light of these considerations,
26 the Settlement Class' membership is sufficiently numerous.

27 ***Predominant Common Questions***

28 13. A question of law or fact is common to the members of a class if it may be resolved
through common proof. In this case, there are many predominant common questions. Plaintiffs
assert all class members were subject to the same or similar operations and employment policies,
practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay

1 wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to
2 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
3 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
4 and related labor law violations, all of which Plaintiffs claim constitute unfair business practices
5 and give rise to PAGA penalties. Plaintiffs assert that common questions include, but are not
6 limited to: (1) Whether Defendants failed to pay all wages earned to class members for all hours
7 worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all
8 meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay
9 the class one additional hour of pay on workdays they failed to provide the class with one or more
10 meal or rest periods in compliance with California law; (4) Whether Defendants failed to
11 indemnify the class for all necessary business expenditures incurred during the discharge of their
12 duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with
13 accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely
14 final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of
15 Business and Professions Code section 17200, *et seq.*, with respect to the class.

16 ***Typicality***

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

25 ***Adequacy***

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

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

13 ***Background of Class Counsel***

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

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

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

25 20. I have tried many cases before California and federal courts, government agencies
26 and neutral arbitrators. I am a member of the California Employment Lawyers Association
27 (CELA).

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

 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special

1 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
2 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
3 back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on Trial:
4 Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego Union-
5 Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias And
6 Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

t. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
No. BC421485 (granted class certification through contested motion and appointed Class Counsel

1 in case on behalf of former security workers based on late final wage payments in violation of
2 Labor Code §§ 201–203).

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

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

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

13 ***Class Action Treatment Is Superior***

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

23 ***The Settlement is Presumptively Fair***

24 26. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted
25 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
26 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
27 weaknesses of their respective cases and Defendants’ estimated exposure. Both defense counsel
28 and I are particularly experienced in employment law and wage and hour class actions. We are
experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks
and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and
hour class settlements, including many involving the same issues presented here. Counsel on both

sides share the view that the Settlement is a fair and reasonable settlement in light of the complexities of the case and uncertainties of class certification and litigation, and a fair result for the Class Members.

Exposure & Risk Analysis

27. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for \$4,280,000.00 is fair and reasonable.

28. **Risks Associated with the Arbitration Agreements.** The arbitration agreements entered into between Defendants on the one hand, and the Class Members, on the other, present a significant risk to the success of Plaintiffs' class action litigation. According to Defendants, the majority of the Class entered into arbitration agreements with Defendants. As the arbitration agreements in question restrict potential litigants from bringing class and PAGA actions against Defendants, Plaintiffs would be effectively barred from pursuing claims on behalf of the Class in Court. Thus, there is a significant risk the Court could determine that those Class Members who have not entered into arbitration agreements with Defendants do not constitute a sufficiently numerous class to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiffs would run the high risk of suffering defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements would pose danger to any class certification motion brought by Plaintiffs. Because different defenses would apply to some Class Members and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiffs' claims present too many individualized inquiries to justify class certification.

29. **Risks Associated with Defendants' Financial Condition.** Defendants' financial condition was the key factor in reaching this Settlement. Due to Defendants' financial condition, even if Plaintiffs prevailed on all claims at trial, they may never recover the damages due to the risk of insolvency. A very large class action judgment would almost certainly put the company out of business and/or would interfere with the Defendants' ability to carry out their contractual obligations.

30. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiffs' recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock

1 claims are difficult where a defendant requires in its written policies that all work must take place
2 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer
3 must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment
4 policies, Defendants mandate that employees must record all time worked accurately on their time
5 records and strictly prohibit employees from performing any work off-the-clock. Moreover, while
6 Defendants dispute that off-the-clock work occurred, they contend that any time spent off the
7 clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal.
8 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de*
9 *minimis* defense even if compensable. (Stating that “We do not decide whether there are
10 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
11 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine
12 may apply here because the time spent off the clock were minute and insignificant. Accordingly,
13 a large award of penalties seems unlikely with respect to this claim.

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

24 32. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiffs’
25 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
26 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
27 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
28 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
or prohibited the employee from taking a proper break, or otherwise failed to release the employee
of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a

1 particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D.
2 Cal. 2010) 271 F.R.D. 629, 641. *Id.*

3 33. Defendants contend they did not impede or discourage Plaintiffs, or any other
4 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
5 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
6 of their meal breaks each day on their time records. The time records that comprise the random
7 sample Defendants produced to Plaintiffs for purposes of mediation show that meal periods were
8 taken the vast majority of the time. Of the time records that show a late, short or no lunch,
9 individualized evidence may be necessary to determine whether they occurred due to conduct of
10 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
11 the value of Plaintiffs’ meal period claim would be substantially reduced at trial.

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

26 35. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
27 Court may consider Plaintiffs’ claims as to Defendants’ alleged failure to indemnify for business
28 expenses to be individual in nature and thus decline to certify the class. Plaintiffs allege that
Defendants required Plaintiffs and the Class Members to use their personal items including
cellular phones, computers and other electronic devices, vehicles, and tools, and failed to
indemnify them for these business expenses. Defendants presented evidence that they have

1 supplied their employees with tools, equipment, and other supplies and had an expense
2 reimbursement policy. As such, there is a risk that the Court may consider Plaintiffs' claims to be
3 individual in nature and unfit for class wide resolution.

4 **36. Risks Associated with the Statutory "Wage Statement" Penalty Claims.**

5 Plaintiffs also assert claims for wage statement violations, untimely wage violations, and PAGA
6 penalties. Under Labor Code section 226, wage statements must include various information,
7 including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiffs'
8 wage statement claim has the same underlying risks as the above claims, as it is derivative of
9 them. On their face, the wage statements issued by Defendants comply with the requirements of
Labor Code section 226.

10 **37. Risks Associated with The Waiting Time Penalties Claim.** Plaintiffs' claim for
11 untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor Code
12 ¶ 226, Plaintiffs must establish that the late payments were willful. The evidence of good faith
13 Defendants put forth will defeat this claim.

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

21 **39.** This uncertainty increases Plaintiffs' risk of pursuing the PAGA claims and
22 required a significant discount for settlement purposes. For mediation purposes, Plaintiffs'
23 counsel estimated a maximum exposure of approximately \$99,781,600.00 in civil penalties. This
24 estimate did not take into account any of the risks discussed above and assumed a violation for
25 every single pay period. *Id.* Plaintiffs' counsel also assessed multiple penalties for the same pay
26 period for the same alleged violations of different Labor Code provisions and derivative
27 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
28 this fashion may be appropriate to determine the amount in controversy for purposes of removal
jurisdiction, Plaintiffs' counsel is not aware of any California state courts awarding plaintiffs

multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking.

40. I am aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.⁶ PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.⁷

41. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828.

⁶ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

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

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

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

⁷ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the complaint is attached as **Exhibit 10**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the statement of decision is attached as **Exhibit 11**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.

Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar result could occur here.

42. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 4,761 members - until it is no longer numerous enough for class certification. *Id.* Plaintiffs, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

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

Allocation of the PAGA Payment

44. The settlement of PAGA penalties in the sum of \$428,000.00, of which 75% (\$321,000.00) will be paid to the LWDA and 25% (\$107,000.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members.

///

Attorneys' Fees and Costs

45. On August 14, 2023, Class Counsel entered into a written agreement to divide attorneys fees recovered in the Actions. A true and correct copy of the fee sharing agreement of August 14, 2023 is attached as **Exhibit 12**. A chart illustrating the fee division agreed upon is attached as **Exhibit 13**.

46. On behalf of Class Counsel, I intend to request Class Counsel Attorneys' Fees of \$1,498,000.00 (35% of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$60,000.00 and will be no more than \$60,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image*

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

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

27 48. Class Counsel have borne all the risks and costs of litigation and will receive no
28 compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour
class action litigation and used that experience to obtain a fair result for the Class. Considering
the amount of the attorney fees requested, the work performed, and the risks incurred, the
requested fees and costs are reasonable and should be awarded.

Class Representative Service Payment

49. The Settlement provides that each Plaintiff may seek a Class Representative Service Payment of \$20,000.00. This amount is entirely reasonable given each Plaintiff's efforts in this Action and the risks she/he undertook on behalf of Class Members. Here, each Plaintiff has devoted many hours advancing the interests of the Settlement Class. Each Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his/her work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Each Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (See Labor Code §§ 218.5-218.6). The efforts and risks that each Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrant preliminary approval.

Individual Class Payment and Individual PAGA Payment

50. The Individual Class Payment and Individual PAGA Payment will be paid to each Class Member based on his or her eligible Work Weeks compared to the total Work Weeks. Settlement ¶¶ 3.2.4 and 3.2.5.1. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

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

51. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 4.2. Although there are current employee Class Members, it is uncertain whether Defendants' records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion

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

9 ***Settlement Administration Duties***

10 52. The duties of the Settlement Administrator are spelled out in section III(C) of the
11 Settlement and in the bid provided by Simpluris, Inc. a true and correct copy of which is attached
12 hereto as **Exhibit 14**.

13 ***Settlement Administration Costs***

14 53. With regard to the settlement administration costs provision (Settlement §3.2.3),
15 it is reasonable. Before agreeing to Simpluris, Inc. the Parties sought and reviewed bids from
16 other reputable third-party administrators: (A) Phoenix Class Action Administration Solutions =
17 \$55,000.00; (B) Simpluris, Inc. = \$50,000.00 and C) CPT Group, Inc. = \$63,000.00. A true and
18 correct copy of the bid from Phoenix Class Action Administration Solutions is attached hereto as
19 **Exhibit 15**. A true and correct copy of the bid from Phoenix Class Action Administration
20 Solutions is attached hereto as **Exhibit 16**. The bid provided by Simpluris, Inc. was comparable.
Thus, settlement administration costs provision should be given preliminary approval.

21 ///

22 ///

23 ///

24 ///

Notice of Settlement to the LWDA

54. Pursuant to Labor Code § 2699(1)(2), Plaintiff Mendivil submitted a copy of the Settlement with the Labor and Workforce Development Agency (“LWDA”) at the same time Plaintiffs’ Motion is being filed with the Court. A true and correct copy of Mendivil’s submission with the LWDA and a confirmation email is attached hereto as **Exhibit 17**.

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

Executed on Friday, January 12, 2024 at Los Angeles, California.



DAVID SPIVAK,
Declarant

EXHIBIT 1

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11 Attorneys for Plaintiff(s),

12 JENICA COLE and SHAUNA ADAMS, and all others similarly situated

(Additional attorneys for parties on following page)

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

14 **FOR THE COUNTY OF YOLO**

15 **(UNLIMITED JURISDICTION)**

16
17 JENICA COLE, SHAUNA ADAMS,
18 KASSANDRA MENDIVIL, RICHARD
19 BAUTISTA, MICHAEL NEVAREZ, JOE
20 NUNEZ, and HUNTER MEELEE, on behalf of
21 themselves and all others similarly situated, and
22 as “aggrieved employees” on behalf of other
23 “aggrieved employees” under the Labor Code
24 Private Attorneys General Act of 2004,

25 *Plaintiff(s),*

26 vs.

27 STRATEGIC GREEN PARTNERS LLC
28 DOING BUSINESS AS AUTHENTIC 760, a
California limited liability company; IGS
SOLUTIONS LLC, a California limited liability
company; SHRYNE GROUP, INC., a California

Case No. CV2021-0426

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

Action filed: March 12, 2021

Dept: 6, The Honorable Samuel T.
McAdam

1 corporation; STIIIZY, LLC, a California limited
2 liability company; IRONWORKS
3 COLLECTIVE INC., DOING BUSINESS AS
4 BLAZE, a California corporation; and DOES 1–
5 50, inclusive,

Defendant(s).

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STRATEGIC GREEN PARTNERS LLC DOING BUSINESS AS AUTHENTIC 760, IGS
SOLUTIONS LLC, SHRYNE GROUP, INC., STIIZY, LLC, and IRONWORKS
COLLECTIVE INC., DOING BUSINESS AS BLAZE

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Jenica Cole, Shauna Adams, Kassandra Mendivil, Richard Bautista, Michael
3 Nevarez, Joe Nunez, and Hunter Meelee (jointly “Plaintiffs”) and defendants Strategic Green
4 Partners LLC doing business as Authentic 760, IGS Solutions LLC, Shryne Group, Inc., STIIIZY,
5 LLC, and Ironworks Collective Inc., doing business as Blaze (collectively “Defendants”). The
6 Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

7 **1. DEFINITIONS.**

8 1.1. “Actions” includes the Plaintiffs’ lawsuit alleging wage and hour violations
9 against Strategic Green Partners LLC doing business as Authentic 760, IGS Solutions LLC,
10 Shryne Group, Inc., STIIIZY, LLC, and Ironworks Collective Inc., doing business as Blaze
11 captioned “Jenica Cole, Shauna Adams, Kassandra Mendivil, Richard Bautista, Michael Nevarez,
12 Joe Nunez, and Hunter Meelee, on behalf of themselves, and all others similarly situated, and as
13 an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code Private
14 Attorneys General Act of 2004, *Plaintiff(s)*, vs. defendants Strategic Green Partners LLC doing
15 business as Authentic 760, IGS Solutions LLC, Shryne Group, Inc., STIIIZY, LLC, and
16 Ironworks Collective Inc., doing business as Blaze; and DOES 1 through 50, inclusive,
17 *Defendant(s)*,” Case No. CV2021-0426 initiated on March 12, 2021 and pending in Superior
18 Court of the State of California, County of Yolo. “Actions” also includes the following actions:
19 (A) *Kassandra Mendivil v. Strategic Green Partners LLC doing business as Authentic 760*, Los
20 Angeles County Superior Court No. 20STCV45949, filed on December 1, 2020 (the “Mendivil
21 action”); (B) *Richard Bautista v. IGS Solutions, LLC*, LWDA-CM-860749-22, submitted to the
22 LWDA on January 3, 2022 (the “Bautista claim”); (C) *Hunter Meelee v. IGS Solutions, LLC*, Los
23 Angeles County Superior Court No. 21STCV03751, filed on January 28, 2021 (the “Meelee
24 action”); (D) *Michael Nevarez v. IGS Solutions, LLC*, Los Angeles County Superior Court No.
25 21STCV04672, filed on February 5, 2021 (the “Nevarez action”); and (E) *Joe Nunez v. IGS*
26 *Solutions, LLC*, Riverside County Superior Court No. CVRI2200303, filed on January 21, 2022
27 (the “Nunez action”).

28 1.2. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed
to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be

1 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
2 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
3 with Preliminary Approval of the Settlement.

4 1.4. “Aggrieved Employee” means a person employed by Defendants in California and
5 classified as a hourly, nonexempt who worked for Defendants during the PAGA Period.

6 1.5. “Class” means all persons employed by Defendants in California and classified as
7 hourly, nonexempt who worked for Defendants during the Class Period.

8 1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm, Walter L.
9 Haines of United Employees Law Group, Chantal Renee McCoy Payton and Laurel N. Holmes
10 of Payton Employment Law PC, Matthew Mann and Justin Rogal of Mann Rogal, PC, Daniel
11 Franklin Gaines and Alex Paul Katofsky of Gaines & Gaines, APLC, Joseph Tojarieh of
12 Stonebrook Law, Harout A. Messrelian of Messrelian Law Inc., Marcus Joseph Bradley of
13 Bradley/Grombacher LLP, Sahag Majariian, II of Majarian Law Group, Frank H. Kim of Kim
14 Legal, APC, and Helen Kim of Helen Kim Law, APC.

15 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
16 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
17 expenses, respectively, incurred to prosecute the Actions.

18 1.8. “Class Data” means Class Member identifying information in Defendants’
19 possession including the Class Member’s name, last-known mailing address, Social Security
20 number, and number of Class Period Work Weeks and PAGA Pay Periods.

21 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as
22 either a Participating Class Member or Non-Participating Class Member (including a Non-
23 Participating Class Member who qualifies as an Aggrieved Employee).

24 1.10. “Class Member Address Search” means the Administrator’s investigation and
25 search for current Class Member mailing addresses using all reasonably available sources,
26 methods and means including, but not limited to, the National Change of Address database, skip
27 traces, and direct contact by the Administrator with Class Members.

28 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
Class Members in English with a Spanish translation in the form, without material variation,
attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from January 28, 2017 to the date of the Court’s order preliminarily approving this Settlement or Defendants’ election to provide a date certain when the 15% benchmark increase in Class Member Work Weeks is reached pursuant to the Escalator Clause in Part 9 of the Settlement.

1.13. “Class Representatives” means the named Plaintiffs in the operative complaint in this Action seeking Court approval to serve as the Class Representatives.

1.14. “Class Representative Service Payments” means the payments to the Class Representatives for initiating the Actions and providing services in support of the Actions.

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

1.16. “Defendants” means named Defendants Strategic Green Partners LLC doing business as Authentic 760, IGS Solutions LLC, Shryne Group, Inc., STIIIZY, LLC, and Ironworks Collective Inc., doing business as Blaze.

1.17. “Defense Counsel” means Todd B. Scherwin, Christopher D. Chaplin, and Ariella M. Kupetz of Fisher & Phillips LLP.

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

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

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

1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. “Gross Settlement Amount” means \$4,280,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA payment, Class Counsel Fees, Class Counsel Expenses, Class Representative

1 Service Payments and the Administrator's Expenses. Defendants will pay the Gross Settlement
2 Amount in four (4) installment payments, outlined further below.

3 1.23. "Individual Class Payment" means the Participating Class Member's pro rata
4 share of the Net Settlement Amount calculated according to the number of Work Weeks worked
5 during the Class Period. The plural "Individual Class Payments" shall refer to the collective
6 payments to the Participating Class Members.

7 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
8 25% of the PAGA Penalties calculated according to the number of Work Weeks worked during
9 the PAGA Period. The plural "Individual PAGA Payments" shall refer to the collective payments
10 to the Aggrieved Employees.

11 1.25. "Judgment" means the judgment entered by the Court based upon the Final
12 Approval.

13 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
14 agency entitled, under Labor Code section 2699, subd. (i).

15 1.27. "LWDA PAGA payment" means the 75% of the PAGA Penalties paid to the
16 LWDA under Labor Code section 2699, subd. (i).

17 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
18 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
19 payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
20 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
21 paid to Participating Class Members as Individual Class Payments.

22 1.29. "Non-Participating Class Member" means any Class Member who opts out of the
23 class portion of the Settlement by sending the Administrator a valid and timely Request for
24 Exclusion.

25 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
26 worked for Defendants for at least one day during the PAGA Period.

27 1.31. "PAGA Period" means the period from September 21, 2019 to the date of the
28 Court's order preliminarily approving this Settlement or Defendants' election to provide a date
certain when the 15% benchmark increase in Class Member Work Weeks is reached pursuant to
the Escalator Clause in Part 9 of the Settlement.

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

1 1.33. “PAGA Notice” means Plaintiff Kassandra Mendivil’s September 21, 2020 letter
2 to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

3 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
4 the Gross Settlement Amount, allocated 25% (\$107,000.00) to the Aggrieved Employees to be
5 paid on a pro-rated basis as Individual PAGA Payments and the remaining 75% (\$321,000.00) to
6 the LWDA as the LWDA PAGA Payment in settlement of the PAGA claims.

7 1.35. “Participating Class Member” means a Class Member who does not submit a valid
8 and timely Request for Exclusion from the Settlement.

9 1.36. “Plaintiffs” means Jenica Cole, Shauna Adams, Kassandra Mendivil, Richard
10 Bautista, Michael Nevarez, Joe Nunez, and Hunter Meelee, the named plaintiffs in this Action.

11 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
12 of the Settlement.

13 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary
14 Approval and Approval of PAGA Settlement.

15 1.39. “Released Class Claims” means any and all claims under state, federal, or local
16 law, whether statutory or common law, arising out of the claims expressly pleaded in the Actions
17 and all other claims, such as those under California Labor Code sections 201, 201.5, 202, 203,
18 204, 221, 226, 226.7, 227.3, 233, 246, 246.5, 248, 248.2, 351, 353, 432, 510, 512, 551, 552, 1174,
19 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2800, 2802, 2804, 2810.5, 6300, 6400, 6401,
20 6402, and 6403, the Wage Orders, regulations, and/or other provisions of law, that could have
21 been pleaded based on the facts pleaded in the Actions for: failure to pay employees all earned
22 wages, failure to pay overtime, failure to provide meal periods, failure to authorize and permit
23 rest periods, failure to indemnify and/or reimburse for business expenses, failure to issue proper
24 wage statements, failure to maintain accurate employment and/or payroll records, failure to
25 provide payroll records, failure to provide access to personnel files, failure to timely pay wages,
26 failure to pay gratuities, unlawful tip collection, failure to pay vacation pay, failure to provide
27 sick leave and sick pay including COVID-19 sick leave and sick pay, failure to provide sick leave
28 without precondition, failure to provide seating, failure to provide a place of employment that
was safe and healthful, wrongful termination for failure to obtain business use vehicle insurance,
retaliation for whistleblower complaints under California Labor Code section 1102.5 for failure
to obtain business use vehicle insurance, failure to provide one day’s rest in seven days, and unfair

1 competition under Business & Professions Code sections 17200, *et seq.* The release is limited to
2 periods of time during which Class Members were employed by one or more of the Defendants
3 in an hourly, non-exempt position in California during the Class Period.

4 1.40. “Released PAGA Claims” means any and all PAGA claims expressly pleaded in
5 the Actions, such as those under California Labor Code sections 201, 201.5, 202, 203, 204, 221,
6 226, 226.7, 227.3, 232, 233, 246, 246.5, 248, 248.2, 351, 353, 432, 510, 512, 551, 552, 1174,
7 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2699, 2800, 2802, 2804, 2810.5, 6300, 6400,
8 6401, 6402, and 6403, unfair competition under Business & Professions Code sections 17200, *et*
9 *seq.*, the Wage Orders, regulations, and/or other provisions of law, that could have been pleaded
10 based on the facts pleaded in the Actions for: failure to pay employees all earned wages, failure
11 to pay overtime, failure to provide meal periods, failure to authorize and permit rest periods,
12 failure to indemnify and/or reimburse for business expenses, failure to issue proper wage
13 statements, failure to maintain accurate employment and/or payroll records, failure to provide
14 payroll records, failure to provide access to personnel files, failure to timely pay wages, failure to
15 pay gratuities, unlawful tip collection, failure to pay vacation pay, retaliating against or otherwise
16 discriminating against an employee who disclosed the amount of his or her wages, failure to
17 provide sick leave and sick pay including COVID-19 sick leave and sick pay, failure to provide
18 sick leave without precondition, failure to provide seating, failure to provide a place of
19 employment that was safe and healthful, wrongful termination for failure to obtain business use
20 vehicle insurance, retaliation for whistleblower complaints under California Labor Code section
21 1102.5 for failure to obtain business use vehicle insurance, and failure to provide one day’s rest
22 in seven days. The release is limited to periods of time during which Aggrieved Employees were
23 employed by one or more of the Defendants in an hourly, non-exempt position in California
24 during the PAGA Period.

25 1.41. “Released Parties” means: Defendants and any of their present and former parent
26 companies, subsidiaries, divisions, concepts, related or affiliated companies and their
27 shareholders, officers, directors, employees (including but not limited to Tony Huang and Sagi
28 Shamam), agents, attorneys, insurers, successors and assigns, and any individual or entity that
could be liable for any of the Released Class Claims, Released PAGA Claims, and Defendants’
counsel of record in the Actions.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request

1 to be excluded from the Class Settlement signed by the Class Member.

2 1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class
3 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
4 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
5 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
6 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
the Response Deadline has expired.

7 1.44. “Settlement” means the disposition of the Actions effected by this Agreement and
8 the Judgment.

9 1.45. “Work Week” means any week during which a Class Member worked for
10 Defendants for at least one day, during the Class Period.

11 **2. RECITALS.**

12 2.1. On March 12, 2021, Plaintiffs Jenica Cole and Shauna Adams commenced this
13 Action by filing a Complaint alleging private attorney general causes of action against Defendants
14 for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal
15 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
16 failure to issue proper wage statements, failure to timely pay wages, failure to maintain required
17 payroll records, and related claims. In or about August 2023, Plaintiffs Jenica Cole and Shauna
18 Adams filed a First Amended Complaint adding the other Plaintiffs and Defendants as parties and
19 alleging causes of action against Defendants for failure to pay wages, unauthorized and unlawful
20 wage deductions, failure to provide meal periods, failure to authorize and permit rest periods,
21 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
22 timely pay wages, failure to maintain required payroll records, failure to pay overtime, failure to
23 provide personnel files and payroll records, failure to pay gratuities, unlawful tip collection,
24 failure to pay vacation pay, retaliating against or otherwise discriminating against an employee
25 who disclosed the amount of his or her wages, failure to provide sick leave and sick pay including
26 COVID-19 sick leave and sick pay, failure to provide sick leave without precondition, failure to
27 provide seating, failure to provide a place of employment that was safe and healthful, wrongful
28 termination for failure to obtain business use vehicle insurance, retaliation for whistleblower
complaints under California Labor Code section 1102.5 for failure to obtain business use vehicle

1 insurance, failure to provide one day's rest in seven days, unfair competition under Business &
2 Professions Code sections 17200, et seq., and civil penalties under PAGA, and related allegations.
3 The First Amended Complaint is the operative complaint in this Action (the "Operative
4 Complaint.") Defendants deny the allegations in the Operative Complaint, deny any failure to
5 comply with the laws identified in in the Operative Complaint, deny any and all liability for the
6 causes of action alleged, and deny that Plaintiffs have suffered any damages.

7 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written
8 notice to Defendants and the LWDA by sending the PAGA Notices.

9 2.3. On June 15, 2022, the Parties participated in an all-day mediation presided over
10 by Steve Pearl which led to this Agreement to settle the Actions.

11 2.4. Prior to mediation, Plaintiffs obtained, through formal and informal discovery,
12 the number of comparable employees, the number of workweeks, the number of pay periods,
13 average rates of pay, sample time records, sample payroll records, sample schedules, written
14 policies, financial records, and related information. Plaintiffs' investigation was sufficient to
15 satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
16 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
17 130 ("*Dunk/Kullar*").

18 2.5. The Court has not granted class certification.

19 **3. MONETARY TERMS.**

20 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
21 Defendants promise to pay \$4,280,000.00 and no more as the Gross Settlement Amount and to
22 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
23 Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any
24 payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator
25 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
26 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
27 Gross Settlement Amount will revert to Defendant.

28 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
deduct the following payments from the Gross Settlement Amount, in the amounts specified by
the Court in the Final Approval:

1 3.2.1. To Plaintiffs: Class Representative Service Payments to each of the Class
2 Representatives of not more than \$20,000.00 (in addition to any Individual Class Payments and
3 any Individual PAGA Payments the Class Representatives are entitled to receive as a Participating
4 Class Members). Defendants will not oppose any Plaintiff's request for a Class Representative
5 Service Payment that does not exceed these amounts. As part of the motion for Class Counsel
6 Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any
7 and all Class Representative Service Payments no later than sixteen (16) court days prior to the
8 Final Approval Hearing. If the Court approves a Class Representative Service Payment less than
9 the amount requested, the Administrator will retain the remainder in the Net Settlement Amount.
10 The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Each
11 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
12 Representative Service Payment.

13 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35%,
14 which is currently estimated to be \$1,498,000.00 and a Class Counsel Litigation Expenses
15 Payment of not more than \$60,000.00. Defendants will not oppose requests for these payments
16 provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for
17 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
18 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
19 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
20 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
21 to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class
22 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
23 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
24 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
25 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
26 Defendants and the Released Parties harmless, and indemnifies Defendants and the Released
27 Parties, from any dispute or controversy regarding any division or sharing of any of these
28 payments.

 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
\$80,000.00 except for a showing of good cause and as approved by the Court. To the extent the
Administration Expenses are less or the Court approves payment less than \$80,000.00, the

1 Administrator will retain the remainder in the Net Settlement Amount.

2 3.2.4. To Each Participating Class Member: An Individual Class Payment
3 calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
4 by all Participating Class Members during the Class Period and (b) multiplying the result by each
5 Participating Class Member's Work Weeks.

6 3.2.4.1. Tax Allocation of Individual Class Payments. 20.00% of
7 each Participating Class Member's Individual Class Payment will be allocated to settlement of
8 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
9 reported on an IRS W-2 Form. The 80.00% of each Participating Class Member's Individual
10 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
11 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
12 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
13 employee taxes owed on their Individual Class Payment.

14 3.2.4.2. Effect of Non-Participating Class Members on Calculation
15 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
16 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
17 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

18 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
19 amount of \$428,000.00 to be paid from the Gross Settlement Amount, with 75% (\$321,000.00)
20 allocated to the LWDA PAGA payment and 25% (\$107,000.00) allocated to the Individual PAGA
21 Payments.

22 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
23 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
24 \$107,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved
25 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
26 PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any
27 taxes owed on their Individual PAGA Payment.

28 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of
3 its records to date, Defendants estimate there are approximately 4,761 Class Members who
4 collectively worked a total of 158,000 Work Weeks, and 4,755 Aggrieved Employees who
5 worked a total of 81,126 PAGA Pay Periods.

6 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of
7 the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
8 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
9 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
10 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
11 employees who need access to the Class Data to effect and perform under this Agreement. The
12 Parties shall communicate these requirements to the Administrator and secure the Administrator's
13 agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
14 discover that the Class Data omitted class member identifying information and to provide
15 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
16 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
17 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
18 issues related to missing or omitted Class Data.

19 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
20 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
21 taxes by transmitting the funds to the Administrator as follows:

22 4.3.1. Within 90 calendar days of the Court's Final Approval order, Defendants
23 shall pay the first of four installment payments on the Gross Settlement Amount into the
24 Settlement Account. The first installment payment shall be in the amount of \$1,480,000.00.

25 4.3.2. Within 180 calendar days of the first installment payment, Defendants shall
26 pay the second installment payment in the amount of \$1,000,000.00 towards the Gross Settlement
27 Amount into the Settlement Account.

28 4.3.3. Within 180 calendar days of the second installment payment, Defendants
shall pay the third installment payment in the amount of \$1,000,000.00 towards the Gross
Settlement Amount into the Settlement Account.

4.3.4. Within 180 calendar days of the third installment payment, Defendants

1 shall pay the fourth and final installment payment in the amount of \$800,000.00 towards the Gross
2 Settlement Amount into the Settlement Account.

3 4.3.5. Within 30 calendar days of each installment payment, the Administrator
4 will make a pro rata distribution of the Individual Class Payments, Individual PAGA Payments,
5 LWDA PAGA payment, Class Representative Service Payments, the Class Counsel Fees
6 Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's expenses.

7 4.3.6. Disbursements of the pro rata portions of the Class Counsel Fees Payment,
8 the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments
9 shall not precede disbursement of pro rata portions of the Individual Class Payments and
10 Individual PAGA Payments.

11 4.3.7. The Administrator will issue checks for the Individual Class Payments
12 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
13 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
14 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
15 not cashed by the void date. The Administrator will send checks for Individual Settlement
16 Payments to all Participating Class Members (including those for whom Class Notice was
17 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
18 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
19 Employees (including those for whom Class Notice was returned undelivered). The Administrator
20 may send Participating Class Members a single check combining the Individual Class Payment
21 and the Individual PAGA Payment. Before mailing any checks, the Administrator must update
22 the recipients' mailing addresses using the National Change of Address Database.

23 4.3.8. The Administrator must conduct a Class Member Address Search for all
24 other Class Members whose checks are returned undelivered without USPS forwarding address.
25 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
26 forwarding address provided or to an address ascertained through the Class Member Address
27 Search. The Administrator need not take further steps to deliver checks to Class Members whose
28 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
replacement check to any Class Member whose original check was lost or misplaced, which is
requested by the Class Member prior to the void date.

4.3.9. For any Class Member whose Individual Class Payment check or

1 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
2 shall transmit the funds represented by such checks to the California Controller's Unclaimed
3 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
4 the requirements of California Code of Civil Procedure Section 384, subd. (b).

5 4.3.10. The payment of Individual Class Payments and Individual PAGA
6 Payments shall not obligate Defendants to confer any additional benefits or make any additional
7 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
8 this Agreement.

9 **5. [OMITTED]**

10 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire
11 Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the
12 Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims
13 against all Released Parties as follows:

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

6.1.1 Plaintiffs' Waivers of Rights Under California Civil Code Section 1542.
For purposes of each Plaintiff's Release, each Plaintiff expressly waives and relinquishes the

provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor Released Party.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period and the facts stated in the Operative Complaint and ascertained in the course of the Actions including, failure to pay wages, unauthorized and unlawful wage deductions, failure to pay overtime, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify and/or reimburse for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain accurate required employment and payroll records, failure to provide payroll records, failure to provide access to personnel files, failure to pay gratuities, unlawful tip collection, failure to pay vacation pay, failure to provide sick leave and sick pay including COVID-19 sick leave and sick pay, failure to provide sick leave without precondition, failure to provide seating, failure to provide a place of employment that was safe and healthful, failure to provide one day's rest in seven days, wrongful termination for failure to obtain business use vehicle insurance, retaliation for whistleblower complaints under California Labor Code section 1102.5 for failure to obtain business use vehicle insurance, and unfair competition under Business & Professions Code sections 17200, et seq.. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination for reasons other than failure to obtain business use vehicle insurance and/or for retaliation for whistleblower complaints for failure to obtain business use vehicle insurance, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

1 6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:

2 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
3 behalf of themselves and their respective former and present representatives, agents, attorneys,
4 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
5 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
6 facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the
7 Actions including, failure to pay wages, unauthorized and unlawful wage deductions, failure to
8 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
9 business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to
maintain required payroll records, and related claims.

10 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
11 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with
12 the Court’s current checklist for Preliminary Approvals.

13 7.1 Defendants’ Declaration in Support of Preliminary Approval. Within fourteen
14 (14) days of the full execution of this Agreement, Defendants will prepare and deliver to Class
15 Counsel signed declarations from Defendants and Defense Counsel disclosing all facts relevant
16 to any actual or potential conflicts of interest with the Administrator.

17 7.2 Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel
18 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
19 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
20 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
21 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary
22 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed
23 declaration from the Administrator attaching its “not to exceed” bid for administering the
24 Settlement and attesting to its willingness to serve; competency; operative procedures for
25 protecting the security of Class Data; amounts of insurance coverage for any data breach,
26 defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of
27 interest with Class Members; and the nature and extent of any financial relationship with
28 Plaintiffs, Class Counsel, or Defense Counsel; (v) a signed declaration from each Plaintiff
confirming willingness and competency to serve and disclosing all facts relevant to any actual or

1 potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed
2 declaration from each Class Counsel firm attesting to its competency to represent the Class
3 Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice
4 of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section
5 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version
6 of the parties' Agreement showing all modifications made to the Model Agreement ready for
7 filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with
8 Class Members and the Administrator. In their declarations, Plaintiffs and Class Counsel shall
9 identify any other pending matter or action asserting claims that will be extinguished or adversely
10 affected by the Settlement.

11 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
12 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
13 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
14 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
15 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
16 Approval to the Administrator.

17 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
18 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
19 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
20 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
21 Preliminary Approval or conditions Preliminary Approval on any material change to this
22 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
23 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
24 otherwise satisfy the Court's concerns.

25 7.5 Notices of Settlement and Request for Stay in the Individual Actions. Within
26 seven (7) days after the Parties file the Motion for Preliminary Approval in this action, all of the
27 following individual Plaintiffs: (a) Kassandra Mendivil, (b) Michael Nevarez, (c) Joe Nunez,
28 (d) Hunter Meelee, and (e) Richard Bautista, shall each file in their respective representative
action a notice of settlement and request to stay each action until the Court's Final Approval of
the Settlement. The Parties reserve their right to seek relief from any Court order staying those
actions.

1
2 **8. SETTLEMENT ADMINISTRATION.**

3 8.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to
4 serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees
5 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
6 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
7 represent that they have no interest or relationship, financial or otherwise, with the Administrator
other than a professional relationship arising out of prior experiences administering settlements.

8 8.2 Employer Identification Number. The Administrator shall have and use its own
9 Employer Identification Number for purposes of calculating payroll tax withholdings and
10 providing reports state and federal tax authorities.

11 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
12 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
Regulation section 468B-1.

13 8.4 Notice to Class Members.

14 8.4.1 No later than three (3) business days after receipt of the Class Data, the
15 Administrator shall notify Class Counsel that the list has been received and state the number of
16 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

17 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
18 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
19 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice
20 with Spanish translation, if applicable, substantially in the form attached to this Agreement as
Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of
21 any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
22 and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
23 amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses
using the National Change of Address database.

24 8.4.3 Not later than three (3) business days after the Administrator’s receipt of
25 any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
26 Notice using any forwarding address provided by the USPS. If the USPS does not provide a
27 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail

1 the Class Notice to the most current address obtained. The Administrator has no obligation to
2 make further attempts to locate or send Class Notice to Class Members whose Class Notice is
3 returned by the USPS a second time.

4 8.4.4 The deadlines for Class Members' written objections, Challenges to Work
5 Weeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days
6 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice
7 is re-mailed. The Administrator will inform the Class Member of the extended deadline with the
8 re-mailed Class Notice.

9 8.4.5 If the Administrator, any of the Defendants, or Class Counsel is contacted
10 by or otherwise discovers any persons who believe they should have been included in the Class
11 Data and should have received Class Notice, the Parties will expeditiously meet and confer in
12 person or by telephone, and in good faith. in an effort to agree on whether to include them as
13 Class Members. If the Parties agree, such persons will be Class Members entitled to the same
14 rights as other Class Members, and the Administrator will send, via email or overnight delivery,
15 a Class Notice requiring them to exercise options under this Agreement not later than 14 days
16 after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

15 8.5 Requests for Exclusion (Opt-Outs).

16 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
17 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
18 Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional
19 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
20 from a Class Member or his/her representative that reasonably communicates the Class Member's
21 election to be excluded from the Settlement and includes the Class Member's name, address and
22 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
23 emailed, or postmarked by the Response Deadline.

24 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
25 because it fails to contain all the information specified in the Class Notice. The Administrator
26 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
27 identity of the person as a Class Member and the Class Member's desire to be excluded. The
28 Administrator's determination shall be final and not appealable or otherwise susceptible to
challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,

1 the Administrator may demand additional proof of the Class Member's identity. The
2 Administrator's determination of authenticity shall be final and not appealable or otherwise
3 susceptible to challenge.

4 8.5.3 Every Class Member who does not submit a timely and valid Request for
5 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
6 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
7 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
8 Participating Class Member actually receives the Class Notice or objects to the Settlement.

9 8.5.4 Every Class Member who submits a valid and timely Request for
10 Exclusion shall be deemed a Non-Participating Class Member and shall not receive an Individual
11 Class Payment or have the right to object to the class action components of the Settlement.
12 Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
13 Participating Class Members who are Aggrieved Employees are deemed to release the claims
14 identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

15 8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60
16 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
17 whose Class Notice is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay
18 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
19 challenge the allocation by communicating with the Administrator via fax, email or mail. The
20 Administrator must encourage the challenging Class Member to submit supporting
21 documentation. In the absence of any contrary documentation, the Administrator is entitled to
22 presume that the Work Weeks contained in the Class Notice are correct so long as they are
23 consistent with the Class Data. The Administrator's determination of each Class Member's
24 allocation of Work Weeks and/or Pay Periods shall be final and not appealable or otherwise
25 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
26 calculation of Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel and the
27 Administrator's determination the challenges.

28 8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action
components of the Settlement and/or this Agreement, including contesting the fairness of the
Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel

1 Litigation Expenses Payment, and/or Class Representative Service Payments.

2 8.7.2 Participating Class Members may send written objections to the
3 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
4 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
5 Hearing. A Participating Class Member who elects to send a written objection to the
6 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
7 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8 8.7.3 Non-Participating Class Members have no right to object to any of the class
9 action components of the Settlement.

10 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
11 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

12 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
13 establish, maintain, and use an internet website to post information of interest to Class Members
14 including the date, time, and location for the Final Approval Hearing and copies of the Settlement
15 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the
16 Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation
17 Expenses Payment and Class Representative Service Payments, the Final Approval, and the
18 Judgment. The Administrator will also maintain and monitor an email address and a toll-free
19 telephone number to receive Class Member calls, faxes and emails.

20 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
21 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later
22 than ten (10) days after the expiration of the deadline for submitting Requests for Exclusion, the
23 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
24 and other identifying information of Class Members who have timely submitted valid Requests
25 for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class
26 Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for
27 Exclusion from Settlement submitted (whether valid or invalid).

28 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
written reports to Class Counsel and Defense Counsel that, among other things, tally the number
of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion
(whether valid or invalid) received, objections received, challenges to Work Weeks and/or Pay

1 Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual
2 PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s
3 assessment of the validity of Requests for Exclusion and attach copies of all Requests for
4 Exclusion and objections received.

5 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
6 authority to address and make final decisions consistent with the terms of this Agreement on all
7 Class Member challenges over the calculation of Work Weeks and/or Pay Periods. The
8 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

9 8.8.5 Administrator’s Declaration. Not later than fourteen (14) days before the
10 date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the
11 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
12 for filing in Court attesting to its due diligence and compliance with all of its obligations under
13 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
14 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
15 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
16 number of written objections, and also attach the Exclusion List. The Administrator will
17 supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel
18 is responsible for filing the Administrator’s declaration(s) in Court.

19 8.8.6 Final Report by Administrator. Within ten (10) days after the
20 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
21 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
22 identification number only of all payments made under this Agreement. At least 15 days before
23 any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and
24 Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of
25 all payments required under this Agreement. Class Counsel is responsible for filing the
26 Administrator’s declaration in Court.

27 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on their records,
28 Defendants estimate that, as of the date of this Settlement Agreement, (1) there are approximately
4,761 Class Members and 158,000 total Work Weeks during the period of January 28, 2017
through June 7, 2022. These numbers would be expected to increase proportionately for the

1 passage of time through the Class Period end date. Before the Parties seek or a Party seeks Court
2 approval of the Settlement, the Administrator will advise Plaintiffs' counsel of Defendants' report
3 of the total number of Work Weeks during the Class Period. If the number of Class Member Work
4 Weeks as of the Class Period end date exceeds the referenced 158,000 weeks worked by more
5 than 15% (i.e. more than 181,700 weeks), the Gross Settlement Amount, including attorney fees,
6 will increase proportionally according to the number of additional Work Weeks in excess of the
7 15%. However, if the total number of Class Members Work Weeks as of the Class Period end
8 date exceeds the referenced 158,000 weeks worked by more than 15%, Defendants will have the
9 option, at Defendants' election, to cap the number of total Work Weeks and cut off the Class
10 Period as of the date when the 15% benchmark is reached, without any increase, proportional or
11 otherwise, to the Gross Settlement Amount or any attorneys' fees.

12 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
13 Exclusion identified in the Exclusion List exceeds 175 Class Members, Defendants may, but are
14 not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants
15 withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that no
16 Party will have any further obligation to perform under this Agreement; provided, however,
17 Defendants will remain responsible for paying all Settlement Administration Expenses incurred
18 to that point. Defendants must notify Class Counsel and the Court in writing of their election to
19 withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to
20 Defense Counsel. Late elections will have no effect.

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

11.1 Response to Objections. Each Party retains the right to respond to any objection

1 raised by a Participating Class Member, including the right to file responsive documents in Court
2 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
3 accepted by the Court.

4 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
5 Approval on any material change to the Settlement (including, but not limited to, the scope of
6 release to be granted by Class Members), the Parties will expeditiously work together in good
7 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
8 Approval. The Court's decision to award less than the amounts requested for the Class
9 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
10 Expenses Payment, and/or Administrator Expenses Payment shall not constitute a material
11 modification to the Agreement within the meaning of this paragraph.

12 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
13 Judgment, the Court will retain jurisdiction over the Parties, this Action, and the Settlement solely
14 for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
15 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

16 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
17 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
18 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
19 respective counsel, and all Participating Class Members who did not object to the Settlement as
20 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
21 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
22 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
23 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
24 Parties' obligations to perform under this Agreement will be suspended until such time as the
25 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
26 the amount of the Net Settlement Amount.

27 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
28 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
material modification of this Agreement (including, but not limited to, the scope of release to be
granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
expeditiously work together in good faith to address the appellate court's concerns and to obtain

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

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

9
10 **13. ADDITIONAL PROVISIONS.**

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

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

1 association, government agency, or other entity except: (1) to the Parties' attorneys, accountants,
2 or spouses, all of whom will be instructed to keep this Agreement confidential including the
3 confidentiality of the Gross Settlement Amount and the Net Settlement Amount; (2) counsel in
4 any other related matter against any of the Defendants whether in litigation or pre-litigation which
5 has the same or similar claims and solely for the purposes of determining the effect of this
6 Settlement in extinguishing or precluding such claims; (3) to the extent necessary to report income
7 to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response
8 to an inquiry or subpoena issued by a state or federal government agency.

9 Each Party agrees to immediately notify each and every other Party of any judicial
10 or agency order, inquiry, or subpoena seeking such information. Such notification shall be in
11 writing and made to each Party's respective counsel of record. Plaintiffs, Class Counsel,
12 Defendants, and Defense Counsel separately agree not to, directly or indirectly, initiate any
13 conversation or other communication, before the filing of the Motion for Preliminary Approval,
14 with any third party regarding this Agreement or the matters giving rise to this Agreement except
15 to respond only that "the matter was resolved," or words to that effect. This paragraph does not
16 restrict Class Counsel's communications with Class Members in accordance with Class Counsel's
17 ethical obligations owed to Class Members.

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

23 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
24 Agreement together with its attached exhibits shall constitute the entire agreement between the
25 Parties relating to the Settlement, superseding any and all oral representations, warranties,
26 covenants, or inducements made to or by any Party.

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

1 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use
2 their best efforts, in good faith, to implement the Settlement by, among other things, modifying
3 the Settlement Agreement, submitting supplemental evidence and supplementing points and
4 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
5 or content of any document necessary to implement the Settlement, or on any modification of the
6 Agreement that may become necessary to implement the Settlement, the Parties will seek the
assistance of a mediator and/or the Court for resolution.

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

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

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

17 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
18 inure to the benefit of, the successors of each of the Parties.

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

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

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

26 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
27 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
28

1 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
2 connection with the Settlement, may be used only with respect to this Settlement, and no other
3 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
4 or rule of court. Not later than ninety (90) days after the date when the Court discharges the
5 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
6 funds, Plaintiffs shall destroy all paper and electronic versions of Class Data received from
7 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
8 make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

9 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
10 is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

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

19 To Plaintiffs:
20 ALEX PAUL KATOFISKY
21 alex@gaineslawfirm.com
22 GAINES & GAINES, APLC
23 4550 E Thousand Oaks Blvd
24 Ste 100
25 Westlake Village, CA 91362-3824
26 Telephone: (818) 703-8985
27 Facsimile: (818) 703-8984

28 DANIEL FRANKLIN GAINES
daniel@gaineslawfirm.com
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd.
Ste 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

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

6 WALTER L. HAINES
7 walter@uelglaw.com
8 UNITED EMPLOYEES LAW GROUP
9 4276 Katella Ave
10 Suite 301
11 Los Alamitos, CA 90720
12 Telephone: (562) 256-1047
13 Facsimile: (562) 256-1006

11 CHANTAL RENEE MCCOY PAYTON
12 CPayton@PaytonEmploymentLaw.com
13 PAYTON EMPLOYMENT LAW PC
14 3807 W. Sierra Highway
15 Ste 206
16 Acton, CA 93510
17 Telephone: (661) 434-1144
18 Facsimile: (661) 434-1144

16 LAUREL N. HOLMES
17 lholmes@paytonemploymentlaw.com
18 PAYTON EMPLOYMENT LAW PC
19 11500 W. Olympic Boulevard
20 Suite 400
21 Los Angeles, CA 90064
22 Telephone: (661) 434-1144
23 Facsimile: (661) 434-1144

21 HAROUT A. MESSRELIAN
22 hm@messrelianlaw.com
23 MESSRELIAN LAW INC.
24 500 N Central Ave
25 Ste 840
26 Glendale, CA 91203
27 Telephone: (818) 484-6531
28 Facsimile: (818) 956-1983

1 MARCUS JOSEPH BRADLEY
2 mbradley@bradleygrombacher.com
3 BRADLEY/GROMBACHER LLP
4 31365 Oak Crest Dr
5 Ste 240
6 Westlake Village, CA 91361-5600
7 Telephone: (805) 270-7100
8 Facsimile: (805) 270-7589

9 SAHAG MAJARIAN, II
10 sahagii@aol.com
11 MAJARIAN LAW GROUP
12 18250 Ventura Bl.
13 Tarzana, CA 91356
14 Telephone: (818) 609-0807
15 Facsimile: (818) 609-0892

16 FRANK H. KIM
17 fkim@kim-legal.com
18 KIM LEGAL, APC
19 3435 Wilshire Blvd
20 Ste 2700
21 Los Angeles, CA 90010-2013
22 Telephone: (323) 482-3300
23 Facsimile: (866) 652-7819

24 HELEN KIM
25 helen@helenkimlaw.com
26 HELEN KIM LAW, APC
27 3435 Wilshire Blvd.
28 Suite 2700
29 Los Angeles, CA 90010
30 Telephone: (323) 487-9151
31 Facsimile: (866) 652-7819

32 To Defendants:
33 TODD B. SCHERWIN
34 CHRISTOPHER D. CHAPLIN
35 Fisher & Phillips LLP
36 444 South Flower Street
37 Suite 150
38 Los Angeles, CA 90071
39 tscherwin@fisherphillips.com
40 cchaplin@fisherphillips.com
41 Telephone: (213) 330-4500
42 Facsimile: (213) 330-4501

1
2 13.18 Execution in Counterparts. This Agreement may be executed in one or more
3 counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this
4 Agreement shall be accepted as an original. All executed counterparts and each of them will be
5 deemed to be one and the same instrument if counsel for the Parties will exchange between
6 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
the existence and contents of this Agreement.

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

12
13 Dated: 07 / 25 / 2023

By: Kassandra Mendivil
KASSANDRA MENDIVIL

14
15 Dated: _____

By: _____
RICHARD BAUTISTA

16
17 Dated: _____

By: _____
JENICA COLE

18
19 Dated: _____

By: _____
SHAUNA ADAMS

20
21 Dated: _____

By: _____
MICHAEL NEVAREZ

22
23 Dated: _____

By: _____
JOE NUNEZ

24
25 Dated: _____

By: _____
HUNTER MEELEE

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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Dated: _____

By: _____
KASSANDRA MENDIVIL

Dated: _____

By: _____
RICHARD BAUTISTA

Dated: _____

By: _____
JENICA COLE

Dated: _____

By: _____
SHAUNA ADAMS

Dated: Aug 10, 2023

By: 
Michael Nevarez (Aug 10, 2023 16:07 PDT)
MICHAEL NEVAREZ

Dated: _____

By: _____
JOE NUNEZ

Dated: _____

By: _____
HUNTER MEELEE

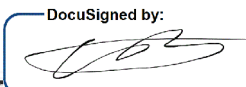
13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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Dated: _____

By: _____
KASSANDRA MENDIVIL

Dated: 8/10/2023

By: 
8AF71004F28C4D7...
RICHARD BAUTISTA

Dated: 07 / 18 / 2023

By: 
JENICA COLE

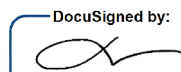
Dated: 07 / 21 / 2023

By: 
SHAUNA ADAMS

Dated: _____

By: _____
MICHAEL NEVAREZ

Dated: 8/15/2023

By: 
92B6B65278E54DB...
JOE NUNEZ

Dated: _____

By: _____
HUNTER MEELEE

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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Dated: _____

By: _____
KASSANDRA MENDIVIL

Dated: _____

By: _____
RICHARD BAUTISTA

Dated: _____

By: _____
JENICA COLE

Dated: _____

By: _____
SHAUNA ADAMS

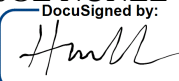
Dated: _____

By: _____
MICHAEL NEVAREZ

Dated: _____

By: _____
JOE NUNEZ

Dated: 8/10/2023

By:  
HUNTER MEELEE

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Dated: _____

By: _____

TAK SATO
President for DEFENDANTS
STRATEGIC GREEN PARTNERS
LLC DOING BUSINESS AS
AUTHENTIC 760, IGS SOLUTIONS
LLC, SHRYNE GROUP, INC.,
STIIIZY, LLC, and IRONWORKS
COLLECTIVE INC., DOING
BUSINESS AS BLAZE

THE SPIVAK LAW FIRM

Dated: 07 / 24 / 2023

By:  _____

DAVID G. SPIVAK, Attorneys for
Plaintiff, KASSANDRA MENDIVIL,
and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: _____

By: _____

WALTER L. HAINES, Attorneys for
Plaintiff, KASSANDRA MENDIVIL,
and all others similarly situated

PAYTON EMPLOYMENT LAW PC

Dated: _____

By: _____

CHANTAL RENEE MCCOY
PAYTON, Attorneys for Plaintiff,
RICHARD BAUTISTA, and all others
similarly situated

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Dated: 8/3/2023

DocuSigned by:
TAK SATO
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By: TAK SATO
President for DEFENDANTS
STRATEGIC GREEN PARTNERS
LLC DOING BUSINESS AS
AUTHENTIC 760, IGS SOLUTIONS
LLC, SHRYNE GROUP, INC.,
STIIIZY, LLC, and IRONWORKS
COLLECTIVE INC., DOING
BUSINESS AS BLAZE

THE SPIVAK LAW FIRM

Dated:

By: DAVID G. SPIVAK, Attorneys for
Plaintiff, KASSANDRA MENDIVIL,
and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated:

By: WALTER L. HAINES, Attorneys for
Plaintiff, KASSANDRA MENDIVIL,
and all others similarly situated

PAYTON EMPLOYMENT LAW PC

Dated:

By: CHANTAL RENEE MCCOY
PAYTON, Attorneys for Plaintiff,
RICHARD BAUTISTA, and all others
similarly situated

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Dated: _____

By: _____
TAK SATO
President for DEFENDANTS
STRATEGIC GREEN PARTNERS
LLC DOING BUSINESS AS
AUTHENTIC 760, IGS SOLUTIONS
LLC, SHRYNE GROUP, INC.,
STIIIZY, LLC, and IRONWORKS
COLLECTIVE INC., DOING
BUSINESS AS BLAZE

THE SPIVAK LAW FIRM

Dated: _____

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

UNITED EMPLOYEES LAW GROUP

Dated: August 9, 2023

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, KASSANDRA MENDIVIL,
and all others similarly situated

PAYTON EMPLOYMENT LAW PC

Dated: _____

By: _____
CHANTAL RENEE MCCOY
PAYTON, Attorneys for Plaintiff,
RICHARD BAUTISTA, and all others
similarly situated

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Dated: _____

By: _____

TAK SATO
President for DEFENDANTS
STRATEGIC GREEN PARTNERS
LLC DOING BUSINESS AS
AUTHENTIC 760, IGS SOLUTIONS
LLC, SHRYNE GROUP, INC.,
STIIIZY, LLC, and IRONWORKS
COLLECTIVE INC., DOING
BUSINESS AS BLAZE

THE SPIVAK LAW FIRM

Dated: _____

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

UNITED EMPLOYEES LAW GROUP

Dated: _____

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

PAYTON EMPLOYMENT LAW PC

Dated: June 25, 2023

By:  _____
CHANTAL RENEE MCCOY
PAYTON, Attorneys for Plaintiff,
RICHARD BAUTISTA, and all others
similarly situated

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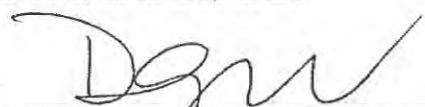
MANN ROGAL APC

Dated: 7/25/23

By: 
MATTHEW MANN, Attorneys for
Plaintiff, RICHARD BAUTISTA, and
all others similarly situated

GAINES & GAINES, APLC

Dated: 7/21/2023

By: 
DANIEL FRANKLIN GAINES,
Attorneys for Plaintiffs, JENICA COLE
and SHAUNA ADAMS, and all others
similarly situated

STONEBROOK LAW

Dated: _____

By: _____
JOSEPH TOJARIEH, Attorneys for
Plaintiffs, JENICA COLE and
SHAUNA ADAMS, and all others
similarly situated

MESSRELIAN LAW INC.

Dated: _____

By: _____
HAROUT A. MESSRELIAN,
Attorneys for Plaintiff, MICHAEL
NEVAREZ, and all others similarly
situated

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MANN ROGAL APC

Dated: _____

By: _____
MATTHEW MANN, Attorneys for
Plaintiff, RICHARD BAUTISTA, and
all others similarly situated

GAINES & GAINES, APLC

Dated: _____

By: _____
DANIEL FRANKLIN GAINES,
Attorneys for Plaintiffs, JENICA COLE
and SHAUNA ADAMS, and all others
similarly situated

STONEBROOK LAW

Dated: _____

By: _____
JOSEPH TOJARIEH, Attorneys for
Plaintiffs, JENICA COLE and
SHAUNA ADAMS, and all others
similarly situated

MESSRELIAN LAW INC.

Dated: 8/10/2023

By:  _____
HAROUT A. MESSRELIAN,
Attorneys for Plaintiff, MICHAEL
NEVAREZ, and all others similarly
situated

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MANN ROGAL APC

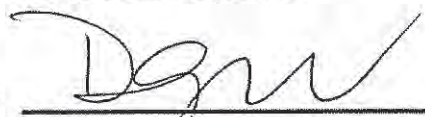
Dated: 7/25/23

By: 

MATTHEW MANN, Attorneys for
Plaintiff, RICHARD BAUTISTA, and
all others similarly situated

GAINES & GAINES, APLC

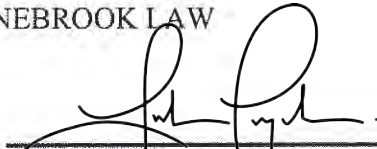
Dated: 7/21/2023

By: 

DANIEL FRANKLIN GAINES,
Attorneys for Plaintiffs, JENICA COLE
and SHAUNA ADAMS, and all others
similarly situated

STONEBROOK LAW

Dated: 9/22/2023

By: 

JOSEPH TOJARIEH, Attorneys for
Plaintiffs, JENICA COLE and
SHAUNA ADAMS, and all others
similarly situated

MESSRELIAN LAW INC.

Dated: _____

By: _____

HAROUT A. MESSRELIAN,
Attorneys for Plaintiff, MICHAEL
NEVAREZ, and all others similarly
situated

///

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Dated: 8/15/23

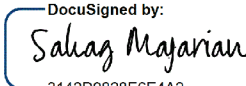
BRADLEY/GROMBACHER LLP

By: 

MARCUS JOSEPH BRADLEY,
Attorneys for Plaintiff, JOE NUNEZ,
and all others similarly situated

Dated: 8/17/2023

MAJARIAN LAW GROUP

By: 

SAHAG MAJARIAN, II, Attorneys
for Plaintiff, JOE NUNEZ, and all
others similarly situated

Dated: _____

KIM LEGAL, APC

By: _____

FRANK H. KIM, Attorneys for
Plaintiff, HUNTER MEELEE, and all
others similarly situated

Dated: _____

HELEN KIM LAW, APC

By: _____

HELEN U. KIM, Attorneys for
Plaintiff, HUNTER MEELEE, and all
others similarly situated

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BRADLEY/GROMBACHER LLP

Dated: _____

By: _____
MARCUS JOSEPH BRADLEY,
Attorneys for Plaintiff, JOE NUNEZ,
and all others similarly situated

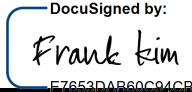
MAJARIAN LAW GROUP

Dated: _____

By: _____
SAHAG MAJARIAN, II, Attorneys
for Plaintiff, JOE NUNEZ, and all
others similarly situated

KIM LEGAL, APC

Dated: 8/10/2023 _____

By:  _____
FRANK H. KIM, Attorneys for
Plaintiff, HUNTER MEELEE, and all
others similarly situated

HELEN KIM LAW, APC

Dated: 8/10/2023 _____

By:  _____
HELEN U. KIM, Attorneys for
Plaintiff, HUNTER MEELEE, and all
others similarly situated

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FISHER & PHILLIPS LLP

Dated: August 7, 2023

By: 

TODD B. SCHERWIN,
CHRISTOPHER D. CHAPLIN
Attorneys for Defendants,
STRATEGIC GREEN PARTNERS
LLC DOING BUSINESS AS
AUTHENTIC 760, IGS
SOLUTIONS LLC, SHRYNE
GROUP, INC., STIIZY, LLC,
IRONWORKS COLLECTIVE
INC., DOING BUSINESS AS
BLAZE

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EXHIBIT A

1 **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**
2 **DATE FOR FINAL COURT APPROVAL**

3 (case name: *Jenica Cole, et al. v. Strategic Green Partners, LLC doing business as Authentic*
4 *760, et al.* and number CV2021-0426)

5 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
6 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer.***
7 ***You are not being sued.***

8 **You may be eligible to receive money** from an employee class action lawsuit (“this
9 Action”) against Strategic Green Partners LLC doing business as Authentic 760, IGS Solutions
10 LLC, Shryne Group, Inc., STIIZY, LLC, and Ironworks Collective Inc., doing business as Blaze
11 (collectively “Defendants”) for alleged wage and hour violations. This Action was filed by several
12 of Defendants’ employees, Jenica Cole, Shauna Adams, Cassandra Mendivil, Richard Bautista,
13 Michael Nevarez, Joe Nunez, and Hunter Meelee (jointly “Plaintiffs”) and seeks payment of (1)
14 wages and other relief for a class of hourly, nonexempt employees (“Class Members”) who
15 worked for Defendants during the Class Period (January 28, 2017 to the date of the Court’s order
16 preliminarily approving this Settlement or Defendants’ election to provide a date certain when
17 the 15% benchmark increase in Class Member Work Weeks is reached pursuant to the Escalator
18 Clause in Part 9 of the Settlement); and (2) penalties under the California Private Attorney
19 General Act (“PAGA”) for all hourly, nonexempt employees who worked for Defendants during
20 the PAGA Period (September 21, 2019 to the date of the Court’s order preliminarily approving
21 this Settlement or Defendants’ election to provide a date certain when the 15% benchmark
22 increase in Class Member Work Weeks is reached pursuant to the Escalator Clause in Part 9 of
23 the Settlement) (“Aggrieved Employees”).

24 This Settlement also resolves the following other “Actions”: (A) *Kassandra Mendivil v.*
25 *Strategic Green Partners, LLC doing business as Authentic 760*, Los Angeles County Superior
26 Court No. 20STCV45949, filed on December 01, 2020 (the “Mendivil action”); (B) *Richard*
27 *Bautista v. IGS Solutions, LLC*, LWDA-CM-860749-22, submitted to the LWDA on January 3,
28 2022 (the “Bautista claim”); (C) *Hunter Meelee v. IGS Solutions, LLC*, Los Angeles County
Superior Court No. 21STCV03751, filed on January 28, 2021 (the “Meelee action”); (D) *Michael*
Nevarez v. IGS Solutions, LLC, Los Angeles County Superior Court No. 21STCV04672, filed on
February 5, 2021 (the “Nevarez action”); and (E) *Joe Nunez v. IGS Solutions, LLC*, Riverside
County Superior Court No. CVRI2200303, filed on January 21, 2022 (the “Nunez action”)

29 The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants
30 to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund
31 Individual PAGA Payments and pay penalties to the California Labor and Workforce
32 Development Agency (“LWDA”).

33 Based on Defendants’ records, and the Parties’ current assumptions, **your Individual**
34 **Class Payment is estimated to be \$___ (less withholding) and your Individual PAGA**
35 **Payment is estimated to be \$___**. The actual amount you may receive likely will be different
36 and will depend on a number of factors. (If no amount is stated for your Individual Class Payment,
37
38

then according to Defendants’ records you are not eligible for an Individual Class Payment under the Settlement because you didn’t work during the Class Period. If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked ____ Work Weeks** during the Class Period and **you worked ____ Pay Periods** during the PAGA Period. If you believe that you worked more Work Weeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to each Plaintiff and his/her attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
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You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is —	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by —	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and each Plaintiff who pursued the Actions on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the ___ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by —	The amount of your Individual Class Payment and LWDA PAGA payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Work Weeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THIS ACTION ABOUT?

Plaintiffs are former employees of Defendants. This Action accuses Defendants of violating California labor laws by failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify and/or reimburse for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required accurate employment and payroll records, failure to pay

overtime, failure to provide payroll records, failure to provide access to personnel files, failure to timely pay wages, failure to pay gratuities, unlawful tip collection, failure to pay vacation pay, retaliating against or otherwise discriminating against an employee who disclosed the amount of his or her wages, failure to provide sick leave and sick pay including COVID-19 sick leave and sick pay, failure to provide sick leave without precondition, failure to provide seating, failure to provide a place of employment that was safe and healthful, wrongful termination for failure to obtain business use vehicle insurance, retaliation for whistleblower complaints under California Labor Code section 1102.5 for failure to obtain business use vehicle insurance, failure to provide one day's rest in seven days, unfair competition under Business & Professions Code sections 17200, et seq., and related violations of the Labor Code. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by attorneys in this Action: David G. Spivak of The Spivak Law Firm, Walter L. Haines of United Employees Law Group, Chantal Renee McCoy Payton and Laurel N. Holmes of Payton Employment Law PC, Matthew Mann and Justin Rogal of Mann Rogal APC, Daniel Franklin Gaines and Alex Paul Katofsky of Gaines & Gaines, APLC, Joseph Tojarieh of Stonebrook Law, Harout A. Messrelian of Messrelian Law Inc., Marcus Joseph Bradley of Bradley/Grombacher LLP, Sahag Majariian, II of Majarian Law Group, Frank H. Kim of Kim Legal, APC, and Helen Kim of Helen Kim Law, APC ("Class Counsel.")

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THIS ACTION HAS SETTLED?

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

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

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

1. Defendants Will Pay \$4,280,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled

1 by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay
2 the Individual Class Payments, Individual PAGA Payments, Class Representative Service
3 Payments, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and
4 penalties to be paid to the California Labor and Workforce Development Agency ("LWDA").
5 Assuming the Court grants Final Approval, Defendants will begin to fund the Gross Settlement
6 as follows: Within 90 calendar days of the Court's final approval order, Defendants shall pay the
7 first of four installment payments on the Gross Settlement Amount into the Settlement Account.
8 The first installment payment shall be in the amount of \$1,480,000.00. Within 180 calendar days
9 of the first installment payment, Defendants shall pay the second installment payment in the
10 amount of \$1,000,000.00. Within 180 calendar days of the second installment payment,
11 Defendants shall pay the third installment payment in the amount of \$1,000,000.00. Within 180
12 calendar days of the third installment payment, Defendants shall pay the fourth and final
13 installment payment in the amount of \$800,000.00. Within 30 calendar days of each installment
14 payment, the Administrator will make a pro rata distribution of the Individual Class Payments,
15 Individual PAGA Payments, LWDA PAGA payment, Class Representative Service Payments,
16 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
17 Administrator's expenses.

11 2. Disbursements of the pro rata portions of the Class Counsel Fees Payment, the
12 Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall
13 not precede disbursement of pro rata portions of the Individual Class Payments and Individual
14 PAGA Payments.

14 3. The Judgment will be final on the date the Court enters Judgment, or a later date
15 if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

16 4. Court Approved Deductions from Gross Settlement. At the Final Approval
17 Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions
18 from the Gross Settlement, the amounts of which will be decided by the Court at the Final
19 Approval Hearing:

19 A. Up to \$1,498,000.00 (35% of the Gross Settlement to Class Counsel for
20 attorneys' fees and up to \$60,000.00 for their litigation expenses. To date, Class Counsel have
21 worked and incurred expenses on the Actions without payment.

21 B. Up to \$20,000.00 as a Class Representative Award to each Plaintiff for
22 filing the Actions, working with Class Counsel and representing the Class. A Class Representative
23 Award will be the only monies each Plaintiff will receive other than his/her Individual Class
24 Payment and any Individual PAGA Payment.

24 C. Up to \$80,000.00 to the Administrator for services administering the
25 Settlement.

26 D. Up to \$428,000.00 for PAGA Penalties, allocated 75% to the LWDA
27 PAGA payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on
28 their PAGA Period Pay Periods.

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

Based on their records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are approximately 4,761 Class Members and 158,000 total Work Weeks during the period of January 28, 2017 through June 7, 2022. These numbers would be expected to increase proportionately for the passage of time through the Class Period end date. Before the Parties seek or a Party seeks Court approval of the Settlement, the Administrator will advise Plaintiffs' counsel of Defendants' report of the total number of Work Weeks during the Class Period. If the number of Class Member Work Weeks as of the Class Period end date exceeds the referenced 158,000 weeks worked by more than 15% the Gross Settlement Amount, including attorney fees, will increase proportionally according to the number of additional Work Weeks. However, if the total number of Work Weeks worked by the Class Members as of the Class Period end date exceeds the referenced 158,000 weeks worked by more than 15%, Defendants will have the option, at Defendants' election, to cap the number of total Work Weeks as of the date when the 15% benchmark is reached.

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

6. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages ("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

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

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

1
2 8. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
3 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
4 Administrator in writing, not later than ____, that you wish to opt-out. The easiest way to notify
5 the Administrator is to send a written and signed Request for Exclusion by the ____ Response
6 Deadline. The Request for Exclusion should be a letter from a Class Member or his/her
7 representative setting forth a Class Member's name, present address, telephone number, and a
8 simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e.,
9 Non-Participating Class Members) will not receive Individual Class Payments, but will preserve
10 their rights to personally pursue wage and hour claims against Defendants.

11 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
12 themselves from the Class Settlement (Non-Participating Class Members), but are also Aggrieved
13 Employees, shall remain eligible for and will be paid their Individual PAGA Payments and are
14 required to give up their right to assert PAGA claims against Defendants based on the PAGA
15 Period facts alleged in the Actions.

16 9. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
17 possible the Court will decline to grant Final Approval of the Settlement or decline to enter a
18 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs
19 and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
20 pay any money and Class Members will not release any claims against Defendants.

21 10. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the
22 "Administrator") to send this Notice, calculate and make payments, and process Class Members'
23 Requests for Exclusion. The Administrator will also decide Class Member Challenges over Work
24 Weeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to
25 administer the Settlement. The Administrator's contact information is contained in Section 9 of
26 this Notice.

27 11. Participating Class Members' Release. After the Judgment is final and Defendants
28 have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under
the Settlement. This means that unless you opted out by validly excluding yourself from the Class
Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or
related entities for wages based on the Class Period facts and PAGA penalties based on PAGA
Period facts, as alleged in the Actions and resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and
present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
release Released Parties from (i) all claims that were alleged, or reasonably could have
been alleged, based on the Class Period facts stated in the Operative Complaint and
ascertained in the course of the Actions including failure to pay wages, unauthorized and
unlawful wage deductions, failure to provide meal periods, failure to authorize and permit

1 rest periods, failure to indemnify and reimburse for business expenses, failure to issue
2 proper wage statements, failure to timely pay wages, failure to maintain required accurate
3 employment and payroll records, failure to pay overtime, failure to provide payroll
4 records, failure to provide access to personnel files, failure to timely pay wages, failure to
5 pay gratuities, unlawful tip collection, failure to pay vacation pay, failure to provide sick
6 leave and sick pay including COVID-19 sick leave and sick pay, failure to provide sick
7 leave without precondition, failure to provide seating, failure to provide a place of
8 employment that was safe and healthful, failure to provide one day's rest in seven days,
9 wrongful termination for failure to obtain business use vehicle insurance, retaliation for
10 whistleblower complaints under California Labor Code section 1102.5 for failure to obtain
11 business use vehicle insurance, unfair competition under Business & Professions Code
sections 17200, et seq., and related allegations. Except as set forth in Section 6.3 of the
Settlement Agreement, Participating Class Members do not release any other claims,
including claims for vested benefits, wrongful termination for reasons other than failure
to obtain business use vehicle insurance and/or for retaliation for whistleblower
complaints for failure to obtain business use vehicle insurance, violation of the Fair
Employment and Housing Act, unemployment insurance, disability, social security,
workers' compensation, or claims based on facts occurring outside the Class Period.

12 12. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and
13 Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes),
14 all Aggrieved Employees will be barred from asserting PAGA claims against Defendants,
15 whether or not they exclude themselves from the Settlement. This means that all Aggrieved
16 Employees, including those who are Participating Class Members and those who opt-out of the
Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against
Defendants or their related entities based on the PAGA Period facts alleged in the Actions and
resolved by this Settlement.

17 The Aggrieved Employees' Releases for Participating and Non-Participating Class
18 Members are as follows:

19 All Participating and Non-Participating Class Members who are Aggrieved Employees
20 are deemed to release, on behalf of themselves and their respective former and present
21 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
22 Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been
23 alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice
24 and ascertained in the course of the Actions including failure to pay wages, unauthorized and
25 unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest
26 periods, failure to indemnify and/or reimburse for business expenses, failure to issue proper wage
27 statements, failure to timely pay wages, failure to maintain required accurate employment and
28 payroll records, failure to pay overtime, failure to provide payroll records, failure to provide
access to personnel files, failure to timely pay wages, failure to pay gratuities, unlawful tip
collection, failure to pay vacation pay, retaliating against or otherwise discriminating against an
employee who disclosed the amount of his or her wages, failure to provide sick leave and sick
pay including COVID-19 sick leave and sick pay, failure to provide sick leave without
precondition, failure to provide seating, failure to provide a place of employment that was safe

1 and healthful, failure to provide one day's rest in seven days, wrongful termination for failure to
2 obtain business use vehicle insurance, retaliation for whistleblower complaints under California
3 Labor Code section 1102.5 for failure to obtain business use vehicle insurance, unfair competition
under Business & Professions Code sections 17200, et seq., and related allegations.

4 The "Released Parties" are Defendants and any of their present and former parent
5 companies, subsidiaries, divisions, concepts, related or affiliated companies and their
6 shareholders, officers, directors, employees (including but not limited to Tony Huang and Sagi
7 Shamam), agents, attorneys, insurers, successors and assigns, and any individual or entity that
could be liable for any of the Released Class Claims, Released PAGA Claims, and Defendants'
counsel of record in the Actions.

8 Other pending claims. Defendants hereby identify the following class / PAGA actions or
9 claims that may be affected by the Released Claims herein: (A) Juan Regino Perez v. IGS
10 Solutions LLC, et al, filed in Los Angeles County Superior Court (Case No. 22STCV15042); (B)
11 Herman Soriano adv. Shryne Group, Inc., et al., filed with LWDA on June 2, 2022 (LWDA claim
12 no. 887021-22); (C) Taylor J. Vizcarra v. IGS Solutions, LLC, et al., filed in Los Angeles County
13 Superior Court (Case No. 22STCV27054); and (D) Jacilyn Goldberg adv. IGS Solutions LLC;
14 filed with the LWDA on October 11, 2022 (LWDA claim no. 913276-22). The Administrator will
15 provide you with copies of the complaints in these matters along with contact information for the
16 attorneys for the plaintiffs in these matters upon your request.

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

15 1. Individual Class Payments. The Administrator will calculate Individual Class
16 Payments by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
17 by all Participating Class Members, and (b) multiplying the result by the number of Work Weeks
worked by each individual Participating Class Member.

18 2. Individual PAGA Payments. The Administrator will calculate Individual PAGA
19 Payments by (a) dividing \$107,000.00 by the total number of PAGA Pay Periods worked by all
20 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
21 worked by each individual Aggrieved Employee.

22 3. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked
23 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
24 Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have
25 until ____ to challenge the number of Work Weeks and/or Pay Periods credited to you. You can
26 submit your challenge by signing and sending a letter to the Administrator via mail, email or fax.
27 Section 9 of this Notice has the Administrator's contact information.

28 You need to support your challenge by sending copies of pay stubs or other records. The
Administrator will accept Defendants' calculation of Work Weeks and/or Pay Periods based on
Defendants' records as accurate unless you send copies of records containing contrary
information. You should send copies rather than originals because the documents will not be
returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based

on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

Within 90 calendar days of the Court's final approval order, Defendants shall pay the first of 4 installment payments on the Gross Settlement Amount into the Settlement Account. The first installment payment shall be in the amount of \$1,480,000.00. Defendants shall make the second installment payment of \$1,000,000.00 within 180 days of the first payment. Defendants shall make the third installment payment of \$1,000,000.00 within 180 days of the second payment. Defendants shall make the fourth and final installment payment of \$800,000.00 within 180 days of the third payment.

1. Participating Class Members. After each installment payment by Defendants toward the Gross Settlement Amount, the Administrator will send, by U.S. mail, a single pro rata check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. After each installment payment by Defendants toward the Gross Settlement Amount, the Administrator will send, by U.S. mail, a single pro rata Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify this Action as *Jenica Cole vs. Strategic Green Partners, LLC doing business as Authentic 760*, Case No. CV2021-0426, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by ___, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to

1 approve. At least ____ days before the ____ Final Approval Hearing, Class Counsel and/or Plaintiffs
2 will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons
3 why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service
4 Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation
5 expenses; and (ii) the amount each Plaintiff is requesting as a Class Representative Service
6 Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of
7 this Notice) will send you copies of these documents at no cost to you. You can also view them
8 on the Administrator's Website ([url](#)) or the Court's website ([url](#)).

9 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
10 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
11 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
12 Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to
13 the Administrator is ____.** Be sure to tell the Administrator what you object to, why you object,
14 and any facts that support your objection. Make sure you identify this Action, *Jenica Cole, et al.*
15 *vs. Strategic Green Partners, LLC doing business as Authentic 760*, case no. CV2021-0426, and
16 include your name, current address, telephone number, and approximate dates of employment for
17 Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact
18 information.

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

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

25 You can, but don't have to, attend the Final Approval Hearing on ____ at ([time](#)) in Department 6
26 of the Yolo Superior Court, located at Yolo Court House, Civil Division, 1000 Main St,
27 Woodland, CA 95695. At the Hearing, the Judge will decide whether to grant Final Approval of
28 the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs,
and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
or virtually via ____ (https://www. ____). Check the Court's website for the most current
information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the
proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
Settlement documents is to go to ([specify entity](#))'s website at ([url](#)). You can also telephone or

1 send an email to Class Counsel or the Administrator using the contact information listed below,
2 or consult the Superior Court website by going to (http://www.____.aspx) and entering the Case
3 Number for this Action, Case No. CV2021-0426. You can also make an appointment to
4 personally review court documents in the Clerk's Office at the Yolo Court House, Civil Division
5 by calling ____.

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

Class Counsel:

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9 THE SPIVAK LAW FIRM
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11 PMB 42554
12 West Hollywood, CA 90069
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23 Telephone: (323) 482-3300

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25 Administrator:

26 Name of Company: Simpluris, Inc.

27 Email Address: _____

28 Mailing Address: _____

Telephone: _____

Fax Number: _____

29 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

30 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
31 as long as you request a replacement before the void date on the face of the original check. If your
32 check is already void:

33 ☒ you should consult the Unclaimed Property Fund ____ for instructions on how to retrieve the
34 funds

35 ☐ you will have no way to recover the money.

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11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

September 21, 2020

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

RE: *Kassandra Mendivil/ Shryne Group, Inc.*

To whom it may concern:

This notice concerns the following employers:

1. IGS Solutions, LLC
2. Authentic 760 LLC
3. Shryne Group, Inc.

Collectively, the aforementioned employers are herein referred to as “Shryne Group.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Kassandra Mendivil (hereafter “Mendivil”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly employees, including but not limited to assistant managers, managers, inventory managers, budtenders, receptionists, fillers, fulfillment and other comparable positions (hereafter referred to as “Aggrieved Employees”), by Shryne Group of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, 1198 and 2802.

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

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

SPIVAKLAW.COM

At all relevant times, Shryne Group has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Mendivil and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Shryne Group first employed Mendivil on or about February 12, 2020 to work as an assistant manager at its Authentic 760 cannabis dispensary located at 72180 CA-111 in Palm Desert, California. Mendivil worked at Authentic 760 for Shryne Group continuously from the time of her hire until approximately April 27, 2020 when Shryne Group terminated her employment.

At all relevant times, Shryne Group paid Mendivil and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Shryne Group classified Mendivil and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Shryne Group required Mendivil and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and after clocking out at the end of their shifts, including, but not limited to, assisting customers with purchases, handling complaints from customers, taking inventory, ordering inventory and supplies, conducting audits, performing daily cash intakes, creating reports, assisting with payroll, preparing documents, and training new employees. Mendivil and the Aggrieved Employees regularly spent approximately one hour on duty after clocking out to complete required tasks prior to leaving work. Shryne Group, however, failed to pay Mendivil and the other Aggrieved Employees for this off-the-clock work.

At all relevant times, Mendivil and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Shryne Group failed to provide Mendivil and the Aggrieved

Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Shryne Group failed to hire sufficient staff members to cover Mendivil and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Even when Mendivil and the Aggrieved Employees tried to take duty-free rest and/or meal periods, other Shryne Group employees and managers, including Brenda (last name unknown), Joanna (last name unknown), Catherine (last name unknown), Store Manager Daniel (last name unknown), and Retail District Manager, Jennifer Arteaga (collectively “the Shryne Group Managers”) interrupted them with requests for help serving customers and for other Shryne Group business. Further, on the rare occasions that the Shryne Group permitted Mendivil and the Aggrieved Employees to take timely, off-duty rest breaks, Shryne Group required her and the Aggrieved Employees to remain on the premises. Shryne Group did not request an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Shryne Group also often failed to provide Mendivil and the Aggrieved Employees with 30-minute meal periods before their fifth work hour. The Shryne Group Managers required Mendivil and the Aggrieved Employees to request permission prior to taking a meal period, which they often prohibited, due to the press of business. On a number of occasions, Mendivil complained to the Shryne Group Managers about Shryne Group’s failure to provide her and the Aggrieved Employees with timely rest and meal periods. In spite of this, Shryne Group refused to make changes.

At all relevant times, the Shryne Group Managers instructed Mendivil and the Aggrieved Employees to falsify their timecards and clock out for meal periods they did not take. The Shryne Group Managers also modified Mendivil’s and the other Aggrieved Employees’ time records to falsely state that they took duty-free, timely, 30-minute meal periods. Shryne Group failed to compensate Mendivil and the other Aggrieved Employees for this work. Finally, Shryne Group failed to pay Mendivil and the Aggrieved Employees premium wages

for days on which it failed to provide them with all timely meal periods and unrestricted rest periods.

At all relevant times, Shryne Group required Mendivil and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Shryne Group instructed Mendivil and the Aggrieved Employees to download the “WhenIWork” and “WhatsApp” applications on their personal mobile phones to check their schedules and communicate with management and other Shryne Group employees while working and when they were clocked out from work. Shryne Group failed to pay Mendivil and the Aggrieved Employees for this time spent working while clocked out. Further, Shryne Group failed to reimburse Mendivil and the Aggrieved Employees for mobile phone charges, nor did it offer them a free alternative to such personal phone use. Shryne Group also failed to offer an alternative for checking work schedules. Shryne Group also required Mendivil and the Aggrieved Employees to use their personal vehicles to make bank deposits and pick up necessary supplies. Shryne Group did not reimburse Mendivil and the Aggrieved Employees for such mileage expenses.

As a result of the practices described above, Shryne Group failed to provide Mendivil and the Aggrieved Employees with accurate wage statements that properly and accurately itemize Mendivil and the other Aggrieved Employees’ gross and net wages earned and the total hours worked. As a further result, Shryne Group failed to timely pay Mendivil and the Aggrieved Employees all earned and unpaid wages during, and upon termination of, their employment.

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

- a) Shryne Group failed to pay Mendivil and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum and overtime wages;

- b) Shryne Group failed to provide Mendivil and the Aggrieved Employees with all meal periods;
- c) Shryne Group failed to pay Mendivil and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Shryne Group failed to provide Mendivil and the Aggrieved Employees with all rest breaks;
- e) Shryne Group failed to pay Mendivil and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- f) Shryne Group failed to reimburse Mendivil and the other Aggrieved Employees for expenses incurred in the course of performing of their duties;
- g) Shryne Group failed to provide Mendivil and the Aggrieved Employees with accurate itemized wage statements;
- h) Shryne Group failed to timely pay Mendivil and the Aggrieved Employees all earned and unpaid wages during their employment at Shryne Group and at the time such employment ended; and
- i) Shryne Group failed to maintain accurate employment records.

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate,

commission, or other basis...” At all relevant times during the applicable limitations period, Shryne Group employed Mendivil as an assistant manager to help run its retail store and provide its customers with information and assistance. Accordingly, Mendivil and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

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

In relevant part, section 2 of the Wage Order states,

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be

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

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

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Shryne Group knowingly failed to compensate Mendivil and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed during their off-the-clock meal periods and after clocking out at the end of their shifts.

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

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

4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

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

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

As described above, at all relevant times during the applicable time period, Shryne Group failed to provide Mendivil and the Aggrieved Employees with all timely 30-minute duty-free meal periods.

Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

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

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

Failure To Provide Paid Rest Periods
(Lab. Code §§ 226.7 & 1198)

In relevant part, section 2 of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

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

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

In addition, Labor Code section 226.7 states:

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

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

As described above, Shryne Group required Mendivil and the Aggrieved Employees to work into and/or through their rest periods. Moreover, by requiring Mendivil and the Aggrieved Employees to remain on work premises during their rest periods, Shryne Group has intentionally and improperly failed to provide Mendivil and the Aggrieved Employees with all duty-free rest periods. Further, Shryne Group failed to compensate Mendivil and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely rest periods as provided by California law.

Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

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

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

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

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, Shryne Group required Mendivil and the other Aggrieved Employees to use their personal vehicles and personal mobile phones for work related activities without reimbursing them for their mileage and phone expenses. Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and

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

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

Labor Code section 226 requires employers to provide employees with accurate written wage statements showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee

identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Shryne Group did not pay Mendivil and the Aggrieved Employees minimum, and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Shryne Group failed to provide Mendivil and the Aggrieved Employees with all meal and rest periods in compliance with California law. Shryne Group also failed to provide Mendivil and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. Shryne Group knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Mendivil and the Aggrieved Employees. As a result, Shryne Group has failed to properly itemize Mendivil and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, Shryne Group has violated California Labor Code § 226.

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

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

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

Because of Shryne Group's failure to pay Mendivil and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided off-duty meal and rest periods within the time periods set by California Labor Code § 204, Shryne Group failed to timely pay all wages due during employment. Accordingly, Mendivil now seeks civil penalties for the Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code section 210).

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

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

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

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

Shryne Group did not pay Mendivil and the Aggrieved Employees minimum and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Shryne Group failed to provide Mendivil and the Aggrieved Employees with meal and rest periods in compliance with California law. Shryne Group also failed to provide Mendivil and the other Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. These failures were willful. Due to its willful failures to pay all minimum, overtime, and premium wages earned to Mendivil and the Aggrieved Employees at the time of termination, Shryne Group is liable for violations of Labor Code sections 201, 202, and 203.

Accordingly, Mendivil now seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows:

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

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

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

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be

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

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Kassandra Mendivil
Walter Haines, Esq.

John Malone, Esq., General Counsel – Shryne Group, Inc.
legal@shrynegroup.com

Frank Sanchez, Director of Human Resources – Shryne Group, Inc.
frank@shrynegroup.com

///

IGS Solutions, LLC
c/o Legalinc Registered Agents, Inc., agent for service of process
Four Embarcadero Center, Suite 1400 #85
San Francisco, CA 94111

IGS Solutions, LLC
c/o Legalinc Registered Agents, Inc., agent for service of process
10601 Clarence Dr., Ste. 250
Frisco, TX 75033

Authentic 760 LLC
c/o Legalinc Registered Agents, Inc., agent for service of process
Four Embarcadero Center, Suite 1400 #85
San Francisco, CA 94111

Authentic 760 LLC
10601 Clarence Dr., Ste. 250
Frisco, TX 75033

Shryne Group, Inc.
c/o Legalinc Registered Agents, Inc., agent for service of process
Four Embarcadero Center, Suite 1400 #85
San Francisco, CA 94111

Shryne Group, Inc.
c/o Legalinc Registered Agents, Inc., agent for service of process
10601 Clarence Dr., Ste. 250
Frisco TX 75033

EXHIBIT 3

Chantal McCoy Payton, Esq.
Robert Torres, Esq.
Laurel N. Holmes, Esq.
Marissa L. Simmons, Esq.*
Hayon Abdulhafiz, Esq.
Melody R. Rissell, Esq.*

**Of Counsel*

Sender

Laurel Holmes, Esq.
LHolmes@PaytonEmploymentLaw.com
(661) 434-1144 Extension 704



Los Angeles

11500 W. Olympic Boulevard, Suite 400
Los Angeles, California 90064
Telephone: (424) 334-3194
Facsimile: (424) 334-3194

Antelope Valley

3807 W. Sierra Highway, Suite 206
Acton, California 93510
Telephone: (661) 434-1144
Facsimile: (661) 434-1144

January 3, 2022

VIA CERTIFIED MAIL AND ONLINE SUBMISSION TO THE LWDA

Labor & Workforce Development Agency

By online Submission

IGS Solutions, LLC
767 South Alameda St, Suite 480
Los Angeles, CA 90021

Via Certified Mail
(7021 2720 0001 0119 4588)

IGS Solutions, LLC
c/o Eric M. Lightman
728 E Commercial St.
Los Angeles, CA 90012-3412

Via Certified Mail
(7021 2720 0001 0119 4595)

IGS Solutions, LLC
c/o LegalInc Registered Agents, Inc
Attn: James Wheeler
Four Embarcadero Center, Suite 1400 #85
San Francisco, CA 94111

Via Certified Mail
(7021 2720 0001 0119 4601)

IGS Solutions, LLC

Attn.: Legal Dept./Human Resources
300 S. Mission Rd.
Los Angeles, CA 90033

Via Certified Mail
(7021 2720 0001 0119 4618)

Ironworks Collective, Inc DBA BLAZE

Attn: Legal Department
718 E. Commercial St.
Los Angeles, CA 90012

Via Certified Mail
(7021 2720 0001 01190 4625)

Ironworks Collective, Inc DBA BLAZE

c/o LegalInc Registered Agents, Inc
Attn: Stephanie Jabs
Four Embarcadero Center, Suite 1400 #85
San Francisco, CA 94111

Via Certified Mail
(7021 2720 0001 0119 4632)

RE: Bautista, Richard v. IGS Solutions, LLC, Ironworks Collective, Inc DBA BLAZE.

Dear PAGA Administrator:

This law firm represents Mr. Richard Bautista (hereinafter “Claimant”), an employee of IGS Solutions, LLC and Ironworks Collective, Inc DBA BLAZE (hereinafter “Defendants”) jointly and severally. IGS Solutions, LLC has its registered entity address at 767 South Alameda Street, Suite 480, Los Angeles, CA 90021, however based on information and belief the business

location and headquarters are located at 300 S. Mission Rd. Los Angeles, CA 90033 and 728 E Commercial St. Los Angeles, CA 90012-3412. Ironworks Collective, Inc DBA BLAZE has its registered entity address and headquarters located at 718 E. Commercial St. Los Angeles, CA 90012.

In compliance with Labor Code § 2699.3, and your agency's right to investigate these violations, this letter shall serve as notice of Labor Code violations committed by Defendants, including Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198.5, 2698 et seq., 2802, 66400, 6402, and 6403, as well as the provisions of the IWC Wage Orders which pertain to the payment of compensation for all hours worked and payment of daily, weekly and seventh-day overtime compensation, and the provision of legally compliant rest periods.

Claimant Richard Bautista is employed by Defendants and has been since September 7, 2021, as a delivery driver. Aggrieved Employees are delivery workers who delivered product to customers for Defendants. Prior to picking up the product to deliver, Claimant and other drivers were required to arrive approximately thirty minutes in advance in order to receive the products, but Claimant and other such Aggrieved Employees were not compensated for the time spent engaged to be waiting for the Defendant's to provide them with the product for delivery.

Claimant seeks to represent himself and all other current, former, and future California non-exempt/hourly employees of Defendants, including but not limited to employees holding job titles in delivery/driver and similar job titles ("Aggrieved Employees") to pursue appropriate penalties, statutory damages, damages, unpaid wages, prejudgment interest, costs, attorneys' fees, restitution, and all other just compensation and/or recoverable items of damages for Defendants' violations of the California Labor Code.

I. NATURE OF THE ALLEGATIONS AND STATUTORY VIOLATIONS

The specific provisions of the Labor Code that Claimant alleges have been violated by Defendants, along with the facts and theories to support the allegations are detailed as follows:

a. Failure to Pay Minimum and/or Overtime

Defendants failed and fails to compensate Aggrieved Employees for all hours worked, including for minimum wage and overtime hours, as a direct and proximate result of maintaining a practice requiring and/or permitting Claimant and Aggrieved Employees to perform off-the-clock work, and refusing to compensate Claimant and Aggrieved Employees for all such time worked, including failing to pay overtime at the applicable overtime rate.

Upon information and belief, Defendants engage in a widespread practice of requiring, suffering, and/or permitting Claimant and the Aggrieved Employees to spend extra time off the clock waiting to receive goods to deliver without compensation without any lawful basis, thereby compensating such persons for fewer accumulated hours than actually worked. Thus, based on the regular rate of pay, Claimant and Aggrieved Employees were paid less than minimum wage for all hours worked, not paid for all hours worked, not paid all wages owed, and not paid a proper overtime rates.

Defendants required Claimant and other Aggrieved Employees to work longer by requiring that Claimant and other Aggrieved Employees arrive to their shifts and then wait for approximately

thirty minutes to receive product they needed to deliver. Defendant's practice of refusing to pay for the time waited-while under Defendants' control-and only tracking time once Aggrieved Employees received the product, deprived/deprives Claimant and Aggrieved Employees of wages owed for work performed. Because Defendants neglected to track the time worked pay for the time employees spent waiting for the goods, Claimant and Aggrieved Employees were uncompensated for the period spent waiting and therefore consistently underpaid. Defendants, as a matter of policy, failed and fail to pay all applicable minimum wages, overtime, compensation for all hours actually worked, including the accumulated time Claimant and Aggrieved Employees spent daily waiting to receive deliverable goods as required by Labor Code §§ 204, 510, 1194, 1194.2 and Industrial Welfare Commission Wage Order ("Wage Order") 7-2001, § 4.

b. Failure to Pay Wages Due Upon Termination

As Defendants failed to pay all wages due, including minimum, overtime and double-time wages, upon termination of the employment relationship between Defendants and Aggrieved Employees. Defendants willfully failed to pay such employees all wages earned and owed because they were aware of the additional time worked by Aggrieved Employees who would wait to receive the goods to deliver well after the time they were scheduled to arrive at the location and were subject to Defendants' control. Defendants made it a practice to leave such time unreported and failed to pay wages for such time as discussed above in violation of California Labor Code §§ 201 and 202. Pursuant to § 203 of the Labor Code, Claimant and former Aggrieved Employees are now also entitled to recover up to thirty (30) days of wages due to Defendants' willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

c. Failure to Pay All Wages in a Timely Fashion

Defendants consistently failed and continue to fail to pay employees all wages earned and owed within the time periods specified in Labor Code §§ 204(d) and 210, twice each calendar month on the regular paydays, including, but not limited to, minimum wages, overtime wages, and premium pay for missed rest periods. Accordingly, Defendants have violated and continue to violate California Labor Code §§ 204(d) and 210 by not timely paying all wages owed to Claimant and other Aggrieved Employees for the time they are subject to Defendants' control but waiting for the product to be provided to them for delivery.

d. Failure to Keep Accurate Payroll Records of Daily Hours Worked

Defendants failed and continue to fail to maintain accurate payroll and time-clock records showing the total hours worked daily, including by neglecting to record Claimant and other Aggrieved Employees for the additional work time spent engaged to be waiting-under Defendants' control-to receive goods to deliver, and of total wages owed to employees in violation of Labor Code § 1174.

e. Failure to Provide Pay Records

Defendants failed and continue to fail to provide Claimant, and based on information and belief, other Aggrieved Employees with access and copies of their pay records including time keeping records despite written and oral requests. Claimant requested such records through counsel on November 10, 2021, via certified mail. 21 days from that date was December 1, 2021, and Defendants failed to provide such pay records to Claimant by that date. Defendants failed to provide access and copy of Claimant's pay and time keeping records timely in accordance with

their obligations consistent with California Labor Code sections 226(b) and Wage Order 7-2001 paragraph 7 as such records were not provided until December 27, 2021, after additional requests. Based on information and belief, Defendants have a practice and policy of ignoring requests for such records and has done so to other Aggrieved Employees in a willful attempt to avoid employees accessing information to pursue their rights in recovering unpaid wages.

f. Failure to Provide Personnel File Access

Defendants failed and continue to fail to provide Claimant, and based on information and belief, other Aggrieved Employees with access and copies of their personnel file and all documents they have signed related to their employment within 30 days of written and/or oral requests. Claimant requested such records through counsel on November 10, 2021, via certified mail 30 days from that date was December 10, 2021, and Defendants failed to provide such records to Claimant on a timeline consisted with their obligations. Records were provided on December 27, 2021; however, Defendants failed to timely provide access and copy of Claimant's personnel records in accordance with their obligations consistent with California Labor Code sections 432, and 1198.5 Wage Order 7-2001 paragraph 7. Based on information and belief, Defendants have a practice and policy of ignoring requests for such records and has done so to other Aggrieved Employees in a willful attempt to avoid employees accessing information to pursue their rights.

g. Failure to Provide Rest Breaks

Defendants failed and continue to fail to maintain a policy and/or practice that provides Claimant and other Aggrieved Employees with complaint off-duty rest periods as required by California law. Despite Defendant being aware of the requirement and referencing breaks in their hiring documents, the effects of requiring Claimant and Aggrieved Employees to not use their vehicle for personal errands before or after delivery in effect prohibited the off-duty nature of any breaks provided. Defendant was or should have been aware of the improperly provided rests, but they failed to pay the required rest break premium compensation requires pursuant to Labor Code 226.7 and Wage Order 7-2001, § 12. Such employees regularly work in excess of four hours or a major fraction thereof during workdays without being provided at least a ten-minute rest period as close to the middle of their shift as possible in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and Wage Order 7-2001, §11. Defendants failed and continue to fail to pay Claimant and other Aggrieved Employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods.

h. Failure to Provide Off-Duty Meal Periods.

Defendants failed and continue to fail to maintain a policy and/or practice that provides employees with off-duty meal periods as required by California law. Defendants required Claimant and Aggrieved Employees to not use their vehicle for personal errands or to carry passengers before or after delivery, in effect prohibited the off-duty nature of any breaks provided. Plaintiffs and other Aggrieved Employees were regularly required to work and worked in excess of five (5) hours a day without being provided at least one half-hour meal period during which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and Wage Order 7-2001, § 10. Defendants failed and continue to fail to pay Plaintiffs and other Aggrieved

Employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods

i. Failure to Furnish Accurate Itemized Wage Statements

Defendants failed to issue accurate and complete wage statements to Claimant and other Aggrieved Employees. As Complainant and other Aggrieved Employees were not paid all wages due for all minimum and overtime wages, nor paid wage premiums for improper meal and rest breaks, as discussed above, the wage statements fail to set forth all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

j. Failure to Provide Sick Leave Without Precondition

Defendants imposed a policy on Claimant and Aggrieved Employees that mandate they must acquire coverage for any shift missed, including a shift missed for illness, diagnosis, treatment and/or recovery in direct violation of Labor Code 246.5(b). Additionally, Defendants subject Claimant and other Aggrieved employees to the condition that they can face disciplinary action, up to and including termination, for missing any shift without finding coverage in direct violation of Labor Code 246.5(c)(1). As such, Claimant and Aggrieved Employees were and are required to work under unlawful conditions and prevented from using their required sick leave under threat of punishment.

k. Failure to Reimburse Business Expenses.

Defendants have violated and continue to violate California Labor Code § 2802 by willfully failing to reimburse Claimant and other Aggrieved Employees with all expenses they incurred in the performance of their job duties for Defendants. Plaintiffs and other Aggrieved Employees incurred costs associated with use of their personal cell phones. Plaintiff and Aggrieved Employees were also required to clean and perform maintenance on company vehicles without pay and without reimbursement for cleaning supplies or required parts. Further, Plaintiff and Aggrieved Employees were required maintain their uniforms without reimbursement for such uniform maintenance. Defendants failed to reimburse Claimant and other Aggrieved Employees for all costs associated with the use of all cleaning and maintenance necessities on company vehicles, for hotel rooms to permit sleeping after shifts while far away from home, and personal cell phones, in violation of Labor Code § 2802.

II. CONCLUSION

Defendants' violations were extensive, voluminous, and not subject to simple itemization and as such are summarized above. As in the ordinary course, it is understood that additional legal implications of the above violations under the California Labor Code and/or applicable Wage Orders are evident from or derivative from the facts referenced in this letter or the circumstances of Claimant' employment. It is the intention of Claimant to pursue penalties and other available relief in connection with all such claims regardless of whether specifically itemized here.

As a result of the foregoing violations, Defendants are liable for civil and statutory penalties including pursuant to California Labor Code §§ 210, 226.3, 558, 1174.5, 1198.5 and 2698 et seq. Pending a full investigation, any later discovered violations may also be subject to our enforcement.

In view of the duties imposed on your agency and this office by the statutes cited above, please be advised we will advance our calendars sixty-five (65) days of the date of this letter.

Sincerely,

Payton Employment Law, PC

A handwritten signature in black ink, appearing to read "Laurel N. Holmes", with a stylized, flowing script.

Laurel N. Holmes, Esq.

CC: Ashley M. Davies, ashley.davies@shrynegroup.com

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3807 W. Sierra Highway, Suite 206, Acton, CA 93510.

On the date set forth below, I served the document(s) described as:

PAGA CLAIM NOTICE

on the person(s) listed below:

IGS Solutions, LLC

c/o LegalInc Registered Agents, Inc
Attn: James Wheeler
Four Embarcadero Center, Suite 1400 #85
San Francisco, CA 94111

IGS Solutions, LLC

c/o Eric M. Lightman
728 E Commercial St.
Los Angeles, CA 90012-3412

IGS Solutions, LLC

767 South Alameda St, Suite 480
Los Angeles, CA 90021

Ironworks Collective, Inc DBA BLAZE

Attn: Legal Department
718 E. Commercial St.
Los Angeles, CA 90012

IGS Solutions, LLC

Attn.: Legal Dept./Human Resources
300 S. Mission Rd.
Los Angeles, CA 90033

Ironworks Collective, Inc DBA BLAZE

c/o LegalInc Registered Agents, Inc
Attn: Stephanie Jabs
Four Embarcadero Center, Suite 1400 #85
San Francisco, CA 94111

X (BY CERTIFIED MAIL) I placed the above-described documents in an envelope, sealed the envelope and deposited it with the United States Postal Service to be sent by certified mail with return receipt requested on the date set forth below with the postage thereon fully prepaid.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: January 3, 2022



Karen Zelaya



MESSRELIAN LAW
ATTORNEYS AT LAW

500 N. Central Avenue, Suite 840
Glendale, California 91203
Tel: (818) 484-6531
Fax: (818) 956-1983

VIA ELECTRONIC FILING

November 24, 2020

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

SHRYNE GROUP, INC.
c/o LEGALINC REGISTERED AGENTS, INC.
FOUR EMBARCADERO CENTER, STE. 1400 #85
SAN FRANCISCO, CA 94111

SHRYNE GROUP, INC.
728 E. COMMERCIAL ST., 2nd FLOOR
LOS ANGELES, CA 90012

IGS SOLUTIONS LLC
c/o LEGALINC REGISTERED AGENTS, INC.
FOUR EMBARCADERO CENTER, STE. 1400 #85
SAN FRANCISCO, CA 94111

IGS SOLUTIONS LLC
767 S. ALAMEDA ST., SUITE 840
LOS ANGELES, CA 90021

III TECH LLC
c/o SAGI SHAMAM
728 E. COMMERCIAL ST.
LOS ANGELES, CA 90012

BLAZE DELIVERY LLC
555 WEST FIFTH ST., 48TH FLR
LOS ANGELES CA 90013

BLAZE DELIVERY LLC
c/o TELOS LEGAL CORP.
510 W. 6th ST., SUITE 320
LOS ANGELES, CA 90014



MESSRELIAN LAW
ATTORNEYS AT LAW

500 N. Central Avenue, Suite 840
Glendale, California 91203

Tel: (818) 484-6531
Fax: (818) 956-1983

KUSHAGRAM
c/o SHAHEEN ABDI
2312 PARK AVENUE #434
TUSTIN, CA 92782

MICHAEL NEVAREZ v. SHRYNE GROUP, INC.; IGS SOLUTIONS LLC; III TECH LLC; SAGI SHAMAM; BLAZE DELIVERY LLC; KUSHAGRAM

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Michael Nevarez (hereinafter “Mr. Nevarez” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for SHRYNE GROUP, INC.; IGS SOLUTIONS LLC; III TECH LLC; SAGI SHAMAM; BLAZE DELIVERY LLC; KUSHAGRAM (hereinafter collectively referred to as “EMPLOYER”) during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. SAGI SHAMAM is being included in this PAGA notice pursuant to Labor Code Section 558.1 since Mr. Shamam is an officer, director, or managing agent/owner of EMPLOYER and controlled the hours, wages, and working conditions of the employees, including our client. Note that Shryne Group, Inc., IGS Solutions LLC, III Tech LLC, Blaze Delivery LLC, and Kushagram are joint employers in that they each controlled the wages, hours, and working conditions of Mr. Nevarez and other similarly situated employees.

Mr. Nevarez started working for EMPLOYER as a delivery driver for Blaze Delivery Service on or around 2020. Mr. Nevarez’s employment ended on or around October 2020. Mr. Nevarez was classified as an hourly, non-exempt employee and earned approximately \$15.00 per hour.

It is our position that EMPLOYER has violated the following Labor Code Sections against Mr. Nevarez and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for EMPLOYER in the State of California during the relevant PAGA period.

EMPLOYER violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because Mr. Nevarez and other drivers would have to engage in preparation work before being able to work. In other words, the drivers, including Mr. Nevarez, would show up to the hub and would then have to gather all the equipment necessary to deliver the cannabis products, including several containers filled with the product, a money bag, and other similar items, which were referred to as the “kit”. Once they secured the kit and the items were scanned in, they were ready to hit the road and make the deliveries. It is our belief that there was no formal clock-in/clock-out system other than the



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500 N. Central Avenue, Suite 840
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scanning in of the kit (at the beginning of the shift) and the scanning out of the kit at the end of the work shift. The issue is that the scanning in and out of the "kit" does not accurately reflect the true hours worked by Mr. Nevarez and other drivers because it does not include the preparation time prior to the scan and does not include the time spent wrapping up after the kit was scanned out. Moreover, Mr. Nevarez and others were advised to show up to the hub early in order to make sure the vehicle was ready and loaded with the "kit" so that they can start making deliveries at the start of their shift. This whole situation resulted in Mr. Nevarez and others not being paid for all hours worked and not being paid the minimum wage for all hours worked in contravention of California law.

Due to the above "off the clock" violations, EMPLOYER also violated Labor Code §510 because it failed to pay our client and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Nevarez's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, EMPLOYER did not compensate its hourly, non-exempt employees with the correct amount of overtime.

EMPLOYER also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/9 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. EMPLOYER did not completely relieve our client and others of all duty during said rest periods. EMPLOYER did not pay to our client and others one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Mr. Nevarez to take rest breaks. The concept of rest breaks was never discussed with employees nor was it ever implemented as it was not company policy. Moreover, it would not have been possible for employees such as Mr. Nevarez to take such rest breaks due to having to make consistent deliveries. There was no mechanism on the phone application to dictate when Mr. Nevarez and others would be able to take uninterrupted rest breaks wherein they were relieved of all work duties. As such, the culture as well as the policies and procedures of EMPLOYER did not lend itself to the employees receiving statutory rest breaks wherein they were relieved of all work duties. The environment at EMPLOYER was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

EMPLOYER violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order no. 4/9 because it failed to provide hourly, non-exempt employees, including Mr. Nevarez and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. EMPLOYER did not completely relieve Mr. Nevarez and other employees of all duty during said meal periods. EMPLOYER did not pay to Mr. Nevarez and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would often not be able to receive their meal periods before the 5th hour worked due to the nature of their work in having to make deliveries in a time crunch. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by EMPLOYER. Furthermore, any argument by



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EMPLOYER that the employees signed an "On Duty Meal Period Agreement" would not hold water since the nature of their job did not prevent them from being relieved of all work duties. In other words, EMPLOYER could have hired additional drivers to act as "breakers" to allow employees such as Mr. Nevarez to receive uninterrupted statutory meal periods. Additionally, there was no mechanism on the phone application to dictate when Mr. Nevarez and others would be able to take uninterrupted meal breaks wherein they were relieved of all work duties. Consequently, it was the normal practice and custom of EMPLOYER not to authorize, permit, and enforce timely statutory meal periods.

Furthermore, during the relevant time period and based on the above, EMPLOYER failed to pay Mr. Nevarez and others all wages due to them within any time period specified by California Labor Code section 204.

EMPLOYER was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, the full and correct name of the legal employer (the only employer that appeared on Mr. Nevarez's pay stubs included IGS Solutions LLC which is clearly not the correct entity as Shryne Group, Inc., III Tech LLC, and Blaze Delivery LLC are all employers) along with the employers' correct legal address, all hours worked (including "off the clock" hours and overtime), all applicable hourly rates in effect, the correct identifying information for each employee, gross wages earned, net wages earned, premium pay for the missed meal and rest breaks, the correct start and end of the pay period, and all deductions, among others. As such, EMPLOYER did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, EMPLOYER also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Nevarez and others pursuant to California Labor Code sections 1174(d).

EMPLOYER also violated Labor Code § 203 because it willfully failed to pay Mr. Nevarez and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

During the relevant time period, Mr. Nevarez and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by EMPLOYER. These costs include, but are not limited to, driving their personal vehicles for deliveries (mileage reimbursement) and use of personal phones for business-related purposes. Although Mr. Nevarez was given a company phone, Mr. Nevarez had to also use his personal cell phone for work purposes including navigation, etc. Furthermore, although Mr. Nevarez did drive a company vehicle, there were several other drivers who had to use their own personal vehicles to make the deliveries. Accordingly, EMPLOYER was in violation of California Labor Code sections 2800 and 2802.



MESSRELIAN LAW
ATTORNEYS AT LAW

500 N. Central Avenue, Suite 840
Glendale, California 91203

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Moreover, EMPLOYER failed to provide sick pay pursuant to Labor Code section 246 and also failed to provide Worker's Compensation coverage for Mr. Nevarez and other aggrieved employees in violation of Labor Code Section 3700.5.

Furthermore, we believe your companies have also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Nevarez also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by EMPLOYER.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,

Harout Messrelian, Esq.



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Glendale, California 91203

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VIA ELECTRONIC FILING

April 16, 2021

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

SHRYNE GROUP, INC.
c/o LEGALINC REGISTERED AGENTS, INC.
FOUR EMBARCADERO CENTER, STE. 1400 #85
SAN FRANCISCO, CA 94111

SHRYNE GROUP, INC.
728 E. COMMERCIAL ST., 2nd FLOOR
LOS ANGELES, CA 90012

IGS SOLUTIONS LLC
c/o LEGALINC REGISTERED AGENTS, INC.
FOUR EMBARCADERO CENTER, STE. 1400 #85
SAN FRANCISCO, CA 94111

IGS SOLUTIONS LLC
767 S. ALAMEDA ST., SUITE 840
LOS ANGELES, CA 90021

III TECH LLC
SAGI SHAMAM
728 E. COMMERCIAL ST.
LOS ANGELES, CA 90012

IRONWORKS COLLECTIVE INC.
Dba BLAZE
718 E COMMERCIAL ST
LOS ANGELES, CA 90012

IRONWORKS COLLECTIVE INC.
Dba BLAZE
c/o LEGALINC REGISTERED AGENTS, INC.
FOUR EMBARCADERO CENTER, STE. 1400 #85
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BLAZE DELIVERY LLC
555 WEST FIFTH ST., 48TH FLR
LOS ANGELES CA 90013

BLAZE DELIVERY LLC
c/o TELOS LEGAL CORP.
510 W. 6th ST., SUITE 320
LOS ANGELES, CA 90014

KUSHAGRAM
c/o SHAHEEN ABDI
2312 PARK AVENUE #434
TUSTIN, CA 92782

MICHAEL NEVAREZ v. SHRYNE GROUP, INC.; IGS SOLUTIONS LLC; III TECH LLC; SAGI SHAMAM; IRONWORKS COLLECTIVE INC. dba BLAZE; BLAZE DELIVERY LLC; KUSHAGRAM

RE: AMENDED PRIVATE ATTORNEYS GENERAL ACT NOTICE

CASE NO. LWDA-CM-813611-20

To Whom It May Concern:

Please be informed that our client, Michael Nevarez (hereinafter “Mr. Nevarez” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for SHRYNE GROUP, INC.; IGS SOLUTIONS LLC; III TECH LLC; SAGI SHAMAM; IRONWORKS COLLECTIVE INC.; BLAZE DELIVERY LLC; and KUSHAGRAM (hereinafter collectively referred to as “EMPLOYER”) during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. SAGI SHAMAM is being included in this PAGA notice pursuant to Labor Code Section 558.1 since Mr. Shamam is an officer, director, or managing agent/owner of EMPLOYER and controlled the hours, wages, and working conditions of the employees, including our client. Note that Shryne Group, Inc., IGS Solutions LLC, III Tech LLC, Sagi Shamam, IRONWORKS COLLECTIVE INC. dba BLAZE, BLAZE DELIVERY LLC and Kushagram are joint employers in that they each controlled the wages, hours, and working conditions of Mr. Nevarez and other similarly situated employees.

Mr. Nevarez started working for EMPLOYER as a delivery driver for Blaze Delivery Service on or around 2020. Mr. Nevarez’s employment ended on or around October 2020. Mr. Nevarez was classified as an hourly, non-exempt employee and earned approximately \$15.00 per hour.



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It is our position that EMPLOYER has violated the following Labor Code Sections against Mr. Nevarez and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for EMPLOYER in the State of California during the relevant PAGA period.

EMPLOYER violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because Mr. Nevarez and other drivers would have to engage in preparation work before being able to work. In other words, the drivers, including Mr. Nevarez, would show up to the hub and would then have to gather all the equipment necessary to deliver the cannabis products, including several containers filled with the product, a money bag, and other similar items, which were referred to as the “kit”. Once they secured the kit and the items were scanned in, they were ready to hit the road and make the deliveries. It is our belief that there was no formal clock-in/clock-out system other than the scanning in of the kit (at the beginning of the shift) and the scanning out of the kit at the end of the work shift. The issue is that the scanning in and out of the “kit” does not accurately reflect the true hours worked by Mr. Nevarez and other drivers because it does not include the preparation time prior to the scan and does not include the time spent wrapping up after the kit was scanned out. Moreover, Mr. Nevarez and others were advised to show up to the hub early in order to make sure the vehicle was ready and loaded with the “kit” so that they can start making deliveries at the start of their shift. This whole situation resulted in Mr. Nevarez and others not being paid for all hours worked and not being paid the minimum wage for all hours worked in contravention of California law.

Due to the above “off the clock” violations, EMPLOYER also violated Labor Code §510 because it failed to pay our client and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Nevarez’s and other aggrieved employees’ actual work hours entitled them to overtime compensation, however, EMPLOYER did not compensate its hourly, non-exempt employees with the correct amount of overtime.

EMPLOYER also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/9 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. EMPLOYER did not completely relieve our client and others of all duty during said rest periods. EMPLOYER did not pay to our client and others one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Mr. Nevarez to take rest breaks. The concept of rest breaks was never discussed with employees nor was it ever implemented as it was not company policy. Moreover, it would not have been possible for employees such as Mr. Nevarez to take such rest breaks due to having to make consistent deliveries. There was no mechanism on the phone application to dictate when Mr. Nevarez and others would be able to take uninterrupted rest breaks wherein they were relieved of all work duties. As such, the culture as well as the policies and procedures of EMPLOYER did not



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lend itself to the employees receiving statutory rest breaks wherein they were relieved of all work duties. The environment at EMPLOYER was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

EMPLOYER violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order no. 4/9 because it failed to provide hourly, non-exempt employees, including Mr. Nevarez and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. EMPLOYER did not completely relieve Mr. Nevarez and other employees of all duty during said meal periods. EMPLOYER did not pay to Mr. Nevarez and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would often not be able to receive their meal periods before the 5th hour worked due to the nature of their work in having to make deliveries in a time crunch. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by EMPLOYER. Furthermore, any argument by EMPLOYER that the employees signed an "On Duty Meal Period Agreement" would not hold water since the nature of their job did not prevent them from being relieved of all work duties. In other words, EMPLOYER could have hired additional drivers to act as "breakers" to allow employees such as Mr. Nevarez to receive uninterrupted statutory meal periods. Additionally, there was no mechanism on the phone application to dictate when Mr. Nevarez and others would be able to take uninterrupted meal breaks wherein they were relieved of all work duties. Consequently, it was the normal practice and custom of EMPLOYER not to authorize, permit, and enforce timely statutory meal periods.

Furthermore, during the relevant time period and based on the above, EMPLOYER failed to pay Mr. Nevarez and others all wages due to them within any time period specified by California Labor Code section 204.

EMPLOYER was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, the full and correct name of the legal employer (the only employer that appeared on Mr. Nevarez's pay stubs included IGS Solutions LLC which is clearly not the correct entity as Shryne Group, Inc., III Tech LLC, Ironworks Collective Inc, and Blaze Delivery LLC are all employers) along with the employers' correct legal address, all hours worked (including "off the clock" hours and overtime), all applicable hourly rates in effect, the correct identifying information for each employee, gross wages earned, net wages earned, premium pay for the missed meal and rest breaks, the correct start and end of the pay period, and all deductions, among others. As such, EMPLOYER did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, EMPLOYER also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Nevarez and others pursuant to California Labor Code sections 1174(d).



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EMPLOYER also violated Labor Code § 203 because it willfully failed to pay Mr. Nevarez and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

During the relevant time period, Mr. Nevarez and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by EMPLOYER. These costs include, but are not limited to, driving their personal vehicles for deliveries (mileage reimbursement) and use of personal phones for business-related purposes. Although Mr. Nevarez was given a company phone, Mr. Nevarez had to also use his personal cell phone for work purposes including navigation, etc. Furthermore, although Mr. Nevarez did drive a company vehicle, there were several other drivers who had to use their own personal vehicles to make the deliveries. Accordingly, EMPLOYER was in violation of California Labor Code sections 2800 and 2802.

Moreover, EMPLOYER failed to provide sick pay pursuant to Labor Code section 246 and also failed to provide Worker's Compensation coverage for Mr. Nevarez and other aggrieved employees in violation of Labor Code Section 3700.5.

Furthermore, we believe your companies have also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

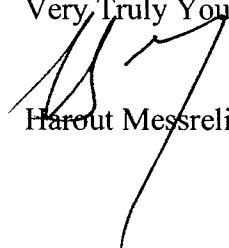
Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Nevarez also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by EMPLOYER.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,



Harout Messrelian, Esq.

BRADLEY/GROMBACHER LLP

CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

Marcus J. Bradley
Kiley L. Grombacher

January 21, 2022

Labor and Workforce Development Agency

Attn: PAGA Administrator

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

*Filed Online and Courtesy Copy Delivered
via Certified Mail*

**Re: Written Notice – Private Attorney General Act (“PAGA”) –
Labor Code sections 2698 et seq., and 6300 et seq.**
Joe Nunez v. IGS Solutions, LLC dba Stiizy

PAGA Administrator:

Notice is hereby provided that, pursuant to Labor Code section 2699.3, Joe Nunez (“Employee”) contends that IGS Solutions, LLC dba Stiizy (“Stiizy”), has violated, and continues to violate, provisions of the Labor Code and wage orders promulgated by the Industrial Welfare Commission (“IWC wage order”), including, but not limited to, Labor Code sections 201-203, 204, 226, 226.7, 227.3, 248.2, 510, 512, 1182, 1197, 1198, and the applicable wage orders.

In accordance with the required notice under Labor Code section 2699.3 of the Private Attorney General Act (“PAGA”), this letter shall serve as formal written notice to the Labor and Workforce Development Agency (“LWDA”).

Employee was hired by Stiizy in approximately December 2020 and worked through his day of separation in approximately October 15, 2021. Employee worked in Jurupa Valley, California as a ‘budtender’ and earned approximately \$14 per hour.

Employee is an “aggrieved employee” as defined in Labor Code section 2699, subdivision.(a) and brings this action on behalf of himself and all other aggrieved employees of Stiizy. Employee, also on behalf of himself and all other aggrieved employees, seeks penalties under PAGA for Stiizy’s violations of the Labor Code.

IGS Solutions is a retailer of cannabis products operating under the name Stiizy. Stiizy is a California limited liability company and owns and operates 15 locations across California. Upon information and belief, Stiizy maintains a single, centralized Human Resources (HR) department

for all aggrieved, hourly paid employees working for Stiizy in California, including Employee and others similarly situated. At all relevant times, Stiizy issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all aggrieved, hourly paid employees in California, including Employee and others similarly situated, regardless of their location or position.

Employee and other aggrieved employees seek penalties and other compensation from Stiizy for the relevant time period because Stiizy:

1. Failed to pay Employees and aggrieved employees for all overtime (Lab. Code §§ 510, 1198);
2. Failed to pay Employees and aggrieved employees for all hours worked (Lab. Code § 1182, 1194, 1197, 1198)
3. Failed to provide Employees and aggrieved employees with compliant meal periods (Lab. Code §§ 226.7, 512);
4. Failed to provide Employees and aggrieved employees with compliant rest periods (Lab. Code §§ 226.7, 512);
5. Failed to provide Employees and aggrieved employees with accurate, itemized wage statements (Lab. Code § 226(a));
6. Failed to provide Employees and aggrieved employees with timely wages (Lab. Code § 204);
7. Failed to timely pay Employees and aggrieved employees all final wages in a timely manner (Lab. Code §§ 201-203);
8. Failed to pay Employee and aggrieved employees all accrued vacation wages;
9. Failed to provide Employees and aggrieved employees with COVID-19 supplemental paid sick leave (Lab. Code § 248.2);
10. Failed to furnish a place of employment that is safe and healthful (Lab. Code §§ 6300-6400); and
11. Failed to provide Employees and aggrieved employees with suitable seating.

Below please find the relevant facts and legal theories to support the aforementioned violation.

Failure to Pay Overtime

During the Relevant Time Period, upon information and belief, Stiizy had, and continues to have, a company-wide policy of discouraging and impeding Employee and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting

overtime, led Employee and other aggrieved employees to work off-the-clock before and after their scheduled shift times. For example, prior to every shift Employee and other aggrieved employees were subject to mandatory off-the-clock temperature checks. Moreover, at the end of each shift employees were subject to off-the-clock security checks which involved checking bags and pockets. Moreover, when Employee and other aggrieved employees were assigned a closing shift, they were required to first clock out and then perform closing duties.

When this occurred, Employee was unable to record this off-the-clock work because Stiizy's management prohibited him from recording hours worked outside of his scheduled shifts.

At all times, Employee and other aggrieved employees remained under the control of Stiizy. Stiizy could have recorded this off-the-clock work, but refused to do so to avoid paying Employee and other aggrieved employees overtime wages.

Moreover, as a result of mandatory security checks upon leaving the premises, Employee and other aggrieved employees' meal and rest breaks were short. Further, on information and belief, because Stiizy frowned upon employees accruing meal and rest period penalties, Stiizy adjusted Employee's and/or other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal and rest period, in order to strictly limit meal penalties that Stiizy would otherwise owe. Thus, Employee and/or other aggrieved employees performed work during meal and rest periods for which they were not paid. Because Employee and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Accordingly, Stiizy regularly failed to pay at least minimum wages to Employee and other aggrieved employees for all overtime hours worked in violation of Labor Code sections 510 and 1198. Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Failure to Pay for All Wages

As stated above, during the relevant time period, as a result of Stiizy's policy of limiting the amount of overtime employees could accrue, Employee and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift start and end times as a result of mandatory security and temperature checks and closing duties when working a closing shift. Moreover, as a result of mandatory security checks upon leaving the premises, Employee and other aggrieved employees' meal and rest breaks were short.

Further, as stated, in order to prevent employees from accruing meal and rest period penalties, upon information and belief, Stiizy adjusted Employee's and/or other aggrieved employees' time records to reflect compliant meal and rest periods, regardless of whether they had received a compliant meal period. Thus, Stiizy did not pay at least minimum wages for all hours worked by Employee and other aggrieved employees. To the extent that these off-the-clock hours

did not qualify for overtime premium payment, Stiizy did not pay at least minimum wages for those hours worked off-the-clock.

Accordingly, Stiizy regularly failed to pay at least minimum wages to Employee and other aggrieved employees for all of the hours they worked in violation of Labor Code sections 1194, 1197, 1197.1 and 1198. Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 1197.1 and/or 2699(a), (f)-(g).

Failure to Provide Compliant Meal Breaks

Stiizy routinely failed to provide Employee and aggrieved employees with compliant meal periods without duty, notwithstanding the fact that Employee and aggrieved employees had not waived their right to the same. Thus, Stiizy failed to provide Employee and aggrieved employees with meal periods required by Labor Code sections 226.7, 512, 516 and IWC wage order #7-2001, section 11 and categorically failed to pay any and all meal period wages due.

Under the foregoing, California employers must provide meal periods and authorize and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016), the California Supreme Court reaffirmed that the required meal and rest periods must be "off-duty," which means that employees must be relieved of "all work-related duties," including the duty to remain "on call," and they must be "free from employer control" over how they "spend their time." *Id.* at 264, 269. Employees must have the freedom to use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1038-39 (2012).

When employees must either "remain at the ready and capable of being summoned to action," "respond when the employer seeks contact with [them]," "perform other work if the employer so requests," and/or remain "on call" during their meal and rest periods, the employees have not been "relieve[d] ... of all work-related duties and employer control." *Augustus*, 2 Cal.5th at 270. Such a meal or rest period is not "off duty" and therefore is "impermissible." *Ibid.*

The Supreme Court's decision in *Augustus* is just the latest in a series of meal and rest break cases that have affirmed California's broad, protective standard for employees.

Moreover, as the mere existence of a facially lawful meal and rest break policy is unavailing if there are practical constraints and pressures on employees to perform their duties in ways that omit breaks. See *Brinker*, 53 Cal.4th at 1040.

Yet Stiizy did and do not provide Employee and aggrieved employees with meal periods during which they are completely relieved of duty for at least thirty (30) minutes by the fifth hour of work and again by the tenth hour of work.

Rather, Employee and aggrieved employees' meal periods were typically late as a result of mandatory temperature checks prior to clocking in and were short as Employee and aggrieved employees were required to go through mandatory bag and pocket checks upon leaving the facilities.

Thus, Stiizy has failed to perform its obligations to provide Employee and aggrieved employees with off-duty meal periods by the end of the fifth hour of work and a second meal period by the end of the tenth hour of work. Stiizy also has failed to pay Employee and aggrieved employees one (1) hour of pay at the regular rate for each off-duty meal period that they have been denied.

On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021) where the court unanimously held that employers must pay premium payments to employees for missed meal, rest, and recovery breaks at the employee's "regular rate of pay" instead of their base hourly rate. The regular rate of pay may be higher than the base hourly rate because the regular rate of pay must include all nondiscretionary incentive payments.

Stiizy knew or should have known that as a result of its policies and/or practices, that Employee and aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Stiizy further knew or should have known that it did not pay Employee and aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted. Furthermore, Stiizy has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Employee and aggrieved employees have not received all premium pay for missed, interrupted, or late meal periods.

Accordingly, Stiizy failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198. Employee and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Failure to Provide Compliant Rest Breaks

Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[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 period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under Labor Code section 226.7 and the applicable IWC wage order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, Stiizy regularly failed to authorize and permit Employee and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. Specifically, rest breaks were late as off-the-clock work was not compensated into the working time prior to the assigned break time. Moreover, Employee and aggrieved employees were subject to bag and pocket checks upon leaving the premises, reducing the overall rest time.

As a result of Stiizy’s practices and policies, Employee and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.

Stiizy also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Employee and other aggrieved employees have not received premium pay for all non-compliant rest periods.

Accordingly, Stiizy failed to authorize and permit all rest periods in violation of Labor Code sections 226.7, 516, and 1198. Employee and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Wage Statements

Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete wage records. Stiizy has not provided Employee and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to section 226(a).

During the relevant time period, Stiizy has knowingly and intentionally provided Employee and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, Stiizy issued uniform wage statements to Employee and other aggrieved

employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Moreover, Stiizy fails to include its address on Employee's final wage statement.

Specifically, Stiizy violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Stiizy did not record the time Employee and other aggrieved employees spent working off-the-clock, Stiizy did not list the correct amount of gross wages and net wages earned by Employee and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Stiizy failed to accurately list the total number of hours worked by Employee and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9). For the same reason, Stiizy also failed to list the correct amount of net wages in violation of section 226(a)(5). Stiizy also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Failure to Timely Pay Wages During Employment

During the relevant time period, Stiizy willfully failed to pay Employees and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by Labor Code section 204.

Failure to Timely Pay Final Wages Upon Termination

As a pattern and practice, Stiizy regularly failed to pay Employee and aggrieved employees their final wages pursuant to Labor Code sections 201-203.

Labor Code sections 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 that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, Stiizy has a company-wide practice or policy of failing to pay all accrued wages to departing employees and don't adhere to the time requirements set forth in Labor Code sections 201 and 202.

Stiizy willfully failed to pay Employee and aggrieved employees the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Stiizy's employ.

Failure to Provide Suitable Seating

Stiizy willfully and knowingly failed to provide aggrieved employees with suitable seats, although the nature of work required standing for substantial periods of time.

Labor Code sections 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that "the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 63 Cal.4th 1, 8 (2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Ibid*. The burden of proof to show suitable seating is not available is on the employer. *Id.* at 24. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." See *ibid*.

Stiizy violated California Labor Code section 1198 and California Code of Regulations, title 8, section 11070(14)(A) because Employee and aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. Stiizy's management did not inform Employee and aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of Stiizy's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Employee and aggrieved employees were forced to stand during shifts and denied seats. Stiizy's failure to provide suitable seating to Employee and aggrieved employees violates Labor Code section 1198 and the applicable Wage Order, subdivision 14(A).

Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that “the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The applicable IWC wage order states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Ibid*. However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Ibid*.

Stiizy did not provide aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing.

As a result of Stiizy’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, aggrieved employees were forced to stand during shifts and denied seats. Stiizy’s failure to provide suitable seating to aggrieved employees violates Labor Code section 1198 and the applicable wage order, subdivision 14(B).

Employee and aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring Stiizy into compliance with California’s seating requirements, pursuant to Labor Code section 1194.5.

Failure to Provide Accrued Vacation Wages

Labor Code section 227.3 sets forth requirements pertaining to vacation pay. The provision states the following: “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

As a matter of uniform corporate policy, procedure and practice, Stiizy violated California Labor Code section 227.3 by failing to pay Employee and aggrieved employees all vested vacation wages at the end of their employment.

By way of example, Employee's final wage statement does not contain any accrued vacation pay.

California Labor Code section 227.3, prohibits employers from forfeiting payment of the vested vacation wages of their employees.

Failure to Provide COVID-19 Supplemental Paid Sick Leave

Labor Code section 248.2 provides that if an employee is unable to work as a result of needing to attend an appointment to receive the COVID-19 vaccine, the employee can use COVID-19 supplemental paid sick leave.

Stiizy failed to comply Labor Code section 248 because it required aggrieved employees to take their personal sick days and/or vacation days to attend a COVID-19 vaccination appointment and failed to provide state mandated COVID-19 supplemental sick pay.

Stiizy is liable to Employee and aggrieved employees alleged herein for the unpaid supplemental COVID-19 sick pay.

Failure to Furnish a Place of Employment that is Safe and Healthful

Labor Code section 6300 states, "[t]he California Occupational Safety and Health Act of 1973 is hereby enacted for the purpose of assuring safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health."

Labor Code section 6400(a) states "[e]very employer shall furnish employment and a place of employment that is safe and healthful for the employees therein." Further section 6401 says "[e]very employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees."

Stiizy has failed to comply with these provisions by maintaining an unsafe place of employment.

Stiizy failed to comply with Labor Code sections 6300-6400 when it stopped checking employees' temperatures in mid-2021 and failed to implement COVID-19 safety protocols.

This placed Employee and aggrieved employees in an unhealthy environment, as the possibility of coming in contact with the COVID-19 was large. Stiizy therefore, significantly increased Employee and aggrieved employees' possibility of injury.

Conclusion

Enclosed please find a copy of the class action complaint that is in the process of being filed in the Superior Court for the State of California, Riverside County. Employee respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail to Stiizy. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Very truly yours,

BRADLEY/GROMBACHER, LLP


Marcus J. Bradley, Esq.

cc: LegalInc
Agent for Service of Process for
IGS Solutions LLC
Four Embarcadero Center, Suite 1400 #85
San Francisco CA 94111

IGS Solutions LLC
767 S Alameda St, Suite 480
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CALABASAS, CALIFORNIA 91301

PHONE (818) 703-8985
FAX (818) 703-8984

January 6, 2021

Via Certified Mail

Labor & Workforce Development Agency
By online submission

IGS Solutions LLC
767 S. Alameda St, Suite 480
Los Angeles, CA 90021 Defendant mailed certified # 70190700000201197752

Agent for Service of Process for IGS Solutions LLC
Legalinc Registered Agents, Inc.
10601 Clarence Dr., Ste. 250
Frisco, TX 75033 Agent mailed certified # 70190700000201197745

Re: ***Labor Code Violations of IGS Solutions LLC – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Jenice Cole and Shauna Adams, current non-exempt California employees of IGS Solutions LLC (“Defendant”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our clients are employed by Defendant in Northern California. Herein we set forth the facts and theories of California Labor Code violations that we allege Defendant engages in with respect to our clients and other of its non-exempt California employees (“Aggrieved Employees”).

Our clients, on behalf of themselves and Aggrieved Employees, claim that Defendant fails to pay all overtime wages due, in violation of Labor Code §§ 510 and 1194. Defendant pays our clients and Aggrieved Employees straight time wages only, with no adjustment for premium overtime hours worked. Our clients and Aggrieved Employees are not compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay, and are not compensated for work performed in excess of twelve (12) hours in a workday at a rate of no less than double the regular rate of pay.

Defendant fails to pay our clients and other Aggrieved Employees all minimum wages and overtime wages earned, in violation of Labor Code §§ 510, 558, 1194 and 1194.2. Our clients and other Aggrieved Employees are required to work off-the-clock. For example, they are required to

count up and divide all gratuities earned for the workday, among other work tasks, all after clocking out from their shift, thereby depriving them of all wages due. This violates Labor Code §§ 510, 558, 1194, and 1194.2.

Our clients also allege that Defendant fails to pay premium wages to them and other Aggrieved Employees who are denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order No. 4-2001. Our clients and Aggrieved Employees are routinely unable to take an on-duty 10-minute rest period for every four (4) hours of work or major fraction thereof, but are not paid premium wages of one hour's pay for each missed rest period. Our clients and other Aggrieved Employees are simply not authorized to take rest periods and frequently work through them. This violates Labor Code §§ 226.7 and 558 and IWC Wage Order 4-2001.

Defendant fails to pay premium wages to our clients and Aggrieved Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001. Our clients and Aggrieved Employees are routinely denied, and not authorized to take, a timely, uninterrupted, off-duty 30-minute meal period for every shift worked that exceeds five hours in duration, or a second timely, uninterrupted, off-duty 30-minute meal period for every shift worked that exceeds ten hours in duration, but are not paid premium wages of one hour's pay for each missed first or second meal period. When they are provided with a meal period, they are late, cut short or they are required to work through them. This violates Labor Code §§ 226.7, 510, 512, 558, 1194 and IWC Wage Order 4-2001.

Our clients claim that Defendant fails to pay them and other Aggrieved Employees all gratuities due, in violation of Labor Code § 351. Our clients and other Aggrieved Employees are forced to share their tips with Defendant (including supervisors and managers), in violation of Labor Code § 351, which states, in pertinent part, that "[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer."

Defendant also fails to issue our clients and Aggrieved Employees accurate itemized wage statements. At times, Defendant failed to issue any wage statements to non-exempt employees like our clients and the Aggrieved Employees. Thus, employees sometimes have no method of verifying that they are being paid all wages due and are not provided accurate information regarding their employment. This violates Labor Code §§ 226(a) and 226.3.

When our clients do receive wage statements during their employment, they further allege that the wage statements fail to fully and accurately itemize the requirements set forth in Labor Code §§ 226(a) and 226.3. Our clients and other Aggrieved Employees are not paid all minimum, overtime, and double-time wages due, and premium meal and rest period wages due, as stated above. As such, the wage statements provided by Defendant fail to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code

Labor & Workforce Development Agency
IGS Solutions LLC
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January 6, 2021
Page 3

§§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, Labor Code §§ 226(a)(9) and 226.3.

Our clients further allege that Defendant fails to pay other Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, other Aggrieved Employees are not paid all wages due during the course of their employment and, as a result of this failure, some are not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of certain Aggrieved Employees no longer employed by Defendant.

The \$75 PAGA filing fee has been electronically submitted to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorney to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By: 

EVAN S. GAINES

cc: Joseph Tojarieh, Esq.

KIM LEGAL, APC

3435 Wilshire Blvd, Suite 2700, Los Angeles, California 90010
Tel: (323) 482-3300 ▪ Fax: (866) 652-7819 ▪ Email: fkim@kim-legal.com

March 18, 2021

VIA ELECTRONIC SUBMISSION

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: PAGA Notice
Hunter MeeLee v. Shryne Group, Stiizy, LLC, IGS Solutions, LLC
LASC Case No. 21STCV03751

To Whom It May Concern:

Please be advised that this office is counsel to Mr. Hunter Meelee (“Plaintiff”). All future communications should be directed to this office.

Plaintiff alleges that Shryne Group, Inc. (“Shryne Group”), Stiizy, LLC (“Stiizy”), and IGS Solutions, LLC (“IGS Solutions”) (together “Defendants”) are jointly liable for the violations alleged herein under an integrated enterprise theory and/or as joint employers. Plaintiff alleges that Defendants are affiliated entities of each other that share common ownership and/or control regarding management, human resources, legal, and administrative functions. Moreover, Plaintiff alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents of each other, under the direction and control of each other, and that said acts and failures to act were within the course and scope of said agency, and/or direction and control.

Defendants employed Plaintiff as a driver to deliver cannabis products throughout the Los Angeles area. On information and belief, Defendants sold the cannabis products under retail licenses held by Stiizy and IGS solutions.

At the beginning of each shift, Defendants gave Plaintiff and the putative class members kits that contained the inventory of the cannabis products to be delivered during each shift. Plaintiff and the putative class members were required to carry Geotab units that tracked their location and mileage with timestamps.

According to Defendants’ Standard Operating Procedure, drivers could not take a 30-minute break unless their shift exceeds 6 hours, there were no pending orders, or the break was expressly authorized by the Support Manager. According to the Standard Operating Procedure, Plaintiff and the putative class members were required to return their kits at the end of each shift. Then, Plaintiff and the putative class members were free to go “[o]nce [their] Kit[s] [have] been approved.”

At the end of each shift, Plaintiff and the putative class members clocked out when returning their kits and were required to wait at the facility for management to reconcile the cash receipts and verify that all the unsold cannabis product was accounted for and audited. The additional “off the clock” time often totaled as much as 2 hours. Plaintiff, who worked scheduled shifts of 7 hours starting at 4:30 p.m. and ending at 11:30 p.m., often stayed as late as 1:00 am after clocking out.

Plaintiff was also required to perform off-the-clock work, including but not limited to, responding to work-related phone calls, e-mails and/or text messages and completing scheduling and other functions, after he had clocked out from his shifts using his own personal device. Plaintiff alleges that Defendants’ company policy is to not pay or otherwise compensate its delivery drivers for such off the clock work.

During the initial months of Plaintiff’s employment, Defendants provided Plaintiff with company vehicles to perform delivery services, but later required Plaintiff to perform the same services using his personal vehicle with full knowledge that Plaintiff lacked the insurance necessary to cover any damage to his personal property. Defendant failed to provide Plaintiff with a Motor Carrier Permit during the that the Plaintiff performed delivery services.

On or about October 16, 2020, Plaintiff was involved in a car accident for Defendants while driving his personal vehicle en route to a delivery location. Upon notifying Defendants of the accident, Defendants arrived at the accident scene to pick up their cannabis product and other equipment and left Plaintiff stranded at the scene. Plaintiff’s vehicle was declared a total loss and not covered by his insurance policy. Defendants have not reimbursed Plaintiff of his personal vehicle.

Plaintiff complained to his supervisors of the violations alleged herein, including unpaid reimbursements, off-the-clock work, unpaid overtime, and Defendants’ failure to provide commercial insurance and Motor Carrier Permits.

In an act of retaliation against Plaintiff for complaining of the foregoing violations of law, Defendants terminated Plaintiff on or about November 21, 2020. On November 25, 2020, Defendants paid Plaintiff his final paycheck without compensating Plaintiff for his off-the-clock hours, his overtime hours, and his meal and rest break premiums. As a result of Defendants’ violations of California law, Plaintiff was denied his fundamental employment rights, including but not limited to, the right to overtime wages, the right to prompt payment of full wages upon termination of employment, the right to lawful meal and rest breaks (or compensation therefore), and the right to accurate, itemized wage statements.

Plaintiff alleges that Defendants failed to comply with one of more of the Labor Code violations as described herein and is therefore liable for civil penalties under California Labor Code § 2698 et seq.

Unlawful Failure to Pay Overtime Wages

Defendants failed to maintain a policy that compensates non-exempt employees for all hours worked, including overtime. Defendants failed to compensate Plaintiff after his deliveries were completed and while he waited for management to audit his inventory and cash receipts. As a result of the violations of California Labor Code §§ 510 and 1194 for failure to pay overtime, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Pay Minimum Wages

Defendants failed to maintain a policy that compensates their employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197.1, 1197. All hours must be paid at the statutory agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. For the reasons explained above, Defendants failed to compensate Plaintiff and the aggrieved employees for time spent off-the-clock after their deliveries were completed and while they waited for management to audit their inventory and cash receipts. As a result of such off-the-clock work, Defendants have violated Labor Code §§ 1194, 1197.1, 1197.1 for failure to pay minimum wage, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 et seq.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

Defendants failed to maintain a policy that provides their employees with off-duty meal periods as required by California law. According to Defendants' Standard Operating Procedure, drivers could not take a 30-minute break unless their shift exceeds 6 hours, there were no pending orders, or the break was expressly authorized by the Support Manager. Plaintiff also alleges that he was not afforded any breaks during or between his deliveries. As a result, Plaintiff and the aggrieved employees regularly worked in excess of five (5) and/or ten (10) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties and free to leave the work site or facility during the meal period, as required by Labor Code §§ 226.7, 512. Defendants did not pay Plaintiff and other aggrieved employees the premium compensation mandated by Labor Code 226.7(b) for these missed meal periods. As a result of the violations of California Labor Code §§ 226.7 and 512, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

Defendants failed to maintain a policy that provides their employees with off-duty rest periods as required by California law. For the reasons explained above, Plaintiff and the aggrieved employees regularly worked in one or more shifts in excess of three and one-half (3.5) hours without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7 and 512. Defendants failed to pay Plaintiff and the aggrieved employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. As a result of the violations of California Labor Code §§ 226.7 and 512, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Provide Notice to Employees

Defendants violated Labor Code § 2810.5 by failing to provide written notice to Plaintiff and the aggrieved employees. By virtue of misclassifying her employees as independent contractors or exempt from overtime, Defendants failed to provide Plaintiff and the aggrieved employees with written notice containing information of the name of their employer, including any “doing business as” names used by the employer, the physical address and telephone number of the employer’s main office, the name, address, and telephone number of the employer's workers’ compensation insurance carrier, and the rate of pay. As such, Plaintiff contends that he and the other aggrieved employees are entitled to penalties in the amount of \$100 for each first violation and \$200 for each subsequent violation pursuant to Labor Code § 2699(f)(2).

Unlawful Failure to Furnish Accurate Wage Statements

Defendants violated California Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing gross wages earned. Plaintiff contends that as a result of Defendants’ other Labor Code violations due to the violations alleged above, Defendants failed to accurately record the gross wages earned, net wages earned, hours worked, and rates of pay for Plaintiff and other aggrieved employees. As a result of the violations of California Labor Code § 226(a), Defendants are liable for civil penalties pursuant to California Labor Code §§ 226.3 and 2698 et seq.

Unlawful Late Payment of Wages

Defendants violated California Labor Code § 204, which requires employers to pay all wages earned no less than the payday for the next regular payroll period. For the reasons explained above, Defendants failed to pay Plaintiff and the aggrieved employees by the next payroll period in which such wages were earned. As a result of the violations of California Labor Code § 204, Defendants are liable for civil penalties pursuant to California Labor Code §§ 210 and 2698 et seq.

Unlawful Failure to Reimburse Expenses

Defendants failed to indemnify Plaintiff and the aggrieved employees for all necessary expenses or losses incurred by them. Defendants failed to reimburse Plaintiff and the aggrieved employees for cell phone usage, internet usage, personal telephones, and expenses associated with compulsory use of their vehicle when traveling between jobsites. California Labor Code § 2802 requires the employer to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties. As a result of the violations of California Labor Code § 2802, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558, 2802 and 2698 et seq.

Unlawful Failure to Pay Wages Due Upon Termination

Defendants has violated California Labor Code § 201 and 202 by willfully failing to pay all compensation due and owing to all former Defendants’ non-exempt employees at the time employment was terminated. Plaintiff and the other aggrieved employees were not paid their

overtime pay, minimum wages, reimbursements, and/or meal and rest break premiums. Pursuant to Labor Code §§ 203 and 256, the aggrieved employees are entitled to recover up to thirty (30) days of wages due to Defendants' willful failure to comply with the statutory requirements of §§ 201 and 202 of the Labor Code. Additionally, because Defendants violated California Labor Code §§ 201 and 203, Defendants are liable for civil penalties pursuant to California Labor Code § 2698 et seq.

Unlawful Whistleblower Retaliation

Defendants have violated California Labor Code § 1102.5 by retaliating against Plaintiff and the aggrieved employees who complained about the unlawful practices by Defendants as alleged herein. Such retaliatory acts include but are not limited to reducing Plaintiff's working hours and terminating Plaintiff. As a result of the violations of California Labor Code § 2802, Defendants are liable for civil penalties pursuant to California Labor Code §§ 1102.5(f) and 98.6(b)(3).

Conclusion

Defendants have violated or has caused to be violated a number of California wage and hour laws. Plaintiff request that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Plaintiff requests the agency inform them if it does not intend to investigate these violations so that Plaintiff may pursue a claim under the PAGA pursuant to Labor Code § 2698 et seq.

Sincerely,



KIM LEGAL, APC

Frank H. Kim

EXHIBIT 4

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WESTLAKE VILLAGE, CALIFORNIA 91362

PHONE (818) 703-8985
FAX (818) 703-8984

December 22, 2023

Via Certified Mail

Labor & Workforce Development Agency
By online submission

IGS Solutions LLC
767 S. Alameda St, Suite 480
Los Angeles, CA 90021 Defendant mailed certified # 9589071052700506685852

Strategic Green Partners LLC
728 E Commercial St
Los Angeles, CA 90012 Defendant mailed certified # 9589071052700506685845

Shryne Group, Inc.
2001 S Alameda St
Los Angeles, CA 90058 Defendant mailed certified # 9589071052700506685838

Stiiizy, LLC
2001 S Alameda St
Los Angeles, CA 90058 Defendant mailed certified # 9589071052700506685821

Ironworks Collective Inc.
2001 S Alameda St
Los Angeles, CA 90058 Defendant mailed certified # 9589071052700506685814

Agent for Service of Process for all Defendants
Legalinc Registered Agents, Inc.
10601 Clarence Dr., Ste. 250
Frisco, TX 75033 Agent mailed certified # 9589071052700506685807

Re: ***Labor Code Violations of IGS Solutions LLC – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act
LWDA-CM-817954-21***

Dear LWDA:

This letter supplements our previous correspondence sent on January 6, 2021 and alleges additional claims.

Labor & Workforce Development Agency
IGS Solutions LLC
Strategic Green Partners LLC
Shryne Group, Inc.
Stiiizy, LLC
Ironworks Collective Inc.
Legalinc Registered Agents, Inc.
December 22, 2023
Page 2

This office represents Jenice Cole and Shauna Adams ("Plaintiffs"), current non-exempt California employees of IGS Solutions LLC, Strategic Green Partners LLC, Shryne Group, Inc., Stiiizy, LLC, and/or Ironworks Collective Inc. (collectively, "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.*

Plaintiffs were employed by Defendants in Northern California. Herein we set forth the facts and theories of California Labor Code violations that we allege Defendants engage in with respect to Plaintiffs and other of their non-exempt California employees ("Aggrieved Employees").

Plaintiffs, on behalf of themselves and Aggrieved Employees, claim that Defendants failed to pay all wages due, in violation of Labor Code §§ 221, 510, 1182.11, 1182.12, 1194, 1197, and 1198. Defendants required Plaintiffs and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and after clocking out at the end of their shifts, including, but not limited to, assisting customers with purchases, handling complaints from customers, taking inventory, ordering inventory and supplies, conducting audits, performing daily cash intakes, creating reports, assisting with payroll, preparing documents, and training new employees. Still, Defendants deducted wages for such time that Plaintiffs and the Aggrieved Employees spent working. Additionally, Defendants deducted as many as 16 hours per pay period from the wages Plaintiffs and the Aggrieved Employees earned and recorded. Plaintiffs and the Aggrieved Employees also regularly spent approximately one hour on duty after clocking out to complete required tasks prior to leaving work. Defendants, however, failed to pay Plaintiffs and the Aggrieved Employees for this off-the-clock work.

Defendants failed to pay Plaintiffs and other Aggrieved Employees all minimum wages and overtime wages earned, in violation of Labor Code §§ 510, 558, 1194 and 1194.2. Plaintiffs and other Aggrieved Employees were required to work off-the-clock, as discussed above. For example, they were required to count up and divide all gratuities earned for the workday, among other work tasks, all after clocking out from their shift, thereby depriving them of all wages due. This violates Labor Code §§ 510, 558, 1194, and 1194.2.

Plaintiffs also allege that Defendants failed to pay premium wages to them and other Aggrieved Employees who were denied rest periods, in violation of Labor Code §§ 226.7, 558, and 1198 and IWC Wage Order No. 4-2001. Plaintiffs and Aggrieved Employees were routinely unable to take an on-duty 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Plaintiffs and other Aggrieved Employees were simply not authorized to take rest periods and frequently worked through them. This violates Labor Code §§ 226.7, 558, and 1198 and IWC Wage Order 4-2001.

Defendants failed to pay premium wages to Plaintiffs and Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 510, 512, 558, 1194, 1198, and IWC Wage Order 4-2001. Plaintiffs and Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, off-duty 30-minute meal period for every shift worked that exceeds five hours in duration, or a second timely, uninterrupted, off-duty 30-minute meal period for every shift worked that exceeds ten hours in duration, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were provided with a meal period, they were late, cut short or they were required to work through them, as discussed above. This violates Labor Code §§ 226.7, 510, 512, 558, 1194, 1198, and IWC Wage Order 4-2001.

Defendants required Plaintiffs and Aggrieved Employees to incur certain business expenses in the course of performing their duties, in violation of Labor Code §§ 1198, 2800, 2802, and 2804. Defendants required Plaintiffs and the Aggrieved Employees to download the "WhenIWork" and "WhatsApp" applications on their personal mobile phones to check their schedules and communicate with management and other employees both while working and when they were clocked out from work. Defendants failed to reimburse Plaintiffs and the Aggrieved Employees for mobile phone charges, nor did they offer them a free alternative to such personal phone use. Defendants also failed to offer an alternative for checking work schedules. Defendants also required Plaintiffs and the Aggrieved Employees to use their personal vehicles to make deliveries, bank deposits, and pick up necessary supplies. Defendants did not reimburse Plaintiffs and the Aggrieved Employees for such vehicle-related expenses. Additionally, Defendants required Plaintiffs and the Aggrieved Employees to supply their own protective gear, including work equipment such as gloves and knives, auto insurance, use of personal vehicles, cleaning supplies, uniform maintenance, maintenance and repair of vehicles, and costs for hotel rooms when travelling for work. With regard to uniforms, Defendants provided only two shirts and a sweater free of charge and required Aggrieved Employees to purchase other apparel if they needed additional uniform items. With regard to travel, defendants require Plaintiffs and the Aggrieved Employees to travel in their personal vehicles to purchase office supplies. Defendants failed to reimburse Plaintiffs and the Aggrieved Employees for such vehicle-related expenses. This violates Labor Code §§ 1198, 2800, 2802, and 2804.

Defendants failed to provide Plaintiffs and all of Aggrieved Employees with the categories of paid sick leave specified above at their regular rates of pay. Defendants at times conditioned such leaves of absence on finding other employees to cover for the employee concerned. This violates Labor Code §§ 232, 233, 246, and 246.5.

Labor & Workforce Development Agency
IGS Solutions LLC
Strategic Green Partners LLC
Shryne Group, Inc.
Stiiizy, LLC
Ironworks Collective Inc.
Legalinc Registered Agents, Inc.
December 22, 2023
Page 4

Defendants also failed to provide a day of rest by failing to provide Plaintiffs and Aggrieved Employees at least one day of rest out of seven days. This violates Labor Code §§ 551 and 552.

Defendants also failed to timely make available the contents of the personnel records of Plaintiffs and Aggrieved Employees within the time required by statute. This violates Labor Code § 1198.5.

Defendants also required Plaintiffs and Aggrieved Employees to refrain from disclosing the amount of their wages, in violation of Labor Code §§ 204, 232, 432, 2350, 2699, 2810.5, 6300, 6400, 6401, 6402, and 6403.

Defendants failed to maintain accurate employment and payroll records for Plaintiffs and Aggrieved Employees. Defendants failed to keep accurate time records reflecting the time that Plaintiffs and Aggrieved Employees began their work shift, started and ended their meal periods, and when their work shifts ended. This violates Labor Code § 1174.

Plaintiffs claim that Defendants failed to pay them and other Aggrieved Employees all gratuities due, in violation of Labor Code §§ 351 and 353. Plaintiffs and other Aggrieved Employees were forced to share their tips with Defendants (including supervisors and managers), in violation of Labor Code § 351, which states, in pertinent part, that “[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.”

Defendants also failed to issue Plaintiffs and Aggrieved Employees accurate itemized wage statements. At times, Defendants failed to issue any wage statements to non-exempt employees like Plaintiffs and the Aggrieved Employees. Thus, employees sometimes have no method of verifying that they were being paid all wages due and were not provided accurate information regarding their employment. This violates Labor Code §§ 226(a) and 226.3. When Plaintiffs do receive wage statements during their employment, they further allege that the wage statements fail to fully and accurately itemize the requirements set forth in Labor Code §§ 226(a) and 226.3. Plaintiffs and other Aggrieved Employees were not paid all minimum, overtime, and double-time wages due, and premium meal and rest period wages due, as stated above. As such, the wage statements provided by Defendants fail to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, Labor Code §§ 226(a)(9) and 226.3.

Labor & Workforce Development Agency
IGS Solutions LLC
Strategic Green Partners LLC
Shryne Group, Inc.
Stiiizy, LLC
Ironworks Collective Inc.
Legalinc Registered Agents, Inc.
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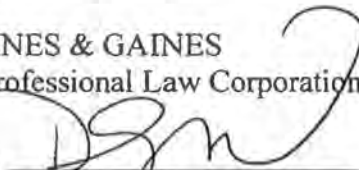
Plaintiffs further allege that Defendants failed to pay them and Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201, 201.5, 202, 203, and 227.3. As stated above, Plaintiffs and Aggrieved Employees were not paid all wages due (including vacation wages) during the course of their employment and, as a result of this failure, some were not timely paid all wages due (including vacation wages) at the separation of their employment. This violates Labor Code §§ 201, 201.5, 202, 203, and 227.3 and is alleged on behalf of Plaintiffs and certain Aggrieved Employees no longer employed by Defendants.

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By:


DANIEL F. GAINES

cc: Todd B. Scherwin, Esq. (by e-mail only)
Christopher D. Chaplin, Esq. (by e-mail only)

EXHIBIT 5

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Christopher Lui

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7 Attorney for Plaintiff,

KASSANDRA MENDIVIL

8 (Additional Counsel on Following Page)

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 KASSANDRA MENDIVIL, on behalf of
14 herself, and as an “aggrieved employee” on
15 behalf of other similarly situated “aggrieved
16 employees” under the Labor Code Private
17 Attorney General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 IGS SOLUTIONS, LLC, a California limited
21 liability company, AUTHENTIC 760 LLC, a
22 California limited liability company, SHRYNE
23 GROUP, INC., a California corporation; and
24 DOES 1 through 50, inclusive,

25 *Defendant(s).*

Case No.: **20STCV45949**

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff KASSANDRA MENDIVIL (hereafter “Plaintiff”), on behalf of herself, the
2 State of California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 4-2001 (hereafter “the
6 Wage Order”), against IGS SOLUTIONS, LLC, a California limited liability company,
7 AUTHENTIC 760 LLC, a California limited liability company, SHRYNE GROUP, INC., a
8 California corporation, and Does 1-50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and other similarly situated aggrieved current and former employees
11 who worked in California as hourly assistant managers, managers, inventory managers,
12 budtenders, receptionists, fillers, fulfillment and employees in similar positions, at any time
13 during the period of September 21, 2019 to the present, for civil penalties and other related
14 relief. These claims are based on Defendants’ alleged failures to (1) pay all wages earned for all
15 hours worked at the correct rates of pay, (2) provide all rest breaks and meal periods, (3)
16 indemnify Plaintiff and the below-described Aggrieved Employees for reasonable expenses
17 incurred during the course of performing their duties, (4) provide accurate written wage
18 statements, (5) timely pay wages during employment, (6) timely pay final wages upon
19 termination of employment and (8) maintain accurate employment records. Accordingly,
20 Plaintiff now seeks to recover civil penalties and related relief through this representative
21 action.

22 **II. JURISDICTION AND VENUE**

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

26 4. Venue is proper in Los Angeles County pursuant to California Code of Civil
27 Procedure sections 395(a) and 395.5 in that liability arose in Los Angeles County because at
28 least some of the transactions that are the subject matter of this Complaint occurred therein



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1 and/or because each defendant is found, maintains offices, transacts business, and/or has an
2 agent therein.

3 **III. THE PARTIES**

4 5. Plaintiff is a resident of Thousand Palms, California. Defendants employed
5 Plaintiff from February 12, 2020 to approximately April 27, 2020 as an assistant manager. At all
6 relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of
7 Regulations Section 11040 and an “Aggrieved Employee” within the meaning of Labor Code
8 Section 2699(c).

9 6. Defendant IGS SOLUTIONS, LLC is a limited liability company organized and
10 existing under the laws of California and a citizen of California based on Plaintiff’s information
11 and belief.

12 7. Defendant AUTHENTIC 760 LLC is a limited liability company organized and
13 existing under the laws of California and a citizen of California based on Plaintiff’s information
14 and belief.

15 8. Defendant SHRYNE GROUP, INC. is a corporation organized and existing
16 under the laws of California and a citizen of California based on Plaintiff’s information and
17 belief.

18 9. **The Aggrieved Employees:** The “Aggrieved Employees” are all individuals
19 Defendants employed in California as hourly assistant managers, managers, inventory
20 managers, budtenders, receptionists, fillers, fulfillment, and in similar positions, during the
21 period of September 21, 2019 and entry of judgment (“the PAGA Period”).

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

28 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times



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1 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
2 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
3 and scope of such agency or employment, and with the approval and ratification of each of the
4 other Defendants.

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

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

14 **IV. FACTUAL ALLEGATIONS**

15 14. Defendants first employed Plaintiff on or about February 12, 2020 to work as an
16 assistant manager at their Authentic 760 cannabis dispensary located at 72180 CA-111 in Palm
17 Desert, California. Plaintiff continuously worked for Defendants from the time of her hire until
18 approximately April 27, 2020 when Defendants terminated her employment.

19 15. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
20 to perform tasks during their off-the-clock meal periods and after clocking out at the end of their
21 shifts, including, but not limited to, assisting customers with purchases, handling complaints
22 from customers, taking inventory, ordering inventory and supplies, conducting audits,
23 performing daily cash intakes, creating reports, assisting with payroll, preparing documents, and
24 training new employees. Plaintiff and the Aggrieved Employees regularly spent approximately
25 one hour on duty after clocking out to complete required tasks prior to leaving work.
26 Defendants, however, failed to pay Plaintiff and the other Aggrieved Employees for this off-the-
27 clock work.

28 16. At all relevant times, Plaintiff and the Aggrieved Employees have worked over



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1 eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this,
2 Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and
3 meal periods pursuant to California law, including, but not limited to, two timely 30-minute
4 uninterrupted meal periods and three ten-minute rest periods on workdays they worked more
5 than ten hours. Defendants failed to hire sufficient staff members to cover Plaintiff and the
6 Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-
7 minute meal periods. Even when Plaintiff and the Aggrieved Employees tried to take duty-free
8 rest and/or meal periods, other employees and managers, including Brenda (last name
9 unknown), Joanna (last name unknown), Catherine (last name unknown), Store Manager Daniel
10 (last name unknown), and Retail District Manager, Jennifer Arteaga (collectively “Defendants’
11 Managers”) interrupted them with requests for help serving customers and for other business
12 needs. Further, on the rare occasions that Defendants permitted Plaintiff and the Aggrieved
13 Employees to take timely, off-duty rest breaks, Defendants required her and the Aggrieved
14 Employees to remain on the premises. Defendants did not request an exemption from
15 California’s rest period law from the Division of Labor Standards Enforcement.

16 17. Defendants also often failed to provide Plaintiff and the Aggrieved Employees
17 with 30-minute meal periods before their fifth work hour. Defendants’ Managers required
18 Plaintiff and the Aggrieved Employees to request permission prior to taking a meal period,
19 which they often prohibited, due to the press of business. On a number of occasions, Plaintiff
20 complained to Defendants’ Managers about Defendants’ failure to provide her and the
21 Aggrieved Employees with timely rest and meal periods. In spite of this, Defendants refused to
22 make changes.

23 18. At all relevant times, Defendants’ Managers instructed Plaintiff and the
24 Aggrieved Employees to falsify their timecards and clock out for meal periods they did not take.
25 Defendants’ Managers also modified Plaintiff’s and the other Aggrieved Employees’ time
26 records to falsely state that they took duty-free, timely, 30-minute meal periods. Defendants
27 failed to compensate Plaintiff and the other Aggrieved Employees for this work. Finally,
28 Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages for days on



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1 which they failed to provide them with all timely meal periods and unrestricted rest periods.

2 19. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
3 to incur certain business expenses in the course of performing their duties. Defendants
4 instructed Plaintiff and the Aggrieved Employees to download the “WhenIWork” and
5 “WhatsApp” applications on their personal mobile phones to check their schedules and
6 communicate with management and other employees while working and when they were
7 clocked out from work. Defendants failed to pay Plaintiff and the Aggrieved Employees for this
8 time spent working while clocked out. Further, Defendants failed to reimburse Plaintiff and the
9 Aggrieved Employees for mobile phone charges, nor did they offer them a free alternative to
10 such personal phone use. Defendants also failed to offer an alternative for checking work
11 schedules. Defendants also required Plaintiff and the Aggrieved Employees to use their personal
12 vehicles to make bank deposits and pick up necessary supplies. Defendants did not reimburse
13 Plaintiff and the Aggrieved Employees for such mileage expenses.

14 20. For the reasons stated herein, Plaintiff alleges that as a result of Defendants’
15 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

16 A. Not paid all wages earned, including but not limited to, minimum wages for
17 all hours worked, one and one-half times their regular rates of pay for all hours worked over
18 eight hours in one workday, over 40 hours in one workweek, and double time wages for all
19 hours worked over 12 hours in one workday;

20 B. Not provided with all rest breaks and timely meal periods;

21 C. Not reimbursed for the reasonable expenses incurred during the course of
22 performing their duties;

23 D. Not paid one hour’s pay for each workday in which Defendants failed to
24 provide them with one or more timely rest periods;

25 E. Not paid one hour’s pay for each workday in which Defendants failed to
26 provide them with one or more timely meal periods;

27 F. Not provided with accurate and complete wage statements;

28 G. Not provided with accurate employment records; and



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1 H. Not timely paid all earned and unpaid wages during their employment with
2 Defendants and at the time such employment ended.

3 **V. FIRST AND ONLY CAUSE OF ACTION**

4 **CIVIL PENALTIES**

5 **(Lab. Code §§ 2698, *et seq.*)**

6 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all**
7 **Defendants)**

8 21. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.
9 **A. FAILURE TO PAY FOR ALL HOURS WORKED AT THE CORRECT RATES**
10 **OF PAY**

11 22. At all relevant times, Plaintiff and the Aggrieved Employees have been entitled
12 to the benefits and protections of California Labor Code §§ 510, 1194, 1197, 1198, and the
13 Wage Order.

14 23. Section 2 of the Wage Order defines “hours worked” as “the time during which
15 an employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so.” As the California Supreme
17 Court has explained, this definition is disjunctive, meaning time can be an “hour worked” if
18 either (a) the employee is subject to the employer's control, or (b) the employer suffers or
19 permits the employee to work during that time, whether or not the employee is required to do
20 so. *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal. 4th 833, 838 (citing *Morillion v. Royal*
21 *Packing Co.* (2000) 22 Cal.4th 575, 582-83).

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

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

24 (1) The following overtime provisions are applicable to
25 employees 18 years of age or over and to employees 16 or 17
26 years of age who are not required by law to attend school and
27 are not otherwise prohibited by law from engaging in the
28 subject work. Such employees shall not be employed more
than eight (8) hours in any workday or more than 40 hours in
any workweek unless the employee receives one and one-half
(1 1/2) times such employee's regular rate of pay for all hours



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1 worked over 40 hours in the workweek. Eight (8) hours of
2 labor constitutes a day's work. Employment beyond eight (8)
3 hours in any workday or more than six (6) days in any
4 workweek is permissible provided the employee is
5 compensated for such overtime at not less than:

6 (a) One and one-half (1 1/2) times the employee's regular rate of
7 pay for all hours worked in excess of eight (8) hours up to and
8 including 12 hours in any workday, and for the first eight (8)
9 hours worked on the seventh (7th) consecutive day of work in a
10 workweek; and

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

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

18 26. In relevant part, California Labor Code § 510 states,

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

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

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

30 29. Labor Code section 1198 makes it unlawful for an employer to employ an



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1 employee under conditions that violate the Wage Order.

2 30. In conjunction, these provisions of the Labor Code require employers to pay
3 non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all
4 hours worked, including unrecorded hours when the employer knew or reasonably should have
5 known that employees were working during those hours. (See *Morillion v. Royal Packing Co.*
6 (2000) 22 Cal.4th 575, 585.)

7 31. At all relevant times, Defendants required Plaintiff and the Aggrieved
8 Employees to perform tasks during their off-the-clock meal periods and after clocking out at the
9 end of their shifts, including, but not limited to, assisting customers with purchases, handling
10 complaints from customers, taking inventory, ordering inventory and supplies, conducting
11 audits, performing daily cash intakes, creating reports, assisting with payroll, preparing
12 documents, and training new employees. Plaintiff and the Aggrieved Employees regularly spent
13 approximately one hour on duty after clocking out to complete required tasks prior to leaving
14 work. Defendants, however, failed to pay Plaintiff and the other Aggrieved Employees for this
15 off-the-clock work.

16 32. At all relevant times, Defendants knowingly failed to compensate Plaintiff and
17 the Aggrieved Employees for all hours worked, including but not limited to, minimum,
18 overtime and double time wages. As such, Defendants failed to compensate Plaintiff and the
19 Aggrieved Employees for all hours worked at the correct rates of pay.

20 33. Plaintiff is informed and believes that, at all relevant times, Defendants have
21 applied centrally devised policies and practices to her and the Aggrieved Employees with
22 respect to working conditions and compensation arrangements.

23 34. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
25 Defendants' failure to compensate the Aggrieved Employees for all hours worked at the correct
26 rates of pay as required by California law.

27 ///

28 ///



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1 **B. UNPROVIDED REST PERIODS**

2 35. In relevant part, Section 12 of the Wage Order states

3 “Rest Periods:

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

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

18 36. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break
19 should fall on either side of the meal break. (Ibid.)” *Brinker Rest. Corp. v. Superior Court*
20 (2012) 53 Cal. 4th 1004, 1032.

21 37. In addition, Labor Code Section 226.7 states

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

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

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



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1 39. By not providing adequate staff to relieve Plaintiff and the Aggrieved Employees
2 of their duties, Defendants have intentionally and improperly failed to provide all rest breaks
3 free from any work or duties to Plaintiff and the Aggrieved Employees in accordance with the
4 Wage Order, including, but not limited to, a third rest break when they worked more than 10
5 hours in a workday. Even when Plaintiff and the Aggrieved Employees tried to take duty-free
6 rest periods, other employees and managers, including Brenda (last name unknown), Joanna
7 (last name unknown), Catherine (last name unknown), Store Manager Daniel (last name
8 unknown), and Retail District Manager, Jennifer Arteaga (collectively “Defendants’ Managers”)
9 interrupted them with requests for help serving customers and for other business needs. Further,
10 on the rare occasions that Defendants permitted Plaintiff and the Aggrieved Employees to take
11 timely, off-duty rest breaks, Defendants required her and the Aggrieved Employees to remain
12 on the premises. Defendants did not request an exemption from California’s rest period law
13 from the Division of Labor Standards Enforcement.

14 40. Plaintiff is informed and believes and thereon alleges that, at relevant times
15 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
16 which resulted in Defendants not providing the Aggrieved Employees with all timely rest breaks
17 required by California law.

18 41. Defendants failed to pay Plaintiff the additional wages required by California
19 Labor Code § 226.7 for workdays in which one or more timely rest breaks were not provided to
20 her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the
21 applicable limitations period, Defendants have maintained a policy, practice, or a lack of a
22 policy which resulted in Defendants not providing the Aggrieved Employees with additional
23 wages for all workdays on which one or more timely rest breaks were not provided to them as
24 required by California Labor Code § 226.7.

25 **C. UNPROVIDED MEAL PERIODS**

26 42. In relevant part, Labor Code Section 512 states

27 “An employer may not employ an employee for a work period of more
28 than five hours per day without providing the employee with a meal
 period of not less than 30 minutes, except that if the total work period per



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

6 43. In relevant part, Section 11 of the Wage Order states

7 “Meal Periods

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

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

15 44. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
16 Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes
17 for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on
18 days they worked more than ten hours.

19 45. By not providing adequate staff to relieve Plaintiff and the Aggrieved Employees
20 of their duties, Defendants have intentionally and improperly failed to provide all meal periods
21 free from any work or duties to Plaintiff and the Aggrieved Employees in accordance with the
22 Wage Order, including, but not limited to, a second 30-minute meal period when they worked in
23 excess of ten hours in a workday. Even when Plaintiff and the Aggrieved Employees tried to
24 take duty-free meal periods, other employees and managers, including Brenda (last name
25 unknown), Joanna (last name unknown), Catherine (last name unknown), Store Manager Daniel
26 (last name unknown), and Retail District Manager, Jennifer Arteaga (collectively “Defendants’
27 Managers”) interrupted them with requests for help serving customers and for other business
28 needs.



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1 46. Defendants also often failed to provide Plaintiff and the Aggrieved Employees
2 with 30-minute meal periods before their fifth work hour. Defendants' Managers required
3 Plaintiff and the Aggrieved Employees to request permission prior to taking a meal period,
4 which they often prohibited, due to the press of business. On a number of occasions, Plaintiff
5 complained to Defendants' Managers about Defendants' failure to provide her and the
6 Aggrieved Employees with timely rest and meal periods. In spite of this, Defendants refused to
7 make changes.

8 47. At all relevant times, Defendants' Managers instructed Plaintiff and the
9 Aggrieved Employees to falsify their timecards and clock out for meal periods they did not take.
10 Defendants' Managers also modified Plaintiff's and the other Aggrieved Employees' time
11 records to falsely state that they took duty-free, timely, 30-minute meal periods. Defendants
12 failed to compensate Plaintiff and the other Aggrieved Employees for this work.

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

17 49. Defendants failed to pay Plaintiff the additional wages required by California
18 Labor Code § 226.7 for all workdays in which one or more timely meal periods were not
19 provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times
20 within the applicable limitations period, Defendants have maintained a policy, practice, or a
21 lack of a policy which resulted in Defendants not providing the Aggrieved Employees with
22 additional wages for all workdays on which one or more timely meal periods were not provided
23 to them as required by California Labor Code § 226.7.

24 **D. FAILURE TO REIMBUSE FOR BUSINESS EXPENSES**

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

28 51. In relevant part, Section 9 of the Wage Order states,



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(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

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

53. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Defendants instructed Plaintiff and the Aggrieved Employees to download the “WhenIWork” and “WhatsApp” applications on their personal mobile phones to check their schedules and communicate with management and other employees while working and when they were clocked out from work. Defendants failed to pay Plaintiff and the Aggrieved Employees for this time spent working while clocked out. Further, Defendants failed to reimburse Plaintiff and the Aggrieved Employees for mobile phone charges, nor did they offer them a free alternative to such personal phone use. Defendants also failed to offer an alternative for checking work schedules. Defendants also required Plaintiff and the Aggrieved Employees to use their personal vehicles to make bank deposits and pick up necessary supplies. Defendants did not reimburse Plaintiff and the Aggrieved Employees for such mileage expenses.

E. INCOMPLETE AND INACCURATE WAGE STATEMENTS

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

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

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



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

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

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

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

11 E. The number of piece-rate units earned and the piece rate.

12 56. "Promptly and easily determine," as stated in California Labor Code section
13 226(e), means a reasonable person would be able to readily ascertain the information without
14 reference to other documents or information.

15 57. As alleged herein, Defendants failed to pay Plaintiff and the Aggrieved
16 Employees all wages owed. As a result, Defendants have failed to properly and accurately
17 itemize each employee's gross wages earned, net wages earned, total hours worked,
18 corresponding number of hours worked, and other requirements of California Labor Code
19 section 226. As a result, Defendants have violated California Labor Code section 226.

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

24 59. As a result of being provided with inaccurate wage statements by Defendants,
25 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
26 accurate wage statements were violated and they were misled about the amount of wages they
27 had actually earned and were owed. In addition, the absence of accurate information on their
28 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has
required discovery and mathematical computations to determine the amounts of wages owed,
has caused difficulty and expense in attempting to reconstruct time and pay records and/or has
led to the submission of inaccurate information about wages to state and federal government



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1 agencies. Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the
2 wage statements whether Defendants complied with their obligations under California Labor
3 Code section 226(a).

4 **F. UNTIMELY WAGES DURING EMPLOYMENT**

5 60. Labor Code section 204 states:

6 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
7 or 204.2, earned by any person in any employment are due and payable twice
8 during each calendar month, on days designated in advance by the employer as
9 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
10 of any calendar month shall be paid for between the 16th and the 26th day of the
11 month during which the labor was performed, and labor performed between the
12 16th and the last day, inclusive, of any calendar month, shall be paid for
13 between the 1st and 10th day of the following month. ...

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

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

23 (c) However, when employees are covered by a collective bargaining
24 agreement that provides different pay arrangements, those arrangements shall
25 apply to the covered employees.

26 (d) The requirements of this section shall be deemed satisfied by the
27 payment of wages for weekly, biweekly, or semimonthly payroll if the wages
28 are paid not more than seven calendar days following the close of the payroll
period.

29 61. Defendants paid wages to employees on regular intervals. Defendants failed to
30 pay Plaintiff on such intervals for all wages earned and all hours worked. On information and
31 belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
32 intervals for all wages earned and all hours worked.

33 **G. UNTIMELY FINAL WAGES**

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



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

64. By failing to pay Plaintiff and the Aggrieved Employees earned minimum, overtime, and double time wages, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

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

H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

66. Labor Code section 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

67. Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

68. Section 7 of Wage Order states,



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(a) Every employer shall keep accurate information with respect to each employee including the following:

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

69. On information and belief, Plaintiff alleges that Defendants failed to maintain accurate employment records for Plaintiff and the Aggrieved Employees.

I. CIVIL PENALTIES SOUGHT

70. During the applicable time period, Defendants violated California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

72. Pursuant to California Labor Code section 2699, subdivisions (a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

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

B. For violations of California Labor Code section 226(a), two hundred fifty



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dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code section 226.3).

C. For violations of California Labor Code sections 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

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

E. For violations of California Labor Code sections 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code section 2699(f)(2)).

F. For the violations of California Labor Code section 1174, \$500 for each aggrieved employee for each violation of California Labor Code section 1174 (penalty amounts established by California Labor Code § 1174.5).

J. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

73. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code section 2699.3. By letter dated September 21, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated September 21, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

74. Pursuant to California Labor Code section 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in



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connection with their claims for civil penalties.

VI. PRAYER FOR RELIEF

75. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, pray for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit; and
- C. Reasonable attorney's fees.

76. For clarity, any reference above to liabilities other than PAGA civil penalties is made only to establish liability for PAGA civil penalties. Plaintiff stipulates that this lawsuit seeks only recovery of PAGA civil penalties for Plaintiff and the Aggrieved Employees, costs of suit, and reasonable attorneys' fees.

VII. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: November 30, 2020

By: _____



DAVID SPIVAK
MARALLE MESSRELIAN
Attorneys for Plaintiff, KASSANDRA
MENDIVIL, and the Aggrieved Employees



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

September 21, 2020

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

RE: *Kassandra Mendivil/ Shryne Group, Inc.*

To whom it may concern:

This notice concerns the following employers:

1. IGS Solutions, LLC
2. Authentic 760 LLC
3. Shryne Group, Inc.

Collectively, the aforementioned employers are herein referred to as “Shryne Group.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Kassandra Mendivil (hereafter “Mendivil”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly employees, including but not limited to assistant managers, managers, inventory managers, budtenders, receptionists, fillers, fulfillment and other comparable positions (hereafter referred to as “Aggrieved Employees”), by Shryne Group of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, 1198 and 2802.

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At all relevant times, Shryne Group has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Mendivil and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Shryne Group first employed Mendivil on or about February 12, 2020 to work as an assistant manager at its Authentic 760 cannabis dispensary located at 72180 CA-111 in Palm Desert, California. Mendivil worked at Authentic 760 for Shryne Group continuously from the time of her hire until approximately April 27, 2020 when Shryne Group terminated her employment.

At all relevant times, Shryne Group paid Mendivil and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Shryne Group classified Mendivil and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Shryne Group required Mendivil and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and after clocking out at the end of their shifts, including, but not limited to, assisting customers with purchases, handling complaints from customers, taking inventory, ordering inventory and supplies, conducting audits, performing daily cash intakes, creating reports, assisting with payroll, preparing documents, and training new employees. Mendivil and the Aggrieved Employees regularly spent approximately one hour on duty after clocking out to complete required tasks prior to leaving work. Shryne Group, however, failed to pay Mendivil and the other Aggrieved Employees for this off-the-clock work.

At all relevant times, Mendivil and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Shryne Group failed to provide Mendivil and the Aggrieved

Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Shryne Group failed to hire sufficient staff members to cover Mendivil and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Even when Mendivil and the Aggrieved Employees tried to take duty-free rest and/or meal periods, other Shryne Group employees and managers, including Brenda (last name unknown), Joanna (last name unknown), Catherine (last name unknown), Store Manager Daniel (last name unknown), and Retail District Manager, Jennifer Arteaga (collectively “the Shryne Group Managers”) interrupted them with requests for help serving customers and for other Shryne Group business. Further, on the rare occasions that the Shryne Group permitted Mendivil and the Aggrieved Employees to take timely, off-duty rest breaks, Shryne Group required her and the Aggrieved Employees to remain on the premises. Shryne Group did not request an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Shryne Group also often failed to provide Mendivil and the Aggrieved Employees with 30-minute meal periods before their fifth work hour. The Shryne Group Managers required Mendivil and the Aggrieved Employees to request permission prior to taking a meal period, which they often prohibited, due to the press of business. On a number of occasions, Mendivil complained to the Shryne Group Managers about Shryne Group’s failure to provide her and the Aggrieved Employees with timely rest and meal periods. In spite of this, Shryne Group refused to make changes.

At all relevant times, the Shryne Group Managers instructed Mendivil and the Aggrieved Employees to falsify their timecards and clock out for meal periods they did not take. The Shryne Group Managers also modified Mendivil’s and the other Aggrieved Employees’ time records to falsely state that they took duty-free, timely, 30-minute meal periods. Shryne Group failed to compensate Mendivil and the other Aggrieved Employees for this work. Finally, Shryne Group failed to pay Mendivil and the Aggrieved Employees premium wages

for days on which it failed to provide them with all timely meal periods and unrestricted rest periods.

At all relevant times, Shryne Group required Mendivil and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Shryne Group instructed Mendivil and the Aggrieved Employees to download the “WhenIWork” and “WhatsApp” applications on their personal mobile phones to check their schedules and communicate with management and other Shryne Group employees while working and when they were clocked out from work. Shryne Group failed to pay Mendivil and the Aggrieved Employees for this time spent working while clocked out. Further, Shryne Group failed to reimburse Mendivil and the Aggrieved Employees for mobile phone charges, nor did it offer them a free alternative to such personal phone use. Shryne Group also failed to offer an alternative for checking work schedules. Shryne Group also required Mendivil and the Aggrieved Employees to use their personal vehicles to make bank deposits and pick up necessary supplies. Shryne Group did not reimburse Mendivil and the Aggrieved Employees for such mileage expenses.

As a result of the practices described above, Shryne Group failed to provide Mendivil and the Aggrieved Employees with accurate wage statements that properly and accurately itemize Mendivil and the other Aggrieved Employees’ gross and net wages earned and the total hours worked. As a further result, Shryne Group failed to timely pay Mendivil and the Aggrieved Employees all earned and unpaid wages during, and upon termination of, their employment.

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

- a) Shryne Group failed to pay Mendivil and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum and overtime wages;

- b) Shryne Group failed to provide Mendivil and the Aggrieved Employees with all meal periods;
- c) Shryne Group failed to pay Mendivil and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Shryne Group failed to provide Mendivil and the Aggrieved Employees with all rest breaks;
- e) Shryne Group failed to pay Mendivil and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- f) Shryne Group failed to reimburse Mendivil and the other Aggrieved Employees for expenses incurred in the course of performing of their duties;
- g) Shryne Group failed to provide Mendivil and the Aggrieved Employees with accurate itemized wage statements;
- h) Shryne Group failed to timely pay Mendivil and the Aggrieved Employees all earned and unpaid wages during their employment at Shryne Group and at the time such employment ended; and
- i) Shryne Group failed to maintain accurate employment records.

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate,

commission, or other basis...” At all relevant times during the applicable limitations period, Shryne Group employed Mendivil as an assistant manager to help run its retail store and provide its customers with information and assistance. Accordingly, Mendivil and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

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

In relevant part, section 2 of the Wage Order states,

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be

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

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

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Shryne Group knowingly failed to compensate Mendivil and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed during their off-the-clock meal periods and after clocking out at the end of their shifts.

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

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

4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

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

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

As described above, at all relevant times during the applicable time period, Shryne Group failed to provide Mendivil and the Aggrieved Employees with all timely 30-minute duty-free meal periods.

Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

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

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

Failure To Provide Paid Rest Periods
(Lab. Code §§ 226.7 & 1198)

In relevant part, section 2 of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

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

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

In addition, Labor Code section 226.7 states:

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

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

As described above, Shryne Group required Mendivil and the Aggrieved Employees to work into and/or through their rest periods. Moreover, by requiring Mendivil and the Aggrieved Employees to remain on work premises during their rest periods, Shryne Group has intentionally and improperly failed to provide Mendivil and the Aggrieved Employees with all duty-free rest periods. Further, Shryne Group failed to compensate Mendivil and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely rest periods as provided by California law.

Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

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

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

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

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, Shryne Group required Mendivil and the other Aggrieved Employees to use their personal vehicles and personal mobile phones for work related activities without reimbursing them for their mileage and phone expenses. Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and

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

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

Labor Code section 226 requires employers to provide employees with accurate written wage statements showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee

identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Shryne Group did not pay Mendivil and the Aggrieved Employees minimum, and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Shryne Group failed to provide Mendivil and the Aggrieved Employees with all meal and rest periods in compliance with California law. Shryne Group also failed to provide Mendivil and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. Shryne Group knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Mendivil and the Aggrieved Employees. As a result, Shryne Group has failed to properly itemize Mendivil and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, Shryne Group has violated California Labor Code § 226.

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

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

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

Because of Shryne Group's failure to pay Mendivil and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided off-duty meal and rest periods within the time periods set by California Labor Code § 204, Shryne Group failed to timely pay all wages due during employment. Accordingly, Mendivil now seeks civil penalties for the Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code section 210).

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

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

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

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

Shryne Group did not pay Mendivil and the Aggrieved Employees minimum and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Shryne Group failed to provide Mendivil and the Aggrieved Employees with meal and rest periods in compliance with California law. Shryne Group also failed to provide Mendivil and the other Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. These failures were willful. Due to its willful failures to pay all minimum, overtime, and premium wages earned to Mendivil and the Aggrieved Employees at the time of termination, Shryne Group is liable for violations of Labor Code sections 201, 202, and 203.

Accordingly, Mendivil now seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows:

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

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

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

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be

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

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Kassandra Mendivil
Walter Haines, Esq.

John Malone, Esq., General Counsel – Shryne Group, Inc.
legal@shrynegroup.com

Frank Sanchez, Director of Human Resources – Shryne Group, Inc.
frank@shrynegroup.com

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IGS Solutions, LLC
c/o Legalinc Registered Agents, Inc., agent for service of process
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San Francisco, CA 94111

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EXHIBIT 6

Electronically Received 10/26/2022 11:17 AM



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5 Telephone: (213) 725-9094
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7 Attorney for Plaintiff(s),
KASSANDRA MENDIVIL, and all others similarly situated
8 (Additional Counsel on Following Page)

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

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

15
16 *Plaintiff(s),*
17 vs.

18 IGS SOLUTIONS, LLC, a California limited
19 liability company, STRATEGIC GREEN
PARTNERS LLC dba AUTHENTIC 760, a
20 California limited liability company;
SHRYNE GROUP, INC., a California
21 corporation; and DOES 1 through 50,
22 inclusive,

23 *Defendant(s).*
24
25
26
27
28

FILED
Superior Court of California
County of Los Angeles
11/10/2022
Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Rodriguez Deputy

Case No.: 20STCV45949

CLASS ACTION

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1182.11, 1182.12, 1194, 1197, and 1198);
2. Vacation Pay Forfeiture (Lab. Code § 227.3);
3. Failure to Provide Sick Leave (Lab. Code §§ 233, 246, and 246.5);
4. Failure to Provide Rest Breaks (Lab. Code § 226.7 and 1198);
5. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
6. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
7. Unlawful Tip Collection (Lab. Code § 351);
8. Wage Statement Penalties (Lab. Code § 226);
9. Waiting Time Penalties (Lab. Code §§ 201, 201.5, 202, and 203);

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

JURY TRIAL DEMANDED

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP P.C.
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1 Plaintiff KASSANDRA MENDIVIL (hereafter “Plaintiff”), on behalf of herself and all
2 other similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code and Industrial Welfare Commission Order No. 7-2001 (hereafter “the
6 Wage Order”), against IGS SOLUTIONS, LLC, a California limited liability company,
7 STRATEGIC GREEN PARTNERS LLC dba AUTHENTIC 760, a California limited liability
8 company, SHRYNE GROUP, INC., a California corporation, and Does 1-50, inclusive
(collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants’ alleged failures to (1) pay all wages
12 earned for all hours worked at the correct rates of pay, (2) provide all rest breaks and meal periods,
13 (3) indemnify Plaintiff and the below-described Class Members for reasonable expenses incurred
14 during the course of performing their duties, (4) provide accurate written wage statements, (5)
15 timely pay wages during employment, (6) timely pay final wages upon termination of
16 employment and (8) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages,
17 premium wages, statutory penalties, reimbursement for expenses, and related relief through this
class and representative action.

18 **JURISDICTION AND VENUE**

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

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

25 **THE PARTIES**

26 5. Plaintiff is a resident of Thousand Palms, California. Defendants employed
27 Plaintiff from February 12, 2020 to approximately April 27, 2020 as an assistant manager. At all
28 relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of



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1 Regulations Section 11040 and an “Aggrieved Employee” within the meaning of Labor Code
2 Section 2699(c).

3 6. Defendant IGS SOLUTIONS, LLC is a limited liability company organized and
4 existing under the laws of California and a citizen of California based on Plaintiff’s information
5 and belief.

6 7. Defendant STRATEGIC GREEN PARTNERS LLC dba AUTHENTIC 760 is a
7 limited liability company organized and existing under the laws of California and a citizen of
8 California based on Plaintiff’s information and belief.

9 8. Defendant SHRYNE GROUP, INC. is a corporation organized and existing under
10 the laws of California and a citizen of California based on Plaintiff’s information and belief.

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

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

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

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

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CLASS ACTION ALLEGATIONS

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

14. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as hourly employees, including assistant managers, managers, inventory managers, budtenders, receptionists, fillers, fulfillment employees, drivers, manufacturing employees, production employees, barcoders, brand ambassadors, warehouse employees, cultivation employees, data entry employees, inventory employees, accounting employees, e-commerce employees, and other similar hourly or non-exempt positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

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

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

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

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

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

C. Whether Defendants failed to pay the Class for all hours worked at the correct rates of pay, including but not limited to, minimum, regular, and overtime wages?

D. Whether Defendants failed to indemnify the Class Members for the



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reasonable expenses they incurred during the course of performing their duties;

E. Whether Defendants unlawfully collected the Class Members' monetary tips?

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

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

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

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

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

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

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



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1 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

2 **STATEMENT OF FACTS**

3 22. Defendants first employed Plaintiff on or about February 12, 2020 to work as an
4 assistant manager at their Authentic 760 cannabis dispensary located at 72180 CA-111 in Palm
5 Desert, California. Plaintiff continuously worked for Defendants from the time of her hire until
6 approximately April 27, 2020 when Defendants terminated her employment.

7 23. At all relevant times, Defendants required Plaintiff and the Class Members to
8 perform tasks during their off-the-clock meal periods and after clocking out at the end of their
9 shifts, including, but not limited to, assisting customers with purchases, handling complaints from
10 customers, taking inventory, ordering inventory and supplies, conducting audits, performing daily
11 cash intakes, creating reports, assisting with payroll, preparing documents, and training new
12 employees. Plaintiff and the Class Members regularly spent approximately one hour on duty after
13 clocking out to complete required tasks prior to leaving work. Defendants, however, failed to pay
14 Plaintiff and the other Class Members for this off-the-clock work.

15 24. At all relevant times, Plaintiff and the Class Members have worked over eight (8)
16 hours in one workday and/or over forty (40) hours in one work week. Despite this, Defendants
17 failed to provide Plaintiff and the Class Members with all timely rest and meal periods pursuant
18 to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods
19 and three ten-minute rest periods on workdays they worked more than ten hours. Defendants
20 failed to hire sufficient staff members to cover Plaintiff and the Class Members so they could take
21 duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Even when Plaintiff and
22 the Class Members tried to take duty-free rest and/or meal periods, other employees and
23 managers, including Brenda (last name unknown), Joanna (last name unknown), Catherine (last
24 name unknown), Store Manager Daniel (last name unknown), and Retail District Manager,
25 Jennifer Arteaga (collectively "Defendants' Managers") interrupted them with requests for help
26 serving customers and for other business needs. Further, on the rare occasions that Defendants
27 permitted Plaintiff and the Class Members to take timely, off-duty rest breaks, Defendants
28 required her and the Class Members to remain on the premises. Defendants did not request an
exemption from California's rest period law from the Division of Labor Standards Enforcement.

25 25. Defendants also often failed to provide Plaintiff and the Class Members with 30-
26 minute meal periods before their fifth work hour. Defendants' Managers required Plaintiff and



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1 the Class Members to request permission prior to taking a meal period, which they often
2 prohibited, due to the press of business. On a number of occasions, Plaintiff complained to
3 Defendants' Managers about Defendants' failure to provide her and the Class Members with
4 timely rest and meal periods. In spite of this, Defendants refused to make changes.

5 26. At all relevant times, Defendants' Managers instructed Plaintiff and the Class
6 Members to falsify their timecards and clock out for meal periods they did not take. Defendants'
7 Managers also modified Plaintiff's and the other Class Members' time records to falsely state that
8 they took duty-free, timely, 30-minute meal periods. Defendants failed to compensate Plaintiff
9 and the other Class Members for this work. Finally, Defendants failed to pay Plaintiff and the
10 Class Members premium wages for days on which they failed to provide them with all timely
11 meal periods and unrestricted rest periods.

12 27. At all relevant times, Defendants required Plaintiff and the Class Members to incur
13 certain business expenses in the course of performing their duties. Defendants instructed Plaintiff
14 and the Class Members to download the "WhenIWork" and "WhatsApp" applications on their
15 personal mobile phones to check their schedules and communicate with management and other
16 employees while working and when they were clocked out from work. Defendants failed to pay
17 Plaintiff and the Class Members for this time spent working while clocked out. Further,
18 Defendants failed to reimburse Plaintiff and the Class Members for mobile phone charges, nor
19 did they offer them a free alternative to such personal phone use. Defendants also failed to offer
20 an alternative for checking work schedules. Defendants also required Plaintiff and the Class
21 Members to use their personal vehicles to make bank deposits and pick up necessary supplies.
22 Defendants did not reimburse Plaintiff and the Class Members for such mileage expenses.

23 28. Defendants failed to provide Plaintiff and the Class with accurate itemized written
24 wage statements. As a result of the violations above, Defendants also failed to timely pay Plaintiff
25 and the Class all earned wages at the time of termination or separation from employment as it did
26 not pay them for all minimum wages, overtime wages, and reimburse them for all expenses.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 221, 510, 1182.11, 1182.12, 1194, 1197, and 1198)

(By Plaintiff and the Class against all Defendants)

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



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1 30. At all relevant times, Plaintiff and the Class Members have been entitled to the
2 benefits and protections of California Labor Code §§ 510, 1182.11, 1182.12, 1194, 1197, 1198,
3 and the Wage Order.

4 31. Labor Code § 1182.11 states,

5 Notwithstanding any other provision of this part, on and after March 1, 1997, the
6 minimum wage for all industries shall not be less than five dollars (\$5.00) per
7 hour; on and after March 1, 1998, the minimum wage for all industries shall not
8 be less than five dollars and seventy-five cents (\$5.75) per hour. The Industrial
9 Welfare Commission shall, at a public meeting, adopt minimum wage orders
consistent with this section without convening wage boards, which wage orders
shall be final and conclusive for all purposes.

10 32. At all relevant times, Labor Code § 1182.12 required employers like Defendants
11 to pay their employees as follows:

12 (a) Notwithstanding any other provision of this part, on and after July 1,
13 2014, the minimum wage for all industries shall be not less than nine
14 dollars (\$9) per hour, and on and after January 1, 2016, the minimum
15 wage for all industries shall be not less than ten dollars (\$10) per hour.

16 (b) Notwithstanding subdivision (a), the minimum wage for all industries
17 shall not be less than the amounts set forth in this subdivision, except
18 when the scheduled increases in paragraphs (1) and (2) are temporarily
suspended under subdivision (d).

19 (1) For any employer who employs 26 or more employees, the
20 minimum wage shall be as follows:

21 (A) From January 1, 2017, to December 31, 2017, inclusive,-
22 ten dollars and fifty cents (\$10.50) per hour.

23 (B) From January 1, 2018, to December 31, 2018, inclusive,-
24 eleven dollars (\$11) per hour.

25 (C) From January 1, 2019, to December 31, 2019, inclusive,-
26 twelve dollars (\$12) per hour.

27 (D) From January 1, 2020, to December 31, 2020, inclusive,-
28 thirteen dollars (\$13) per hour.



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(E) From January 1, 2021, to December 31, 2021, inclusive, fourteen dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars (\$15) per hour.

33. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” As the California Supreme Court has explained, this definition is disjunctive, meaning time can be an “hour worked” if either (a) the employee is subject to the employer's control, or (b) the employer suffers or permits the employee to work during that time, whether or not the employee is required to do so. *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal. 4th 833, 838 (citing *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582-83).

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

(A) Daily Overtime - General Provisions

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

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

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



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

4 36. In relevant part, California Labor Code § 510 states,

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

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

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

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

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

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

 42. At all relevant times, Defendants required Plaintiff and the Class Members to
perform tasks during their off-the-clock meal periods and after clocking out at the end of their
shifts, including, but not limited to, assisting customers with purchases, handling complaints from
customers, taking inventory, ordering inventory and supplies, conducting audits, performing daily
cash intakes, creating reports, assisting with payroll, preparing documents, and training new



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1 employees. Still, Defendants deducted wages for such time that Plaintiff and the Class Members
2 spent working. Additionally, Defendants deducted as many as 16 hours per pay period from the
3 wages Plaintiff and the Class Members earned and recorded. Plaintiff and the Class Members
4 complained about these deductions to Defendants. Nevertheless, Defendants did not return the
5 wages wrongfully deducted. Plaintiff and the Class Members regularly spent approximately one
6 hour on duty after clocking out to complete required tasks prior to leaving work. Defendants,
7 however, failed to pay Plaintiff and the other Class Members for this off-the-clock work.

8 43. At all relevant times, Defendants knowingly failed to compensate Plaintiff and the
9 Class Members for all hours worked, including but not limited to, minimum, overtime and double
10 time wages. As such, Defendants failed to compensate Plaintiff and the Class Members for all
11 hours worked at the correct rates of pay.

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

15 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
16 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
17 failure to compensate the Class Members for all hours worked at the correct rates of pay as
18 required by California law.

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

23 47. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of herself and the
24 Class, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
25 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including
26 interest thereon, as permitted by law, all in amounts subject to proof.

SECOND CAUSE OF ACTION

VACATION PAY FORFEITURE

(Lab. Code § 227.3)

(By Plaintiff and the Class against all Defendants)

28 48. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.



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1 49. Section 227.3 of the Labor Code states that, unless otherwise stipulated by a
2 collective bargaining agreement, whenever a contract of employment or employer policy provides
3 for paid vacations and an employee is terminated without having fully utilized his vested vacation
4 time, all vested vacation must be paid to the employee at his final rate in accordance with such
5 contract of employment or employer policy respecting vacation eligibility or time served. In
6 addition, the statute prohibits an employment contract or employer policy from providing for
7 forfeiture of such vested vacation time upon an employee's termination of employment,
8 regardless of the reason for termination. (See *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d
774, [183 Cal.Rptr. 846, 646 P.2d 122 (1982)].)

9 50. The California Supreme Court has examined the terms under which an employee
10 acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court
11 concluded that a "proportionate right to a paid vacation 'vests' as the labor is rendered." Thus, an
12 employee is entitled to a pro rata share of vacation pay upon termination of employment even
13 though he has not completed all of the service requirements specified in the employer's policy or
14 plan.

15 51. An employer should never, by reason of the employee's termination, attempt to
16 divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested
17 interest pursuant to the terms of the employer's policy or agreement.

18 52. A vacation policy that provides for the forfeiture of vacation pay that is not used
19 by a specified date, such as an employee's anniversary date, is impermissible under California
20 law. Courts have held that such "use-it-or-lose-it policies" result in forfeitures of vested vacation
21 pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not
22 permit employees to carry over vacation time from one year to the next and do not allow
23 employees to receive vacation pay in lieu of taking vacation time off.

24 53. The DLSE's enforcement policy permits employers to exclude employees from a
25 vacation policy during a specified period of time at the beginning of employment. This could
26 apply to a probationary or introductory period or even the first year of employment. If the policy
27 is properly drafted, employees will not be entitled to prorated vacation benefits if they separate
28 from the employer for any reason during the probationary period or "initial employment."
(D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be
recognized only if it is not found to be a "subterfuge." The Division will deem a subterfuge to



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1 exist if vacation benefits are implicitly earned or accrued during the waiting period. For example,
2 if a policy provides that employees do not earn any vacation during their first year of employment,
3 but earn four weeks' vacation during the second year and are reduced to two weeks' vacation the
4 third year, the Division will contend that the policy involves a subterfuge. This is based on the
5 Division's position that the policy, when viewed as a whole, makes it clear that two of the four
6 weeks' vacation attributed to the second year are actually earned in the first years. In a case where
7 such a subterfuge is found, employees who separate during the so-called "waiting period" (i.e.,
the first year of employment in the example) will be entitled to prorated vacation pay.

8 54. The Division takes the position that vacation pay for a terminating employee must
9 be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date of the
10 separation. (See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies
11 and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J.
12 Reyff (Oct. 28, 1986).)

13 55. The Defendants maintained vacation pay policies and practices with accrual
14 components that violate Labor Code § 227.3 based on the California Supreme Court's decision
15 in *Suastez v. Plastic Dress-Up Co.*, supra. The Defendants' vacation policy fails to provide for
16 proportionate vacation pay accruals as employees render labor and causes employees to forfeit
17 their vested rights to vacation pay. Under the policies and practices of the Defendants, Plaintiff
18 and all of the other Class Members earned the following forms of vacation pay during
19 employment: vacation, and paid time off (PTO). Under such policies, these accrued but unused
20 forms of vacation pay were subject to forfeit at the conclusion of the employment relationship.
Consequently, the Class Members are entitled to recover vacation pay.

21 56. In *Suastez*, the defendant-employer "refused to pay vacation benefits to anyone
22 whose employment was terminated before . . . [his or her employment] anniversary date" and
23 refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period
24 between his last employment anniversary date and his termination date. (*Id.* at 776–77.) In finding
25 for the plaintiff-employee, the Court held that "a proportionate right to a paid vacation 'vests' as
the labor is rendered" and that Labor Code § 227.3 protects that right from forfeiture. (*Id.* at 784.)

26 57. It is especially worth noting that, in rejecting the contention that the plaintiff-
27 employee had no vested right to vacation pay until his anniversary date, the Court specifically
28 stated: "The right to some share of vacation pay vests, like pension rights, on acceptance of



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1 employment. Nonperformance of a condition subsequent, such as [defendant-employer's]
2 requirement that employees remain until their anniversary, can, at most, result in a forfeiture of
3 the right to a vacation; *it cannot prevent that right from vesting.*" (*Id.* at 780–81, (italics added).)

4 58. Like the vacation pay policy the Court rejected in *Suastez*, the Defendants'
5 vacation pay policies also fail to provide for proportionate accruals. Defendants willfully failed
6 to pay out at the end of the employment relationship and at the correct final rates of pay the unused
7 vacation pay Plaintiff and the Class Members earned and accrued. During the employment
8 relationship between Defendants and Plaintiff and the Class Members, Defendants paid out
9 accrued vacation pay at lower rates than the regular rates of pay of Plaintiff and the Class
Members.

10 59. Defendants did not pay Plaintiff or the Class Members at the time they were
11 terminated for any unused but accrued vacation days and the like. Defendants had the ability to
12 provide Plaintiff and the Class Members payment for their accrued but unused vacation days and
13 similar compensation but intentionally failed to pay Plaintiff and the Class Members.

14 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
15 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
16 failure to pay Plaintiff and the other Class Members vacation wages as required by California
law.

17 **THIRD CAUSE OF ACTION**
18 **FAILURE TO PROVIDE SICK LEAVE**
19 **(Lab. Code §§ 233, 246, and 246.5)**
20 **(By Plaintiff and the Class against all Defendants)**

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

22 62. Labor Code section 233 states

23 Any employer who provides sick leave for employees shall permit an employee to
24 use in any calendar year the employee's accrued and available sick leave
25 entitlement, in an amount not less than the sick leave that would be accrued during
26 six months at the employee's then current rate of entitlement, for the reasons
specified in subdivision (a) of Section 246.5.

27 63. Labor Code section 246(a)(1) states

28 An employee who, on or after July 1, 2015, works in California for the same



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1 employer for 30 or more days within a year from the commencement of
2 employment is entitled to paid sick days as specified in this section.

3 64. Labor Code section 246.5 states

4 (a) Upon the oral or written request of an employee, an employer shall provide
5 paid sick days for the following purposes:

6 (1) Diagnosis, care, or treatment of an existing health condition of, or
7 preventive care for, an employee or an employee's family member.

8 ...

9 (c) (1) An employer shall not deny an employee the right to use accrued
10 sick days ...

11 65. Labor Code § 248 entitles food sector workers such as Plaintiff and the Class
12 Members of up to 80 hours of COVID-19 food sector supplemental paid sick leave. Additionally,
13 Labor Code § 248.2 entitles workers such as Plaintiff and the Class Members of up to 80 hours
14 of COVID-19 supplemental paid sick leave when they were unable to work or telework.

15 66. The Defendants failed to provide Plaintiff and all of the other Class Members with
16 the categories of paid sick leave specified above at their regular rates of pay. Defendants at times
17 conditioned such leaves of absence on finding other employees to cover for the employee
18 concerned. The Defendants also failed to implement COVID-19 safety measures, including
19 temperature checks, social distancing, and masks.

20 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
21 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
22 failure to pay Plaintiff and the other Class Members sick leave, including COVID-19 food sector
23 supplemental paid sick leave, as required by California law.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST BREAKS**

26 **(Lab. Code §§ 226.7 and 1198)**

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

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

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



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1 70. Labor Code § 1198 states,

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

7 71. In relevant part, Section 12 of the Wage Order states

8 “Rest Periods:

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

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

23 72. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break
24 should fall on either side of the meal break. (Ibid.)” *Brinker Rest. Corp. v. Superior Court* (2012)
25 53 Cal. 4th 1004, 1032.

26 73. In addition, Labor Code Section 226.7 states

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

32 (c) If an employer fails to provide an employee a meal or rest or recovery
33 period in accordance with a state law, including, but not limited to, an
34 applicable statute or applicable regulation, standard, or order of the
35 Industrial Welfare Commission, the Occupational Safety and Health
36 Standards Board, or the Division of Occupational Safety and Health, the



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1 employer shall pay the employee one additional hour of pay at the
2 employee's regular rate of compensation for each workday that the meal or
3 rest or recovery period is not provided.

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

7 75. By not providing adequate staff to relieve Plaintiff and the Class Members of their
8 duties, Defendants have intentionally and improperly failed to provide all rest breaks free from
9 any work or duties to Plaintiff and the Class Members in accordance with the Wage Order,
10 including, but not limited to, a third rest break when they worked more than 10 hours in a
11 workday. Even when Plaintiff and the Class Members tried to take duty-free rest periods, other
12 employees and managers, including Brenda (last name unknown), Joanna (last name unknown),
13 Catherine (last name unknown), Store Manager Daniel (last name unknown), and Retail District
14 Manager, Jennifer Arteaga (collectively "Defendants' Managers") interrupted them with requests
15 for help serving customers and for other business needs. Further, on the rare occasions that
16 Defendants permitted Plaintiff and the Class Members to take timely, off-duty rest breaks,
17 Defendants required her and the Class Members to remain on the premises. Defendants did not
18 request an exemption from California's rest period law from the Division of Labor Standards
19 Enforcement.

20 76. Plaintiff is informed and believes and thereon alleges that, at relevant times within
21 the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which
22 resulted in Defendants not providing the Class Members with all timely rest breaks required by
23 California law.

24 77. Defendants failed to pay Plaintiff the additional wages required by California
25 Labor Code § 226.7 for workdays in which one or more timely rest breaks were not provided to
26 her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the
27 applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy
28 which resulted in Defendants not providing the Class Members with additional wages for all
workdays on which one or more timely rest breaks were not provided to them as required by
California Labor Code § 226.7.

78. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered



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

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

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

14 82. Labor Code § 1198 states,

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

20 83. In relevant part, Labor Code Section 512 states

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

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

Meal Periods:

(A) No employer shall employ any person for a work period of more
than five (5) hours without a meal period of not less than 30 minutes,



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1 except that when a work period of not more than six (6) hours will
2 complete the day's work the meal period may be waived by mutual
3 consent of the employer and the employee.

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

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

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

23 (E) In all places of employment where employees are required to eat on
24 the premises, a suitable place for that purpose shall be designated.

25 85. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
26 Class Members were entitled to uninterrupted meal periods of at least thirty (30) minutes for each
27 day they worked five or more hours, and to a second uninterrupted 30-minute meal on days they
28 worked more than ten hours.

86. By not providing adequate staff to relieve Plaintiff and the Class Members of their
duties, Defendants have intentionally and improperly failed to provide all meal periods free from
any work or duties to Plaintiff and the Class Members in accordance with the Wage Order,
including, but not limited to, a second 30-minute meal period when they worked in excess of ten
hours in a workday. Even when Plaintiff and the Class Members tried to take duty-free meal
periods, other employees and managers, including Brenda (last name unknown), Joanna (last
name unknown), Catherine (last name unknown), Store Manager Daniel (last name unknown),
and Retail District Manager, Jennifer Arteaga (collectively "Defendants' Managers") interrupted



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1 them with requests for help serving customers and for other business needs.

2 87. Defendants also often failed to provide Plaintiff and the Class Members with 30-
3 minute meal periods before their fifth work hour. Defendants' Managers required Plaintiff and
4 the Class Members to request permission prior to taking a meal period, which they often
5 prohibited, due to the press of business. On a number of occasions, Plaintiff complained to
6 Defendants' Managers about Defendants' failure to provide her and the Class Members with
7 timely rest and meal periods. In spite of this, Defendants refused to make changes.

8 88. Defendants also required Plaintiff and the Class Members to eat on the premises
9 of their worksite the Defendants failed to provide them with a break room or other suitable place
10 for that purpose shall be designated.

11 89. At all relevant times, Defendants' Managers instructed Plaintiff and the Class
12 Members to falsify their timecards and clock out for meal periods they did not take. Defendants'
13 Managers also modified Plaintiff's and the other Class Members' time records to falsely state that
14 they took duty-free, timely, 30-minute meal periods. Defendants failed to compensate Plaintiff
15 and the other Class Members for this work.

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

20 91. Defendants failed to pay Plaintiff the additional wages required by California
21 Labor Code § 226.7 for all workdays in which one or more timely meal periods were not provided
22 to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the
23 applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy
24 which resulted in Defendants not providing the Class Members with additional wages for all
25 workdays on which one or more timely meal periods were not provided to them as required by
26 California Labor Code § 226.7.

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

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



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pursuant to California Labor Code § 226.7.

SIXTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198, 2800, and 2802)

(By Plaintiff and the Class against all Defendants)

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

95. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 1198, 2802, and the Wage Order.

96. Labor Code section 2800 states, “An employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

97. In pertinent part, California Labor Code section 2802(a) states,

“An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

98. In relevant part, Section 9 of the Wage Order states,

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

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

100. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties, including the losses caused by the Defendants want of ordinary care. Defendants instructed Plaintiff and the Class Members to download the “WhenIWork” and “WhatsApp” applications on their personal mobile phones to check their schedules and communicate with management and other employees while working and when they were clocked out from work. Defendants failed to pay Plaintiff and the Class Members for this time spent working while clocked out. Further, Defendants failed to reimburse Plaintiff and the Class Members for mobile phone charges, nor did they offer them a free



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1 alternative to such personal phone use. Defendants also failed to offer an alternative for checking
2 work schedules. Defendants also required Plaintiff and the Class Members to use their personal
3 vehicles to make bank deposits and pick up necessary supplies. Defendants did not reimburse
4 Plaintiff and the Class Members for such mileage expenses. Additionally, Defendants required
5 Plaintiff and the Class Members to supply their own protective gear, work equipment such as
6 gloves and knives, auto insurance, use of personal vehicles, cleaning supplies, uniform
7 maintenance, maintenance and repair of vehicles, and costs for hotel rooms when travelling for
8 work. With regard to uniforms, Defendants provided only two shirts and a sweater free of charge
9 and required Class Members to purchase other apparel if they needed additional uniform items.
10 With regard to travel, defendants require Plaintiffs and the Class Members to travel in their
11 personal vehicles to purchase office supplies. Defendants refuse to reimburse Plaintiffs and the
12 Class Members for such mileage.

13 101. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
15 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
16 during the course of performing their duties.

17 102. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
18 Members are entitled to reimbursement for all necessary expenditures and losses and interest
19 thereon, due and owing to them within four years of the date of the filing of the Complaint until
20 the entry of judgment.

21 103. Accordingly, with respect to this cause of action, on behalf of herself and the Class,
22 Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to
23 Labor Code § 2802(c) and as otherwise permitted by law.

24 **SEVENTH CAUSE OF ACTION**

25 **UNLAWFUL TIP COLLECTION**

26 **(Lab. Code § 351)**

27 **(By Plaintiffs and the Class against all Defendants)**

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

105. In relevant part, California Labor Code § 350(e) provides as follows:

(e) "Gratuity" includes any tip, gratuity, money, or part thereof that has been paid
or given to or left for an employee by a patron of a business over and above the



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1 actual amount due the business for services rendered or for goods, food, drink, or
2 articles sold or served to the patron.

3 106. In relevant part, California Labor Code § 351 states:

4 No employer or agent shall collect, take, or receive any gratuity or a part thereof
5 that is paid, given to, or left for an employee by a patron, or deduct any amount
6 from wages due an employee on account of a gratuity, or require an employee to
7 credit the amount, or any part thereof, of a gratuity against and as a part of the
8 wages due the employee from the employer. Every gratuity is hereby declared to
9 be the sole property of the employee or employees to whom it was paid, given, or
10 left for.

11 107. During all times relevant herein, Defendants forced the Class Members to share
12 their monetary tips with Defendants' supervisors and managers, in violation of Labor Code § 351.

13 108. Therefore, Class Members demand return of all tips unlawfully collected from
14 them within four years of the filing of this complaint until the date of entry of judgment after trial.

15 **EIGHTH CAUSE OF ACTION**

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

17 **(Lab. Code § 226)**

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

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

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

23 111. Pursuant to California Labor Code section 226(a), Plaintiff and the Aggrieved
24 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
25 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
26 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
27 each hourly rate by the employee.

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



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

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

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

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

11 E. The number of piece-rate units earned and the piece rate.

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

15 114. As alleged herein, Defendants failed to pay Plaintiff and the Class Members all
16 wages owed. As a result, Defendants have failed to properly and accurately itemize each
17 employee’s gross wages earned, net wages earned, total hours worked, corresponding number of
18 hours worked, and other requirements of California Labor Code section 226. As a result,
19 Defendants have violated California Labor Code section 226.

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

24 116. As a result of being provided with inaccurate wage statements by Defendants,
25 Plaintiff and the Class Members have suffered an injury. Their legal rights to receive accurate
26 wage statements were violated and they were misled about the amount of wages they had actually
27 earned and were owed. In addition, the absence of accurate information on their wage statements
28 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
and mathematical computations to determine the amounts of wages owed, has caused difficulty
and expense in attempting to reconstruct time and pay records and/or has led to the submission of
inaccurate information about wages to state and federal government agencies. Further, Plaintiff



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1 and the Class Members were not able to ascertain from the wage statements whether Defendants
2 complied with their obligations under California Labor Code section 226(a).

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

8 **NINTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(Lab. Code §§ 201, 201.5, 202, and 203)**

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

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

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

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

17 121. Under Labor Code § 201.5, the payment of wages to employees may be mailed to
18 the employee or made available to the employee at a location specified by the employer in the
19 county where the employee was hired or performed labor. The payment shall be deemed to have
20 been made on the date that the employee's wages are mailed to the employee or made available
21 to the employee at the location specified by the employer, whichever is earlier.

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

25 123. By failing to pay Plaintiff and the Class Members earned minimum, overtime, and
26 double time wages, Defendants failed to timely pay them all earned and unpaid wages in violation
of Labor Code § 201, 201.5, or § 202.

27 124. Labor Code § 203 provides that the wages of an employee continue on a daily
28



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1 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
2 unpaid wages to the employee in accordance with Labor Code § 201, 201.5, or § 202.

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

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

11 **TENTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

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

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

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

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

19 129. Defendants engaged in unfair competition by failing to: 1) pay employees for all
20 hours worked at the correct rates of pay; 2) pay their employees premium wages for workdays
21 during which one or more meal or rest periods were not provided, and 3) unlawfully collecting
22 the Class Members' monetary tips. Moreover, Defendants engaged in unfair competition by
23 requiring Plaintiff and the Class to incur, without reimbursement, business expenses in the course
24 of performing their duties including unreimbursed mileage, uniform purchases, and mobile
25 phones. Furthermore, Defendants withheld vacation and sick pay that Plaintiff and the Class
26 Members earned and accrued but did not use.

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



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1 131. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
2 Class have suffered injuries in fact and lost money or property. Plaintiff and the Class were
3 deprived of wages for all rest and meal periods not provided to them, for hours worked for which
4 they did not receive wages at the correct rates of pay, for vacation and sick pay they earned and
5 did not use, for tips unlawfully collected from them, and reimbursement for expenses that Plaintiff
6 and the Class incurred in the course of performing their duties.

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

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

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

16 **ELEVENTH CAUSE OF ACTION**

17 **CIVIL PENALTIES**

18 **(Lab. Code §§ 2698, et seq.)**

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

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

21 136. "Aggrieved Employees" Definition: The "Aggrieved Employees" are all persons
22 Defendants employed in California as hourly employees, including assistant managers, managers,
23 inventory managers, budtenders, receptionists, fillers, fulfillment, and in similar positions, during
24 the period of September 21, 2019 and entry of judgment ("the PAGA Period").

25 137. Labor Code § 204 states:

- 26 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
27 or 204.2, earned by any person in any employment are due and payable
28 twice during each calendar month, on days designated in advance by the
employer as the regular paydays. Labor performed between the 1st and
15th days, inclusive, of any calendar month shall be paid for between the
16th and the 26th day of the month during which the labor was performed,
and labor performed between the 16th and the last day, inclusive, of any



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1 calendar month, shall be paid for between the 1st and 10th day of the
2 following month.

3 ...

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

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

15 (b) However, when employees are covered by a collective bargaining
16 agreement that provides different pay arrangements, those arrangements
17 shall apply to the covered employees.

18 The requirements of this section shall be deemed satisfied by the payment of wages for weekly,
19 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
20 following the close of the payroll period.

21 138. Defendants paid wages to employees on regular intervals. Defendants failed to
22 pay Plaintiff on such intervals for all wages earned and all hours worked. On information and
23 belief Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
24 intervals for all wages earned and all hours worked. Defendants did not allow Plaintiff and the
25 Class Members to receive their wages by direct deposit. On multiple occasions, Defendants sent
26 to the Plaintiff and Class Members' paychecks to the wrong worksites. Defendants prohibited
27 Plaintiff and the Class Members from retrieving their paychecks from these sites and, instead,
28 required them to wait until Defendants made arrangements to have their paychecks delivered to
29 the worksite they had assigned Plaintiff in the Class Members to.

30 139. Labor Code § 226 states

31 (b) An employer that is required by this code or any regulation adopted
32 pursuant to this code to keep the information required by subdivision (a)



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1 shall afford current and former employees the right to inspect or copy
2 records pertaining to their employment, upon reasonable request to the
3 employer. The employer may take reasonable steps to ensure the identity
4 of a current or former employee. If the employer provides copies of the
5 records, the actual cost of reproduction may be charged to the current or
6 former employee.

7 Plaintiff and Class Members requested Defendants to produce or allow inspection of records
8 pertaining to their employment. Defendants have yet to provide such records or permit inspection
9 of them. Therefore, Defendants are in violation of Labor Code § 226.

10 140. Labor Code § 432 states, "If an employee or applicant signs any instrument
11 relating to the obtaining or holding of employment, he shall be given a copy of the instrument
12 upon request."

13 141. Before filing suit, Plaintiff and the Class Members requested that Defendants
14 provide a copy of any instrument they signed relating to the obtaining or holding of employment.
15 Defendants have yet to provide all such copies.

16 142. The Wage Order states that:

17 Every employer shall keep accurate information with respect to
18 each employee including the following:

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



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

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

Before filing suit, Plaintiff and the Class Members requested that Defendants allow them to inspect or copy such records pertaining to their employment. Defendants have yet to permit them to inspect all such records.

143. Labor Code § 226 states,

An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

Before filing suit, Plaintiff and the Class Members requested that Defendants allow them to inspect or copy their records pertaining to their employment. Defendants have yet to permit them to inspect all such records.

144. Labor Code § 1198 states that

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



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1 those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.”

3 Before filing suit, Plaintiff and the Class Members requested that Defendants allow them to
4 inspect their records. Defendants have yet to permit them to inspect all such records.

5 145. Labor Code § 353 states,

6 Every employer shall keep accurate records of all gratuities received by him,
7 whether received directly from the employee or indirectly by means of deductions
8 from the wages of the employee or otherwise. Such records shall be open to
9 inspection at all reasonable hours by the department.

10 Before filing suit, Plaintiff and the Class Members requested that Defendants provide them with
11 an opportunity to inspect records of their gratuities. Defendants have not done so.

12 146. Labor Code § 1198.5 states,

13 (a) Every current and former employee, or his or her representative, has the
14 right to inspect and receive a copy of the personnel records that the
15 employer maintains relating to the employee's performance or to any
16 grievance concerning the employee.

17 (b) (1) The employer shall make the contents of those personnel records
18 available for inspection to the current or former employee, or his or her
19 representative, at reasonable intervals and at reasonable times, but not later
20 than 30 calendar days from the date the employer receives a written
21 request, unless the current or former employee, or his or her representative,
22 and the employer agree in writing to a date beyond 30 calendar days to
23 inspect the records, and the agreed-upon date does not exceed 35 calendar
24 days from the employer's receipt of the written request. Upon a written
25 request from a current or former employee, or his or her representative, the
26 employer shall also provide a copy of the personnel records, at a charge
27 not to exceed the actual cost of reproduction, not later than 30 calendar
28 days from the date the employer receives the request, unless the current or
29 former employee, or his or her representative, and the employer agree in
30 writing to a date beyond 30 calendar days to produce a copy of the records,
31 as long as the agreed-upon date does not exceed 35 calendar days from the
32 employer's receipt of the written request. Except as provided in paragraph
33 (2) of subdivision (c), the employer is not required to make those personnel
34 records or a copy thereof available at a time when the employee is actually
35 required to render service to the employer, if the requester is the employee.

36 (2)(A) For purposes of this section, a request to inspect or receive a copy
37 of personnel records shall be made in either of the following ways:



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(i) Written and submitted by the current or former employee or his or her representative.

(ii) Written and submitted by the current or former employee or his or her representative by completing an employer-provided form.

(B) An employer-provided form shall be made available to the employee or his or her representative upon verbal request to the employee's supervisor or, if known to the employee or his or her representative at the time of the request, to the individual the employer designates under this section to receive a verbal request for the form.

(c) The employer shall do all of the following:

(1) With regard to all employees, maintain a copy of each employee's personnel records for a period of not less than three years after termination of employment.

(2) With regard to current employees, make a current employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof, at the place where the employee reports to work, or at another location agreeable to the employer and the requester. If the employee is required to inspect or receive a copy at a location other than the place where he or she reports to work, no loss of compensation to the employee is permitted.

(3)(A) With regard to former employees, make a former employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof, at the location where the employer stores the records, unless the parties mutually agree in writing to a different location. A former employee may receive a copy by mail if he or she reimburses the employer for actual postal expenses.

Before filing suit, Plaintiff and the Class Members requested in writing that Defendants provide them with their personnel files. Defendants have not done so. Therefore, Defendants are in violation of Labor Code § 1198.5.

147. Labor Code § 2804 states,

Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall



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not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.

Defendants impliedly required Plaintiff and the Class Members to agree to waive their rights to reimbursement for the work-related expenses specified above.

148. Labor Code § 6400 states, “Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.” Labor Code § 6401 states,

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code § 6402 states, “No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.” Labor Code § 6403 states,

No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Defendants failed to provide Plaintiff and the Class Members with employment and a place of employment that was safe and healthful. Additionally, Defendants failed to furnish to Plaintiff and the Class Members safety devices and safeguards adequate to render employment and place of employment safe and healthful. Defendants permitted Plaintiff and the Class Members to be in place of employment which was not safe and healthful. Furthermore, Defendants failed to use methods and processes reasonably adequate to render employment and the place of employment of the Plaintiff and Class Members safe. The Defendants also failed to implement COVID-19 safety measures, including temperature checks, social distancing, and masks.

149. Section 1198.5 states that



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(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

150. Section 14 of the Wage Order states as follows:

Seats.

A. All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

B. When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

The nature of the work the Defendants expected Plaintiff and all of the other Class Members to perform reasonably permits the use of seats. However, the Defendants, in violation of the Wage Order and Labor Code § 1198, did not provide Plaintiff and all of the other Class Members with an adequate number of suitable seats. Additionally, the Defendants did not place an adequate number of suitable seats in reasonable proximity to their work area, nor did they permit Plaintiff and all of the other Class Members to use such seats when it did not interfere with the performance of their duties. Defendants required Plaintiff and the other Aggrieved Employees to stand or sit on the floor when their duties reasonably permitted the use of seating.

151. California Labor Code § 2350 states:

“Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated..”

152. In relevant part, § 13 of the Wage Order states:



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(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

153. In relevant part, § 15 of the Wage Order states, "A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use."

154. At all relevant times during the applicable limitations period, Defendants failed to provide any working toilet facilities for use by the Aggrieved Employees within reasonable access. Defendants also failed to provide lockers, closets, storage facilities, and changing rooms for use by the Aggrieved Employees. Moreover, Defendants failed to provide acceptable temperatures for the work areas they expected the Aggrieved Employees to perform their job duties in.

155. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to provide the Aggrieved Employees with toilet and storage facilities, lockers, change rooms, and acceptable work temperatures.

156. During the applicable time period, Defendants violated California Labor Code sections 201, 201.5, 202, 203, 204, 226, 226.7, 227.3, 233, 246, 246.5, 248, 351, 353, 432, 510, 512, 1174, 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2800, 2802, 2804, 2810.5, 6300, 6400, 6401, 6402, and 6403.

157. California Labor Code section 2699, subdivisions (a) and (g) authorize an



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

4 158. Pursuant to California Labor Code section 2699, subdivisions (a) and (f), Plaintiff
5 and the Class Members are entitled to recover civil penalties for each of Defendants' violations
6 of California Labor Code sections 201, 201.5, 202, 203, 204, 226, 226.7, 227.3, 233, 246, 246.5,
7 248, 351, 353, 432, 510, 512, 1174, 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2800,
8 2802, 2804, 2810.5, 6300, 6400, 6401, 6402, and 6403 during the applicable limitations period
in the following amounts:

9 A. For violations of California Labor Code section 204, one hundred dollars
10 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
11 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
12 (penalty amounts established by California Labor Code section 210).

13 B. For violations of California Labor Code section 226(a), two hundred fifty
14 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
15 employee for each subsequent violation (penalty amounts established by California Labor Code
section 226.3).

16 C. For violations of California Labor Code sections 510 and 512, fifty dollars
17 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
18 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
19 each pay period for which the employee was underpaid (penalty amounts established by
20 California Labor Code § 558).

21 D. For violations of California Labor Code section 1197, one hundred dollars
22 (\$100.00) for each aggrieved employee for each initial and intentional violation per pay period
23 (regardless of whether the initial violations were intentionally committed) and two hundred fifty
24 dollars (\$250.00) for each aggrieved employee for each subsequent violation per pay period
(regardless of whether the initial violations were intentionally committed).

25 E. For violations of California Labor Code sections 201, 201.5, 202, 203,
26 226.7, 227.3, 233, 246, 246.5, 248, 432, 1182.11, 1182.12, 1194, 1198, 1198.5, 2350, 2800, 2802,
27 2804, 2810.5, 6300, 6400, 6401, 6402, and 6403, one hundred dollars (\$100.00) for each
28 aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00)



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1 for each aggrieved employee per pay period for each subsequent violation (penalty amounts
2 established by California Labor Code section 2699(f)(2)).

3 F. For the violations of California Labor Code section 1174, \$500 for each
4 aggrieved employee for each violation of California Labor Code section 1174 (penalty amounts
5 established by California Labor Code § 1174.5).

6 G. For the violations of California Labor Code section 1198.5, \$750 for each
7 aggrieved employee for each violation of California Labor Code section 1198.5 (penalty amounts
8 established by California Labor Code § 1198.5(k)).

9 159. Plaintiff has complied with the procedures for bringing suit specified in California
10 Labor Code section 2699.3. By letter dated September 21, 2020, Plaintiff gave written notice by
11 certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of
12 the specific provisions of the California Labor Code alleged to have been violated, including the
13 facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to
14 the LWDA dated September 21, 2020 is attached hereto as Exhibit A. The LWDA has not
15 responded to Plaintiff’s letter.

16 160. Pursuant to California Labor Code section 2699(g), Plaintiff and the Class
17 Members are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
18 connection with their claims for civil penalties.

19 **PRAYER FOR RELIEF**

20 161. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, pray for
21 relief and judgment against Defendants as follows:

- 22 A. An order that the action be certified as a class action;
- 23 B. An order that Plaintiff be appointed class representative;
- 24 C. An order that counsel for Plaintiff be appointed class counsel;
- 25 D. Unpaid wages;
- 26 E. Actual damages;
- 27 F. Statutory damages;
- 28 G. Civil Penalties
- H. Liquidated damages;
- I. Restitution, including expense reimbursement;
- J. Declaratory relief;



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

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on
10 all issues so triable.

11 Respectfully submitted,

THE SPIVAK LAW FIRM

12 Dated: May 10, 2022

By: _____

David Spivak

DAVID SPIVAK
MAYA CHEATANI, Attorneys for Plaintiff
KASSANDRA MENDIVIL, and all others
similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

September 21, 2020

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

RE: *Kassandra Mendivil/ Shryne Group, Inc.*

To whom it may concern:

This notice concerns the following employers:

1. IGS Solutions, LLC
2. Authentic 760 LLC
3. Shryne Group, Inc.

Collectively, the aforementioned employers are herein referred to as “Shryne Group.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Kassandra Mendivil (hereafter “Mendivil”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly employees, including but not limited to assistant managers, managers, inventory managers, budtenders, receptionists, fillers, fulfillment and other comparable positions (hereafter referred to as “Aggrieved Employees”), by Shryne Group of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, 1198 and 2802.

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At all relevant times, Shryne Group has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Mendivil and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Shryne Group first employed Mendivil on or about February 12, 2020 to work as an assistant manager at its Authentic 760 cannabis dispensary located at 72180 CA-111 in Palm Desert, California. Mendivil worked at Authentic 760 for Shryne Group continuously from the time of her hire until approximately April 27, 2020 when Shryne Group terminated her employment.

At all relevant times, Shryne Group paid Mendivil and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Shryne Group classified Mendivil and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Shryne Group required Mendivil and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and after clocking out at the end of their shifts, including, but not limited to, assisting customers with purchases, handling complaints from customers, taking inventory, ordering inventory and supplies, conducting audits, performing daily cash intakes, creating reports, assisting with payroll, preparing documents, and training new employees. Mendivil and the Aggrieved Employees regularly spent approximately one hour on duty after clocking out to complete required tasks prior to leaving work. Shryne Group, however, failed to pay Mendivil and the other Aggrieved Employees for this off-the-clock work.

At all relevant times, Mendivil and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Shryne Group failed to provide Mendivil and the Aggrieved

Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Shryne Group failed to hire sufficient staff members to cover Mendivil and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Even when Mendivil and the Aggrieved Employees tried to take duty-free rest and/or meal periods, other Shryne Group employees and managers, including Brenda (last name unknown), Joanna (last name unknown), Catherine (last name unknown), Store Manager Daniel (last name unknown), and Retail District Manager, Jennifer Arteaga (collectively “the Shryne Group Managers”) interrupted them with requests for help serving customers and for other Shryne Group business. Further, on the rare occasions that the Shryne Group permitted Mendivil and the Aggrieved Employees to take timely, off-duty rest breaks, Shryne Group required her and the Aggrieved Employees to remain on the premises. Shryne Group did not request an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Shryne Group also often failed to provide Mendivil and the Aggrieved Employees with 30-minute meal periods before their fifth work hour. The Shryne Group Managers required Mendivil and the Aggrieved Employees to request permission prior to taking a meal period, which they often prohibited, due to the press of business. On a number of occasions, Mendivil complained to the Shryne Group Managers about Shryne Group’s failure to provide her and the Aggrieved Employees with timely rest and meal periods. In spite of this, Shryne Group refused to make changes.

At all relevant times, the Shryne Group Managers instructed Mendivil and the Aggrieved Employees to falsify their timecards and clock out for meal periods they did not take. The Shryne Group Managers also modified Mendivil’s and the other Aggrieved Employees’ time records to falsely state that they took duty-free, timely, 30-minute meal periods. Shryne Group failed to compensate Mendivil and the other Aggrieved Employees for this work. Finally, Shryne Group failed to pay Mendivil and the Aggrieved Employees premium wages

for days on which it failed to provide them with all timely meal periods and unrestricted rest periods.

At all relevant times, Shryne Group required Mendivil and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Shryne Group instructed Mendivil and the Aggrieved Employees to download the “WhenIWork” and “WhatsApp” applications on their personal mobile phones to check their schedules and communicate with management and other Shryne Group employees while working and when they were clocked out from work. Shryne Group failed to pay Mendivil and the Aggrieved Employees for this time spent working while clocked out. Further, Shryne Group failed to reimburse Mendivil and the Aggrieved Employees for mobile phone charges, nor did it offer them a free alternative to such personal phone use. Shryne Group also failed to offer an alternative for checking work schedules. Shryne Group also required Mendivil and the Aggrieved Employees to use their personal vehicles to make bank deposits and pick up necessary supplies. Shryne Group did not reimburse Mendivil and the Aggrieved Employees for such mileage expenses.

As a result of the practices described above, Shryne Group failed to provide Mendivil and the Aggrieved Employees with accurate wage statements that properly and accurately itemize Mendivil and the other Aggrieved Employees’ gross and net wages earned and the total hours worked. As a further result, Shryne Group failed to timely pay Mendivil and the Aggrieved Employees all earned and unpaid wages during, and upon termination of, their employment.

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

- a) Shryne Group failed to pay Mendivil and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum and overtime wages;

- b) Shryne Group failed to provide Mendivil and the Aggrieved Employees with all meal periods;
- c) Shryne Group failed to pay Mendivil and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Shryne Group failed to provide Mendivil and the Aggrieved Employees with all rest breaks;
- e) Shryne Group failed to pay Mendivil and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- f) Shryne Group failed to reimburse Mendivil and the other Aggrieved Employees for expenses incurred in the course of performing of their duties;
- g) Shryne Group failed to provide Mendivil and the Aggrieved Employees with accurate itemized wage statements;
- h) Shryne Group failed to timely pay Mendivil and the Aggrieved Employees all earned and unpaid wages during their employment at Shryne Group and at the time such employment ended; and
- i) Shryne Group failed to maintain accurate employment records.

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate,

commission, or other basis...” At all relevant times during the applicable limitations period, Shryne Group employed Mendivil as an assistant manager to help run its retail store and provide its customers with information and assistance. Accordingly, Mendivil and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

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

In relevant part, section 2 of the Wage Order states,

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be

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

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

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Shryne Group knowingly failed to compensate Mendivil and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed during their off-the-clock meal periods and after clocking out at the end of their shifts.

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

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

4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

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

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

As described above, at all relevant times during the applicable time period, Shryne Group failed to provide Mendivil and the Aggrieved Employees with all timely 30-minute duty-free meal periods.

Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

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

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

Failure To Provide Paid Rest Periods
(Lab. Code §§ 226.7 & 1198)

In relevant part, section 2 of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

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

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

In addition, Labor Code section 226.7 states:

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

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

As described above, Shryne Group required Mendivil and the Aggrieved Employees to work into and/or through their rest periods. Moreover, by requiring Mendivil and the Aggrieved Employees to remain on work premises during their rest periods, Shryne Group has intentionally and improperly failed to provide Mendivil and the Aggrieved Employees with all duty-free rest periods. Further, Shryne Group failed to compensate Mendivil and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely rest periods as provided by California law.

Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

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

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

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

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, Shryne Group required Mendivil and the other Aggrieved Employees to use their personal vehicles and personal mobile phones for work related activities without reimbursing them for their mileage and phone expenses. Accordingly, Mendivil seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and

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

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

Labor Code section 226 requires employers to provide employees with accurate written wage statements showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee

identification number other than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Shryne Group did not pay Mendivil and the Aggrieved Employees minimum, and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Shryne Group failed to provide Mendivil and the Aggrieved Employees with all meal and rest periods in compliance with California law. Shryne Group also failed to provide Mendivil and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. Shryne Group knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Mendivil and the Aggrieved Employees. As a result, Shryne Group has failed to properly itemize Mendivil and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, Shryne Group has violated California Labor Code § 226.

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

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

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

Because of Shryne Group's failure to pay Mendivil and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided off-duty meal and rest periods within the time periods set by California Labor Code § 204, Shryne Group failed to timely pay all wages due during employment. Accordingly, Mendivil now seeks civil penalties for the Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code section 210).

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

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

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

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

Shryne Group did not pay Mendivil and the Aggrieved Employees minimum and overtime wages for work it required them to perform during their off-the-clock meal periods and after clocking out at the end of their shifts. Shryne Group failed to provide Mendivil and the Aggrieved Employees with meal and rest periods in compliance with California law. Shryne Group also failed to provide Mendivil and the other Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. These failures were willful. Due to its willful failures to pay all minimum, overtime, and premium wages earned to Mendivil and the Aggrieved Employees at the time of termination, Shryne Group is liable for violations of Labor Code sections 201, 202, and 203.

Accordingly, Mendivil now seeks civil penalties for these Labor Code violations that Shryne Group has committed against her and the other Aggrieved Employees as follows:

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

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

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

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be

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

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Kassandra Mendivil
Walter Haines, Esq.

John Malone, Esq., General Counsel – Shryne Group, Inc.
legal@shrynegroup.com

Frank Sanchez, Director of Human Resources – Shryne Group, Inc.
frank@shrynegroup.com

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IGS Solutions, LLC
c/o Legalinc Registered Agents, Inc., agent for service of process
Four Embarcadero Center, Suite 1400 #85
San Francisco, CA 94111

IGS Solutions, LLC
c/o Legalinc Registered Agents, Inc., agent for service of process
10601 Clarence Dr., Ste. 250
Frisco, TX 75033

Authentic 760 LLC
c/o Legalinc Registered Agents, Inc., agent for service of process
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Authentic 760 LLC
10601 Clarence Dr., Ste. 250
Frisco, TX 75033

Shryne Group, Inc.
c/o Legalinc Registered Agents, Inc., agent for service of process
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c/o Legalinc Registered Agents, Inc., agent for service of process
10601 Clarence Dr., Ste. 250
Frisco TX 75033

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 15303 Ventura Blvd., Suite 900, Sherman Oaks, CA 91403.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Wednesday, October 26, 2022, I caused to have electronically served the following document described as **[PROPOSED] FIRST AMENDED COMPLAINT** on interested parties with the email listed below:

Christopher Chaplin, Esq.
Todd Scherwin, Esq.
Fisher & Phillips LLP
444 South Flower Street
Suite 1500
Los Angeles, CA 90071
cchaplin@fisherphillips.com
tscherwin@fisherphillips.com

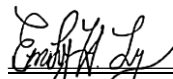
XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address emily@spivaklaw.com.

____ (BY ELECTRONIC SERVICE) I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service ONLINELEGALCOURIER.

EXECUTED on Wednesday, October 26, 2022, at Los Angeles, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



EMILY HUNG LY

EXHIBIT 7

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Attorneys for Plaintiffs Jenice Cole and Shauna Adams, on behalf of themselves and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YOLO**

JENICE COLE, SHAUNA ADAMS, on
behalf of themselves and all "aggrieved
employees" pursuant to Labor Code § 2698 *et*
seq.

Plaintiffs,

v.

IGS SOLUTIONS LLC, a California limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CV2021-0426

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 350, 351, 510, 512,
AND 1194 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

1 Plaintiffs JENICE COLE and SHAUNA ADAMS (collectively, "Plaintiffs"), on behalf of
2 themselves and others as "aggrieved employees" under the Labor Code Private Attorneys General
3 Act of 2004, complain of IGS SOLUTIONS LLC, a California limited liability company, and/or any
4 subsidiaries or affiliated companies (hereinafter referred to as "Defendants"), as follows:

5 I.

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiffs and all of Defendants' non-exempt California employees ("Aggrieved Employees").

9 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
10 to the date Plaintiffs began the process of exhausting the administrative requirements, pursuant to
11 Labor Code § 2698 *et seq.*, and continuing to the present (the "liability period"), Defendants have had
12 consistent policies of:

13 a. Failing to pay all overtime wages due, in violation of Labor Code §§ 510, 558,
14 and 1194. Defendants pay Plaintiffs and Aggrieved Employees straight time wages only, with no
15 adjustment for premium overtime hours worked. Plaintiffs and Aggrieved Employees are not
16 compensated for work performed in excess of eight (8) hours in a workday and work performed in
17 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
18 rate of pay, and are not compensated for work performed in excess of twelve (12) hours in a workday
19 at a rate of no less than double the regular rate of pay;

20 b. Failing to pay Plaintiffs and other Aggrieved Employees all minimum wages
21 and overtime wages earned, in violation of Labor Code §§ 510, 558, and 1194. Plaintiffs and other
22 Aggrieved Employees are required to work off-the-clock. For example, they are required to count up
23 and divide all gratuities earned for the workday, among other work tasks, all after clocking out from
24 their shift, thereby depriving them of all wages due. This violates Labor Code §§ 510, 558, and 1194;

25 c. Failing to pay premium wages to Plaintiffs and other Aggrieved Employees
26 who are denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order No.
27 4-2001. Plaintiffs and Aggrieved Employees are routinely unable to take an on-duty 10-minute rest
28 period for every four (4) hours of work or major fraction thereof, but are not paid premium wages of

1 one hour's pay for each missed rest period. Plaintiffs and other Aggrieved Employees are simply not
2 authorized to take rest periods and frequently work through them. This violates Labor Code §§ 226.7
3 and 558 and IWC Wage Order 4-2001;

4 d. Failing to pay premium wages to Plaintiffs and Aggrieved Employees who are
5 denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-
6 2001. Plaintiffs and Aggrieved Employees are routinely denied, and not authorized to take, a timely,
7 uninterrupted, off-duty 30-minute meal period for every shift worked that exceeds five hours in
8 duration, or a second timely, uninterrupted, off-duty 30-minute meal period for every shift worked
9 that exceeds ten hours in duration, but are not paid premium wages of one hour's pay for each missed
10 first or second meal period. When Plaintiffs and Aggrieved Employees are provided with a meal
11 period, they are late, cut short or they are required to work through them. This violates Labor Code
12 §§ 226.7, 510, 512, 558, 1194 and IWC Wage Order 4-2001;

13 e. Failing to pay Plaintiffs and other Aggrieved Employees all gratuities due, in
14 violation of Labor Code §§ 350 and 351. Plaintiffs and other Aggrieved Employees are forced to
15 share their tips with Defendants (including supervisors and managers), in violation of Labor Code §
16 351, which states, in pertinent part, that "[n]o employer or agent shall collect, take, or receive any
17 gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any
18 amount from wages due an employee on account of a gratuity, or require an employee to credit the
19 amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from
20 the employer";

21 f. Failing to issue Plaintiffs and Aggrieved Employees accurate itemized wage
22 statements. At times, Defendants failed to issue any wage statements to non-exempt employees like
23 Plaintiffs and the Aggrieved Employees. Thus, these employees sometimes have no method of
24 verifying that they are being paid all wages due and are not provided accurate information regarding
25 their employment. This violates Labor Code §§ 226(a) and 226.3. When Plaintiffs and Aggrieved
26 Employees do receive wage statements during their employment, Plaintiffs further allege that the
27 wage statements fail to fully and accurately itemize the requirements set forth in Labor Code §§
28 226(a) and 226.3. As stated above Plaintiffs and other Aggrieved Employees are not paid all

1 minimum, overtime, and double-time wages due, and premium meal and rest period wages due; as
2 such, the wage statements provided by Defendants fail to accurately state all gross wages earned, in
3 violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§
4 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours worked,
6 Labor Code §§ 226(a)(9) and 226.3; and

7 g. Failing to pay other Aggrieved Employees all wages due at the separation of
8 their employment based on the time frames required by Labor Code §§ 201 and 202. As stated above,
9 other Aggrieved Employees are not paid all wages due during the course of their employment and, as
10 a result of this failure, some are not timely paid all wages due at the separation of their employment.
11 This violates Labor Code §§ 201-202 and is alleged on behalf of certain Aggrieved Employees no
12 longer employed by Defendants.

13 3. Plaintiffs, on behalf of themselves and all Aggrieved Employees pursuant to Labor
14 Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

15 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
16 The Labor Code violations alleged against Defendants herein arose in Yolo County, California.

17 II.

18 PARTIES

19 A. Plaintiff

20 5. Plaintiff JENICE COLE has been employed by Defendants since September 2019 as
21 non-exempt employee in California.

22 6. Plaintiff SHAUNA ADAMS has been employed by Defendants since January 2019 as
23 non-exempt employee in California.

24 B. Defendant

25 7. Defendant IGS SOLUTIONS LLC is a California limited liability company.
26 Defendant IGS SOLUTIONS LLC employed Plaintiffs and Aggrieved Employees throughout the
27 State of California, including Yolo County, California.
28

1 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
2 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who
3 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
4 are informed and believe, and based thereon allege, that each of the Defendants designated herein as
5 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will
6 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
7 designated hereinafter as DOES when such identities become known.

8 9. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
9 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
10 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is
11 legally attributable to the other Defendants.

12 10. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
13 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
14 provisions of the California Labor Code as alleged herein.

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 350, 351, 510, 512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as though fully set forth herein.

12. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiffs seek civil penalties pursuant to Labor Code §§ 2698 *et seq.*

13. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 350, 351, 510, 512, and 1194; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

14. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

15. On January 6, 2021, Plaintiffs sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of January 6, 2021. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as described below.

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IV.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: March 11, 2021

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA COUNTY OF YOLO 1000 MAIN STREET WOODLAND, CA. 95695 530-406-6704	<i>For Court Use</i> FILED Yolo Superior Court 3/12/2021 10:13 AM By: C. Gojkovich, Deputy
Cole, Adams, et al. Plaintiff, vs. IGS Solutions LLC, et al. Defendant	
NOTICE OF CASE MANAGEMENT CONFERENCE	

NOTICE TO ALL APPEARING PARTIES AND THEIR ATTORNEYS:

Notice is hereby given that the above-entitled action has been set for a Case Management Conference on 6/28/2021 at 9:00 AM in Department TBD.

The plaintiff shall serve the Notice of Case Management Conference on each defendant with the complaint.

You must file a Case Management Statement 15 days prior to the above date.

Date: 3/12/2021

SHAWN C. LANDRY, COURT EXECUTIVE OFFICER

/s/ C. Gojkovich

C. Gojkovich , Deputy Clerk

EXHIBIT 8

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ELECTRONICALLY FILED
by Superior Court of CA,
County of Yolo,
on 11/13/2023 1:13 PM
By: A Akanno, Deputy

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Attorneys for Plaintiffs JENICA COLE and SHAUNA ADAMS

(Additional Counsel on Following Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF YOLO

JENICA COLE, SHAUNA ADAMS,
KASSANDRA MENDIVIL, RICHARD
BAUTISTA, MICHAEL NEVAREZ, JOE
NUNEZ, and HUNTER MEELEE, on behalf
of themselves and all others similarly
situated, and as “aggrieved employees” on
behalf of other “aggrieved employees” under
the Labor Code Private Attorneys General
Act of 2004,

Plaintiff(s),

vs.

STRATEGIC GREEN PARTNERS DOING
BUSINESS AS AUTHENTIC 760, LLC, a
California limited liability company; IGS
SOLUTIONS LLC DOING BUSINESS AS
STIIIZY-DTLA, a California limited liability
company; SHRYNE GROUP, INC., a
California corporation; STIIIZY, LLC, a
California limited liability company;
IRONWORKS COLLECTIVE INC.,
DOING BUSINESS AS BLAZE, a

CASE NO: CV2021-0426

*Assigned to the Honorable Samuel T.
McAdam, Dept. 10*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1182.11, 1182.12, 1194, 1197, and 1198);
2. Vacation Pay Forfeiture (Lab. Code § 227.3);
3. Failure to Provide Sick Leave (Lab. Code §§ 233, 246, and 246.5);

California corporation; and DOES 1–50,
inclusive,

Defendant(s).

4. Failure to Provide Rest Breaks (Lab. Code § 226.7 and 1198);
5. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
6. Failure to Provide a Day of Rest (Lab. Code §§ 551 and 552);
7. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
8. Unlawful Tip Collection (Lab. Code § 351);
9. Wage Statement Penalties (Lab. Code § 226);
10. Waiting Time Penalties (Lab. Code §§ 201, 201.5, 202, and 203);
11. Failure to Provide Access to Personnel Files (Lab. Code § 119.5);
12. Failure to Provide Access to Payroll Records (Lab. Code § 226);
13. Failure to Maintain Accurate Records (Lab. Code § 1174);
14. Wrongful Termination in Violation of Public Policy;
15. Whistleblower Retaliation (Lab. Code § 1102.5);
16. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
17. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

Complaint Filed: March 12, 2021

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Attorneys for Plaintiff HUNTER MEELEE, and all others similarly situated

1 Plaintiffs SHAUNA ADAMS, JENICA COLE, KASSANDRA MENDIVIL, MICHAEL
2 NEVAREZ, HUNTER MEELEE, RICHARD BAUTISTA, and JOE NUNEZ (hereafter
3 collectively referred to as the “Plaintiffs”), on behalf of themselves and all other similarly situated,
4 complain and alleges as follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this class and representative action based on alleged violations of
7 the California Labor Code and Industrial Welfare Commission Order No. 7-2001 (hereafter “the
8 Wage Order”), against IGS SOLUTIONS LLC, a California limited liability company,
9 STRATEGIC GREEN PARTNERS LLC dba AUTHENTIC 760, a California limited liability
10 company, SHRYNE GROUP, INC., a California corporation, STIIIZY, LLC, a California limited
11 liability company, IRONWORKS COLLECTIVE INC. dba BLAZE, a California corporation,
12 and Does 1-50, inclusive (collectively, “Defendants”).

13 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
14 them, and other similarly situated current and former employees in California for unpaid wages
15 and other related relief. These claims are: (1) failure to pay all wages earned for all hours worked
16 at the correct rates of pay, (2) failure to pay accrued vacation, (3) provide sick leave, (4) failure
17 to provide all rest breaks, (5) failure to provide meal periods, (6) failure to provide a day of rest,
18 (7) failure to indemnify and/or reimburse Plaintiffs and the below-described Class Members for
19 reasonable expenses incurred during the course of performing their duties, (8) unlawful tip
20 collection, (9) wage statement penalties, (10) waiting time penalties, (11) failure to provide access
21 to personnel files, (12) failure to provide access to payroll records, (13) failure to maintain
22 accurate records, (14) wrongful termination in violation of public policy, (15) whistleblower
23 retaliation, (16) unfair competition, (17) violations of the Private Attorneys General Act
24 (“PAGA”). Accordingly, Plaintiffs now seek to recover unpaid wages, premium wages, statutory
25 penalties, reimbursement for expenses, and related relief through this class and representative
26 action.
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1 and belief.

2 13. Defendant STRATEGIC GREEN PARTNERS LLC dba AUTHENTIC 760 is a
3 limited liability company organized and existing under the laws of California and a citizen of
4 California based on Plaintiffs' information and belief.

5 14. Defendant SHRYNE GROUP, INC. is a corporation organized and existing under
6 the laws of California and a citizen of California based on Plaintiffs' information and belief.

7 15. Defendant STIIIZY, LLC is a limited liability company organized and existing
8 under the laws of California and a citizen of California based on Plaintiffs' information and belief.

9 16. Defendant IRONWORKS COLLECTIVE INC. is a corporation organized and
10 existing under the laws of California and a citizen of California based on Plaintiffs' information
11 and belief.

12 17. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
13 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
14 are informed and believe and thereon allege that said defendants are legally responsible for the
15 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
16 Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE defendants
17 when ascertained.

18 18. Plaintiffs are informed and believe and thereon allege that, at all relevant times
19 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
20 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
21 and scope of such agency or employment, and with the approval and ratification of each of the
22 other Defendants.

23 19. Plaintiffs are informed and believe and thereon allege that each and every one of
24 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
25 each acting as agents and/or employees, and/or under the direction and control of each of the other
26 defendants, and that said acts and failures to act were within the course and scope of said agency,
27 employment and/or direction and control.
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1 20. At all relevant times, in perpetrating the acts and omissions alleged herein,
2 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
3 of a practice which resulted in Defendants not paying Plaintiffs and other Class Members in
4 accordance with applicable California labor laws as alleged herein.

5 **CLASS ACTION ALLEGATIONS**

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

11 21. **Class Definition:** The Class is defined as follows: all current and former hourly,
12 non-exempt employees of Defendants in California at any time from January 28, 2017 through
13 the earlier date of either the Court's preliminary approval of the Settlement or Defendants' election
14 to provide a date certain when the 15% benchmark increase in Class employee workweeks is
15 reached pursuant to the Escalator Clause in Paragraph 6 of the Parties' Class Action And PAGA
16 Settlement Agreement And Class Notice, whichever occurs first.

17 A. The Class includes a Driver Termination Sub-Class of all current and former
18 hourly, non-exempt employees of Defendants in California at any time from
19 January 28, 2017 through the earlier date of either the Court's preliminary
20 approval of the Settlement or Defendants' election to provide a date certain
21 when the 15% benchmark increase in Class employee workweeks is reached
22 pursuant to the Escalator Clause in Paragraph 6 of the Parties' Parties' Class
23 Action And PAGA Settlement Agreement And Class Notice, whichever
24 occurs first, for drivers who allege they were wrongfully terminated for failing
25 to obtain business use vehicle insurance.

26 B. The Class includes a Driver Retaliation Sub-Class of all current and former
27 hourly, non-exempt employees of Defendants in California at any time from
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January 28, 2017 through the earlier date of either the Court's preliminary approval of the Settlement or Defendants' election to provide a date certain when the 15% benchmark increase in Class employee workweeks is reached pursuant to the Escalator Clause in Paragraph 6 of the Parties' Parties' Class Action And PAGA Settlement Agreement And Class Notice, whichever occurs first, for drivers who allege they were retaliated against for whistleblower complaints regarding Defendants' requirement for Plaintiff Hunter Meelee and the Driver Termination_Sub-Class to obtain business use vehicle insurance.

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

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

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

- A. Whether Defendants failed to provide the Class Members with all rest periods as required by section 12 of the Wage Order?
- B. Whether Defendants failed to provide the Class Members with all meal periods as required by section 11 of the Wage Order?
- C. Whether Defendants failed to pay the Class Members for all hours worked at the correct rates of pay, including but not limited to, minimum, regular, and overtime wages?
- D. Whether Defendants failed to pay Class Members all earned wages?

- 1 E. Whether Defendants failed to indemnify and/or reimburse Class Members for the
2 reasonable expenses they incurred during the course of performing their duties;
3 F. Whether Defendants unlawfully collected Class Members' monetary tips?
4 G. Whether Defendants knowingly and intentionally failed to provide Class Members
5 with accurate wage statements?
6 H. Whether Defendants willfully failed to provide Class Members with timely final
7 wages?
8 I. Whether Defendants engaged in unfair competition within the meaning of
9 Business and Professions Code §§ 17200, *et seq.*, with respect to Class Members?
10 J. Whether Defendants failed to maintain accurate employment and payroll records
11 for Class Members?
12 K. Whether Defendants failed to provide payroll records to Class Members?
13 L. Whether Defendants failed to provide access to personnel files to Class Members?
14 M. Whether Defendants failed to pay gratuities to Class Members?
15 N. Whether Defendants failed to pay vacation pay to Class Members?
16 O. Whether Defendants failed to provide sick leave and sick pay including COVID-
17 19 sick leave and sick pay to Class Members?
18 P. Whether Defendants failed to provide sick leave without precondition to Class
19 Members?
20 Q. Whether Defendants wrongfully terminated driver Class Members for failure to
21 obtain business use vehicle insurance?
22 R. Whether Defendants retaliated against driver Class Members for whistleblower
23 complaints under California Labor Code section 1102.5 for failure to obtain
24 business use vehicle insurance?
25 S. Whether Defendants failed to provide Class Members with one day's rest in seven
26 days.
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1 25. **Typicality:** Plaintiffs' claims are typical of Class Members' claims. Plaintiffs are
2 informed and believe and thereon allege that Defendants have a policy, practice or a lack of a
3 policy which resulted in Defendants failing to comply with the California Labor Code and the
4 Business and Professions Code as alleged herein.

5 26. **Adequacy of Class Representative:** Plaintiffs are adequate Class representatives
6 in that they have no interests that are adverse to, or otherwise in conflict with, the interests of
7 absent Class Members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of
8 Class Members. Plaintiffs will fairly and adequately represent and protect the interests of Class
9 Members.

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

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

3 32. At all relevant times, Defendants' Managers instructed Plaintiffs and the Class
4 Members to clock out for meal periods they did not take. Defendants' Managers also modified
5 Plaintiffs' and Class Members' time records to state that they took duty-free, timely, 30-minute
6 meal periods. Defendants failed to compensate Plaintiffs and Class Members for this work.
7 Finally, Defendants failed to pay Plaintiffs and the Class Members premium wages for days on
8 which Defendants failed to provide Plaintiffs and the Class Members with all timely meal periods
9 and unrestricted rest periods.

10 33. At all relevant times, Defendants required Plaintiffs and the Class Members to
11 incur certain business expenses in the course of performing their duties. Defendants instructed
12 Plaintiffs and the Class Members to download the "WhenIWork" and "WhatsApp" applications
13 on their personal mobile phones to check their schedules and communicate with management and
14 other employees while working and when they were clocked out from work. Defendants failed to
15 pay Plaintiffs and the Class Members for this time spent working while clocked out. Further,
16 Defendants failed to reimburse Plaintiffs and the Class Members for mobile phone charges, nor
17 did they offer them a free alternative to such personal phone use. Defendants also failed to offer
18 an alternative for Plaintiffs and the Class Members to check their work schedules. Defendants
19 also required Plaintiffs and the Class Members to use their personal vehicles to make deliveries,
20 bank deposits, and pick up necessary supplies. Defendants did not reimburse Plaintiffs and the
21 Class Members for such vehicle-related expenses. Additionally, Defendants required Plaintiffs
22 and the Class Members to clean and perform maintenance on company vehicles without
23 reimbursement for cleaning supplies or required parts. Defendants also required Plaintiffs and
24 the Class Members to clean their uniforms without reimbursement for such uniform maintenance.
25 Further, Defendants failed to reimburse Plaintiffs and the Class Members for the cost of hotel
26 rooms to permit sleeping after employee shifts that were far away from Plaintiffs' and the Class
27 Members' residences.
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1 34. At all relevant times, Defendants failed to provide Plaintiffs and the Class
2 Members with accurate itemized written wage statements.

3 35. At all relevant times, as a result of the violations above, Defendants also failed to
4 timely pay Plaintiffs and Class Members all earned wages at the time of termination or separation
5 from employment as Defendants did not pay them for all minimum wages, overtime wages, and
6 reimburse them for all expenses.

7 36. At all relevant times, Defendants failed to pay Plaintiffs and the Class Members
8 wages at a rate of 1.5 times their regular rate of pay for all hours over eight hours worked in a day
9 and/or forty hours in a week or on seventh consecutive day of work, or a rate of twice their regular
10 rate of pay for all hours worked in excess of twelve hours worked in a day and/or and for all hours
11 worked in excess of eight hours on the seventh consecutive day of work in a workweek.

12 37. At all relevant times, Defendants failed to maintain accurate employment and
13 payroll records for Plaintiffs and the Class Members. Defendants failed to keep accurate time
14 records reflecting the time that Plaintiffs and the Class Members began their work shift, started
15 and ended their meal periods, and when their work shifts ended.

16 38. At all relevant times, Defendants failed to provide Plaintiffs and the Class
17 Members with access to payroll records and personnel files.

18 39. At all relevant times, Defendants failed to pay gratuities and forced the Class
19 Members to share their monetary tips with Defendants' supervisors and managers.

20 40. At all relevant times, Plaintiffs and all of Class Members earned vacation pay
21 during employment. Defendants' vacation pay policies failed to provide for proportionate
22 accruals. Additionally, under such policies, these accrued but unused forms of vacation pay were
23 subject to forfeit at the conclusion of the employment relationship. Defendants willfully failed to
24 pay out employees at the end of the employment relationship and at the correct final rates of pay
25 the unused vacation pay that Plaintiffs and the Class Members earned and accrued. During the
26 employment relationship between Defendants and Plaintiffs and the Class Members, Defendants
27 either failed to pay for any unused but accrued vacation days or paid out accrued vacation pay at
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1 lower rates than the regular rates of pay for Plaintiffs and the Class Members.

2 41. At all relevant times, Defendants failed to provide Plaintiffs and the Class
3 Members with paid sick leave.

4 42. At all relevant times, Defendants failed to provide Plaintiffs and the Class
5 Members pay for COVID-19 related time off, but rather required Plaintiffs and the Class Members
6 to use sick pay or vacation pay to take days off for the COVID-19 vaccine or illness.

7 43. At all relevant times, Defendants imposed policies on Plaintiffs and the Class
8 Members that mandate they must acquire coverage for any shift missed, including any shift
9 missed for illness, diagnosis, treatment, and/or recovery. Additionally, Defendants would subject
10 Plaintiffs and the Class Members to disciplinary action, up to and including termination, for
11 missing any shift without finding coverage.

12 44. At all relevant times, Plaintiff Hunter Meelee and the Driver Termination Sub-
13 Class used their personal vehicles to perform work for Defendants. At some point during their
14 employment, Defendants required Plaintiff Meelee and the Driver Termination Sub-Class to
15 obtain business use vehicle insurance for their personal vehicles. Defendants refused to reimburse
16 Plaintiff Meelee and the Driver Termination Sub-Class for the costs of the business use vehicle
17 insurance. Defendants then wrongfully terminated Plaintiff Meelee and other employees in the
18 Driver Termination Sub-Class for failing to obtain business use vehicle insurance.

19 45. At all relevant times, Plaintiff Hunter Meelee and the Driver Retaliation Sub-Class
20 complained to Defendants that the requirement to obtain business use vehicle insurance was
21 unlawful. Plaintiff Meelee and the Driver Retaliation Sub-Class were then retaliated against for
22 these whistleblower complaints.

23 46. At all relevant times, Defendants required Plaintiffs and the Class Members to
24 work for consecutive days without providing one day's rest in seven days.

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1 **FIRST CAUSE OF ACTION**

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

3 **(Lab. Code §§ 221, 510, 1182.11, 1182.12, 1194, 1197, and 1198)**

4 **(By Plaintiffs and the Class Members against all Defendants)**

5 47. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

6 48. At all relevant times, Plaintiffs and the Class Members have been entitled to the
7 benefits and protections of California Labor Code §§ 221, 510, 1182.11, 1182.12, 1194, 1197,
8 1198, and the Wage Order.

9 49. Labor Code § 1182.11 states,
10 Notwithstanding any other provision of this part, on and after
11 March 1, 1997, the minimum wage for all industries shall not be
12 less than five dollars (\$5.00) per hour; on and after March 1, 1998,
13 the minimum wage for all industries shall not be less than five
14 dollars and seventy-five cents (\$5.75) per hour. The Industrial
15 Welfare Commission shall, at a public meeting, adopt minimum
16 wage orders consistent with this section without convening wage
17 boards, which wage orders shall be final and conclusive for all
18 purposes.

19 50. At all relevant times, Labor Code § 1182.12 required employers like Defendants
20 to pay their employees as follows:

21 (a) Notwithstanding any other provision of this part, on and
22 after July 1, 2014, the minimum wage for all industries
23 shall be not less than nine dollars (\$9) per hour, and on
24 and after January 1, 2016, the minimum wage for all
25 industries shall be not less than ten dollars (\$10) per hour.

26 (b) Notwithstanding subdivision (a), the minimum wage for
27 all industries shall not be less than the amounts set forth
28 in this subdivision, except when the scheduled increases
in paragraphs (1) and (2) are temporarily suspended under
subdivision (d).

(1) For any employer who employs 26 or more
employees, the minimum wage shall be as follows:

(A) From January 1, 2017, to December 31, 2017,
inclusive, -ten dollars and fifty cents (\$10.50)
per hour.

(B) From January 1, 2018, to December 31, 2018,
inclusive, -eleven dollars (\$11) per hour.

- (C) From January 1, 2019, to December 31, 2019, inclusive, -twelve dollars (\$12) per hour.
- (D) From January 1, 2020, to December 31, 2020, inclusive, -thirteen dollars (\$13) per hour.
- (E) From January 1, 2021, to December 31, 2021, inclusive, -fourteen dollars (\$14) per hour.
- (F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars (\$15) per hour.

51. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” As the California Supreme Court has explained, this definition is disjunctive, meaning time can be an “hour worked” if either (a) the employee is subject to the employer's control, or (b) the employer suffers or permits the employee to work during that time, whether or not the employee is required to do so. *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal. 4th 833, 838 (citing *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582-83).

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

(A) Daily Overtime - General Provisions

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

- (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours

1 worked in excess of eight (8) hours up to
2 and including 12 hours in any workday, and
3 for the first eight (8) hours worked on the
4 seventh (7th) consecutive day of work in a
5 workweek; and

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

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

14 54. In relevant part, California Labor Code § 510 states,

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

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

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

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

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

1 doing so.

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

7 60. At all relevant times, Defendants required Plaintiffs and the Class Members to
8 perform tasks during their off-the-clock meal periods and after clocking out at the end of their
9 shifts, including, but not limited to, assisting customers with purchases, handling complaints from
10 customers, taking inventory, ordering inventory and supplies, conducting audits, performing daily
11 cash intakes, creating reports, assisting with payroll, preparing documents, and training new
12 employees. Still, Defendants deducted wages for such time that Plaintiffs and the Class Members
13 spent working. Additionally, Defendants deducted as many as 16 hours per pay period from the
14 wages Plaintiffs and the Class Members earned and recorded. Plaintiffs and the Class Members
15 complained about these deductions to Defendants. Nevertheless, Defendants did not return the
16 wages wrongfully deducted. Plaintiffs and the Class Members regularly spent approximately one
17 hour on duty after clocking out to complete required tasks prior to leaving work. Defendants,
18 however, failed to pay Plaintiffs and the Class Members for this off-the-clock work.

20 61. At all relevant times, Defendants knowingly failed to compensate Plaintiffs and
21 the Class Members for all hours worked, including but not limited to, minimum, overtime and
22 double time wages. As such, Defendants failed to compensate Plaintiffs and the Class Members
23 for all hours worked at the correct rates of pay.

24 62. Plaintiffs are informed and believe that, at all relevant times, Defendants have
25 applied centrally devised policies and practices to Plaintiffs and the Class Members with respect
26 to working conditions and compensation arrangements.

27 63. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
28 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'

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

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

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

11 **SECOND CAUSE OF ACTION**

12 **VACATION PAY FORFEITURE**

13 **(Lab. Code § 227.3)**

14 **(By Plaintiffs and the Class Members against all Defendants)**

15 66. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged herein.

16 67. Section 227.3 of the Labor Code states that, unless otherwise stipulated by a
17 collective bargaining agreement, whenever a contract of employment or employer policy provides
18 for paid vacations and an employee is terminated without having fully utilized his vested vacation
19 time, all vested vacation must be paid to the employee at his final rate in accordance with such
20 contract of employment or employer policy respecting vacation eligibility or time served. In
21 addition, the statute prohibits an employment contract or employer policy from providing for
22 forfeiture of such vested vacation time upon an employee's termination of employment,
23 regardless of the reason for termination. *See Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d
24 774.
25

26 68. The California Supreme Court has examined the terms under which an employee
27 acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court
28 concluded that a "proportionate right to a paid vacation 'vests' as the labor is rendered." Thus, an

1 employee is entitled to a pro rata share of vacation pay upon termination of employment even
2 though he has not completed all of the service requirements specified in the employer's policy or
3 plan.

4 69. An employer should never, by reason of the employee's termination, attempt to
5 divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested
6 interest pursuant to the terms of the employer's policy or agreement.

7 70. A vacation policy that provides for the forfeiture of vacation pay that is not used
8 by a specified date, such as an employee's anniversary date, is impermissible under California
9 law. Courts have held that such "use-it-or-lose-it policies" result in forfeitures of vested vacation
10 pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not
11 permit employees to carry over vacation time from one year to the next and do not allow
12 employees to receive vacation pay in lieu of taking vacation time off.

13 71. The DLSE's enforcement policy permits employers to exclude employees from a
14 vacation policy during a specified period of time at the beginning of employment. This could
15 apply to a probationary or introductory period or even the first year of employment. If the policy
16 is properly drafted, employees will not be entitled to prorated vacation benefits if they separate
17 from the employer for any reason during the probationary period or "initial employment."
18 (D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be
19 recognized only if it is not found to be a "subterfuge." The Division will deem a subterfuge to
20 exist if vacation benefits are implicitly earned or accrued during the waiting period. For example,
21 if a policy provides that employees do not earn any vacation during their first year of employment,
22 but earn four weeks' vacation during the second year and are reduced to two weeks' vacation the
23 third year, the Division will contend that the policy involves a subterfuge. This is based on the
24 Division's position that the policy, when viewed as a whole, makes it clear that two of the four
25 weeks' vacation attributed to the second year are actually earned in the first years. In a case where
26 such a subterfuge is found, employees who separate during the so-called "waiting period" (i.e.,
27 the first year of employment in the example) will be entitled to prorated vacation pay.
28

1 72. The Division takes the position that vacation pay for a terminating employee must
2 be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date of the
3 separation. (See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies
4 and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J.
5 Reyff (Oct. 28, 1986).)

6 73. The Defendants maintained vacation pay policies and practices with accrual
7 components that violate Labor Code § 227.3 based on the California Supreme Court’s decision
8 in *Suastez v. Plastic Dress-Up Co.*, supra. The Defendants’ vacation policy fails to provide for
9 proportionate vacation pay accruals as employees render labor and causes employees to forfeit
10 their vested rights to vacation pay. Under the policies and practices of the Defendants, Plaintiffs
11 and all of Class Members earned the following forms of vacation pay during employment:
12 vacation, and paid time off (PTO). Under such policies, these accrued but unused forms of
13 vacation pay were subject to forfeit at the conclusion of the employment relationship.
14 Consequently, the Class Members are entitled to recover vacation pay.

15 74. In *Suastez*, the defendant-employer “refused to pay vacation benefits to anyone
16 whose employment was terminated before . . . [his or her employment] anniversary date” and
17 refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period
18 between his last employment anniversary date and his termination date. (*Id.* at 776–77.) In finding
19 for the plaintiff-employee, the Court held that “a proportionate right to a paid vacation ‘vests’ as
20 the labor is rendered” and that Labor Code § 227.3 protects that right from forfeiture. (*Id.* at 784.)

21 75. It is especially worth noting that, in rejecting the contention that the plaintiff-
22 employee had no vested right to vacation pay until his anniversary date, the Court specifically
23 stated: “The right to some share of vacation pay vests, like pension rights, on acceptance of
24 employment. Nonperformance of a condition subsequent, such as [defendant-employer’s]
25 requirement that employees remain until their anniversary, can, at most, result in a forfeiture of
26 the right to a vacation; *it cannot prevent that right from vesting.*” (*Id.* at 780–81, (italics added).)
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28 76. Like the vacation pay policy the Court rejected in *Suastez*, the Defendants’

1 vacation pay policies also fail to provide for proportionate accruals. Defendants willfully failed
2 to pay out at the end of the employment relationship and at the correct final rates of pay the unused
3 vacation pay Plaintiffs and the Class Members earned and accrued. During the employment
4 relationship between Defendants and Plaintiffs and the Class Members, Defendants paid out
5 accrued vacation pay at lower rates than the regular rates of pay of Plaintiffs and the Class
6 Members.

7 77. Defendants did not pay Plaintiffs or the Class Members at the time they were
8 terminated for any unused but accrued vacation days and the like. Defendants had the ability to
9 provide Plaintiffs and the Class Members payment for their accrued but unused vacation days and
10 similar compensation but intentionally failed to pay Plaintiffs and the Class Members.

11 78. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
12 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
13 failure to pay Plaintiffs and Class Members vacation wages as required by California law.
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15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE SICK LEAVE**

17 **(Lab. Code §§ 233, 246, and 246.5)**

18 **(By Plaintiffs and the Class Members against all Defendants)**

19 79. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

20 80. Labor Code section 233 states

21 Any employer who provides sick leave for employees shall permit
22 an employee to use in any calendar year the employee's accrued
23 and available sick leave entitlement, in an amount not less than the
24 sick leave that would be accrued during six months at the
25 employee's then current rate of entitlement, for the reasons
26 specified in subdivision (a) of Section 246.5.

27 81. Labor Code section 246(a)(1) states

28 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.

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82. Labor Code section 246.5 states

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member.
- ...
- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

83. Labor Code § 248 entitles food sector workers such as Plaintiffs and the Class Members of up to 80 hours of COVID-19 food sector supplemental paid sick leave. Additionally, Labor Code § 248.2 entitles workers such as Plaintiffs and the Class Members of up to 80 hours of COVID-19 supplemental paid sick leave when they were unable to work or telework.

84. The Defendants failed to provide Plaintiffs and all of Class Members with the categories of paid sick leave specified above at their regular rates of pay. Defendants at times conditioned such leaves of absence on finding other employees to cover for the employee concerned. The Defendants also failed to implement COVID-19 safety measures, including temperature checks, social distancing, and masks.

85. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to pay Plaintiffs and Class Members sick leave, including COVID-19 supplemental paid sick leave, as required by California law. Defendants also failed to provide Plaintiffs and the Class Members sick leave without precondition, in that Plaintiffs and Class Members were required to find other employees to cover shifts in order to take sick leave.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST BREAKS**

3 **(Lab. Code §§ 226.7 and 1198)**

4 **(By Plaintiffs and the Class Members against all Defendants)**

5 86. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

6 87. At all relevant times during the applicable limitations period, Plaintiffs and the
7 Class have been employees of Defendants and entitled to the benefits and protections of California
8 Labor Code §§ 226.7, 1198, and the Wage Order.

9 88. Labor Code § 1198 states,
10 “The maximum hours of work and the standard conditions of labor
11 fixed by the commission shall be the maximum hours of work and
12 the standard conditions of labor for employees. The employment
13 of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.”

14 89. In relevant part, Section 12 of the Wage Order states

15 “Rest Periods:

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

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

1 90. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break
2 should fall on either side of the meal break. (Ibid.)” *Brinker Rest. Corp. v. Superior Court* (2012)
3 53 Cal. 4th 1004, 1032.

4 91. In addition, Labor Code Section 226.7 states

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

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

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

19 93. By not providing adequate staff to relieve Plaintiffs and the Class Members of their
20 duties, Defendants have intentionally and improperly failed to provide all rest breaks free from
21 any work or duties to Plaintiffs and the Class Members in accordance with the Wage Order,
22 including, but not limited to, a third rest break when they worked more than 10 hours in a
23 workday. Even when Plaintiffs and the Class Members tried to take duty-free rest periods, other
24 employees and managers (collectively “Defendants’ Managers”) interrupted them with requests
25 for help serving customers and for other business needs. Further, on the rare occasions that
26 Defendants permitted Plaintiffs and the Class Members to take timely, off-duty rest breaks,
27 Defendants required Plaintiffs and the Class Members to remain on the premises. Defendants did
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1 not request an exemption from California's rest period law from the Division of Labor Standards
2 Enforcement.

3 94. Plaintiffs are informed and believe and thereon allege that, at relevant times within
4 the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which
5 resulted in Defendants not providing the Class Members with all timely rest breaks required by
6 California law.

7 95. Defendants failed to pay Plaintiffs and the Class Members the additional wages
8 required by California Labor Code § 226.7 for workdays in which one or more timely rest breaks
9 were not provided to them. Plaintiffs are informed and believe and thereon allege that, at relevant
10 times within the applicable limitations period, Defendants have maintained a policy, practice, or
11 a lack of a policy which resulted in Defendants not providing Plaintiffs and the Class Members
12 with additional wages for all workdays on which one or more timely rest breaks were not provided
13 to them as required by California Labor Code § 226.7.
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15 96. As a result of Defendants' unlawful conduct, Plaintiffs and the Class Members
16 have suffered damages in amounts subject to proof to the extent they were not paid additional
17 wages owed for all rest breaks not provided to them.

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

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

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

4 **(By Plaintiffs and the Class Members against all Defendants)**

5 98. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

9 100. Labor Code § 1198 states,
10 “The maximum hours of work and the standard conditions of labor
11 fixed by the commission shall be the maximum hours of work and
12 the standard conditions of labor for employees. The employment
13 of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.”

14 101. In relevant part, Labor Code Section 512 states
15 “An employer shall not employ an employee for a work period of
16 more than five hours per day without providing the employee with
17 a meal period of not less than 30 minutes, except that if the total
work period per day of the employee is no more than six hours, the
18 meal period may be waived by mutual consent of both the
employer and employee. An employer may not employ an
19 employee for a work period of more than 10 hours per day without
providing the employee with a second meal period of not less than
20 30 minutes, except that if the total hours worked is no more than
21 12 hours, the second meal period may be waived by mutual
consent of the employer and the employee only if the first meal
period was not waived.”

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

23 Meal Periods:

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

- 1 (B) An employer may not employ an employee for a work
2 period of more than ten (10) hours per day without
3 providing the employee with a second meal period of not
4 less than 30 minutes, except that if the total hours worked
5 is no more than 12 hours, the second meal period may be
6 waived by mutual consent of the employer and the
7 employee only if the first meal period was not waived.
- 8 (C) Unless the employee is relieved of all duty during a 30
9 minute meal period, the meal period shall be considered an
10 "on duty" meal period and counted as time worked. An "on
11 duty" meal period shall be permitted only when the nature
12 of the work prevents an employee from being relieved of
13 all duty and when by written agreement between the
14 parties an on-the-job paid meal period is agreed to. The
15 written agreement shall state that the employee may, in
16 writing, revoke the agreement at any time.
- 17 (D) If an employer fails to provide an employee a meal period
18 in accordance with the applicable provisions of this Order,
19 the employer shall pay the employee one (1) hour of pay
20 at the employee's regular rate of compensation for each
21 workday that the meal period is not provided.
- 22 (E) In all places of employment where employees are required
23 to eat on the premises, a suitable place for that purpose
24 shall be designated.

25 103. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the
26 Class Members were entitled to uninterrupted meal periods of at least thirty (30) minutes for each
27 day they worked five or more hours, and to a second uninterrupted 30-minute meal on days they
28 worked more than ten hours.

104. By not providing adequate staff to relieve Plaintiffs and the Class Members of their
duties, Defendants have intentionally and improperly failed to provide all meal periods free from
any work or duties to Plaintiffs and the Class Members in accordance with the Wage Order,
including, but not limited to, a second 30-minute meal period when they worked in excess of ten
hours in a workday. Even when Plaintiffs and the Class Members tried to take duty-free meal
periods, other employees and managers (collectively "Defendants' Managers") interrupted them

1 with requests for help serving customers and for other business needs.

2 105. Defendants also often failed to provide Plaintiffs and the Class Members with 30-
3 minute meal periods before the end of their fifth work hour. Defendants' Managers required
4 Plaintiffs and the Class Members to request permission prior to taking a meal period, which they
5 often prohibited, due to the press of business. On a number of occasions, Plaintiffs complained to
6 Defendants' Managers about Defendants' failure to provide Plaintiffs and the Class Members
7 with timely rest and meal periods. In spite of this, Defendants refused to make changes.

8 106. Defendants also required Plaintiffs and the Class Members to eat on the premises
9 of their worksite where Defendants failed to provide them with a designated break room or other
10 suitable place for taking their breaks.

11 107. At all relevant times, Defendants' Managers instructed Plaintiffs and the Class
12 Members to clock out for meal periods they did not take. Defendants' Managers also modified
13 Plaintiffs' and Class Members' time records to state that they took duty-free, timely, 30-minute
14 meal periods. Defendants failed to compensate Plaintiffs and Class Members for this work.

15 108. Plaintiffs are informed and believe and thereon allege that, at all relevant times
16 within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a
17 policy which resulted in Defendants not providing Plaintiffs and the Class Members with all
18 timely meal periods required by California Labor Code § 512 and the Wage Order.

19 109. Defendants failed to pay Plaintiffs and the Class Members the additional wages
20 required by California Labor Code § 226.7 for all workdays in which one or more timely meal
21 periods were not provided to her. Plaintiffs are informed and believe and thereon allege that, at
22 relevant times within the applicable limitations period, Defendants have maintained a policy,
23 practice, or a lack of a policy which resulted in Defendants not providing Plaintiffs and the Class
24 Members with additional wages for all workdays on which one or more timely meal periods were
25 not provided to them as required by California Labor Code § 226.7.

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

2 111. By reason of the above, Plaintiffs and the Class Members are entitled to premium
3 wages for workdays in which one or more meal periods were not provided to them pursuant to
4 California Labor Code § 226.7.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE A DAY OF REST**

7 **(Lab. Code §§ 551 and 552)**

8 **(By Plaintiffs and the Class Members against all Defendants)**

9 112. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

10 113. At all relevant times, Plaintiffs and the Class Members have been non-exempt
11 employees of Defendants and entitled to the benefits and protections of California Labor Code §§
12 551 and 552.

13 114. Labor Code section 551 states, “Every person employed in any occupation of labor
14 is entitled to one day’s rest therefrom in seven.”

15 115. Labor Code section 552 states, “No employer of labor shall cause his employees
16 to work more than six days in seven.”

17 116. At all relevant times, Defendants failed to provide a day of rest by failing to
18 provide Plaintiffs and the Class Members at least one day of rest out of seven days.

19 117. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
20 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
21 failure to provide one day of rest out of seven days to Plaintiffs and the Class Members.

22 118. Therefore, pursuant to California Labor Code §§ 551-552, Plaintiffs and the Class
23 Members are entitled to penalties for pay periods in which a day of rest was not provided to them
24 pursuant to California Labor Code § 558.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO INDEMNIFY**

3 **(Lab. Code §§ 1198, 2800, and 2802)**

4 **(By Plaintiffs and the Class Members against all Defendants)**

5 119. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

6 120. At all relevant times, Plaintiffs and the Class Members have been non-exempt
7 employees of Defendants and entitled to the benefits and protections of California Labor Code §§
8 1198, 2802, and the Wage Order.

9 121. Labor Code section 2800 states, “An employer shall in all cases indemnify his
10 employee for losses caused by the employer’s want of ordinary care.”

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

15 123. In relevant part, Section 9 of the Wage Order states,

16 (B) When tools or equipment are required by the employer or are
17 necessary to the performance of a job, such tools and equipment shall be provided
18 and maintained by the employer, except that an employee whose wages are at
least two (2) times the minimum wage provided herein may be required to provide
and maintain hand tools and equipment customarily required by the trade or craft.

19 124. Labor Code section 1198 prohibits employers from employing their employees
20 under conditions prohibited by the Wage Order.

21 125. At all relevant times, Defendants required Plaintiffs and the Class Members to
22 incur certain business expenses in the course of performing their duties, including the losses
23 caused by the Defendants want of ordinary care. Defendants instructed Plaintiffs and the Class
24 Members to download the “WhenIWork” and “WhatsApp” applications on their personal mobile
25 phones to check their schedules and communicate with management and other employees while
26 working and when they were clocked out from work. Defendants failed to pay Plaintiffs and the
27 Class Members for this time spent working while clocked out. Further, Defendants failed to
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1 reimburse Plaintiffs and the Class Members for mobile phone charges, nor did they offer them a
2 free alternative to such personal phone use. Defendants also failed to offer an alternative for
3 checking work schedules. Defendants also required Plaintiffs and the Class Members to use their
4 personal vehicles to make deliveries, bank deposits, and pick up necessary supplies. Defendants
5 did not reimburse Plaintiffs and the Class Members for such vehicle-related expenses.
6 Additionally, Defendants required Plaintiffs and the Class Members to supply their own
7 protective gear, including work equipment such as gloves and knives, auto insurance, use of
8 personal vehicles, cleaning supplies, uniform maintenance, maintenance and repair of vehicles,
9 and costs for hotel rooms when travelling for work. With regard to uniforms, Defendants provided
10 only two shirts and a sweater free of charge and required Class Members to purchase other apparel
11 if they needed additional uniform items. With regard to travel, defendants require Plaintiffs and
12 the Class Members to travel in their personal vehicles to purchase office supplies. Defendants
13 refuse to reimburse Plaintiffs and the Class Members for such vehicle-related expenses.
14

15 126. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
16 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
17 failure to indemnify and/or reimburse Plaintiffs and the Class Members for the reasonable
18 expenses they incurred during the course of performing their duties.

19 127. Therefore, pursuant to California Labor Code § 2802(b), Plaintiffs and the Class
20 Members are entitled to reimbursement for all necessary expenditures and losses and interest
21 thereon, due and owing to them within four years of the date of the filing of the Complaint until
22 the entry of judgment.

23 128. Accordingly, with respect to this cause of action, on behalf of themselves and the
24 Class Members, Plaintiffs pray for the above stated relief, costs, and all reasonable attorneys' fees
25 pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

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1 **EIGHTH CAUSE OF ACTION**

2 **UNLAWFUL TIP COLLECTION**

3 **(Lab. Code § 351)**

4 **(By Plaintiffs and the Class Members against all Defendants)**

5 129. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

6 130. In relevant part, California Labor Code § 350(e) provides as follows:

7 (e) “ Gratuity” includes any tip, gratuity, money, or part thereof
8 that has been paid or given to or left for an employee by a
9 patron of a business over and above the actual amount due
the business for services rendered or for goods, food, drink,
or articles sold or served to the patron.

10 131. In relevant part, California Labor Code § 351 states:

11 No employer or agent shall collect, take, or receive any
12 gratuity or a part thereof that is paid, given to, or left for an
13 employee by a patron, or deduct any amount from wages
14 due an employee on account of a gratuity, or require an
15 employee to credit the amount, or any part thereof, of a
16 gratuity against and as a part of the wages due the employee
from the employer. Every gratuity is hereby declared to be
the sole property of the employee or employees to whom it
was paid, given, or left for.

17 132. During all times relevant herein, Defendants failed to pay gratuities and forced the
18 Class Members to share their monetary tips with Defendants’ supervisors and managers, in
19 violation of Labor Code § 351.

20 133. Therefore, Class Members demand return of all tips unlawfully collected from
21 them within four years of the filing of this complaint until the date of entry of judgment after trial.

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1 **NINTH CAUSE OF ACTION**

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

3 **(Lab. Code § 226)**

4 **(By Plaintiffs and the Class Members against all Defendants)**

5 134. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

9 136. Pursuant to California Labor Code section 226(a), Plaintiffs and the Class
10 Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate
11 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly
12 rates in effect during the pay period; and d) the corresponding number of hours worked at each
13 hourly rate by the employee.

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

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

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

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

27 D. The name of the employee and only the last four digits of his or her social
28

1 security number or an employee identification number other than a social security number; and

2 E. The number of piece-rate units earned and the piece rate.

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

6 139. As alleged herein, Defendants failed to pay Plaintiffs and the Class Members all
7 wages owed. As a result, Defendants have failed to properly and accurately itemize each
8 employee’s gross wages earned, net wages earned, total hours worked, corresponding number of
9 hours worked, and other requirements of California Labor Code section 226. As a result,
10 Defendants have violated California Labor Code section 226.

11 140. Defendants’ failure to provide Plaintiffs and the Class Members with accurate
12 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs
13 and the Class Members with accurate wage statements but intentionally provided wage statements
14 that Defendants knew were not accurate.

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

26 142. Pursuant to California Labor Code § 226(e), Plaintiffs and the Class Members are
27 entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial
28 pay period in which a violation of California Labor Code § 226(a) occurred and one hundred

1 dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to
2 exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are also
3 entitled to an award of costs and reasonable attorneys' fees.

4 **TENTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(Lab. Code §§ 201, 201.5, 202, and 203)**

7 **(By Plaintiffs and the Class Members against all Defendants)**

8 143. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

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

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

14 146. Under Labor Code § 201.5, the payment of wages to employees may be mailed to
15 the employee or made available to the employee at a location specified by the employer in the
16 county where the employee was hired or performed labor. The payment shall be deemed to have
17 been made on the date that the employee's wages are mailed to the employee or made available
18 to the employee at the location specified by the employer, whichever is earlier.

19 147. Labor Code § 202 provides that all earned and unpaid wages of an employee who
20 quits after providing at least 72-hours notice before quitting are due and payable at the time of
21 quitting and that all earned and unpaid wages of an employee who quits without providing at least
22 72-hours notice before quitting are due and payable within 72 hours.

23 148. By failing to pay Plaintiffs and the Class Members earned minimum, overtime,
24 and double time wages, Defendants failed to timely pay them all earned and unpaid wages in
25 violation of Labor Code § 201, 201.5, or § 202.

26 149. Labor Code § 203 provides that the wages of an employee continue on a daily
27 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
28

1 unpaid wages to the employee in accordance with Labor Code § 201, 201.5, or § 202.

2 150. Plaintiffs are informed and believe that Defendants' failures to timely pay
3 Plaintiffs and the Class Members all of their earned and unpaid wages have been willful in that,
4 at all relevant times, Defendants have deliberately maintained policies and practices that violate
5 the requirements of the Labor Code and the Wage Order even though, at all relevant times, they
6 have had the ability to comply with those legal requirements.

7 151. Pursuant to Labor Code § 203, Plaintiffs seek waiting time penalties on behalf of
8 themselves and the Class Members, in amounts subject to proof not to exceed 30 days of waiting
9 time penalties for each Class Member.

10 **ELEVENTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCESS TO PERSONNEL RECORDS**

12 **(Labor Code § 1198.5)**

13 **(By Plaintiffs and the Class Members against all Defendants)**

14 152. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

15 153. Under Labor Code § 1198.5(a), every current and former employee, or his or her
16 representative, has the right to inspect and receive a copy of the personnel records that the
17 employer maintains relating to the employee's performance or to any grievance concerning the
18 employee.

19 154. Under Labor Code § 1198.5(b), unless an extension is granted, the employer shall
20 make the contents of those personnel records available for inspection to the current or former
21 employee, or his or her representative, at reasonable intervals and at reasonable times, but not
22 later than 30 calendar days from the date the employer receives a written request.

23 155. Plaintiffs are informed and believes that Defendants failed to timely make the
24 contents of the personnel records of Plaintiffs and the Class Members within the time required by
25 statute.

26 156. Pursuant to Labor Code § 1198.5(k), Plaintiffs and the Class Members are entitled
27 to recover a penalty in the amount of \$750 for each of Defendants' violation of Labor Code §
28

1 1198.5.

2 **TWELVTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCESS TO PAYROLL RECORDS**

4 **(Labor Code § 226)**

5 **(By Plaintiffs and the Class Members against all Defendants)**

6 157. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

7 158. Labor Code § 226 requires employers to afford current and former employees the
8 right to inspect or receive a copy of their payroll records within 21 calendar days from the date of
9 a written or oral request.

10 159. Plaintiffs are informed and believes that Defendants failed to timely make the
11 contents of their payroll records to Plaintiffs and the Class Members within the time required by
12 statute.

13 160. Pursuant to Labor Code 226(f), Plaintiffs and the Class Members are entitled to
14 recover a penalty in the amount of \$750 for each of Defendants' violation of Labor Code § 226.

15 **THIRTEENTH CAUSE OF ACTION**

16 **FAILURE TO MAINTAIN ACCURATE RECORDS**

17 **(Labor Code § 1174)**

18 **(By Plaintiffs and the Class Members against all Defendants)**

19 161. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

20 162. California Labor Code § 1174(d), which was in force and effect at all relevant
21 times, herein, provides in pertinent part, that "Every person employing labor in this state shall
22 keep... at a central location in the state or at the plants or establishments at which employees are
23 employed, payroll records showing the hours worked daily by and the wages paid to, and the
24 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
25 at the respective plants or establishments. These records shall be kept in accordance with rules
26 established for this purpose by the commission, but in any case shall be kept on file for not less
27 than three years. An employer shall not prohibit an employee from maintaining a personal record
28

1 of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

2 163. At all relevant times, Defendants failed to maintain accurate employment and
3 payroll records for Plaintiffs and the Class Members. Defendants failed to keep accurate time
4 records reflecting the time that Plaintiffs and the Class Members began their work shift, started
5 and ended their meal periods, and when their work shifts ended.

6 164. As a direct and proximate result of Defendants’ unlawful conduct as set forth
7 herein, Plaintiffs and the Class Members have sustained damages, for Defendants’ violation of
8 Cal. Lab. Code § 1174(d), including loss of earnings for hours worked, and loss of receipt of
9 premium pay penalties, in amounts to be established at the time of trial.

10 165. Plaintiffs and the Class Members are therefore entitled to and do seek to recover
11 penalties, pursuant to Cal. Lab. Code § 1174.5, which provides that an employer who fails to
12 properly maintain records pursuant to 1174(d) shall be subject to a civil penalty of five hundred
13 dollars (\$500).

14
15 **FOURTEENTH CAUSE OF ACTION**

16 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

17 **(By Plaintiff Meelee and the Driver Termination Sub-Class Members against all**
18 **Defendants)**

19 166. Plaintiff Meelee and the Driver Termination Sub-Class incorporate all paragraphs
20 of this Complaint as if fully alleged herein.

21 167. On or about October 16, 2020, Plaintiff Meelee was involved in a car accident for
22 Defendants while driving his personal vehicle to a delivery location. Shortly thereafter,
23 Defendants began requiring Plaintiff Meelee and the other drivers who used their personal
24 vehicles for cannabis deliveries to obtain business use vehicle insurance at their own expense.
25 Pursuant to this companywide policy, Defendants prepared written instructions describing how
26 Plaintiff Meelee and the other drivers could obtain business use vehicle insurance, scheduled
27 multiple meetings with Plaintiff Meelee and the other drivers about this requirement, and
28 announced that any driver who failed to obtain business use vehicle insurance by November 20,

1 2020 would be terminated.

2 168. Plaintiff Meelee and other drivers in the Driver Termination Sub-Class believed
3 that Defendants' policy was unlawful and complained to their supervisors about Defendants'
4 refusal to reimburse the drivers for the cost of the business use vehicle insurance Plaintiff Meelee
5 and other drivers in the Driver Termination Sub-Class refused to obtain business use vehicle
6 insurance by the November 20, 2020 deadline. In retaliation, Defendants terminated all drivers
7 who refused to obtain business use vehicle insurance by the November 20, 2020 deadline,
8 including Plaintiff Meelee and other drivers in the Driver Termination Sub-Class.

9 169. At all times relevant herein, a fundamental public policy of the State of California
10 was reflected in California Labor Code section 2800, which requires an employer to indemnify
11 his or her employee for all necessary expenditures incurred by the employee in direct consequence
12 of the discharge of his or her duties.

13 170. Plaintiff Meelee believes and alleges that a motivating factor in the termination of
14 his employment and the employment of other drivers in the Driver Termination Sub-Class by
15 Defendants was Plaintiff Meelee's and other drivers' complaints about Defendants' policy of
16 requiring employees to obtain business use vehicle insurance at the drivers' own expense.

17 171. As a proximate result of Defendants' termination of Plaintiff Meelee's
18 employment and termination of the employment of other drivers in the Driver Termination Sub-
19 Class in violation of fundamental public policies, Plaintiff Meelee and the Driver Termination
20 Sub-Class have suffered and continue to suffer humiliation, emotional distress, and mental and
21 physical pain and anguish, all to their damages in a sum according to proof.

22 172. As a result of Defendants' termination of Plaintiff Meelee and termination of other
23 drivers in the Driver Termination Sub-Class, Plaintiff Meelee and the Driver Termination Sub-
24 Class have suffered general and special damages in sums according to proof.

25 173. Defendants' wrongful termination of Plaintiff Meelee and other drivers in the
26 Driver Termination Sub-Class was done intentionally, in a malicious, oppressive manner,
27 entitling plaintiff to punitive damages.
28

1 174. Plaintiff Meelee and other drivers in the Driver Termination Sub-Class have
2 incurred and continue to incur legal expenses and attorneys' fees and are entitled to the same
3 under California Code of Civil Procedure section 1021.5.

4 **FIFTEENTH CAUSE OF ACTION**
5 **WHISTLEBLOWER RETALIATION**

6 **(Labor Code § 1174)**

7 **(By Plaintiff Meelee and the Driver Retaliation Sub-Class Members against all**
8 **Defendants)**

9 175. Plaintiff Meelee and the Driver Retaliation Sub-Class incorporate all paragraphs
10 of this Complaint as if fully alleged herein.

11 176. On or about October 16, 2020, Plaintiff Meelee was involved in a car accident for
12 Defendants while driving his personal vehicle to a delivery location. Shortly thereafter,
13 Defendants began requiring Plaintiff Meelee and the other drivers who used their personal
14 vehicles for cannabis deliveries to obtain business use vehicle insurance at their own expense.
15 Pursuant to this companywide policy, Defendants prepared written instructions describing how
16 Plaintiff Meelee and the other drivers could obtain business use vehicle insurance, scheduled
17 multiple meetings with Plaintiff Meelee and the other drivers about this requirement, and
18 announced that any driver who failed to obtain business use vehicle insurance by November 20,
19 2020 would be terminated.

20 177. Plaintiff Meelee and the other drivers believed that Defendants' policy was
21 unlawful and complained to their supervisors about Defendants' refusal to reimburse drivers for
22 the cost of the business use vehicle insurance. Plaintiff Meelee and other drivers in the Driver
23 Retaliation Sub-Class refused to obtain business use vehicle insurance by the November 20, 2020
24 deadline. In retaliation, Defendants terminated all drivers who refused to obtain business use
25 vehicle insurance by the November 20, 2020 deadline, including Plaintiff Meelee and other
26 drivers in the Driver Retaliation Sub-Class.

27 178. At all times relevant herein, a fundamental public policy of the State of California
28

1 was reflected in California Labor Code section 1102.5, which prohibits retaliation against an
2 employee who discloses an employer's violations of or noncompliance with state statutes and
3 regulations. This policy was binding on Defendants.

4 179. Plaintiff Meelee believes and alleges that a motivating factor in the termination of
5 his employment and the employment of other drivers in the Driver Retaliation Sub-Class by
6 Defendants was Plaintiff Meelee's and other drivers' complaints about Defendants' policy of
7 requiring employees to obtain business use vehicle insurance at their own expense.

8 180. As a proximate result of Defendants' termination of Plaintiff Meelee's
9 employment and the employment of other drivers in the Driver Retaliation Sub-Class in violation
10 of fundamental public policies, Plaintiff Meelee and the Driver Retaliation Sub-Class have
11 suffered and continue to suffer humiliation, emotional distress, and mental and physical pain and
12 anguish, all to their damages in a sum according to proof.

13 181. As a result of Defendants' termination of Plaintiff Meelee and other drivers in the
14 Driver Retaliation Sub-Class, Plaintiff Meelee and other drivers in the Driver Retaliation Sub-
15 Class have suffered general and special damages in sums according to proof.

16 182. Defendants' wrongful termination of Plaintiff Meelee and other drivers in the
17 Driver Retaliation Sub-Class was done intentionally, in a malicious, oppressive manner, entitling
18 plaintiff to punitive damages.

19 183. Plaintiff Meelee and other drivers in the Driver Retaliation Sub-Class have
20 incurred and continue to incur legal expenses and attorneys' fees.

21 **SIXTEENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

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

24 **(By Plaintiffs and the Class Members against all Defendants)**

25 184. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

26 185. At all relevant times during the applicable limitations period, Plaintiffs and the
27 Class Members have been employees of Defendants and entitled to the benefits and protections
28

1 of the Business and Professions Code §§ 17200, *et seq.*

2 186. Defendants engaged in unfair competition by failing to: 1) pay employees for all
3 hours worked at the correct rates of pay; 2) pay their employees premium wages for workdays
4 during which one or more meal or rest periods were not provided, and 3) unlawfully collecting
5 the Class Members' monetary tips. Moreover, Defendants engaged in unfair competition by
6 requiring Plaintiffs and the Class Members to incur, without reimbursement, business expenses
7 in the course of performing their duties including unreimbursed mileage and vehicle-related costs,
8 uniform and equipment purchases and maintenance costs, and use of mobile phones. Furthermore,
9 Defendants withheld vacation and sick pay that Plaintiffs and the Class Members earned and
10 accrued but did not use.

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

16 188. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and the
17 Class Members have suffered injuries in fact and lost money or property. Plaintiffs and the Class
18 Members were deprived of wages for all rest and meal periods not provided to them, for hours
19 worked for which they did not receive wages at the correct rates of pay, for vacation and sick pay
20 they earned and did not use, for tips unlawfully collected from them, and reimbursement for
21 expenses that Plaintiffs and the Class Members incurred in the course of performing their duties.

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

26 190. Plaintiffs and the Class Members are entitled to reasonable attorneys' fees in
27 connection with their unfair competition claims pursuant to California Code of Civil Procedure
28

1 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

2 191. Accordingly, with respect to this cause of action, on behalf of themselves and the
3 Class Members, Plaintiffs pray for the herein stated relief, and an award of all reasonable costs
4 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
5 proof.

6 **SEVENTEENTH CAUSE OF ACTION**

7 **CIVIL PENALTIES**

8 **(Lab. Code §§ 2698, et seq.)**

9 **(By Plaintiffs and the Aggrieved Employees against all Defendants)**

10 192. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

11 193. "Aggrieved Employees" Definition: The "Aggrieved Employees" are all persons
12 employed by Defendants in California and classified as a hourly, nonexempt who worked for
13 Defendants during the period of September 21, 2019 to the date of the Court's order preliminarily
14 approving this Settlement or Defendants' election to provide a date certain when the 15%
15 benchmark increase in Class Member Work Weeks is reached pursuant to the Escalator Clause
16 in Part 9 of the Parties' Class Action And PAGA Settlement Agreement And Class Notice ("the
17 PAGA Period").
18

19 194. Labor Code § 204 states:

- 20 (a) All wages, other than those mentioned in Section 201,
21 201.3, 202, 204.1, or 204.2, earned by any person in any
22 employment are due and payable twice during each
23 calendar month, on days designated in advance by the
24 employer as the regular paydays. Labor performed between
25 the 1st and 15th days, inclusive, of any calendar month
26 shall be paid for between the 16th and the 26th day of the
27 month during which the labor was performed, and labor
28 performed between the 16th and the last day, inclusive, of
any calendar month, shall be paid for between the 1st and
10th day of the following month.

...

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

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

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

The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

195. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiffs on such intervals for all wages earned and all hours worked. On information and belief, Plaintiffs allege that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked. Defendants did not allow Plaintiffs and the Aggrieved Employees to receive their wages by direct deposit. On multiple occasions, Defendants sent the Plaintiffs and Aggrieved Employees' paychecks to the wrong worksites. Defendants prohibited Plaintiffs and the Aggrieved Employees from retrieving their paychecks from these sites and, instead, required them to wait until Defendants made arrangements to have their paychecks delivered to the worksite to which Defendants had assigned Plaintiff and the Aggrieved Employees.

196. Labor Code § 226 states

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information

1 required by subdivision (a) shall afford current and former
2 employees the right to inspect or copy records pertaining
3 to their employment, upon reasonable request to the
4 employer. The employer may take reasonable steps to
5 ensure the identity of a current or former employee. If the
6 employer provides copies of the records, the actual cost of
7 reproduction may be charged to the current or former
8 employee.

9 Plaintiffs and the Aggrieved Employees requested Defendants to produce or allow inspection of
10 records pertaining to their employment. Defendants have yet to provide such records or permit
11 inspection of them. Therefore, Defendants are in violation of Labor Code § 226.

12 197. Labor Code § 432 states, "If an employee or applicant signs any instrument
13 relating to the obtaining or holding of employment, he shall be given a copy of the instrument
14 upon request."

15 198. Before filing suit, Plaintiffs and the Aggrieved Employees requested that
16 Defendants provide a copy of any instrument they signed relating to the obtaining or holding of
17 employment. Defendants have yet to provide all such copies.

18 199. The Wage Order states that:

19 Every employer shall keep accurate information with respect to
20 each employee including the following:

- 21 (1) Full name, home address, occupation and social
22 security number.
- 23 (2) Birth date, if under 18 years, and designation as a
24 minor.
- 25 (3) Time records showing when the employee begins
26 and ends each work period. Meal periods, split shift
27 intervals and total daily hours worked shall also be
28 recorded. Meal periods during which operations
cease and authorized rest periods need not be
recorded.
- (4) Total wages paid each payroll period, including
value of board, lodging, or other compensation
actually furnished to the employee.

1 (5) Total hours worked in the payroll period and
2 applicable rates of pay. This information shall be
3 made readily available to the employee upon
4 reasonable request.

5 (6) When a piece rate or incentive plan is in operation,
6 piece rates or an explanation of the incentive plan
7 formula shall be provided to employees. An
8 accurate production record shall be maintained by
9 the employer.

10 (B) Every employer shall semimonthly or at the time of each
11 payment of wages furnish each employee, either as a
12 detachable part of the check, draft, or voucher paying the
13 employee's wages, or separately, an itemized statement in
14 writing showing: (1) all deductions; (2) the inclusive dates
15 of the period for which the employee is paid; (3) the name
16 of the employee or the employee's social security number;
17 and (4) the name of the employer, provided all deductions
18 made on written orders of the employee may be aggregated
19 and shown as one item.

20 (C) All required records shall be in the English language and
21 in ink or other indelible form, properly dated, showing
22 month, day and year, and shall be kept on file by the
23 employer for at least three years at the place of employment
24 or at a central location within the State of California. An
25 employee's records shall be available for inspection by the
26 employee upon reasonable request.

27 Before filing suit, Plaintiffs and the Aggrieved Employees requested that Defendants allow them
28 to inspect or copy such records pertaining to their employment. Defendants have yet to permit
them to inspect all such records.

200. Labor Code § 226 states,

An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

1 Before filing suit, Plaintiffs and the Aggrieved Employees requested that Defendants allow them
2 to inspect or copy their records pertaining to their employment. Defendants have yet to permit
3 them to inspect all such records.

4 201. Labor Code § 1198 states that
5 “The maximum hours of work and the standard conditions of
6 labor fixed by the commission shall be the maximum hours of
7 work and the standard conditions of labor for employees. The
8 employment of any employee for longer hours than those fixed
9 by the order or under conditions of labor prohibited by the order
10 is unlawful.”

11 Before filing suit, Plaintiffs and the Aggrieved Employees requested that Defendants allow them
12 to inspect their records. Defendants have yet to permit them to inspect all such records.

13 202. Labor Code § 353 states,
14 Every employer shall keep accurate records of all gratuities
15 received by him, whether received directly from the employee or
16 indirectly by means of deductions from the wages of the employee
17 or otherwise. Such records shall be open to inspection at all
18 reasonable hours by the department.

19 Before filing suit, Plaintiffs and the Aggrieved Employees requested that Defendants provide
20 them with an opportunity to inspect records of their gratuities. Defendants have not done so.

21 203. Labor Code § 1198.5 states,
22 (a) Every current and former employee, or his or her
23 representative, has the right to inspect and receive a copy
24 of the personnel records that the employer maintains
25 relating to the employee's performance or to any grievance
26 concerning the employee.
27 (b) (1) The employer shall make the contents of those
28 personnel records available for inspection to the current or
former employee, or his or her representative, at reasonable
intervals and at reasonable times, but not later than 30
calendar days from the date the employer receives a written
request, unless the current or former employee, or his or
her representative, and the employer agree in writing to a
date beyond 30 calendar days to inspect the records, and
the agreed-upon date does not exceed 35 calendar days
from the employer's receipt of the written request. Upon a
written request from a current or former employee, or his

1 or her representative, the employer shall also provide a
2 copy of the personnel records, at a charge not to exceed the
3 actual cost of reproduction, not later than 30 calendar days
4 from the date the employer receives the request, unless the
5 current or former employee, or his or her representative,
6 and the employer agree in writing to a date beyond 30
7 calendar days to produce a copy of the records, as long as
8 the agreed-upon date does not exceed 35 calendar days
9 from the employer's receipt of the written request. Except
10 as provided in paragraph (2) of subdivision (c), the
11 employer is not required to make those personnel records
12 or a copy thereof available at a time when the employee is
13 actually required to render service to the employer, if the
14 requester is the employee.

15 (2)(A) For purposes of this section, a request to inspect or
16 receive a copy of personnel records shall be made in either
17 of the following ways:

18 (i) Written and submitted by the current or
19 former employee or his or her
20 representative.

21 (ii) Written and submitted by the current or
22 former employee or his or her
23 representative by completing an employer-
24 provided form.

25 (B) An employer-provided form shall be made available to
26 the employee or his or her representative upon verbal
27 request to the employee's supervisor or, if known to the
28 employee or his or her representative at the time of the
request, to the individual the employer designates under
this section to receive a verbal request for the form.

(c) The employer shall do all of the following:

(1) With regard to all employees, maintain a copy of
each employee's personnel records for a period of
not less than three years after termination of
employment.

(2) With regard to current employees, make a current
employee's personnel records available for
inspection, and, if requested by the employee or his
or her representative, provide a copy thereof, at the

1 place where the employee reports to work, or at
2 another location agreeable to the employer and the
3 requester. If the employee is required to inspect or
4 receive a copy at a location other than the place
where he or she reports to work, no loss of
compensation to the employee is permitted.

5 (3)(A) With regard to former employees, make a former
6 employee's personnel records available for
7 inspection, and, if requested by the employee or his
8 or her representative, provide a copy thereof, at the
9 location where the employer stores the records,
10 unless the parties mutually agree in writing to a
different location. A former employee may receive
a copy by mail if he or she reimburses the employer
for actual postal expenses.

11 Before filing suit, Plaintiffs and the Aggrieved Employees requested in writing that
12 Defendants provide them with their personnel files. Defendants have not done so. Therefore,
13 Defendants are in violation of Labor Code § 1198.5.

14 204. Labor Code § 2804 states,

15
16 Any contract or agreement, express or implied, made by any
17 employee to waive the benefits of this article or any part thereof,
18 is null and void, and this article shall not deprive any employee or
his personal representative of any right or remedy to which he is
entitled under the laws of this State.

19
20 Defendants impliedly required Plaintiffs and the Aggrieved Employees to agree to waive their
21 rights to reimbursement for the work-related expenses specified above.

22 205. Labor Code § 6400 states, "Every employer shall furnish employment and a place
23 of employment that is safe and healthful for the employees therein." Labor Code
24 § 6401 states:

25 Every employer shall furnish and use safety devices and
26 safeguards, and shall adopt and use practices, means, methods,
27 operations, and processes which are reasonably adequate to render
28 such employment and place of employment safe and healthful.
Every employer shall do every other thing reasonably necessary to
protect the life, safety, and health of employees.

1 Labor Code § 6402 states, “No employer shall require, or permit any employee to go or be in any
2 employment or place of employment which is not safe and healthful.” Labor Code § 6403 states:

3
4 No employer shall fail or neglect to do any of the following:

- 5 (a) To provide and use safety devices and safeguards
6 reasonably adequate to render the employment and place
7 of employment safe.
- 8 (b) To adopt and use methods and processes reasonably
9 adequate to render the employment and place of
10 employment safe.
- 11 (c) To do every other thing reasonably necessary to protect the
12 life, safety, and health of employees.

13 At all relevant times, Defendants failed to provide Plaintiffs and the Aggrieved Employees
14 with employment and a place of employment that was safe and healthful. Additionally,
15 Defendants failed to furnish to Plaintiffs and the Aggrieved Employees safety devices and
16 safeguards adequate to render employment and place of employment safe and healthful.
17 Defendants permitted Plaintiffs and the Aggrieved Employees to be in places of employment
18 which were not safe and healthful. Furthermore, Defendants failed to use methods and processes
19 reasonably adequate to render employment and the place of employment of the Plaintiffs and
20 Aggrieved Employees safe. The Defendants also failed to implement COVID-19 protocols and
21 safety measures to keep Plaintiffs and the Aggrieved Employees safe and healthful, including
22 temperature checks, social distancing, and masks. This placed Plaintiffs and the Aggrieved
23 Employees in an unhealthy environment, as the possibility of coming into contact with the
24 COVID-19 virus was heightened. This increased Plaintiffs’ and the Aggrieved Employees’
25 possibility of injury.

26 206. Section 1198.5 states that

- 27 (k) If an employer fails to permit a current or former employee,
28 or his or her representative, to inspect or copy personnel
records within the times specified in this section, or times

1 agreed to by mutual agreement as provided in this section,
2 the current or former employee or the Labor Commissioner
3 may recover a penalty of seven hundred fifty dollars (\$750)
4 from the employer.

5 207. Section 14 of the Wage Order states as follows:

6 **Seats.**

7 A. All working employees shall be provided with suitable
8 seats when the nature of the work reasonably permits the
9 use of seats.

10 B. When employees are not engaged in the active duties of
11 their employment and the nature of the work requires
12 standing, an adequate number of suitable seats shall be
13 placed in reasonable proximity to the work area and
14 employees shall be permitted to use such seats when it does
15 not interfere with the performance of their duties.

16 At all relevant times, Defendants' retail stores and facilities were generally similar in their layout
17 and design and allow for space for employees to use seats or stools. The nature of the work the
18 Defendants expected Plaintiffs and other Aggrieved Employees to perform reasonably permits
19 the use of seats. However, the Defendants, in violation of the Wage Order and Labor Code §
20 1198, failed to provide Plaintiffs and other Aggrieved Employees with seating by not providing
21 an adequate number of suitable seats and/or requiring Plaintiffs and the Aggrieved Employees to
22 stand or sit on the floor throughout the day when their duties reasonably permitted the use of
23 seating. Additionally, the Defendants did not place an adequate number of suitable seats in
24 reasonable proximity to Plaintiff's and the Aggrieved Employees' work area, nor did Defendants
25 permit Plaintiffs and other Aggrieved Employees to use such seats when it did not interfere with
26 the performance of their duties.

27 208. California Labor Code § 2350 states:

28 "Every factory, workshop, mercantile or other establishment in
which one or more persons are employed, shall be kept clean and
free from the effluvia arising from any drain or other nuisance, and

1 shall be provided, within reasonable access, with a sufficient
2 number of toilet facilities for the use of the employees. When there
3 are five or more employees who are not all of the same gender, a
4 sufficient number of separate toilet facilities shall be provided for
5 the use of each sex, which shall be plainly so designated.”

6 209. In relevant part, § 13 of the Wage Order states:

7 (A) Employers shall provide suitable lockers, closets, or equivalent
8 for the safekeeping of employees’ outer clothing during working
9 hours, and when required, for their work clothing during non-
10 working hours. When the occupation requires a change of clothing,
11 change rooms or equivalent space shall be provided in order that
12 employees may change their clothing in reasonable privacy and
13 comfort. These rooms or spaces may be adjacent to but shall be
14 separate from toilet rooms and shall be kept clean.

15 NOTE: This section shall not apply to change rooms and storage
16 facilities regulated by the Occupational Safety and Health
17 Standards Board.

18 (B) Suitable resting facilities shall be provided in an area separate
19 from the toilet rooms and shall be available to employees during
20 work hours.

21 210. In relevant part, § 15 of the Wage Order states, “A temperature of not less than
22 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of
23 use.”

24 211. At all relevant times during the applicable limitations period, Defendants failed to
25 provide any working toilet facilities for use by Plaintiffs and the Aggrieved Employees within
26 reasonable access. Defendants also failed to provide lockers, closets, storage facilities, and
27 changing rooms for use by Plaintiffs and the Aggrieved Employees. Moreover, Defendants failed
28 to provide acceptable temperatures for the work areas they expected Plaintiffs and the Aggrieved
Employees to perform their job duties in.

212. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
failure to provide Plaintiffs and the Aggrieved Employees with toilet and storage facilities,
lockers, change rooms, and acceptable work temperatures.

1 213. California Labor Code section 232 provides:

2 No employer may do any of the following:

3 (a) Require, as a condition of employment, that an employee refrain from
4 disclosing the amount of his or her wages.

5 (b) Require an employee to sign a waiver or other document that purports to deny
6 the employee the right to disclose the amount of his or her wages.

7 (c) Discharge, formally discipline, or otherwise discriminate against an employee
8 who discloses the amount of his or her wages.

9 At all relevant times during the applicable limitations period, Defendants required that
10 Plaintiffs and the Aggrieved Employees refrain from disclosing the amount of their wages.

11 214. During the applicable imitations period, Defendants violated California Labor
12 Code sections 201, 201.5, 202, 203, 204, 221, 226, 226.7, 227.3, 232, 233, 246, 246.5, 248, 248.2,
13 351, 353, 432, 510, 512, 551, 552, 1102.5, 1174, 1174.5, 1182.11, 1182.12, 1194, 1197, 1198,
14 1198.5, 2350, 2800, 2802, 2804, 2810.5, 6300, 6400, 6401, 6402, and 6403.

15 215. California Labor Code section 2699, subdivisions (a) and (g) authorize an
16 aggrieved employee, on behalf of themselves and other current or former employees, to bring a
17 civil action to recover civil penalties pursuant to the procedures specified in California Labor
18 Code section 2699.3.

19 216. Pursuant to California Labor Code section 2699, subdivisions (a) and (f), Plaintiffs
20 and the Aggrieved Employees are entitled to recover civil penalties for each of Defendants'
21 violations of California Labor Code sections 201, 201.5, 202, 203, 204, 221, 226, 226.7, 227.3,
22 232, 233, 246, 246.5, 248, 248.2, 351, 353, 432, 510, 512, 551, 552, 1102.5, 1174, 1174.5,
23 1182.11, 1182.12, 1194, 1197, 1198, 1198.5, 2350, 2800, 2802, 2804, 2810.5, 6300, 6400, 6401,
24 6402, and 6403 during the applicable limitations period in the following amounts:
25

26 A. For violations of California Labor Code section 204, one hundred dollars
27 (\$100.00) for each aggrieved employee for each initial violation and two
28 hundred dollars (\$200.00) for each aggrieved employee for each subsequent,

1 willful or intentional violation (penalty amounts established by California
2 Labor Code section 210).

3 B. For violations of California Labor Code section 226(a), two hundred fifty
4 dollars (\$250.00) per employee for initial violation and one thousand dollars
5 (\$1,000.00) per employee for each subsequent violation (penalty amounts
6 established by California Labor Code section 226.3).

7 C. For violations of California Labor Code sections 510 and 512, fifty dollars
8 (\$50.00) for each aggrieved employee for each initial violation for pay period
9 for which the employee was underpaid and one hundred dollars (\$100.00) for
10 each underpaid employee for each pay period for which the employee was
11 underpaid (penalty amounts established by California Labor Code § 558).

12 D. For violations of California Labor Code section 1197, one hundred dollars
13 (\$100.00) for each aggrieved employee for each initial and intentional
14 violation per pay period (regardless of whether the initial violations were
15 intentionally committed) and two hundred fifty dollars (\$250.00) for each
16 aggrieved employee for each subsequent violation per pay period (regardless
17 of whether the initial violations were intentionally committed).

18 E. For violations of California Labor Code sections 201, 201.5, 202, 203, 221,
19 226.7, 227.3, 232, 233, 246, 246.5, 248, 248.2, 432, 551, 552, 1102.5, 1182.11,
20 1182.12, 1194, 1198, 1198.5, 2350, 2800, 2802, 2804, 2810.5, 6300, 6400,
21 6401, 6402, and 6403, one hundred dollars (\$100.00) for each aggrieved
22 employee per pay period for each initial violation and two hundred dollars
23 (\$200.00) for each aggrieved employee per pay period for each subsequent
24 violation (penalty amounts established by California Labor Code section
25 2699(f)(2)).
26
27
28

- 1 F. For the violations of California Labor Code section 1174, \$500 for each
2 aggrieved employee for each violation of California Labor Code section 1174
3 (penalty amounts established by California Labor Code § 1174.5).
4
- 5 G. For the violations of California Labor Code section 1198.5, \$750 for each
6 aggrieved employee for each violation of California Labor Code section
7 1198.5 (penalty amounts established by California Labor Code § 1198.5(k)).
- 8 217. Plaintiffs have complied with the procedures for bringing suit specified in
9 California Labor Code section 2699.3 and may therefore commence this action to seek civil
10 penalties pursuant to Labor Code § 2698 *et seq.*:
- 11 A. On January 6, 2021, Plaintiffs Cole and Adams sent a letter, by online
12 submission to the LWDA and by certified mail, return receipt requested, to
13 Defendants setting forth the facts and theories of the violations alleged against
14 Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
15 Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs Cole and Adams
16 from the LWDA within sixty-five (65) calendar days of January 6, 2021.
- 17 B. On September 21, 2020, Plaintiff Mendivil sent a letter, by online submission
18 to the LWDA and by certified mail, return receipt requested, to Defendants
19 setting forth the facts and theories of the violations alleged against Defendants,
20 as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code §
21 2699.3(a)(2)(A), no notice was received by Plaintiff Mendivil from the LWDA
22 within sixty-five (65) calendar days of September 21, 2020.
- 23 C. On January 3, 2022, Plaintiff Bautista sent a letter, by online submission to the
24 LWDA and by certified mail, return receipt requested, to Defendants setting
25 forth the facts and theories of the violations alleged against Defendants, as
26 prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code §
27 2699.3(a)(2)(A), no notice was received by Plaintiff Bautista from the LWDA
28 within sixty-five (65) calendar days of January 3, 2022.

1 D. On March 18, 2021, Plaintiff Meelee sent a letter, by online submission to the
2 LWDA and by certified mail, return receipt requested, to Defendants setting
3 forth the facts and theories of the violations alleged against Defendants, as
4 prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code §
5 2699.3(a)(2)(A), no notice was received by Plaintiff Meelee from the LWDA
6 within sixty-five (65) calendar days of March 18, 2021.

7 E. On November 24, 2020, Plaintiff Nevarez sent a letter, by online submission
8 to the LWDA and by certified mail, return receipt requested, to Defendants
9 setting forth the facts and theories of the violations alleged against Defendants,
10 as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code §
11 2699.3(a)(2)(A), no notice was received by Plaintiff Nevarez from the LWDA
12 within sixty-five (65) calendar days of November 24, 2020.

13
14 218. Pursuant to California Labor Code section 2699(g), Plaintiffs and the Aggrieved
15 Employees are entitled to an award of civil penalties, reasonable attorney's fees, and costs in
16 connection with their claims for civil penalties.

17 **PRAYER FOR RELIEF**

18 219. WHEREFORE, Plaintiffs, on behalf of themselves, Class Members, and
19 Aggrieved Employees, pray for relief and judgment against Defendants as follows:

- 20 A. An order that the action be certified as a class action;
21 B. An order that Plaintiffs be appointed class representatives;
22 C. An order that counsel for Plaintiffs' counsel be appointed class counsel;
23 D. Unpaid wages;
24 E. Actual damages;
25 F. Statutory damages;
26 G. Civil Penalties
27 H. Liquidated damages;
28 I. Restitution, including expense reimbursement;

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- J. Declaratory relief;
- K. Equitable relief;
- L. Statutory penalties;
- M. Pre-judgment and post-judgment interest;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys’ fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves, Class Members, and Aggrieved Employees hereby demand a jury trial on all issues so triable.

Dated: November 13, 2023	Respectfully submitted,
	GAINES & GAINES
	A Professional Law Corporation
	By: <u><i>Daniel F. Gaines</i></u>
	DANIEL F. GAINES
	EVAN S. GAINES
	Attorney for Plaintiffs

PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is 4550 East Thousand Oaks Blvd. Suite 100, Westlake Village, CA 91362.

_____ (For messenger) my business address is:

On November 13, 2023, I served the foregoing document described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Todd B. Scherwin, Esq. Christopher D. Chaplin, Esq. FISHER & PHILLIPS LLP 444 South Flower Street, Suite 1500 Los Angeles, California 90071	STONEBROOK LAW Joseph Tojarieh, Esq. (SBN 265492) 10250 Constellation Boulevard, Suite 100 Los Angeles, California 90067 Telephone: (310) 553-5533, ext. 1001 Facsimile: (310) 553-5536 Email: jft@stonebrooklaw.com
THE SPIVAK LAW FIRM David G. Spivak, Esq. (SBN 179684) Maya Cheatani, Esq. (SBN 335777) 8605 Santa Monica Blvd., PMB 42554 West Hollywood, CA 90069 Email: david@spivaklaw.com maya@spivaklaw.com Attorneys for Plaintiff KASSANDRA MENDIVIL	UNITED EMPLOYEES LAW GROUP P.C. Walter Haines, Esq. (SBN 71075) 4276 Katella Ave., Suite 301 Los Alamitos, CA 90720 Email: whaines@uelglaw.com Attorneys for Plaintiff KASSANDRA MENDIVIL, and all others similarly situated
BRADLEY/GROMBACHER LLP Marcus Bradley, Esq. (SBN 174156) Kiley Grombacher, Esq. (SBN 245960) Lirit King, Esq. (SBN 252521) 31365 Oak Crest Drive, Suite 240 Westlake Village, CA 91361 Emails: mbradley@bradleygrombacher.com kgrombacher@bradleygrombacher.com lking@bradleygrombacher.com Attorneys for Plaintiff JOE NUNEZ, and all others similarly situated	MAJARIAN LAW GROUP APC Shag Majarian, II, Esq. (SBN 146621) Garen Majarian, Esq. (SBN 334104) 18250 Ventura Boulevard Tarzana CA 91356 Emails: sahagii@aol.com garen@majarianlawgroup.com Attorneys for Plaintiff JOE NUNEZ, and all others similarly situated
MESSRELIAN LAW INC. Harout Messrelian, Esq. (SBN 272020) 500 N. Central Ave., Suite 840 Glendale, California 91203 Email: hm@messrelianlaw.com Attorneys for Plaintiff MICHAEL NEVAREZ, and all others similarly situated	PAYTON EMPLOYMENT LAW, PC Chantal McCoy Payton, Esq. (SBN: 293215) Laurel N. Holmes, Esq. (SBN: 308515) 3807 W. Sierra Highway, Suite 206 Acton, California 93510 Email: CPayton@PaytonEmploymentLaw.com LHolmes@PaytonEmploymentLaw.com Attorneys for Plaintiff RICHARD BAUTISTA, and all others similarly situated

	MANN ROGAL, APC Matthew L. Mann, Esq. (SBN: 276220) Justin R. Rogal, Esq. (SBN: 273352) 3055 Wilshire Boulevard, Suite 630 Los Angeles, California 90010 Email: mmann@mannrogal.com jrogal@mannrogal.com Attorneys for Plaintiff RICHARD BAUTISTA, and all others similarly situated
KIM LEGAL, APC Frank H. Kim, Esq. (SBN 264609) 3435 Wilshire Blvd., Suite 2700 Los Angeles, CA 90010 Email: fkim@kim-legal.com Attorneys for Plaintiff HUNTER MEELEE, and all others similarly situated	HELEN KIM LAW, APLC Helen U. Kim, Esq. (SBN 260195) 3435 Wilshire Blvd., Suite 2700 Los Angeles, CA 90010 Email: helen@helenkimlaw.com Attorneys for Plaintiff HUNTER MEELEE, and all others similarly situated

On the above date:

 X (BY x U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit for mailing in affidavit.

 (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

 (BY FACSIMILE TRANSMISSION) On November 13, 2023, at a.m./p.m., at Westlake Village, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was () - . A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

 (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

 (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission via email on the counsel of record listed above.

I certify that the above document was printed on recycled paper.

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

Executed on November 13, 2023, at Westlake Village, California.



JEREMY REYES

EXHIBIT 9

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Friday, December 2, 2016
Lab.Code § 203 (waiting time penalties) period begins:	Saturday, December 2, 2017
Lab.Code § 2699 (civil penalties) period begins:	Sunday, September 22, 2019
Lab.Code § 226 (pay stub penalties) period begins:	Monday, December 2, 2019
LWDA Notice:	Monday, September 21, 2020
Lawsuit:	Tuesday, December 1, 2020
Sample begin:	Sunday, March 1, 2020
Sample end:	Sunday, October 31, 2021
Sample calendar days:	609.00
Mediation:	Tuesday, February 15, 2022
Anticipated Settlement Period end date:	Wednesday, June 15, 2022
Settlement Period to Sample Period:	331.86%

Classes / Groups sizes

UCL Class Members:	4,761
UCL Workweeks:	142,190
UCL Wage Statements:	72,392
UCL Workdays:	540,322
UCL Calendar days:	1,901
UCL Months:	11,849.17
 Waiting Time Penalties Class Members:	 2,698
 PAGA Aggrieved Employees:	 2,063
PAGA Wage Statements:	44,348
 Wage Statement Class Members:	 2,063
Wage Statement Class Wage Statements:	44,248

Averages

Average Hourly Rate:	\$	17.37
Average Overtime Rate:	\$	26.06
Average Doubletime Rate:	\$	34.74
 Average Work Hours Per Day:		 7.40
Average Work Hours Per Week:		42.73
Average Workdays Per Week:		3.80

Confidential Settlement Communication

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Workdays to Calendar Days (%):

54.29%

Paycycle:

Biweekly (26 / year)

Paychecks Per Year:

Confidential Settlement Communication

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Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	Unpaid wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	17.37
Unpaid hours per pay week:		2.50
Actionable workweeks:		72,392
Interest:		10%

Unpaid wages:	\$	3,457,984.86
Liquidated damages:	\$	3,457,984.86

Confidential Settlement Communication

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Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198
Average Hourly Rate:	\$ 17.37
Actionable workdays:	540,322
>>Percentage qualifying for meal periods:	91%
Violation rate (%)	35%
Meal period premium wages:	\$ 3,009,632.79

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Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198
Average Hourly Rate:	\$ 17.37
Actionable workdays:	540,322
>>Percentage qualifying for rest periods:	97%
Violation rate (%)	100%
Rest period premium wages:	\$ 9,122,602.13

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Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Mileage

IRS Mileage Rate:	\$	0.560
Miles Per Workweek:		5.00
UCL Workweeks:		142,190
Interest rate:		10%
Unreimbursed mileage	\$	437,945.20

Telecom

Plaintiff's Telecom provider:		Verizon
UCL Months:		11,849
Average Monthly Telecom bill:	\$	150.00
Percentage attributable to work:		75%
Interest rate:		10%
Unreimbursed Telecom costs:	\$	1,334,231.24

Unreimbursed expenses:	\$	1,334,231.24
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Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226
Wage Statement Class Members:	2,063
Wage Statement Class Wage Statements:	44,248
Initial penalty:	\$ 50.00
Subsequent penalty:	\$ 100.00
Statutory wage statement penalties:	\$ 4,321,650.00

Confidential Settlement Communication

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203
Waiting Time Penalties Class Members:	2,698
Days waiting:	30
Average Hourly Rate:	\$ 17.37
Average Overtime Rate:	\$ 26.06
Average Doubletime Rate:	\$ 34.74
Average Work Hours Per Day:	7.40
Regular Hours Per Day:	7.40
Overtime Hours Per Day:	-
Doubletime Hours Per Day:	-
Waiting time penalties:	\$ 10,403,865.72

Confidential Settlement Communication

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Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Subsequent penalty	Pay periods	Total
Misclassification (Lab.Code § 226.8)	Lab.Code § 226.8	\$ 25,000.00	\$ 25,000.00	2,063	\$ 51,575,000.00
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	44,348	\$ 11,086,850.00
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00	44,348	\$ 4,434,750.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	44,348	\$ 4,434,750.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	44,348	\$ 8,869,500.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00	44,348	\$ 8,869,500.00
Vacation pay (Lab.Code § 227.3):	Lab.Code § 2699	\$ 100.00	\$ 200.00	44,348	\$ 8,869,500.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 250.00	\$ 1,000.00	44,348	\$ 44,347,250.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	44,348	\$ 8,869,500.00
Total:				\$	99,781,600.00

Confidential Settlement Communication

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Shryne Group Wage & Hour Cases
Case no.:	various
Court:	various
Judge:	various
Page subject:	Totals
Authority:	Various

Restitution		Reduction		Demand
Unpaid wages:	\$ 3,457,984.86	5%	\$	3,285,085.62
Liquidated damages:	\$ 3,457,984.86	5%	\$	3,285,085.62
Meal period premium wages:	\$ 3,009,632.79	5%	\$	2,859,151.15
Rest period premium wages:	\$ 9,122,602.13	5%	\$	8,666,472.03
Unreimbursed expenses:	\$ 1,334,231.24	5%	\$	1,267,519.68
Forfeited vacation pay:			\$	-
Restitution subtotal:	\$ 20,382,435.88		\$	19,363,314.09
Penalties				
Statutory wage statement penalties:	\$ 4,321,650.00	5%	\$	4,105,567.50
Waiting time penalties:	\$ 10,403,865.72	5%	\$	9,883,672.43
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 11,086,850.00	5%	\$	10,532,507.50
Overtime wages (Lab.Code § 510):civil penalties:	\$ 4,434,750.00	5%	\$	4,213,012.50
Meal periods Lab.Code § 512):civil penalties:	\$ 4,434,750.00	5%	\$	4,213,012.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 8,869,500.00	5%	\$	8,426,025.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 8,869,500.00	5%	\$	8,426,025.00
Vacation pay (Lab.Code § 227.3):civil penalties:	\$ 8,869,500.00	5%	\$	8,426,025.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 44,347,250.00	5%	\$	42,129,887.50
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 8,869,500.00	5%	\$	8,426,025.00
Penalties subtotal:	\$ 114,507,115.72		\$	108,781,759.93
Grand total:	\$ 134,889,551.60		\$	128,145,074.02

EXHIBIT 10

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
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5 Beverly Hills, CA 90212
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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

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

11 ALINA GHRDILYAN; EVGENIA
12 SULTANIAN; and all others similarly situated,

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

26 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
27 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE
SPIVAK
LAW FIRM

1 “Defendants”) for violations of the California Labor Code, the applicable Industrial Welfare
2 Commission Order(s) (“Wage Order(s)”), and the California Business and Professions Code,
3 and as grounds therefore alleges:

4 INTRODUCTION

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 CLASS ACTION ALLEGATIONS

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

30 **Meal Periods Class:** All persons employed by Defendants in California
31 who were not provided with uninterrupted thirty (30) minute meal periods
32 during each work period of five (5) or more hours during the period
33 beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class**, and/or **Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class**, **Overtime Class**,
6 **Rest Periods Class**, **Meal Periods Class**, **Inaccurate Wage Statement**
7 **Class**, **Unauthorized Deduction Class**, **Former Employee Class**, and/or
8 **Indemnification Class**.

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

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 "Management Recognition Days," without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

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

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

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

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 11

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTling THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

PLAINTIFFS,

VS.

DEFENDANTS,

CASE NO. BC430633

CERTIFIED COPY

MONDAY, APRIL 23, 2012

FOR THE PLAINTIFFS:

LOUIS BENOWITZ,
ATTORNEY AT LAW

MICHAEL SABZEVAR,
ATTORNEY AT LAW

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 12

JOINT PROSECUTION AGREEMENT

This Joint Prosecution Agreement (“Agreement”) is entered into effective August 11, 2023 (the “Effective Date”) and sets forth the terms of the co-counsel relationship, and fee sharing agreement, by and among Gaines & Gaines, APLC (“G&G”), The Spivak Law Firm (“SLF”), Bradley/Grombacher LLP (“BG”), Payton Employment Law, PC (“Payton”), Kim Legal, APC (“Kim”), Messrelian Law Inc. (“ML”) (collectively the “Attorneys”) and others in connection with the to-be-consolidated lawsuits against IGS Solutions, et al. and related entities (the “Actions”).

1. Relationship of Co-Counsel.

The Attorneys agree to confer with each other on major decision-making. The Attorneys agree to work cooperatively and to keep each other apprised of major developments in the Actions, including communication with the clients, the Courts, and opposing counsel. In the event of class certification, the Attorneys will request that the Court appoint all firms as Co-Lead Class Counsel.

2. Attorneys’ Fees and Costs

The Attorneys shall divide any fee awarded or recovered in the Actions, whether resolved together or separately, including any multiplier (i.e., premium above the lodestar), as follows, regardless of lodestar:

SLF (and its co-counsel) – 20.4254%

G&G (and its co-counsel) – 18.2331%

Kim (and its co-counsel) – 19.1665%

ML (and its co-counsel) – 18.9928%

BG (and its co-counsel) – 11.7864%

Payton (and its co-counsel) – 11.3957%

The Attorneys will maintain contemporaneous time records and cost summaries for all legal work performed and costs reasonably incurred in the Actions. The Attorneys will inform each other of their respective lodestar totals upon request during the pendency of the litigation, including total hours billed, hourly rate and fees billed for each timekeeper, as well as cost summaries. Some Attorneys have entered fee sharing agreements with additional lawyers, all of which are comprehensively set forth in the attached **Exhibit B**.

3. No Partnership, Joint Venture Or Agency Relationship

Nothing contained herein shall constitute or be construed to imply that a partnership, joint venture, employment, or principal/agent relationship exists between the Attorneys as a result of this Agreement.

4. Professional Negligence

The Attorneys assume no liability for each other's professional negligence. The Attorneys maintain their own insurance policy to cover errors or omissions.

5. Choice of Law, Statute of Limitations and Dispute Resolution

This Agreement shall be interpreted under the laws of the State of California. The Attorneys agree that any action in relation to an alleged breach of this Agreement shall be commenced in Los Angeles, California within one year of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that one-year time period shall be barred, without regard to any other limitations period set forth by law or statute.

6. Client Consent

Each respective firm will be responsible for obtaining its client's written consent to this Agreement in the form attached as **Exhibit A**.

7. Full Agreement

This is an integrated contract and reflects the full agreement of the parties, and it may only be modified in writing. No prior or contemporaneous written or oral representations may be admitted as to the meaning and/or mutual intent of the terms set forth herein.

8. Execution in Counterparts

This Agreement may be executed in counterparts, and a fully executed photocopy, facsimile, or .pdf hereof shall be as binding and valid as a fully executed original.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

GAINES & GAINES, APLC

12 / 06 / 2023
Date: _____



Daniel F. Gaines

THE SPIVAK LAW FIRM

Date: _____

David Spivak

4. Professional Negligence

The Attorneys assume no liability for each other's professional negligence. The Attorneys maintain their own insurance policy to cover errors or omissions.

5. Choice of Law, Statute of Limitations and Dispute Resolution

This Agreement shall be interpreted under the laws of the State of California. The Attorneys agree that any action in relation to an alleged breach of this Agreement shall be commenced in Los Angeles, California within one year of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that one-year time period shall be barred, without regard to any other limitations period set forth by law or statute.

6. Client Consent

Each respective firm will be responsible for obtaining its client's written consent to this Agreement in the form attached as **Exhibit A**.

7. Full Agreement

This is an integrated contract and reflects the full agreement of the parties, and it may only be modified in writing. No prior or contemporaneous written or oral representations may be admitted as to the meaning and/or mutual intent of the terms set forth herein.

8. Execution in Counterparts

This Agreement may be executed in counterparts, and a fully executed photocopy, facsimile, or .pdf hereof shall be as binding and valid as a fully executed original.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

GAINES & GAINES, APLC

Date: _____

Daniel F. Gaines

THE SPIVAK LAW FIRM

Date: 08 / 14 / 2023



David Spivak

BRADLEY/GROMBACHER LLP



Date: 12/05/2023

Marcus J. Bradley

PAYTON EMPLOYMENT LAW, PC

Date: _____

Chantal Payton

KIM LEGAL, APC

Date: _____

Frank H. Kim

MESSRELIAN LAW INC.

Date: _____

Harout Messrelian

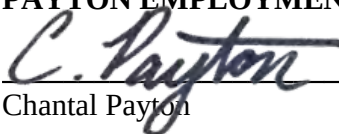
BRADLEY/GROMBACHER LLP

Date:_____

Marcus J. Bradley

PAYTON EMPLOYMENT LAW, PC

Date: 12/04/23



Chantal Payton

KIM LEGAL, APC

Date:_____

Frank H. Kim

MESSRELIAN LAW INC.

Date:_____

Harout Messrelian

BRADLEY/GROMBACHER LLP

Date:_____

Marcus J. Bradley

PAYTON EMPLOYMENT LAW, PC

Date:_____

Chantal Payton

KIM LEGAL, APC

Date: 12/5/2023

DocuSigned by:
Frank H. Kim

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Frank H. Kim

MESSRELIAN LAW INC.

Date:_____

Harout Messrelian

BRADLEY/GROMBACHER LLP

Date: _____

Marcus J. Bradley

PAYTON EMPLOYMENT LAW, PC

Date: _____

Chantal Payton

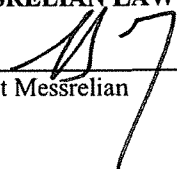
KIM LEGAL, APC

Date: _____

Frank H. Kim

MESSRELIAN LAW INC.

Date: 9/5/23



Harout Messrelian

EXHIBIT "A" TO JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 2-200(A)

I, Jenica Cole, state as follows:

1. I have been advised in writing that Gaines & Gaines, APLC, The Spivak Law Firm, Bradley/Grombacher LLP, Payton Employment Law, PC, Kim Legal, APC, Messrelian Law Inc., Haines Law Group, Stonebrook Law, Helen Kim Law, APC, Majarian Law Group, APC, Aslanian Law, and Mann Rogal, APC (collectively the "Attorneys") have entered into a proposed "Joint Prosecution Agreement" and fee sharing agreement regarding the case filed against my former or current employer IGS Solutions, Inc., et al. (the "Actions").
2. I have been advised in writing and understand that in the event of a settlement or judgment in the Actions, the fees and costs will be paid to the Attorneys as set forth in the Joint Prosecution Agreement and the exhibits thereto.
3. I have further been advised in writing and understand that the total fee charged will not be increased solely by reason of the division of fees.

I hereby consent to this proposed fee division.

Client Signature: 

Date: 12 / 05 / 2023

EXHIBIT "A" TO JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 2-200(A)

I, Shauna Adams, state as follows:

1. I have been advised in writing that Gaines & Gaines, APLC, The Spivak Law Firm, Bradley/Grombacher LLP, Payton Employment Law, PC, Kim Legal, APC, Messrelian Law Inc., Haines Law Group, Stonebrook Law, Helen Kim Law, APC, Majarian Law Group, APC, Aslanian Law, and Mann Rogal, APC (collectively the "Attorneys") have entered into a proposed "Joint Prosecution Agreement" and fee sharing agreement regarding the case filed against my former or current employer IGS Solutions, Inc., et al. (the "Actions").
2. I have been advised in writing and understand that in the event of a settlement or judgment in the Actions, the fees and costs will be paid to the Attorneys as set forth in the Joint Prosecution Agreement and the exhibits thereto.
3. I have further been advised in writing and understand that the total fee charged will not be increased solely by reason of the division of fees.

I hereby consent to this proposed fee division.

Client Signature: _____



Date: 12 / 05 / 2023

EXHIBIT "A" TO JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 2-200(A)

I, Kassandra Mendivil, state as follows:

1. I have been advised in writing that Gaines & Gaines, APLC, The Spivak Law Firm, Bradley/Grombacher LLP, Payton Employment Law, PC, Kim Legal, APC, Messrelian Law Inc., Haines Law Group, Stonebrook Law, Helen Kim Law, APC, Majarian Law Group, APC, Aslanian Law, and Mann Rogal, APC (collectively the "Attorneys") have entered into a proposed "Joint Prosecution Agreement" and fee sharing agreement regarding the case filed against my former or current employer IGS Solutions, Inc., et al. (the "Actions").
2. I have been advised in writing and understand that in the event of a settlement or judgment in the Actions, the fees and costs will be paid to the Attorneys as set forth in the Joint Prosecution Agreement and the exhibits thereto.
3. I have further been advised in writing and understand that the total fee charged will not be increased solely by reason of the division of fees.

I hereby consent to this proposed fee division.

Client Signature: Kassandra Mendivil

Date: 08 / 14 / 2023

EXHIBIT "A" TO JOINT PROSECUTION AGREEMENT

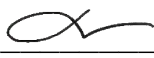
Client Consent Pursuant to California Rules of Professional Conduct Rule 2-200(A)

I, JOE NUNEZ, state as follows:

1. I have been advised in writing that Gaines & Gaines, APLC, The Spivak Law Firm, Bradley/Grombacher LLP, Payton Employment Law, PC, Kim Legal, APC, Messrelian Law Inc., Haines Law Group, Stonebrook Law, Helen Kim Law, APC, Majarian Law Group, APC, Aslanian Law, and Mann Rogal, APC (collectively the "Attorneys") have entered into a proposed "Joint Prosecution Agreement" and fee sharing agreement regarding the case filed against my former or current employer IGS Solutions, Inc., et al. (the "Actions").
2. I have been advised in writing and understand that in the event of a settlement or judgment in the Actions, the fees and costs will be paid to the Attorneys as set forth in the Joint Prosecution Agreement and the exhibits thereto.
3. I have further been advised in writing and understand that the total fee charged will not be increased solely by reason of the division of fees.

I hereby consent to this proposed fee division.

Client Signature:

DocuSigned by:

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Date: 12/4/2023

EXHIBIT "A" TO JOINT PROSECUTION AGREEMENT

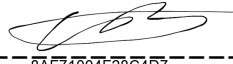
Client Consent Pursuant to California Rules of Professional Conduct Rule 2-200(A)

I, Richard Bautista, state as follows:

1. I have been advised in writing that Gaines & Gaines, APLC, The Spivak Law Firm, Bradley/Grombacher LLP, Payton Employment Law, PC, Kim Legal, APC, Messrelian Law Inc., Haines Law Group, Stonebrook Law, Helen Kim Law, APC, Majarian Law Group, APC, Aslanian Law, and Mann Rogal, APC (collectively the "Attorneys") have entered into a proposed "Joint Prosecution Agreement" and fee sharing agreement regarding the case filed against my former or current employer IGS Solutions, Inc., et al. (the "Actions").
2. I have been advised in writing and understand that in the event of a settlement or judgment in the Actions, the fees and costs will be paid to the Attorneys as set forth in the Joint Prosecution Agreement and the exhibits thereto.
3. I have further been advised in writing and understand that the total fee charged will not be increased solely by reason of the division of fees.

I hereby consent to this proposed fee division.

Client Signature: _____

DocuSigned by:

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Date: 12/5/2023

EXHIBIT "A" TO JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 2-200(A)

I, Hunter Meelee, state as follows:

1. I have been advised in writing that Gaines & Gaines, APLC, The Spivak Law Firm, Bradley/Grombacher LLP, Payton Employment Law, PC, Kim Legal, APC, Messrelian Law Inc., Haines Law Group, Stonebrook Law, Helen Kim Law, APC, Majarian Law Group, APC, Aslanian Law, and Mann Rogal, APC (collectively the "Attorneys") have entered into a proposed "Joint Prosecution Agreement" and fee sharing agreement regarding the case filed against my former or current employer IGS Solutions, Inc., et al. (the "Actions").
2. I have been advised in writing and understand that in the event of a settlement or judgment in the Actions, the fees and costs will be paid to the Attorneys as set forth in the Joint Prosecution Agreement and the exhibits thereto.
3. I have further been advised in writing and understand that the total fee charged will not be increased solely by reason of the division of fees.

I hereby consent to this proposed fee division.

Client Signature: _____

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6224C5137D21477...

Date: 12/6/2023

EXHIBIT "A" TO JOINT PROSECUTION AGREEMENT

Client Consent Pursuant to California Rules of Professional Conduct Rule 2-200(A)

I, Michael Nevarez, state as follows:

1. I have been advised in writing that Gaines & Gaines, APLC, The Spivak Law Firm, Bradley/Grombacher LLP, Payton Employment Law, PC, Kim Legal, APC, Messrelan Law Inc., Haines Law Group, Stonebrook Law, Helen Kim Law, APC, Majarian Law Group, APC, Aslanian Law, and Mann Rogal, APC (collectively the "Attorneys") have entered into a proposed "Joint Prosecution Agreement" and fee sharing agreement regarding the case filed against my former or current employer IGS Solutions, Inc., et al. (the "Actions").
2. I have been advised in writing and understand that in the event of a settlement or judgment in the Actions, the fees and costs will be paid to the Attorneys as set forth in the Joint Prosecution Agreement and the exhibits thereto.
3. I have further been advised in writing and understand that the total fee charged will not be increased solely by reason of the division of fees.

I hereby consent to this proposed fee division.

Client Signature: _____


michaelnevarez (Sep 6, 2023 18:12 PDT)

Date: Sep 6, 2023

EXHIBIT “B” TO JOINT PROSECUTION AGREEMENT

Complete Attorney’s Fee Sharing Agreement – percentages are the share of fees to be awarded to each law firm or group of law firms set forth below:

Spivak Law Firm – 20.4254%

Spivak Law Firm – 13.6170%

Haines Law Group – 6.8085%

Gaines & Gaines, APLC – 18.2331%

Gaines & Gaines, APLC – 10.9399%

Stonebrook Law – 7.2932%

Kim Legal, APC – 19.1665%

Kim Legal, APC – 9.5832%

Helen Kim Law, APC – 9.5832%

Messrelian Law Inc. – 18.9928%

Bradley/Grombacher LLP – 11.7864%

Bradley/Grombacher LLP – 6.8734%

Majarian Law Group, APC – 4.5583%

Payton Employment Law, PC – 11.3957%

Payton Employment Law, PC – 5.5985%

Aslanian Law – 1.7680%

Mann Rogal, APC – 4.4199%

EXHIBIT 13

		Internal Fee Division % Per Plaintiff	Internal Fee Division \$ Per Plaintiff	Law Firm % of Entire Attorney Fee Sought	Individual Plaintiff's Filing Date	JPA Date	Days Pending	% of Days Pending	Attorney Fees per each Plaintiff's attorneys
Mendivil Counsel					12/1/2020	6/30/2023	941	20.4254%	\$ 305,973.08
	The Spivak Law Firm	66.6667%	\$ 203,982.06	13.6170%					
	United Employees Law Group	33.3333%	\$ 101,991.03	6.8085%					
Meelee Counsel					1/28/2021	6/30/2023	883	19.1665%	\$ 287,113.96
	Kim Legal APLC	50.0000%	\$ 143,556.98	9.5832%					
	Helen Kim Law, APC	50.0000%	\$ 143,556.98	9.5832%					
Nevarez Counsel					2/5/2021	6/30/2023	875	18.9928%	\$ 284,512.70
	Messrelian Law Inc.	100.0000%	\$ 284,512.70	18.9928%					
Cole / Adams Counsel					3/12/2021	6/30/2023	840	18.2331%	\$ 273,132.19
	Gaines & Gaines, APLC	60.0000%	\$ 163,879.31	10.9399%					
	Stonebrook Law	40.0000%	\$ 109,252.88	7.2932%					
Bautista Counsel					1/3/2022	6/30/2023	543	11.7864%	\$ 176,560.45
	Payton Employment Law PC	47.5000%	\$ 83,866.21	5.5985%					
	Mann Rogel	37.5000%	\$ 66,210.17	4.4199%					
	Aslanian Law	15.0000%	\$ 26,484.07	1.7680%					
Nunez Counsel					1/21/2022	6/30/2023	525	11.3957%	\$ 170,707.62
	Bradley Grombacher LLP	60.0000%	\$ 102,424.57	6.8374%					
	Majarian Law Group	40.0000%	\$ 68,283.05	4.5583%					
Total			\$ 1,498,000.00	100.0000%			4,607		\$ 1,498,000.00

EXHIBIT 14



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	14516V5	Prepared By:	Michael Sutherland
Estimate Date:	6/29/2022	Direct Dial #:	321.223.5067
		Email:	msutherland@simpluris.com

	<u>Plaintiff Attorney</u>		<u>Defense Attorney</u>
Attorney/Client:	David Spivak/Emily Houg	Attorney/Client:	
Firm:	Spivak Law	Firm:	
Email:	Emily Houg Ly <emily@spivaklaw.com>	Email:	

Case Name: Mendivil v. Strategic Green Partners: PAGA: Opt Out Settlement

Anticipated Total Cost	\$60,071
Capped Fee* after professional discount	\$50,000

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	5,000	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	5%
Mailing Document Language:	English Spanish	Re-distribution:	Three
Reminder Postcard / Letter:	Yes	State(s):	Single
Unclaimed Funds	Escheat-State	Tax Years	Four

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports			
Category	Unit Value	# of Units	Total
Project Manager - Case Setup, Website posting	\$125.00	7	\$875.00
Database Manager - Initial Data Analysis	\$140.00	6	\$840.00
Total			\$1,715.00

Notification

Notice Packet: 7 pg Notice - Double Sided - English, Spanish			
Category	Unit Value	# of Units	Total
Mail Notice Packet-English, Spanish	\$0.70	5,000	\$3,500.00
Postage	\$0.58	5,000	\$2,900.00
NCOA/CASS/LACS	\$0.01	5,000	\$50.00
Undeliverable Processing	\$0.25	500	\$125.00
Skip Trace RUM	\$1.50	500	\$750.00
Remail Notice Packet	\$0.70	425	\$297.50
Remail Postage	\$0.63	425	\$267.75
Reminder Post Card-Three Times. Check cashing	\$0.60	1,000	\$600.00
Mail Supervisor	\$50.00	2	\$100.00
Total			\$8,590.25

Call Center

Establish Case Specific Toll Free Number			
Category	Unit Value	# of Units	Total
Customer Service Reps / Call Center Support	\$55.00	12	\$660.00
800 # Charges	\$0.10	720	\$72.00
Total			\$732.00



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Claims Administration			
Process Mail: Claims, Opt-Outs and/or Objections			
Category	Unit Value	# of Units	Total
Database Manager	\$125.00	8	\$1,000.00
Disputes / Deficiencies - Send One Cure Letter	\$3.50	7	\$24.50
Opt Out Processing	\$3.50	35	\$122.50
Data Entry	\$50.00	2	\$100.00
Project Manager	\$125.00	5	\$625.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$1,872.00

Distribution			
Setup a Disbursement Account			
Print & Mail Checks to Class Members - W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	3	\$420.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account / QSF	\$300.00	1	\$300.00
Print & Mail Checks	\$0.75	4950	\$3,712.50
Postage	\$0.59	4950	\$2,920.50
Process Returned Checks	\$0.50	50	\$24.75
Skip Trace Search Undeliverable Checks	\$5.00	50	\$247.50
Remail Checks	\$4.00	50	\$198.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal / State Tax Reporting	\$500.00	1	\$500.00
QSF Reporting / Declaration	\$500.00	1	\$500.00
QSF Annual Tax Preparation Fee-2023	\$1,000.00	1	\$1,000.00
Reissuing Checks/Mailing	\$3.00	50	\$148.50
Postage	\$0.59	50	\$29.21
Escheat Management Unclaimed Property State	\$300.00	1	\$300.00
Disbursement Manager	\$125.00	3	\$375.00
Total			\$11,000.96

Distributions Two,Three & Four			
Setup a Disbursement Account			
Print & Mail Checks to Class Members - W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	3	\$420.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Print & Mail Checks	\$1.25	14850	\$18,562.50
Postage	\$0.58	14850	\$8,613.00
Process Returned Checks	\$0.50	149	\$74.25
Skip Trace Search Undeliverable Checks	\$5.00	149	\$742.50
Remail Checks	\$4.00	149	\$594.00
Individual Federal / State Tax Reporting	\$500.00	3	\$1,500.00
QSF Annual Tax Preparation Fee-2023/2024/2025	\$1,350.00	3	\$4,050.00
Reissuing Checks/Mailing	\$3.00	149	\$445.50
Postage	\$0.63	149	\$93.56
Escheat Management Unclaimed Property State	\$300.00	1	\$300.00
Disbursement Manager	\$125.00	3	\$375.00
Total			\$35,845.31



Case Wrap Up			
Send Final Reports to Counsel			
Category	Unit Value	# of Units	Total
Data Manager: Final Reporting	\$140.00	1	\$140.00
Clerical: Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager: Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$315.00

Postage	\$6,117.46	Total Case Costs	\$60,070.51
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EXHIBIT 15



February 2, 2023

CASE ASSUMPTIONS

Class Members	5,000
Opt Out Rate	1%
Opt Outs Received	50
Total Class Claimants	4,950
Subtotal Admin Only	\$61,217.93

Flat Fee Total \$55,000.00

For 5,000 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Four Installments & Four Distributions

Case: Mendivil v. Strategic Green Partners, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: David G. Spivak
Firm: The Spivak Law Firm
Contact Number: (213) 725-9094
Email: david@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **5,000** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	4	\$400.00
Programming Database & Setup	\$100.00	4	\$400.00
Toll Free Setup*	\$150.00	1	\$150.00
Call Center & Long Distance	\$2.00	506	\$1,012.00
NCOA (USPS)	\$1,250.00	1	\$1,250.00
Total			\$3,212.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Spanish Translation	\$800.00	1	\$800.00
Data Merge & Duplication Scrub	\$0.10	5,000	\$500.00
Notice Packet & Opt-Out Form	\$1.10	5,000	\$5,500.00
Estimated Postage (up to 2 oz.)*	\$0.78	5,000	\$3,900.00
Static Website	\$100.00	1	Included
Check Cashing Reminder Postcard	\$0.60	1,040	\$623.70
Postage Included			
Total			\$11,523.70

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	7	\$385.00
Skip Tracing Undeliverables	\$0.85	1,250	\$1,062.50
Remail Notice Packets	\$0.75	1,247	\$935.25
Estimated Postage	\$0.84	1,247	\$1,047.48
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$3,480.23

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$150.00	2	\$300.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	6	\$330.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	56	\$560.00
Case Manager	\$85.00	4	\$340.00
Total			\$1,730.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	8	\$1,080.00
Disbursement Review	\$135.00	5	\$675.00
Programming Manager	\$95.00	5	\$475.00
QSF Bank Account & EIN	\$135.00	1	\$135.00
Check Run Setup & Printing	\$135.00	15	\$2,025.00
Mail Class Checks * (x 4)	\$0.85	4,950	\$16,830.00
Estimated Postage (x 4)	\$0.61	4,950	\$12,078.00
Total			\$33,298.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	4	\$460.00
Remail Checks & Tax Forms (Postage Included)	\$1.50	706	\$1,059.00
Case Associate	\$55.00	6	\$330.00
Reconcile Uncashed Checks	\$85.00	11	\$935.00
Conclusion Reports	\$115.00	6	\$690.00
Case Manager Conclusion	\$85.00	6	\$510.00
Final Reporting & Declarations	\$115.00	6	\$690.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$750.00	4	\$3,000.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office Estimated <u>135</u> Total Class Members	\$300.00	1	\$300.00
Total			\$7,974.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$61,217.93



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 16



www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Mendivil v Strategic Green Partners

Date: **January 13, 2022**

All-In Settlement

Requesting Attorney: **Emily Houg Ly**

* Class Members: **5,000**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **The Spivak Law Firm**

Opt-Outs Received: **75**

Telephone: **(818) 582-3086**

Postage Total: **\$17,235.50**

Email: emily@spivaklaw.com

Grand Total: **\$83,078.13**

***** DISCOUNTED FLAT FEE: \$63,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 75 opt-out's filed. Any additional opt-out's filed above 75 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Spanish Translation / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	7	\$665.00
System Programming/Data Base Setup	\$150.00	7	\$1,050.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Total			\$3,715.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form in English & Spanish / Postage (up to 2 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.35	5,000	\$1,750.00
Mailing of Notice Pack	\$1.00	5,000	\$5,000.00
Estimated Postage (up to 2 oz.)*	\$0.60	5,000	\$3,000.00
Total			\$10,090.00

*Additional charges will apply if the postage exceeds 2 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.35	500	\$175.00
Skip Traces	\$1.00	430	\$430.00
Remail Packs	\$1.35	375	\$506.25
Estimated Postage (up to 2 oz.)	\$0.78	375	\$292.50
Clerical Staff	\$60.00	3	\$180.00
Total			\$1,583.75

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$10.00	75	\$750.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	4	\$80.00
Estimated Postage (up to 1 oz.)	\$0.60	4	\$2.40
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$2.50	1,000	\$2,500.00
		Total	\$4,087.40

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.10	4,925	\$492.50
		Total	\$927.50

Disbursement - Year 1

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2 / Check Reminder Postcard			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	12	\$1,800.00
Project Manager-Correspond w/Attorney	\$95.00	6	\$570.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	5	\$750.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$1.25	4,925	\$6,156.25
Estimated Postage (up to 1 oz.)	\$0.52	4,925	\$2,561.00
Check Reminder Postcard	\$0.15	3,201	\$480.19
Postage for Reminder Postcard	\$0.44	3,201	\$1,408.55
		Total	\$14,625.99

Post-Disbursement & Tax Reporting - Year 1

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	50	\$250.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.00	394	\$394.00
Remail Undeliverable Checks	\$2.00	394	\$788.00
Estimated Postage (up to 1 oz.)	\$0.60	444	\$266.40
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
CA Tax Preparation*	\$350.00	1	\$350.00
Annual Tax Reporting to IRS*	\$500.00	1	\$500.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
		Total	\$4,548.40

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement / Order / parties require(s) multiple state tax filings.

Disbursement - Year 2

Calculations / Data Management / Manage QSF / Print & Mail Checks, 1099/W-2 / Check Reminder Postcard

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/Attorney	\$95.00	2	\$190.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$1.25	4,925	\$6,156.25
Estimated Postage (up to 1 oz.)	\$0.52	4,925	\$2,561.00
Check Reminder Postcard	\$0.15	1,724	\$258.56
Postage for Reminder Postcard	\$0.44	1,724	\$758.45
Total			\$11,124.26

Post-Disbursement & Tax Reporting -Year 2

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	50	\$250.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.00	296	\$296.00
Remail Undeliverable Checks	\$2.00	296	\$592.00
Estimated Postage (up to 1 oz.)	\$0.60	346	\$207.60
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
CA Tax Preparation*	\$350.00	1	\$350.00
Annual Tax Reporting to IRS*	\$500.00	1	\$500.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
Total			\$4,195.60

Disbursement - Year 3

Calculations / Data Management / Manage QSF / Print & Mail Checks, 1099/W-2 / Check Reminder Postcard

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/Attorney	\$95.00	2	\$190.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$1.25	4,925	\$6,156.25
Estimated Postage (up to 1 oz.)	\$0.52	4,925	\$2,561.00
Check Reminder Postcard	\$0.15	985	\$147.75
Postage for Reminder Postcard	\$0.44	985	\$433.40
Total			\$10,688.40

Post-Disbursement & Tax Reporting -Year 3

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	50	\$250.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.00	296	\$296.00
Remail Undeliverable Checks	\$2.00	296	\$592.00
Estimated Postage (up to 1 oz.)	\$0.60	346	\$207.60
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
CA Tax Preparation*	\$350.00	1	\$350.00
Annual Tax Reporting to IRS*	\$500.00	1	\$500.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
Total			\$4,195.60

Disbursement - Year 4

Calculations / Data Management / Manage QSF / Print & Mail Checks, 1099/W-2 / Check Reminder Postcard

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/Attorney	\$95.00	2	\$190.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$1.25	4,925	\$6,156.25
Estimated Postage (up to 1 oz.)	\$0.52	4,925	\$2,561.00
Check Reminder Postcard	\$0.15	493	\$73.88
Postage for Reminder Postcard	\$0.44	493	\$216.70
Total			\$10,397.83

Post-Disbursement & Tax Reporting - Year 4/Final

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	50	\$250.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.00	148	\$148.00
Remail Undeliverable Checks	\$2.00	148	\$296.00
Estimated Postage (up to 1 oz.)	\$0.60	198	\$118.80
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acmt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$350.00	1	\$350.00
Annual Tax Reporting to IRS*	\$500.00	1	\$500.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
Total			\$4,262.80

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement / Order / parties require(s) multiple state tax filings.

Escheat Processing

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
UPEnterprise Reporting Services	\$0.15	1,034	\$155.10
Project Manager - Fall Reporting	\$95.00	2	\$190.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues - Winter/Spring QTR	\$5.00	103	\$517.00
Estimated Postage (up to 1 oz.) for Reissue	\$0.60	103	\$62.04
Project Manager - June Remittance	\$95.00	2	\$190.00
Project Supervisor- June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$2,831.20

Grand Total: \$83,078.13

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. **Mutual Obligations.**
- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and/or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
 - a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
 - b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
 - e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
 - a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
 - a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. **Force Majeure.** Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. **Counterparts.** This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. **Entire Agreement.** This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. **Modifications.** Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. **Assignment.** Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; **provided, however,** either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. **No Third Party Beneficiaries.** The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. **Statistical Data.** Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. **Export Controls.** Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. **Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. **Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. **Independent Contractors.** Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. **Subcontractors.** CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. **Headings.** The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. **Waiver.** No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. **Survival.** Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 17