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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PIERRE FISTANIC, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HILLTOP SECURITIES INC., a Delaware
corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV47743

*[Assigned for all purposes to the Hon. Kevin
C. Brazile, Dept. 20]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF
SETTLEMENT OF CLAIMS
BROUGHT UNDER THE PRIVATE
ATTORNEYS' GENERAL ACT AND
REASONABLE ATTORNEYS' FEES,
COSTS, AND ENHANCEMENT
AWARD**

Date: November 4, 2022
Time: 8:30 a.m.
Dept.: 20

Reservation ID: 742939880446

Complaint Filed: December 14, 2020
Trial Date: None set

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Pierre Fistanic (“Plaintiff”) and the Aggrieved Employees in the above-captioned
4 matter. I am a member in good standing of the bar of the State of California and am admitted to
5 practice in this Court. I have personal knowledge of the facts stated in this declaration and could
6 testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 *cum laude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of Civil
16 Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class and
21 representative actions, and my law firm is currently responsible for prosecuting over fifty (50)
22 wage and hour class and representative actions filed in both State and Federal courts throughout
23 California. A few examples of the matters in which I have been appointed as Class Counsel, all
24 of which have been granted final approval, include the following: *Sanchez v. Res-Care, Inc.*, Case
25 No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley,
26 presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
27 States District Court, Central District of California, Honorable Judge John F. Walter, presiding;
28 *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa Clara

County, Judge Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California Superior Court, County of San Luis Obispo, Honorable Judge Charles S. Crandall, presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding. *Morales v. Caremeridian, LLC, et al.*, Case No. BC593191, California Superior Court, County of Los Angeles, Judge William F. Highberger presiding; *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-2017-00004339-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joel R. Wohlfeil, presiding; *Sandoval v. Rotational Molding, Inc.*, Case No. BC640678, Superior Court of California, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Gooding v. Vita-Mix Corp., et al*, Case No. 2:16-cv-03898-ODW (JEMx), United States District Court for the Central District of California, Honorable Judge Otis D. Wright II presiding.

7. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action, in the following cases: *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of employees who were misclassified as independent contractors); *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class); *Vega v. Weatherford*

1 *U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern
2 District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an
3 unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-
4 2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge
5 William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class);
6 *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC, California
7 Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying piece rate
8 pay plan classes, expense reimbursement class, wage statement class, and waiting time penalties
9 class); *Ontiveros v. Safelite Fulfillment, Inc.*, et al, Case No. CV 15-7118-DMG (RAOx), United
10 States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying
11 six classes of employees for rest period violations, wage statement violations, meal period
12 violations, and overtime and double-time violations); *Vazquez, et al v. Kraft Heinz Foods*
13 *Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of
14 California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid
15 wages, meal period violations, wage statement violations, and waiting time penalties); *Caudle, et*
16 *al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States
17 District Court, Northern District of California, Honorable William H. Alsup presiding (certifying
18 three classes of employees for unlawful wage deductions, wage statement violations, and waiting
19 time violations); *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL,
20 California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding
21 (certifying class of employees for wage statement violations); *Staublein v. Wells Fargo Bank,*
22 *N.A.*, Case No. CIV DS1712267, San Bernardino Superior Court, Hon. David S. Cohn presiding
23 (certifying wage statement class); and *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*,
24 Case No. BC657139, Los Angeles County Superior Court, Honorable Maren E. Nelson presiding
25 (certifying four classes for meal period violations, rest period violations, wage statement
26 violations, and waiting time penalties).

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1 8. Of particular relevance to this case, I served as lead or co-lead counsel for the
2 plaintiff and aggrieved employees in several PAGA-only settlements, including but not limited
3 to:

- 4 • *Pentinio v. Southern Wine and Spirits of America, Inc.*, Case No. BC570234,
5 California Superior Court, County of Los Angeles, Honorable Judge Maureen
6 Duffy-Lewis, presiding, approved by the Court on January 19, 2016;
- 7 • *Resendez v. Bridgestone Retail Operations, LLC*, Case No. BC596892, California
8 Superior Court, County of Los Angeles, Honorable Judge Marc Marmaro
9 presiding, approved by the Court on June 13, 2016;
- 10 • *Canul v. Basmat, Inc.*, Case No. BC674940, California Superior Court, County of
11 Los Angeles, Honorable Judge Teresa A. Beaudet presiding, approved by the
12 Court on August 22, 2018;
- 13 • *Silva v. CitiStaff Solutions, Inc.*, Case No. BC620115, California Superior Court,
14 County of Los Angeles, Honorable Judge David S. Cunningham III presiding,
15 approved by the Court on November 19, 2018;
- 16 • *Cruz v. Fleetwash, Inc.*, Case No. 19STCV03033, California Superior Court,
17 County of Los Angeles, Honorable Judge Stuart M. Rice presiding, approved by
18 the Court on October 7, 2019; and
- 19 • *Ibarra v. Baker Commodities, Inc.*, Case No. 19STCV06148, California Superior
20 Court, County of Los Angeles, Honorable Yolanda Orozco presiding, approved
21 by the Court on September 30, 2020.

22 9. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
23 Attorney in Southern California in the annual Rising Star Edition of Super Lawyer. This is an
24 honor awarded to no more than two and a half percent of attorneys under the age of forty in
25 Southern California each year. In 2018, 2019, and 2020, Thomson Reuters recognized me as a
26 “Super Lawyer,” an honor awarded to no more than five percent of attorneys in Southern
27 California each year.

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1 10. As counsel for Plaintiff and Aggrieved Employees in this case, I have been
2 intimately involved in every aspect of this case from its inception through the present, and I
3 believe the proposed Settlement is fair, reasonable and adequate for the Aggrieved Employees
4 and the State of California.

5 11. Defendant Hilltop Securities, Inc. (“Defendant”) offers wealth management and
6 other financial services to clients throughout the country, including from seven offices in
7 California spanning from San Diego to the Bay Area.

8 12. On October 7, 2020, Plaintiff provided written notice to the LWDA and
9 Defendant, thereby giving notice of his intent to pursue civil penalties under PAGA for alleged
10 Labor Code violations, as required by Labor Code § 2699.3. A true and correct copy of Plaintiff
11 Fistanic’s LWDA letter is attached hereto as **Exhibit 2**.

12 13. On December 14, 2020, after the prescribed 65-day waiting period under Labor
13 Code § 2699.3(a)(2)(A), Plaintiff filed the operative Representative Action Complaint titled
14 *Pierre Fistanic v. Hilltop Securities, Inc.*, Los Angeles County Superior Court Case No.
15 20STCV47743, alleging a single cause of action for civil penalties under the PAGA.

16 14. On January 22, 2021, Defendant removed this action to the United States District
17 Court, Central District of California, on the sole basis of diversity jurisdiction under 28 U.S.C. §
18 1332(a).

19 15. On February 22, 2021, Plaintiff filed a Motion to Remand this Action back to the
20 Superior Court of California, County of Los Angeles. On March 15, 2021, this action was
21 remanded to Department 20 of the above-entitled Court, located at 111 North Hill Street, Los
22 Angeles, CA 90012.

23 16. The Parties engaged in significant discovery during this litigation, with Plaintiff
24 propounding and Defendant responding to formal discovery, the Parties meeting and conferring
25 over Defendant’s discovery responses, the Parties’ participating in an Informal Discovery
26 Conference (“IDC”) to address Defendant’s discovery responses, Plaintiff filing Motions to
27 Compel Further Responses to Plaintiff’s Requests for Production of Documents and Special
28 Interrogatories, Set One, and the Parties completing a *Belaire-West* opt-out process. In

connection with mediation, Defendant informally and formally produced information and documents pertaining to Plaintiff and other Aggrieved Employees, including, but not limited to, its commission pay plans, a sample of payroll records for Aggrieved Employees, and a list of Aggrieved Employees with hire dates and termination dates, in order for Plaintiff's counsel to investigate Plaintiff's allegations and value the claims prior to mediation.

17. On April 4, 2022, the Parties attended a full-day mediation with mediator Jeffrey A. Ross, Esq., a well-respected wage and hour mediator. During mediation, the Parties vigorously debated Plaintiff's ability to proceed on a representative basis, the legal basis for Plaintiff's claims and Defendant's defenses, the impact of *Viking River* on this case, the potential amount of civil penalties, and the Parties' data analyses and conclusions based thereon. With the assistance of Mr. Ross, the Parties agreed to fully and finally resolve Plaintiff's PAGA claim, and subsequently negotiated and finalized the Settlement now before the Court.

18. A true and correct copy of the fully-executed Settlement Agreement is attached hereto as **Exhibit 1**. The proposed Explanatory Letter to be mailed to Aggrieved Employees with their settlement payments is attached as **Exhibit A** to the Settlement Agreement. The Settlement provides for Defendant to pay a Gross Settlement Amount ("GSA") of \$93,625.00. After deducting amounts for requested attorneys' fees (\$31,208.33), attorney costs (\$11,538.68), Plaintiff's enhancement award (\$5,000.00), and administration costs (\$2,250.00), the Settlement provides for distribution of a Net Settlement Amount ("NSA") of approximately \$43,627.99 to be paid to Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA"). The NSA shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). The 25% portion to Aggrieved Employees shall be distributed based on each Aggrieved Employee's proportional number of pay periods worked for Defendant in California during the PAGA Period. The settlement is non-reversionary, and does not require Aggrieved Employees to submit claim forms to reap financial benefit from the Settlement. Based on an NSA of \$43,627.99, the total amount paid to Aggrieved Employees is estimated at \$10,907.00, with approximately \$32,720.99 paid to the LWDA. According to information provided by Defendant, the number of Aggrieved Employees is approximately 60. Thus, the

average payment to Aggrieved Employees is estimated at \$181.78.

19. Plaintiff acknowledges that there are substantial risks and uncertainty in proceeding to trial. First and foremost was the risk that the United States Supreme Court would issue its opinion in *Viking River*, which could have resulted in the outright dismissal of Plaintiff's representative PAGA claim. At the time that this settlement was reached, the U.S. Supreme Court had granted certiorari in *Viking River*. Shortly after Plaintiff entered into this Settlement, this risk became a reality and the Supreme Court issued its opinion in *Viking River*, which overturned the California Supreme Court's holding in *Iskanian v. CLS Transportation Los Angeles, LLC* which held that a representative PAGA claim could not be compelled to arbitration. As a result, absent this settlement, it is likely that **no** representative PAGA recovery would be possible at all.

20. Defendant also presented multiple defenses with respect to the merits of Plaintiff's claims. For example, Defendant argues that its commission pay plans comply with California law and that it has always compensated its commissioned-based employees for all required paid rest periods. Defendant further argues that at all times throughout the PAGA Period, it calculated separate rest period compensation for its commissioned based employees in compliance with California law. Defendant also contends that employees experienced minimal (if any) uncompensated "non-productive" time. Additionally, Defendant maintains that any questions of non-productive time would be highly individualized, as employees worked in a variety of locations, and there are no records or other common evidence of time spent on potentially non-productive tasks, making Plaintiff's unpaid wages claim unmanageable on a representative basis.

21. As a result of Defendant's failures to pay all rest period premiums, and all wages owed, Plaintiff alleges PAGA claims for failure to issue accurate and itemized wage statements and failure to pay all wages owed at separation of employment. In response, Defendant argues that Plaintiff's underlying claims will fail and, as a result, these claims will also fail. Defendant also maintains that any "derivative" PAGA claims for violations of Labor Code Sections 226 or 203 would be entirely duplicative and would be unlikely to be awarded in any significant manner by a Court.

1 22. Defendant further maintain that even if the Court awarded PAGA penalties for any
2 of the alleged violations, it would substantially reduce the penalties based on the discretionary
3 factors in Labor Code § 2699(e)(2) (authorizing reduction in penalties “if, based on the facts and
4 circumstances of the particular case, to do otherwise would result in an award that is unjust,
5 arbitrary and oppressive, or confiscatory.”). Indeed, Defendant argues, many courts have reduced
6 PAGA penalties drastically where, as here, the employer presented good-faith defenses and
7 attempted to comply with the law.

8 23. Based on data provided by Defendant, there were approximately 3,745 pay periods
9 worked by the Aggrieved Employees during the PAGA Period. Therefore, assuming that Plaintiff
10 could prove at least one Labor Code violation in each pay period, Plaintiff calculated Defendant’s
11 maximum PAGA exposure at \$374,500 (3,745 pay periods * \$100 per violation). However, as
12 discussed above, Defendant raised numerous defenses to the merits of Plaintiff’s claims, and
13 argued that even if found liable, the Court would exercise its discretion to reduce any potential
14 PAGA penalties given Defendant’s good-faith defenses. Additionally, at the time of mediation,
15 there was a looming threat that a forthcoming decision in *Viking River* could preclude any
16 representative PAGA recovery at all. In the face of Defendant’s defenses on the merits, the
17 Court’s discretion to reduce PAGA penalties, and the threat (which has since become reality) of
18 an adverse *Viking River* ruling, Plaintiff felt that the negotiated settlement of \$93,625.00, was
19 clearly in the best interests of the LWDA and the Aggrieved Employees and was well within the
20 range of reasonableness.

21 24. Plaintiff’s counsel is requesting attorneys’ fees of one-third of the Gross
22 Settlement Amount (i.e., \$31,208.33). Based on my experience in similar wage and hour class
23 and representative actions in California state courts, fee awards in matters such as this one
24 generally equal about one-third of the gross recovery. In addition, and as explained below and in
25 the accompanying Motion, this case presented significant risks to Plaintiff, including the risk that
26 an adverse *Viking River* decision could effectively conclude the case. It is fair and reasonable to
27 account for these risks in compensating Plaintiff’s counsel, as well as the risks involved in
28 undertaking this litigation and expending considerable effort while working on a pure

contingency basis. Since undertaking representation of Plaintiff, my office has dedicated substantial resources to this litigation, including expending \$11,538.68 in litigation costs, without receiving any compensation to date.

25. Plaintiff's counsel has expended significant time and effort in this case, including but not limited to, conducting extensive research regarding the merits of Plaintiff's claims, his ability to recover PAGA civil penalties, and Defendant's potential defenses. Plaintiff's counsel conducted formal and informal discovery, performed law and motion work, and also performed extensive analysis of data and information produced by Defendant, used this analysis to evaluate Plaintiff's claims, and drafted a comprehensive mediation brief. Plaintiff's counsel also attended a private mediation, and expended significant effort in preparing settlement documents, this Motion and supporting documents, and will oversee the settlement administration process. Given the considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiff's counsel was great.

26. Since undertaking representation of Plaintiff, my firm has dedicated substantial resources to this litigation without receiving any compensation to date. My office is requesting reimbursement of up to \$11,538.68 in total costs, which includes \$60.00 of anticipated costs for filing and serving the instant Motion. A summary of the costs incurred by my office to date in connection with this case is attached hereto as **Exhibit 3**. These costs include filing fees, copying costs, mediation fees, service fees, and other expenses that were all reasonably incurred in the prosecution of this litigation on behalf of Plaintiff and the Aggrieved Employees.

27. In this case, Plaintiff's counsel has a collective lodestar of approximately \$88,972.50 without the use of any multiplier, resulting in a *negative* multiplier compared to the \$31,208.33 fee request. Below is a general summary showing the number of hours of work performed by each attorney and paralegal in my firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (17th Year Attorney)	\$675	25.2	\$17,010.00
Tuvia Korobkin (14th Year Attorney)	\$650	55.9	\$36,335.00

Neil M. Larsen (11th Year Attorney)	\$550	60.8	\$33,440.00
Firm Paralegals	\$175	12.5	\$2,187.50
Total Lodestar			\$88,972.50

28. My proposed hourly rate of \$675, Mr. Korobkin's proposed hourly rate of \$650, and Mr. Larsen's proposed hourly rate of \$550 are reasonable in light of our respective skills, wage and hour class action litigation experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover, our requested hourly rates are in line with the *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit 4**.

29. I believe the requested \$5,000 enhancement award to Plaintiff is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Aggrieved Employees. Plaintiff provided substantial factual information and documents to counsel, assisted in identifying potential witnesses, and participated in numerous discussions with Plaintiff's counsel regarding the case. Accordingly, I believe Plaintiff's requested enhancement award is reasonable and should be approved.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 13, 2022, at El Segundo, California.


 Paul K. Haines

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement” or “Agreement”) is made and entered into between Plaintiff Pierre Fistanic (“Plaintiff”), acting in a Private Attorney General capacity, and Defendant Hilltop Securities, Inc. (“Hilltop” or “Defendant”).

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. “Action” means the matter entitled *Pierre Fistanic v. Hilltop Securities, Inc.*, Los Angeles Superior Court Case No. 20STCV47743 and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated on or about October 7, 2020.

2. “Aggrieved Employees” means all current and former employees of Hilltop who worked pursuant to a commission pay plan at any time during the PAGA Period. Hilltop represents that there are approximately 60 Aggrieved Employees.

3. “Complaint” means the Representative Action Complaint entitled *Pierre Fistanic v. Hilltop Securities, Inc.*, Los Angeles Superior Court Case No. 20STCV47743, filed on December 14, 2020.

4. “Court” means the Superior Court of California for the County of Los Angeles.

5. “Effective Date” means the date the Court enters an order approving the Settlement and entering judgment thereon.

6. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

7. “LWDA” means the California Labor and Workforce Development Agency.

8. “Gross Settlement Amount” or “GSA” is the non-reversionary sum of Ninety-Three Thousand Six Hundred Twenty-Five Dollars and Zero Cents (\$93,625.00), which represents the total all-in amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s Counsel’s fees and costs, payment of Plaintiff’s enhancement award and payment to the Settlement Administrator for administration costs.

9. “Net Settlement Amount” or “NSA” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (a) Plaintiff’s Counsel’s fees up to one-third of the Gross Settlement Amount, currently estimated at \$31,208.33; (b) Plaintiff’s verified costs up to \$17,500.00; (c) Plaintiff’s enhancement award of \$5,000.00; and (d) administration costs up to \$3,500.00.

10. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

11. “PAGA Period” means the time-period from April 12, 2019 through December 31, 2021.

12. “Released Parties” means Hilltop and its former, present and future parent owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.

13. “PAGA Released Claims” means all claims for civil penalties under the PAGA, that were alleged in the Action or that could have been alleged based on the facts alleged in Plaintiff’s PAGA notice and in the Action, arising from Aggrieved Employees’ employment with Hilltop during the PAGA Period, including claims for PAGA civil penalties based on alleged violations of Labor Code §§ 201-204, 226, 226.2, 226.7, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, and 1198, and including any and all orders and awards for costs, fees, and/or sanctions previously issued in the Action.

14. “Parties” means Plaintiff and Defendant, collectively.

15. “Plaintiff” means Pierre Fistanic.

16. “Plaintiff’s Counsel” means Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen of Haines Law Group, APC.

17. “Settlement Administrator” means Phoenix Class Action Administration Solutions.

II. RECITALS

1. Plaintiff alleges that with regard to the Aggrieved Employees, Defendant: (1) failed to pay all minimum wages owed; (2) failed to authorize and permit rest periods; (3) failed to provide accurate, itemized wage statements; (4) failed to timely pay all final wages and compensation earned at the time of separation of employment; (5) failed to timely pay all wages due; and (6) failed to maintain accurate records, and that all of which result in liability for civil penalties under the PAGA.

2. On October 7, 2020, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code described in Paragraph II.1 above.

3. On December 14, 2020, Plaintiff filed the Action.

4. During the pendency of the Action, the Parties engaged in informal and formal discovery prior to mediation. In response to Plaintiff’s discovery requests, Defendant provided Plaintiff with information and documents pertaining to Plaintiff and other Aggrieved Employees and the claims in the Action in order for Plaintiff’s Counsel to investigate Plaintiff’s allegations and value the PAGA claim, including but not limited to compensation plans and payroll data.

5. On April 4, 2022, the Parties participated in mediation before mediator Jeffrey A. Ross, Esq. With the assistance of Mr. Ross, the Parties agreed to fully and finally resolve, subject to Court approval, the PAGA Released Claims as to Plaintiff and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay Ninety-Three Thousand Six Hundred Twenty-Five Dollars and Zero Cents (\$93,625.00) as the **non-reversionary** Gross Settlement Amount. Defendant will not pay more than the Gross Settlement Amount (subject to the Escalator Clause below). The payment of the Gross Settlement Amount shall be made within thirty (30) calendar days of the Effective Date. Defendant shall make the payment to the Settlement Administrator who will then distribute all payments.

3. **Escalator Clause.** Defendant represents that there are an estimated 3,745 total pay periods worked by the Aggrieved Employees in California during the PAGA Period ("Affected Pay Periods"). If the number of Affected Pay Periods as reported to the Settlement Administrator following the Effective Date is more than 5% greater than this figure (i.e., if there are 3,933 or more Affected Pay Periods), Defendant shall increase the GSA in proportion to the increase in Affected Pay Periods (e.g., if the number of Affected Pay Periods is 12% greater than 3,745, Defendant will increase the GSA by 12%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Counsel's Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to one-third of the Gross Settlement Amount (currently estimated at \$31,208.33), and costs incurred in prosecuting this Action up to \$17,500.00. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. Defendant, via the Settlement Administrator, will report these payments on an IRS Form 1099 issued to Plaintiff's Counsel.

b. **Plaintiff's Enhancement Award.** Defendant will not oppose Plaintiff's request for an enhancement award in the amount of \$5,000.00 for his service to the LWDA and the Aggrieved Employees, and the risk he undertook by attaching his name to the Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount. Defendant, via the Settlement Administrator, will report this payment on an IRS Form 1099 issued to Plaintiff.

c. **Administration Costs.** Defendant will not oppose the Settlement Administrator's costs in the amount up to \$3,500.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net

Settlement Amount. Defendant, via the Settlement Administrator, will report this payment on an IRS Form 1099 issued to the Settlement Administrator.

5. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be distributed pursuant to Labor Code § 2699(i) as follows:

a. 75% of the Net Settlement Amount shall be distributed to the LWDA.

b. 25% of the Net Settlement Amount shall be paid to Aggrieved Employees. This portion of the Net Settlement Amount shall be paid to all Aggrieved Employees pro rata based on the proportional number of Affected Pay Periods worked by each Aggrieved Employee for Hilltop in California during the PAGA Period.

The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the Parties agree to re-negotiate the allocation of funds in good faith in an effort to obtain approval of the Settlement.

6. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement and full payment by Defendant of the Gross Settlement Amount, all Aggrieved Employees will release the PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, as well as full payment by Defendant of the Gross Settlement Amount, Plaintiff and all Aggrieved Employees will be forever barred from pursuing the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. **No Right to Opt-Out.** Aggrieved Employees do not have the right to object, opt out of, or otherwise exclude themselves from the settlement of claims for civil penalties under PAGA, and upon approval of the Settlement by the Court and the Settlement being fully funded, each Aggrieved Employee will have released Defendant and each of the Released Parties from the PAGA Released Claims as described above, and each Aggrieved Employee will be entitled to receive payment, in conformity with the Settlement.

8. **Notification to LWDA.** Plaintiff's Counsel will notify the LWDA of the settlement at the time the settlement is submitted to the court for approval, will seek approval of the settlement, and will perform any and all statutory tasks as required by law.

9. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment as provided for in this Settlement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the material terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement. However, before exercising this option, a Party contemplating terminating the Settlement must attempt to work with the other Party in good faith to modify the Settlement in order to obtain Court approval or to otherwise cure any defect in the Settlement.

10. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement pursuant to Cal. Code Civ. Proc. § 664.6. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Class Action Administration Solutions to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within five (5) business days of the Effective Date, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, total number of Affected Pay Periods, and Social Security number. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within seven (7) business days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within twenty-one (21) days of the Settlement being fully funded as provided above in section III.2, and upon receiving approval from the Parties' counsel of its Individual PAGA Payment calculations, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address, using a skip-trace or other similar search, using the name, address and/or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing if a new address is located.

Defendant fully discharges its obligations to those Aggrieved Employees to whom it will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued.

5. **Payment of Remainder.** Within twenty-one (21) days of the Settlement being fully funded, and upon receiving approval from counsel of its calculations, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved enhancement award to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days of distribution of the Settlement funds, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. MISCELLANEOUS PROVISIONS

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party. This Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

2. **Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, assigns, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees and other fees incurred in connection with this Settlement and Plaintiff's PAGA claim, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the state of California. This Settlement shall be deemed to have been entered into in the County of Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Los Angeles.

5. **Complete Agreement.** The Parties each acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims in the Action. This Settlement cannot be amended or modified except by a writing signed by counsel for the Parties hereto, and subject to necessary Court approval.

6. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of the PAGA claim in the Action.

7. **Authorization to Enter into Settlement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

8. **Execution and Counterparts.** This Settlement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

9. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the PAGA claim in the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel and with the assistance of an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

10. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible

consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

11. **Severability**. If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

12. **Waiver**. No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

13. **Representation by Counsel**. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

14. **Binding Agreement**. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms under California Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

15. **Denial of Liability**. The Parties expressly recognize that the making of this Settlement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

16. **Confidential**. The Parties agree that this Settlement is confidential (except for purposes of enforcement) and that no Party will issue any press release nor other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the Settlement. The Parties and their counsel agree that they will not initiate or have any contact with the press, respond to any press inquiry, or have any communication with the press about this case.

17. **Enforcement Action**: In the event that one or more of the Parties institutes any legal action, motion, or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this

Settlement, the prevailing Party or Parties will be entitled to recover from the non-prevailing Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any action, motion, or other proceeding.

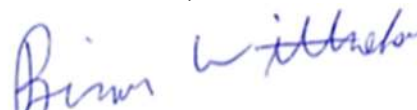
IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

Dated: Jul 1, 2022


Pierre Fistanic (Jul 1, 2022 12:04 PDT)

Pierre Fistanic, Plaintiff

Dated: 06/28/2022



Hilltop Securities, Inc.

By: Brian Wittneben

Title: General Counsel

APPROVED AS TO FORM ONLY:

Dated: July 1, 2022

HAINES LAW GROUP, APC

By: 

Paul K. Haines

Tuvia Korobkin

Neil M. Larsen

Attorneys for Plaintiff

Dated: June 28, 2022

JACKSON LEWIS P.C.

By: 

James P. Carter

Attorneys for Defendant

EXHIBIT A

Re: Payment from Pierre Fistanic v. Hilltop Securities, Inc.
Superior Court of California for the County of Los Angeles; Case No. 20STCV47743

Date: [REDACTED]/[REDACTED]/2022

SIMID
Name
Address

Dear Name:

Enclosed, please find a check made payable to you. This is your payment from the settlement of the lawsuit titled *Pierre Fistanic v. Hilltop Securities, Inc.*, Case No. 20STCV47743, pending in the Superior Court of the State of California for the County of Los Angeles (the “Action”).

The Action was filed against Hilltop Securities, Inc. (“Hilltop”) and includes a claim pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). The Action was brought by Plaintiff Pierre Fistanic (“Plaintiff”), a former employee of Hilltop, on behalf of the State of California and other alleged aggrieved employees. You have been identified as one of the employees on whose behalf the case was brought.

Plaintiff claimed that Hilltop owed civil penalties under PAGA for alleged violations of the California Labor Code. The parties have reached a settlement of Plaintiff’s claims, and on [DATE], the Court approved the settlement, including the amount of civil penalties to be paid under the settlement. A portion of the civil penalty settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of the civil penalty settlement amount goes to employees of Hilltop who were allegedly affected by the alleged violations of the Labor Code. In agreeing to this settlement, Hilltop does not admit that it is liable in any way to current or former employees for any violations of the California Labor Code or any penalties. The Court has not decided the merits of Plaintiff’s claims.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in your name. If you are still employed by Hilltop, your decision to cash the check will not affect your employment.

While you were not a party to the Action, you and the State of California have been bound by the settlement entered in this matter and approved by the Court, including the release contained in the settlement. The release pertains to civil penalties under PAGA only. The release includes all claims under the PAGA that were alleged in, or could have been alleged based on the facts alleged in, Plaintiff’s PAGA notice and complaint in the Action, including claims for civil penalties under the PAGA based on Hilltop’s alleged violations of Labor Code sections 201-204, 226, 226.2, 226.7, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, and 1198, during the time period April 12, 2019 through December 31, 2021 (the “PAGA Period”).

If you have any questions, you can contact Phoenix Settlement Administrators, the Settlement Administrator, at 1-[REDACTED]-[REDACTED].

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

October 7, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Pierre Fistanic vs. Hilltop Securities, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Pierre Fistanic with respect to claims arising from his employment with Hilltop Securities, Inc. and Does 1 through 100 (collectively, "Hilltop"). Mr. Fistanic is an "aggrieved employee" as defined by Labor Code Section 2699 *et seq.*, due to Hilltop's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, for purposes of this letter, "aggrieved employees" refers to all of Hilltop's California employees who have been paid on a commission pay plan at any time in the one-year plus 178 days preceding the submission of this letter to the LWDA through the present.

Hilltop offers financial services to a range of industries and individuals, including in the public finance, wealth management, fixed income capital markets, and structured finance/debt capital markets industries. During Mr. Fistanic's employment with Hilltop, Mr. Fistanic and other aggrieved employees were paid on a commission-only basis, whereby they were paid commissions based on the financial transactions they completed, and were not paid a salary or hourly wage. While paid on a commission-only basis, Mr. Fistanic and other aggrieved employees were not separately compensated for time spent working on tasks which were not compensated on a commission basis, including for example, time spent attending meetings and trainings (i.e., non-productive time). As a result, Mr. Fistanic and other aggrieved employees were not paid at least the minimum wage for all hours worked.

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While working on a commission-only basis, Mr. Fistanic and other aggrieved employees worked for 3.5 hours or more in a workday, but were never provided with a paid rest period for every 4-hour period worked, or major fraction thereof, because Hilltop's commission pay plan failed to separately compensate Mr. Fistanic and other aggrieved employees for required rest periods. *See* Labor Code § 226.2 (requiring employers to separately compensate piece-rate employees for rest periods and other non-productive time); *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98, 113-14 (2017) (holding that commission-employees must be paid separately for rest periods and non-productive time, finding that “[n]othing in section 226.2, however, suggests that the Legislature intended to adopt a different rule for commission-based employees”); *see also* *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) (finding pay plan unlawful because “[t]here is no dispute that Safeway’s activity-based compensation system did not separately compensate drivers for their rest periods.”). As a result, Mr. Fistanic and other aggrieved employees were not authorized and permitted paid rest periods as required by Industrial Welfare Commission Wage Order 4 (“Wage Order 4”), § 12(A).

As a result of Hilltop's failure to pay all minimum wages and rest period premium wages, Hilltop maintained inaccurate payroll records and issued inaccurate wage statements. In addition, Hilltop issued facially non-compliant wage statements to Mr. Fistanic and other aggrieved employees by failing to list the total hours of compensable rest and recovery periods and the corresponding rate of compensation and gross wages for those periods, in violation of Labor Code § 226.2(a)(2)(A); and failing to state the total hours of non-productive time along with the corresponding rate of compensation and gross wages for non-productive time worked in violation of Labor Code § 226.2(a)(2)(B).

As a further result of Hilltop's failure to pay all minimum wages and rest period premium wages, Hilltop failed to pay all wages owed to Mr. Fistanic and other aggrieved former employees upon their separation of employment with Hilltop.

As described above, Hilltop has committed the following violations of the Labor Code and Wage Order 4:

Minimum Wage Violations

Hilltop was required to pay Mr. Fistanic and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; Wage Order 4, § 4. Because Hilltop failed to compensate Mr. Fistanic and other aggrieved employees for all non-productive time when they were paid on a commission-only basis, Hilltop failed to compensate Mr. Fistanic and other aggrieved employees at least the minimum wage for all hours worked. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Fistanic and other aggrieved employees were deprived of all required minimum wages.

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Rest Period Violations

As described above, Hilltop failed to separately compensate Mr. Fistanic and other aggrieved employees for required rest periods while they worked pursuant to Hilltop's commission pay plan. See *Vaquero, supra*, 9 Cal.App.5th 98; *Bluford, supra*, 216 Cal.App.4th 864. As a result, Mr. Fistanic and other aggrieved employees are owed rest period premium payments pursuant to Labor Code § 226.7 and Wage Order 4, § 12(B).

Wage Statement Violations

Hilltop is required to furnish Mr. Fistanic and other aggrieved employees with complete and accurate itemized wage statements that show, among other things, total gross wages earned, total net wages earned, total hours of rest periods and of non-productive time worked, the rate of compensation for rest periods and non-productive time, and the gross wages paid for rest periods and non-productive time. See Labor Code §§ 226(a), 226.2(a)(2), 1174(d); Wage Order 4, § 7. As alleged above, as a result of Hilltop's failure to pay all minimum wages, failure to pay all rest period premium wages, and failure to include information regarding rest periods and non-productive time worked on aggrieved employees' wage statements, Hilltop maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Fistanic and other aggrieved employees in violation of Labor Code §§ 226 and 226.2. Hilltop's failure to comply with the wage statement obligations was knowing and intentional, and Mr. Fistanic and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Hilltop failed to timely pay Mr. Fistanic and other aggrieved employees all of their final wages at the time of separation, which included all minimum wages and rest period premium wages owed. Hilltop's failure to pay all final wages due to Mr. Fistanic and other aggrieved employees was willful and, consequently, entitles Mr. Fistanic and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Hilltop failed to pay their final wages after their separation, up to a maximum of thirty days.

Mr. Fistanic is informed and believes that the violations alleged herein are continuing to the present. As an "aggrieved employee," Mr. Fistanic will initiate a civil action on behalf of himself, the State of California, and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Fistanic's own investigation, and on information and belief, Hilltop committed, and continues to commit, the following violations:

- a. Hilltop has violated Labor Code §§ 226.2, 1182.12, 1194, 1194.2, 1197, and 1198, by failing to pay Mr. Fistanic and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Hilltop has violated Labor Code §§ 226.2, 226.7, 516, 558, and 1198 by failing to separately compensate Mr. Fistanic and other aggrieved employees for required rest periods and failing to pay them rest periods premiums;
- c. Hilltop has violated Labor Code §§ 226 and 226.2 by failing to furnish Mr. Fistanic and other aggrieved employees with accurate and compliant itemized wage statements;
- d. Hilltop has violated Labor Code §§ 201-203 by failing to timely pay all final wages due, including but not limited to minimum wages and rest period premium wages, to Mr. Fistanic and other aggrieved employees upon their separation of employment;
- e. Hilltop has violated Labor Code § 204 by failing to pay Mr. Fistanic and other aggrieved employees all wages earned at least twice during each calendar month; and
- f. Hilltop has violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Fistanic and other aggrieved employees.

Pursuant to Labor Code Section 2699.3, please notify us and Hilltop if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: Hilltop Securities, Inc. (via certified mail)

7019 2280 0000 7680 3012

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- ☐ Adult Signature Restricted Delivery \$ _____

Postage

Hilltop Securities Inc.
 c/o C T Corporation, Agent of Service of
 Process
 818 West Seventh Street, #930
 Los Angeles, CA 90017



PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hilltop Securities Inc.
Attention: Human Resources
1201 Elm Street, Suite 3500
Dallas TX 75270



9590 9402 5238 9122 7212 86

2. Article Number (Transfer from service label)

7019 2280 0000 7680 3029

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

Linda Flanagan

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery

Mail

Mail Restricted Delivery

(over 5000)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

EXHIBIT 3

Haines Law Group, APC

Expense Summary

Pierre Fistanic v. Hilltop Securities Inc.

EXPENSE	AMOUNT
Mediation Costs	\$9,000.00
Filing, Service, and Messenger Fees	\$2,189.20
Copying and Postage Costs	\$192.83
Westlaw Charges	\$156.65
TOTAL:	\$11,538.68

EXHIBIT 4

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

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