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8 TUAN HOANG, and all others similarly situated

9 (Additional attorneys for parties on following page)

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

11 **FOR THE COUNTY OF SANTA CLARA**

12 **(UNLIMITED JURISDICTION)**

13 TUAN HOANG, on behalf of himself and as an
14 "aggrieved employee" on behalf of other
15 "aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

16 *Plaintiff,*

17 vs.

18 MDC VACUUM PRODUCTS LLC, a Delaware
19 limited liability company; and DOES 1-50,
20 inclusive,

21 *Defendants.*

Case No. 21CV376678

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF TUAN
HOANG'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Hearing Date: April 26, 2023

Hearing Time: 1:30 p.m.

Hearing Dept.: 19, The Honorable
Theodore C. Zayner

Action filed: March 01, 2021



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

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am
5 an attorney of record for Plaintiff Tuan Hoang (“Plaintiff” or “Hoang”) in this action against
6 Defendant MDC Vacuum Products LLC (“Defendant”). I am a member in good standing of the
7 State Bar of California. Except as otherwise indicated, I have personal knowledge of all matters
8 set forth herein and, if called as a witness, could and would competently testify thereto under
9 oath.

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

14 ***Factual and Procedural Background***

15 3. Defendant delivers high quality products and comprehensive design and
16 manufacturing solutions to the research, semiconductor, aerospace, life sciences and food
17 processing sectors. Defendants employed Plaintiff as an expeditor from about January 9, 2017
18 until September 1, 2020.

19 4. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
20 under PAGA. By letters dated December 23, 2020, Plaintiff, on behalf of himself and other
21 aggrieved hourly employees gave written notice by certified mail to the Labor and Workforce
22 Development Agency (“LWDA”) and Defendant of the specific provisions of the California
23 Labor Code alleged to have been violated, including the facts and theories to support the alleged
24 violations. A true and correct copy of Plaintiff’s letter to the LWDA is attached as **Exhibit 3**.

25 5. Plaintiff and the PAGA Members are subject to arbitration agreements with
26 Defendants. On March 1, 2021, Plaintiff filed a Class Action Complaint in the Santa Clara
27 County Superior Court, Case No. 21CV376678, against Defendant on behalf of himself and
28 others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to



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1 Provide Meal and Rest Periods (Lab. Code §§226.7, 512 and 1198); (2) Failure to Pay All Wages
2 Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and
3 1198); (3) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (4) Wage Statement Penalties
4 (Lab. Code § 226); (5) Waiting Time Penalties (Lab. Code §§ 201-203); and (6) Failure to
5 Maintain Accurate Employment Records (Lab. Code §§ 1174, 1174.5, and 1198); (7) Unfair
6 Competition (Bus. & Prof. Code §§ 17200, et seq.); and (8) Civil Penalties under PAGA (Lab.
7 Code §§ 2698, et seq.). A true and correct copy of Plaintiff's Class Complaint is attached as
8 **Exhibit 4**. After Plaintiff filed his Class Action Complaint, Defendant produced a Mutual
9 Arbitration Agreement signed by Plaintiff on August 26, 2020, which includes a class action
10 waiver which Defendant contends is enforceable. As a result, on June 22, 2021, Plaintiff filed a
11 Request to Dismiss Class Allegations and File First Amended Complaint. A true and correct
12 copy of Plaintiff's June 22, 2021 request is attached as **Exhibit 5**. On June 22, 2021, the Court
13 granted Plaintiff's request for dismissal of the class action allegations from Plaintiff's operative
14 Complaint without prejudice, and allowed Plaintiff to file a First Amended Complaint which
15 pleads a representative action for civil penalties under the PAGA. A true and correct copy of the
16 Court's June 22, 2021 order is attached as **Exhibit 6**. On June 22, 2021, Plaintiff filed his First
17 Amended Complaint which presents one cause of action for civil penalties under PAGA. A true
18 and correct copy of Plaintiff's First Amended Complaint is attached as **Exhibit 7**.

19 6. On January 14, 2022, the Parties participated in mediation with mediator Louis
20 Marlin in an attempt to resolve the PAGA claim. The Parties engaged in arm's-length
21 negotiations and ultimately reached a resolution of the PAGA claims asserted in the Action. The
22 PAGA Settlement was reached after exchanges of data, information and documents, and is a
23 result of extensive arms-length negotiations. The Parties conducted informal discovery for
24 purposes of potential resolution through which they ascertained the size of the aggrieved
25 employee group and the number of pay periods worked by them during the PAGA Period to
26 ascertain the total value of Plaintiff's PAGA claim. Now that the parties have finalized the
27 PAGA Settlement, Plaintiff submits it to this Court for approval.

28 7. Here, notice is being given to the LWDA concurrently with the filing of this



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1 motion. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation
2 email is attached as **Exhibit 8**.

3 8. The PAGA Settlement warrants a presumption of fairness for several reasons:
4 (1) The Parties reached the Settlement through arm's-length bargaining with the aid of a
5 respected mediator; (2) The Parties conducted sufficient investigation and discovery to allow
6 Counsel and the Court to act intelligently. Plaintiff requested and Defendant provided the
7 number PAGA Members, the number of total pay periods during the PAGA Period, and all
8 policies in effect during the relevant time period; and (3) Counsel for the Parties are experienced
9 with PAGA cases.

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

21 *Background of Counsel*

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



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

3 A. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
4 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
5 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
6 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
7 back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on
8 Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, *San Diego*
9 *Union-Tribune*, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced
10 Bias And Retaliation" by Valerie Alvord, *San Diego Union-Tribune*, May 16, 1998.

11 B. *Jorge Guzman v. Department of Justice*, United States District Court,
12 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
13 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
14 and police brutality by agents of the Office of the Inspector General. Jury found the defendants
15 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
16 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he
17 is Latino, including falsified charges" by Patrick J. McDonnell, *Los Angeles Times*, January 21,
18 1999.

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

26 D. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
27 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
28 Plaintiff, who I represented *pro bono* sought the return of \$45,000.00 he paid to an attorney



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1 escrow officer who subsequently absconded with the money. The jury awarded compensatory
2 damages. The Judgment with interest is now far in excess of that amount. Soon after this case
3 was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono
4 Legal Services.

5 E. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
6 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
7 Customs Agent, followed by an award of Attorneys' fees and costs.

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

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

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

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

28 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-



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1 2010-000382146 (appointed Class Counsel and granted final approval of class action settlement
2 by the court on behalf of nonexempt employees).

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

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

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

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

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

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

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

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

28 K. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court,



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1 Case No. BC462681 (appointed Class Counsel and granted final approval of class action
2 settlement on behalf of security guard employees).

3 L. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
4 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
5 on behalf of dairy and agricultural laborers).

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

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

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

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

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

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

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



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

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

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

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

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

18 ***Exposure & Risk Analysis***

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

- 22 • Defendant produced and Plaintiff reviewed his personnel file.
- 23 • Defendant produced and Plaintiff reviewed and analyzed time and payroll
24 records for over 329 PAGA Members.
- 25 • Plaintiff requested that Defendant produce any and all relevant policies
26 regarding Plaintiff's claims and Defendant produced those policies in effect during the relevant
27 time period.
- 28 • Plaintiff interviewed other employees about the claims at issue.



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1 • Plaintiff analyzed the state of caselaw on PAGA claims, claims for failure
2 to pay employees all earned wages, failure to provide meal periods, failure to authorize and
3 permit rest periods, failure to indemnify for business expenses, failure to issue proper wage
4 statements, failure to timely pay wages, and related claims.

5 • Plaintiff surveyed the outcomes of PAGA cases that went to trial or
6 otherwise concluded before trial.

7 14. As set forth above, Defendants have posed valid defenses to the Labor Code
8 claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face
9 significant uncertainty. There is a risk that the Court would consider the maximum civil penalty
10 available to be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA
11 claims and required a significant discount for settlement purposes. For mediation purposes,
12 Plaintiff's counsel estimated a maximum exposure of approximately \$8,143,000.00 in civil
13 penalties. This estimate did not take into account any of the risks discussed above and assumed
14 a violation for every single pay period. Plaintiff's counsel also assessed multiple penalties for
15 the same pay period for the same alleged violations of different Labor Code provisions and
16 derivative violations. Although two federal district court decisions held that "stacking" PAGA
17 penalties in this fashion may be appropriate to determine the amount in controversy for purposes
18 of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding
19 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
20 Labor Code provisions. This may be because the PAGA does not provide for what many
21 employers characterize as claim splitting and not merely stacking.

22 15. In preparation for mediation and during the settlement negotiations that followed,
23 Defendant disclosed that there were approximately 329 potentially aggrieved employees and
24 9,580 pay periods. The maximum possible civil penalties under the PAGA is the total number
25 of pay periods with one or more violations multiplied by the maximum possible civil penalty
26 amount per pay period. Unfortunately for the employees concerned, the potential for recovery
27 of the maximum possible civil penalties depends on circumstances that are extremely unlikely
28 independently and in combination. It would depend on the Court stacking the maximum



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1 recoverable civil penalties for failure to pay employees all earned wages, failure to provide meal
2 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
3 failure to issue proper wage statements, failure to timely pay wages per pay period for all 9,580
4 pay periods for all 329 potentially aggrieved employees during the PAGA Period. Plaintiff's
5 counsel is not aware of any California State court decision awarding a plaintiff and the other
6 aggrieved employees he represents multiple civil penalties for the same pay period under
7 different Labor Code provisions. Plaintiff's counsel had to substantially discount the value of
8 these claims in the settlement negotiations for this and a variety of other reasons (outlined
9 below).

10 16. **Risks Associated with Plaintiff's Claim That Defendant Failed To Pay All**
11 **Earned Wages at the Correct Rates of Pay.** There is a risk that Plaintiff's claim that
12 Defendant did not pay all wages at the correct rates of pay would be extremely limited at best.
13 The predicate for Plaintiff's unpaid wage claim is Defendant's failure to pay overtime wages on
14 bonuses it paid to the Class Members. However, Defendant presented evidence that its bonuses
15 were discretionary. As such, Defendant would have no obligation to pay overtime wages on the
16 bonuses.

17 17. **Risks Associated with Plaintiff's Claim That Defendant Failed To Provide All**
18 **Meal Periods.** There are risks to Plaintiff's claims that defendant failed to provide all meal periods.
19 Defendant presented evidence that Class Members were free to take meal periods when they
20 wanted and that records of late meal periods were the result of Class Members choosing to
21 postpone their meal periods. Defendant contends that, to establish a violation of the meal period
22 law, a plaintiff must do more than show that a meal break was not taken. Defendant contends it
23 did not impede or discourage Plaintiff, or any other employees, from taking their meal periods.
24 Defendant's policies mandate that employees take at least a 30-minute, uninterrupted meal
25 periods and record the beginning and ending time of their meal breaks each day on their time
26 records. The time records that comprise the random sample Defendant produced to Plaintiff for
27 purposes of mediation show that meal periods were taken the vast majority of the time. Of the
28 time records that show a late, short or no lunch, individualized evidence may be necessary to



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determine whether they occurred due to conduct of the Defendant or each of the employees concerned.

18. **Risks Associated with Plaintiff's Claim That Defendant Failed To Authorize or Permit Rest Breaks.** There are risks to Plaintiff's claims that Defendant failed to authorize or permit rest breaks. Defendant presented evidence that Class Members were free to take rest periods when they wanted. Defendant contends it provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendant's written policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims.

19. **Risks Associated with Plaintiff's Claim That Defendant Failed To Indemnify for Expenses.** There is a risk that the Court may consider Plaintiff's claim that Defendant failed to indemnify for business expenses to be individual in nature and thus decline to allow a trial on behalf of all aggrieved employees and the State. Defendant had policies to reimburse for work related expenses. Plaintiff alleges that Defendant required Plaintiff and the Aggrieved Employees to use their personal items for work, including cellular phones, computers and other electronic devices, vehicles, and tools, and failed to indemnify them for these business expenses. Defendant presented evidence that they have supplied their employees with tools, equipment, and other supplies and had an expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class wide resolution.

20. **Risks Associated with Plaintiff's Claim That Defendant Failed To Issue Accurate and Complete Wage Statements.**

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is



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1 derivative of them. *Id.* On their face, the wage statements issued by Defendants comply with the
2 requirements of Labor Code § 226.

3 21. **Risks Associated with Plaintiff's Claim That Defendant Failed To Timely Pay**
4 **All Wages.** Plaintiff's claim for untimely wages is predicated on Labor Code section 201 to 203.
5 Like the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were
6 willful. The evidence of good faith Defendants put forth will defeat this claim.

7 22. **The Absence of Large Civil Penalty Awards under PAGA.** The sole source
8 of money recoverable for the PAGA Members and the State is civil penalties available under
9 PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so
10 long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above,
11 Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every
12 paycheck that Defendant issued to employees during the PAGA Period represents a pay period
13 in which every PAGA Member suffered a minimum wage violation; (2) Every paycheck that
14 Defendant issued to employees during the PAGA Period represents a pay period in which every
15 PAGA Member suffered an overtime wage violation; (3) Every paycheck that Defendant issued
16 to employees during the PAGA Period represents a pay period in which every PAGA Member
17 suffered a meal period violation; (4) Every paycheck that Defendant issued to employees during
18 the PAGA Period represents a pay period in which every PAGA Member suffered a rest period
19 violation; and (5) Every paycheck that Defendant issued to employees during the PAGA Period
20 represents a pay period in which every PAGA Member suffered an unreimbursed expense
21 violation. There are no California state court decisions under the PAGA to date with substantial
22 awards of civil penalties. Plaintiff's counsel is aware of only two significant awards under the
23 PAGA in a contested proceeding, both issued by federal district courts, one of which was
24 overturned on May 28, 2021.⁶

25 _____
26 ⁶ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
27 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
28 the plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
suffered a particularly sizeable injury – the court found that the defendant's policies caused



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23. Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 ("Carrington") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily discounted award of only \$5 per violation because it was within the Court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. Under *Carrington*, assuming 1 violation for each pay period for all 329 PAGA Members, will result in a recovery of \$47,900 (9,580 x 1 x \$5 = \$47,900).

24. Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court, case number BC430633 in which I represented the Plaintiffs, the employer underpaid commission overtime wages. The plaintiffs sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000.00 in civil penalties under the PAGA. A true and correct copy of the amended judgment in *Ghrdilyan* is attached as **Exhibit 9**. A true and correct copy of the complaint in *Ghrdilyan* is attached as **Exhibit 10**. A

damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in *Bernstein*, who the court noted had received "millions of dollars from the state of California" to train their flight attendants, engaged in glaring violations of the labor code, such as failing to compensate its flight attendants for work performed outside of "block time" (time during which the aircraft is moving), including time spent participating in pre-flight briefings, boarding passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049, 1055-1058. Indeed, defendant's liability was so clear in *Bernstein* that the case was resolved on the plaintiffs' motion for summary judgment. *Id.*

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



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1 true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 11**, 19:8-
2 20:19. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security*
3 *Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court
4 awarded the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result
5 could occur here. A true and correct copy of the judgment in *Shields* is attached as **Exhibit 12**.

6 25. Defendant could also convince the Court to dismiss the claims due to
7 unmanageability because determining whether each Aggrieved Employee worked off the clock
8 or why each employee missed a meal or rest period would require separate mini-trials. *Id. See,*
9 *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*,
10 the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4
11 (N.D. Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case
12 would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*,
13 and dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals
14 whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL
15 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D.
16 Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal.
17 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number
18 of potential aggrieved employees, judicial economy favors deferring the representative portion
19 of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May
20 13, 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision
21 in *Wesson v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh’g
22 denied (Sept. 27, 2021) holding that trial courts have authority to ensure that claims under
23 PAGA are manageable, and that courts may limit or strike unmanageable PAGA claims.

24 26. The arbitration agreements entered into between Defendants on the one hand,
25 and the Plaintiff and comparable workers, on the other, present a significant risk to the success
26 of Plaintiff’s representative litigation. According to Defendants, the majority of the workers
27 entered into arbitration agreements with Defendants. Recently, with *Viking River Cruises, Inc.*
28 *v. Moriana* (2022) 142 S.Ct. 1906, the Supreme Court was to decide whether or not to overrule



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1 the California Supreme Court's decision in *Iskanian v. CLS Transportation* (2014) 59
2 Cal.4th 348 that a private arbitration agreement cannot deprive an employee of his right to sue
3 under PAGA in a court of law. The Supreme Court in *Viking* ultimately held that the employer
4 could enforce the arbitration agreement as to the employee's individual PAGA claim, and that
5 the employee lacked standing to maintain her representative PAGA claims. *Viking River*
6 *Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022), reh'g denied, No. 20-1573, 2022 WL 3580311
7 (U.S. Aug. 22, 2022). Therefore, Plaintiff would effectively run the risk of the Court compelling
8 his representative PAGA claim to individual arbitration. Also, because different defenses would
9 apply to some workers and not others – i.e., the existence of signed arbitration agreements –
10 there is a risk that the Court could determine that Plaintiff's claims present too many
11 individualized inquiries to allow for manageable PAGA trial.

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

18 28. Each PAGA Member will receive a portion of the civil penalties on a pro-rata
19 basis depending on the number of pay periods Defendant employed them for during the PAGA
20 Period. Agreement, ¶ 5. With a total of approximately 329 PAGA Members, the average
21 estimated individual Settlement Payment for each PAGA Member is approximately \$224.16
22 (\$73,750/329) PAGA Members). Although an average payment of \$224.16 per Aggrieved
23 Employee is not an enormous sum of money, it is an excellent result given the uncertainties this
24 lawsuit entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA
25 is not a restitution statute with a traditional damages provision designed to restore victims to the
26 position they would have been in had the Labor Code violations not taken place. Rather, it is at
27 best a punishment statute designed to reduce future Labor Code violations. It provides for civil
28 penalties only.



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

9
Attorneys' Fees and Costs

10 30. My co-counsel and I intend to request attorneys' fees of \$160,000.00 (1/3 of the
11 Gross Settlement Amount) and up to \$15,000.00 in litigation expenses. The written retainer
12 agreement I entered into with Plaintiff provides that I may elect to recover either (a) statutorily
13 awarded attorney fees or (b) up to 40% of any recovery.

14 31. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
15 awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's
16 Counsel's fee request of \$160,000.00 (one-third of the Gross Settlement Amount) is fair and
17 reasonable based on their lodestar as cross-checked against the percentage of the recovery. In
18 this case, Plaintiff's Counsel have a total lodestar of approximately \$68,769.00 without the use
19 of any multiplier, which results in a multiplier of 2.33 when compared against the \$160,000.00
20 fee request. A true and correct summary of the time records of my firm is attached as **Exhibit**
21 **13** to this declaration. I will make the detailed copies of such records available to the Court for
22 in camera inspection upon its request. I will have waited for a lengthy period to be awarded
23 attorneys' fees for work performed since Plaintiff first contacted my office, compared to
24 Defendant's counsel who have been paid as they performed work during this case. Moreover,
25 my co-counsel and I have expended time, effort, and money that we could have expended on
26 less risky cases instead.

27 32. My firm's current litigation costs total approximately \$10,495.08. A true and
28 correct summary of my firm's costs and expense is attached as **Exhibit 14** to this declaration. I



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1 will make detailed copies of such records available to the Court for in camera inspection upon
2 its request. I anticipate that I will incur an additional \$90.40 in costs, which consist of filing fees
3 and attorney service fees for filing this motion and notice of entry of order. Thus, I anticipate
4 my firm's litigations costs will total approximately \$ 10,585.48 through final accounting of the
5 Settlement. Including the out-of-pocket expenses incurred by my co-counsel⁷, Plaintiff's
6 Counsel request a total of \$10,589.48 in reasonable litigation costs.⁸

7 33. In addition, based on my experience in wage and hour class action and PAGA
8 matters, fee awards of approximately one-third of the settlement fund are routinely approved as
9 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund
10 in several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin
11 County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*,
12 San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund);
13 *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-
14 third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court,
15 Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San
16 Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The*
17 *Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of
18 fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-
19 00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*,
20 Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*,
21 Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services*
22 *Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v.*
23 *HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of
24 fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249

25 _____
26 ⁷ My co-counsel's current out of pocket expenses total approximately \$4.00. See Haines Decl. ¶
11.

27 ⁸ My co-counsel and I do not seek reimbursement for the wages I paid to the attorneys, paralegals,
28 and legal assistants to aid in the representation of the Class. We bore these expenses over the
time since this lawsuit began without expectation of reimbursement.



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(one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

34. My previous experience in litigating wage and hour class and representative actions supports the reasonableness of the fee request, as does the caliber of opposing counsel. My previous experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law, state and federal, as well as the procedural law of class action litigation. Because it is reasonable to compensate me commensurate with my skill, reputation, and experience, attorneys' fees of approximately one-third of the Gross Settlement Amount is



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1 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
2 litigation support the fairness and reasonableness of the requested fee award.

3 ***Plaintiff's General Release Payment***

4 35. Plaintiff's General Release Payment in the amount of \$15,000.00 is being paid
5 to Plaintiff as PAGA Representative for his general release and service to the State of California
6 and the PAGA Members in prosecuting the Action.

7 36. Plaintiff's General Release Payment of \$15,000.00 is entirely reasonable given
8 Plaintiff's efforts in the Lawsuit and the risks he undertook on behalf of the PAGA Members.
9 *See generally* Hoang Decl. Plaintiff devoted many hours advancing the interests of the PAGA
10 Members. *Id.* Plaintiff has done this, by, among other things, retaining experienced counsel,
11 providing them with information about his work history with Defendant, assisting in contacting
12 absent PAGA Members to gather information, participating in mediation, and being actively
13 involved in the settlement process to ensure a fair result for the PAGA Members as a whole. In
14 doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay
15 Defendant's attorneys' fees and costs if this action had been unsuccessful and in bad faith (*See*
16 Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the
17 PAGA Members show that the proposed General Release Payment to Plaintiff is fair, adequate,
18 and reasonable, and thus warrants approval. *See generally* Hoang Decl.

19 ***Settlement Administration Duties***

20 37. The duties of the Settlement Administrator are spelled out in the in the bid by
21 CPT Group, Inc. ("CPT Group, Inc."), a true and correct copy of which is attached as **Exhibit**
22 **15**.

23 38. With regard to the Third-Party Settlement Administration Fees provision, it is
24 reasonable. Before agreeing to CPT Group, Inc., the Parties sought and reviewed bids from other
25 reputable third-party administrators which provided higher bids:

- 26 A. Class Action Claims Administration, Inc. = \$18,587.00;
27 B. ILYM Group, Inc. = \$8,000.00;
28 C. Phoenix Settlement Administrators = \$5,000.00;



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- D. Simpluris, Inc. = \$7,400.00;
- E. CAC Services Group, LLC = \$11,000.00; and
- F. CPT Group, Inc. = \$7,750.00.

A true and correct copy of the bid from Class Action Claims Administration, Inc. is attached hereto as **Exhibit 16**. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 17**. A true and correct copy of the bid from Phoenix Settlement Administrators is attached hereto as **Exhibit 18**. A true and correct copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 19**. A true and correct copy of the bid from CAC Services Group, LLC, is attached hereto as **Exhibit 20**. Thus, settlement administration costs provision should be given approval.

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

Executed on Monday, January 23, 2023 at Los Angeles, California.



DAVID SPIVAK,
Declarant



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EXHIBIT 1

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2 MAYA CHEAITANI (SBN 335777)
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3 THE SPIVAK LAW FIRM

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Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),

8 TUAN HOANG, and all others similarly situated

(Additional attorneys for parties on following page)

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

11 **FOR THE COUNTY OF SANTA CLARA**

12 **(UNLIMITED JURISDICTION)**

13
14 TUAN HOANG, on behalf of himself, and as an
15 “aggrieved employee” on behalf of other
16 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 MDC VACUUM PRODUCTS, LLC, a Delaware
20 limited liability company; and DOES 1–50,
inclusive,

21 *Defendant(s).*
22

Case No. 21CV376678

PAGA SETTLEMENT AGREEMENT

Action filed: 3/1/2021

Dept.: 3

Judge: Hon. Patricia M. Lucas

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1 Subject to Court approval by the Superior Court for the State of California, County of
2 Santa Clara (“Court”), Plaintiff Tuan Hoang (“Plaintiff”) and Defendant MDC Vacuum Products,
3 LLC (“Defendant”) (collectively, Plaintiff and Defendant are the “Parties”) hereby agree to the
4 following binding settlement (“Settlement” or “Settlement Agreement”) of the PAGA claims set
5 forth in the operative First Amended Complaint in the Action entitled Tuan Hoang v. MDC
6 Vacuum Products, LLC, et al., filed in Santa Clara County Superior Court, Case
7 No. 21CV376678 (the “Action”).

8 **PERSONS COVERED BY THE SETTLEMENT**

9 1. **Aggrieved Employees**: This Settlement covers all current and former hourly or
10 non-exempt employees of Defendant who worked in California at any time during the PAGA
11 Period (the “Aggrieved Employees”).

12 2. **PAGA Period**: The Settlement covers the period from December 26, 2019, to
13 the date the Court approves this settlement (the “PAGA Period”).

14 3. **Effective Date**: The effective date (“Effective Date”) of this Agreement shall be
15 the last to occur of the following: (a) sixty-five (65) calendar days after the date of entry of an
16 order and judgment approving this Settlement; (b) if there are intervenors to the Action, and if
17 an appeal, review or writ is not sought from the order granting approval of the settlement, then
18 upon the expiration date of the time for the filing or noticing of any appeal from, or other
19 challenge to, the judgment; or (c) if an appeal, review or writ is sought from the judgment, thirty
20 (30) calendar days after the judgment is affirmed or the appeal, review or writ is dismissed or
21 denied, and the judgment is no longer subject to further judicial review. Prior to the Effective
22 Date of the Settlement, Defendant will not be required to fund the Settlement, in whole or in part,
23 through the Settlement Administrator or any third party. If PAGA Counsel were to appeal a ruling
24 with respect to fees or costs, such appeal shall not affect the Effective Date and the Settlement
25 Administrator shall reserve such funds sufficient to cover the dispute. Any subsequent
26 distribution shall be at PAGA Counsel’s expense. If the Effective Date falls on a holiday or
27 weekend, the Effective Date shall be the next calendar day.

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SETTLEMENT CONSIDERATION

4. **Maximum Settlement Amount:** Defendant will pay Four Hundred and Eighty Thousand Dollars and Zero Cents (\$480,000.00) to settle the PAGA claims in the Action (“Maximum Settlement Amount”). In no event shall Defendant be liable for more than the Maximum Settlement Amount of Four Hundred and Eighty Thousand Dollars and Zero Cents (\$480,000.00) as a result of this Settlement. The Maximum Settlement Amount will be allocated as follows:

- a. Third-Party Settlement Administration Fees of up to Ten Thousand Dollars (\$10,000.00);
- b. Plaintiff’s counsel’s, The Spivak Law Firm and United Employees Law Group (“PAGA Counsel”), request for attorneys’ fees of up to one-third (1/3) of the Maximum Settlement Amount, or One Hundred and Sixty Thousand Dollars and Zero Cents (\$160,000.00) (“PAGA Counsel’s Fees”), subject to Court approval, plus actual costs and expenses incurred by PAGA Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Fifteen Thousand Dollars and Zero Cents (\$15,000.00) (“PAGA Counsel’s Costs”);
- c. A payment to Plaintiff in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) (“Enhancement Award”) for (1) his general release that includes a release of claims pursuant to California Civil Code section 1542 and (2) his service to the State of California and the Aggrieved Employees in prosecuting the Action; and
- d. The remaining funds (the Maximum Settlement Amount less the Third-Party Settlement Administration Fees, PAGA Counsel’s Fees, PAGA Counsel’s Costs, and Plaintiff’s Enhancement Award) shall be referred to as the “Net Settlement Amount.”

5. **Distribution of the Net Settlement Amount.** The Net Settlement Amount shall be designated as PAGA penalties in full satisfaction of all claims for PAGA civil penalties under

1 the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to
2 have been violated in or reasonably related to the operative First Amended Complaint with
3 respect to the Aggrieved Employees, allocated between the LWDA and the Aggrieved
4 Employees pursuant to Labor Code section 2699(i) with 75.0% paid to the LWDA and 25.0%
5 paid to the Aggrieved Employees on a pro-rata basis ("PAGA Penalties Fund"). The 25.0% of
6 the Net Settlement Amount will be paid to all Aggrieved Employees according to the following
7 formula: Settlement Payment to each Aggrieved Employee = $[\$[25.0\% \text{ of Net Settlement}$
8 $\text{Amount}] \times [\text{Pay Periods Worked by Individual Aggrieved Employee During PAGA Period} \div$
9 $\text{Total Pay Periods Worked by All Aggrieved Employees during PAGA Period}]$.

10 6. **Settlement Administration.** Settlement Administrator CPT Group, Inc., or as
11 otherwise agreed to by the Parties and approved by the Court, will administer this Settlement and
12 will be responsible for issuing payments and appropriate tax forms to Aggrieved Employees, the
13 LWDA, Plaintiff, and PAGA Counsel. The estimate of costs of administration for the
14 disbursement of the PAGA Penalties Fund is no more than Ten Thousand Dollars and Zero Cents
15 (\$10,000.00). If less than \$10,000.00 is spent on the Settlement Administrator, any unused funds
16 will be paid to the California State Controller's Office Unclaimed Property Fund.

17 7. **Court Approval of the Settlement and Distribution of Settlement Payments.**
18 The Parties will present this Settlement Agreement to the Court and will request that the Court
19 issue a Court Approval Order and Judgment approving and incorporating by reference the terms
20 and conditions of the Settlement Agreement (the "Court Approval Order and Judgment"),
21 dismissing the Action with prejudice, and entering judgment. The Parties shall submit this
22 Settlement Agreement for the Court's approval by stipulation and order, unless the Court requires
23 a motion, in which event, Plaintiff will undertake that responsibility.

24 8. **Notice to LWDA.** Pursuant to California Labor Code section 2699(l)(1), Plaintiff
25 shall submit to the LWDA a copy of this Settlement Agreement and all supporting approval
26 documents at the same time that Plaintiff submits it to the Court for approval.

27 9. **Funding of the Settlement.** Within thirty (30) calendar days after the Effective
28 Date and notice by the Court or Plaintiff that the Action has been dismissed with prejudice,

1 Defendant shall deposit the Maximum Settlement Amount with the Settlement Administrator,
2 who shall issue payment to PAGA Counsel and Plaintiff within twenty (20) calendar days of
3 receipt of the Maximum Settlement Amount. Within thirty (30) calendar days after the Effective
4 Date, Defendant shall provide the Settlement Administrator with the list of all Aggrieved
5 Employees, with each listed employee's full name, hiring, and, if applicable, termination dates
6 in connection with the employee's employment with Defendant during the PAGA Period, last
7 known mailing address, and social security number. Within twenty (20) calendar days of receipt
8 of the list of all Aggrieved Employees, the Settlement Administrator shall run all the addresses
9 of Aggrieved Employees through the United States Postal Service NCOA database to obtain
10 current address information, and issue payments to (a) Aggrieved Employees; (b) the LWDA;
11 and (c) itself. The Settlement Administrator will skip-trace return mail and re-mail within five
12 (5) calendar days. The Settlement Administrator will issue the appropriate tax forms for all
13 payments issued under this Settlement. If the Effective Date falls on a holiday or weekend, the
14 Effective Date shall be the next calendar day.

15 10. **Settlement Payments to Aggrieved Employees:** The Settlement Administrator
16 will issue each Aggrieved Employee a check for his or her share of the Net Settlement Amount
17 along with an explanatory letter to be prepared by the Parties. Checks will remain negotiable for
18 one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check
19 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
20 affixed thereto. Funds represented by settlement checks returned as undeliverable and those
21 settlement checks remaining un-cashed for more than 180 days after issuance shall be paid to the
22 California State Controller's Office Unclaimed Property Fund with an identification of the
23 amount of unclaimed funds attributable to each Aggrieved Employee. The Parties do not bear
24 any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation
25 of checks. Unless responsible by its own acts of omission or commission, the same is true for the
26 Settlement Administrator. All settlement payments to Aggrieved Employees will be treated as
27 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement
28 Administrator if required by law.

1 11. **Release of Plaintiff's Individual Claims:** In exchange for the benefits of this
2 Settlement, including the Enhancement Award, Plaintiff agrees to an irrevocable and
3 unconditional release of Defendant and the Released Parties (defined in section 13) from any and
4 all charges, complaints, claims, causes of action, debts, sums of money, controversies,
5 agreements, promises, damages, and liabilities of any kind or nature whatsoever, both at law and
6 equity, known or unknown, suspected or unsuspected, arising from any conducting occurring on
7 or before the date Plaintiff executes this Agreement, including but not limited to a release of any
8 and all rights, Plaintiff has to sue or to bring any type of claim under (a) California state law;
9 (b) the laws of other states; (c) the Fair Labor Standards Act; (d) Title VII of the Civil Rights Act
10 of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, (e) the Age Discrimination in Employment Act
11 of 1967, (f) the Civil Rights Act of 1991, (g) the Civil Rights Act of 1866 and 1870, (h) 42 U.S.C.
12 § 1981, as amended, (i) Executive Order 11246, (j) the Americans with Disabilities Act 42 U.S.C.
13 § 12101, *et seq.*, as amended, (k) the Family and Medical Leave Act, as amended, (l) the Equal
14 Pay Act of 1963, as amended, (m) the Immigration and Reform Control Act, as amended,
15 (n) the Occupational Safety and Health Act, as amended, (o) the Sarbanes-Oxley Act of 2002, as
16 amended, (p) the Employment Retirement Income Security Act of 1974, as amended (except
17 vested benefits), (q) the Worker Adjustment and Benefit Protection Act of 1990, as amended,
18 (r) the Worker Adjustment and Retraining Notification Act, as amended, (s) any federal, state or
19 common law claim or cause of action based on any alleged failure to pay wages, breach of
20 contract, wrongful discharge, constructive discharge, retaliation, defamation, slander, liable,
21 intentional or negligent infliction of emotional distress, misrepresentation, fraud, promissory
22 estoppel, (t) any other tort or negligence claim or obligations arising out of any of Defendant's
23 employment policies or practices, employee handbooks, or any statements by any employee or
24 agent of Defendant whether oral or written; and (u) for reinstatement, back pay, bonus, attorneys'
25 fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief,
26 liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering,
27 medical expenses, damage to reputation, damage for personal, emotional or economic injury or
28 damage of any kind. This provision is intended by the Parties to be all-encompassing and to act

1 as a full and total release of any claim, whether specifically enumerated herein or not, that
2 Plaintiff might have or have had, that exists or ever has existed on or prior to the date this
3 Settlement Agreement is signed. The Parties understand and agree that the word “claims”
4 includes all actions, group actions (including any pending or future collective, class, private
5 attorney general or representative actions for which Plaintiff may otherwise qualify as a putative
6 class member or represented party), complaints and grievances that could potentially be brought
7 by Plaintiff against the Released Parties. Plaintiff acknowledges the existence of and, with
8 respect to the release given herein, expressly waives and relinquishes any and all rights and
9 benefits Plaintiff has or may have under California Civil Code section 1542, which provides:

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

13 12. Plaintiff acknowledges that he may hereafter discover facts different from or in
14 addition to those which each he or his attorneys now know or believe to be true with respect to
15 the matters released in this settlement, and agrees that the release so given, shall be and remain
16 in effect as a full and complete release of all claims, notwithstanding any such different or
17 additional facts.

18 13. **Settled and Released PAGA Claims.** As of and subject to the occurrence of the
19 Effective Date, and in consideration for the Maximum Settlement Amount, the claims settled,
20 fully released and forever discharged by the LWDA and the Aggrieved Employees, including
21 Plaintiff, constitute any and all claims under the Private Attorneys General Act, inclusive of all
22 civil penalties, attorneys’ fees, interest, liquidated damages, injunctive relief, and costs, for
23 alleged violations of California Labor Code §§ 201-204, 221, 226, 226.7, 246, 510, 512, 558,
24 1174, 1174.5, 1194, 1197, 1198, 2802 and 2698 *et seq.* and the applicable Wage Order(s) during
25 the PAGA Period arising from (1) any allegation in the Action and (2) any allegation that could
26 have been pleaded in the Action, whether known or unknown, that relates to the (a) failure to pay
27 all wages earned for all hours worked or amounts otherwise due under the Labor Code at the
28 correct regular rate of pay, (b) failure to provide compliant rest breaks and meal periods,

1 (c) failure to reimburse necessary business expenses, (d) failure to provide timely and accurate
2 wage statements, (e) failure to timely pay wages during employment and upon separation, and
3 (f) failure to maintain accurate employment records (“PAGA Released Claims”) against the
4 Released Parties. The “Released Parties” are MDC Vacuum Products, LLC; MDC Precision,
5 LLC; MDC Precision, Inc; and their present and former parent companies, subsidiaries,
6 divisions, concepts, related or affiliated companies, and its shareholders, officers, directors,
7 employees, agents, attorneys, insurers, successors and assigns, and any other individual or entity
8 that could be liable for any of the PAGA Released Claims (hereinafter “Released Parties”).

9 14. **No Credit Toward Benefit Plans.** Payments to Aggrieved Employees as
10 referenced herein will not be utilized to calculate any additional benefits under any benefit plans
11 to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing
12 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
13 PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement
14 Agreement will not affect any rights, contributions, or amounts to which any Aggrieved
15 Employee may be entitled under any benefit plans.

16 15. **No Prior Assignments.** The Parties and their counsel represent, covenant, and
17 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
18 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
19 demand, action, cause of action or right herein released and discharged.

20 16. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not
21 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
22 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,
23 will be null and void, and the Parties will be returned to their original respective positions.

24 17. **Continued Jurisdiction.** After entry of the Court Approval Order and Judgment,
25 the Court will have continuing jurisdiction under California Code of Civil Procedure
26 section 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the
27 terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval
28 matters as may be appropriate under court rules or as set forth in this Settlement.

1 18. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the
2 Parties' settlement terms regarding the Action. No other prior or contemporaneous written or oral
3 agreements may be deemed binding on the Parties.

4 19. **Amendment or Modification.** This Settlement Agreement may be amended or
5 modified only by a written instrument, signed by either all the Parties or their successors-in-
6 interest or counsel for all Parties.

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

17 21. **Binding on Successors and Assigns.** This Settlement Agreement will be binding
18 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
19 defined.

20 22. **California Law Governs.** All terms of this Settlement Agreement hereto will be
21 governed by and interpreted according to the laws of the State of California.

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

26 24. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties
27 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
28 and have arrived at this Settlement after arm's-length negotiations by experienced counsel before

1 Louis Marlin, an experienced and well-respected mediator who focuses on mediation of
2 employment matters involving alleged wage and hour violations. The Parties further
3 acknowledge that they are each represented by competent counsel and that they have had an
4 opportunity to consult with their counsel regarding the fairness and reasonableness of this
5 Settlement.

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

18 26. **Invalidity of Any Provision.** Before declaring any provision of this Settlement
19 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement or
22 the application thereof is held invalid, the invalidity shall not affect other provisions or
23 applications of this Settlement Agreement which can be given effect without the invalid
24 provisions or application and, to this end, the provisions of this Settlement Agreement are
25 declared to be severable. Notwithstanding the foregoing, no portion of any release contained
26 herein may be deemed severed or deleted from this Agreement, except upon waiver in writing
27 by the applicable party.

28 ///

1 27. **Captions.** The captions and section numbers in this Settlement Agreement are
2 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
3 or intent of the provisions of this Settlement Agreement.

4 28. **Waiver.** No waiver of any condition or covenant contained in this Settlement
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
6 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
7 right or remedy.

8 29. **Enforcement Action.** In the event that one or more of the Parties institutes any
9 legal action or other proceeding against any other Party or Parties to enforce the provisions of
10 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
11 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
12 fees and costs, including expert witness fees incurred in connection with any enforcement
13 actions.

14 30. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the
15 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will
16 not be construed more strictly against one party than another merely by virtue of the fact that it
17 may have been prepared by counsel for one of the Parties, it being recognized that, because of
18 the arms-length negotiations between the Parties, all Parties have contributed to the preparation
19 of this Settlement Agreement.

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

24 32. **Cooperation and Execution of Necessary Documents.** All Parties will
25 cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate
26 the terms of this Settlement Agreement.

27 33. **Binding Agreement.** The Parties warrant that they understand and have full
28 authority to enter into this Settlement, and further intend that this Settlement Agreement will be

1 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
2 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
3 provisions that otherwise might apply under federal or state law.

4 34. **Confidentiality**. The Parties and their counsel agree that they will not issue any
5 press releases, initiate any contact with the press, respond to any press inquiry or have any
6 communication with the press about the fact, amount or terms of this Settlement. PAGA Counsel
7 may respond to press inquiries by stating the matter has been resolved and refer the press to court
8 filings. In addition, PAGA Counsel agree that they will not engage in any advertising or
9 distribute any marketing materials specifying any material terms specifically relating to the
10 Settlement of this case, including but not limited to any postings on any websites maintained by
11 PAGA Counsel. Any communication about the Settlement to Aggrieved Employees will be
12 limited to a statement that a settlement has been reached and the details will be communicated in
13 a forthcoming notice letter that will be drafted by the Parties. Plaintiff is prohibited from
14 discussing the terms or the fact of this PAGA Settlement with third parties other than:
15 (1) his immediate family members, and (2) his respective accountants or lawyers as necessary
16 for tax purposes. Nothing herein shall restrict PAGA Counsel from including publicly available
17 information regarding this Settlement in future judicial submissions regarding PAGA Counsel's
18 qualifications and experience.

19
20 Plaintiff TUAN HOANG

21 09 / 23 / 2022

22 DATED

23 Defendant MDC Vacuum Products, LLC

24
25 DATED

26 David Dutton
27 CEO

1 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
2 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
3 provisions that otherwise might apply under federal or state law.

4 34. **Confidentiality.** The Parties and their counsel agree that they will not issue any
5 press releases, initiate any contact with the press, respond to any press inquiry or have any
6 communication with the press about the fact, amount or terms of this Settlement. PAGA Counsel
7 may respond to press inquiries by stating the matter has been resolved and refer the press to court
8 filings. In addition, PAGA Counsel agree that they will not engage in any advertising or
9 distribute any marketing materials specifying any material terms specifically relating to the
10 Settlement of this case, including but not limited to any postings on any websites maintained by
11 PAGA Counsel. Any communication about the Settlement to Aggrieved Employees will be
12 limited to a statement that a settlement has been reached and the details will be communicated in
13 a forthcoming notice letter that will be drafted by the Parties. Plaintiff is prohibited from
14 discussing the terms or the fact of this PAGA Settlement with third parties other than:
15 (1) his immediate family members, and (2) his respective accountants or lawyers as necessary
16 for tax purposes. Nothing herein shall restrict PAGA Counsel from including publicly available
17 information regarding this Settlement in future judicial submissions regarding PAGA Counsel's
18 qualifications and experience.

19
20 Plaintiff TUAN HOANG

21
22 DATED

23
24 9/26/2022

25 DATED

26 Defendant MDC Vacuum Products, LLC

David Dutton

27 David Dutton
28 CEO

1 **APPROVED AS TO FORM**

2
3 THE SPIVAK LAW FIRM

4 09 / 23 / 2022



5 DATED

David Spivak
Attorneys for Plaintiff Tuan Hoang

6
7 UNITED EMPLOYEES LAW GROUP

8
9
10 DATED

Walter L. Haines
Attorneys for Plaintiff Tuan Hoang

11
12 JACKSON LEWIS, P.C.

13
14
15 DATE

Donald P. Sullivan
Janelle J. Sahouria
Attorneys for Defendant
MDC Vacuum Products, LLC

1 **APPROVED AS TO FORM**

2
3 THE SPIVAK LAW FIRM

4
5 DATED

6 David Spivak
7 Attorneys for Plaintiff Tuan Hoang

8 UNITED EMPLOYEES LAW GROUP

9 Sept 23, 2022

10 

11 DATED

12 Walter L. Haines
13 Attorneys for Plaintiff Tuan Hoang

14 JACKSON LEWIS, P.C.

15 September 26, 2022

16 

17 DATE

18 Donald P. Sullivan
19 Janelle J. Sahouria
20 Attorneys for Defendant
21 MDC Vacuum Products, LLC

EXHIBIT 2

1 **NOTICE OF PAGA SETTLEMENT**

2 *Tuan Hoang v. MDC Vacuum Products LLC*
3 *(Superior Court of California, Santa Clara County*
4 *Case No. 21CV376678*

5 <<CPT Group, Inc.>>

6 []

7 []

8 Telephone: []

9 «Barcode» «BarcodeString»

10 SIMID «SIMID»

11 «FirstName»

12 «LastName»

13 «Address1» «Address2»

14 «City» «State» «Zip»

15 You are receiving this notice as a result of lawsuits brought on a representative basis
16 under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”).
17 The plaintiff in the Action is Tuan Hoang (“Plaintiff”) and the defendant is MDC Vacuum
18 Products LLC (“Defendant”). The Action seek civil penalties for purported violations of the
19 California Labor Code on behalf of all Defendant’s current and former California non-exempt
20 employees (“PAGA Members”) who Defendant employed during the PAGA Period of
21 12/26/2019 through Court-approval date. Defendant denies all claims and allegations in the
22 Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable
23 Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action,
24 Defendant has settled the case and the Court has approved the settlement and release of claims.
25 By settling the Action, Defendant is not admitting that it has done anything wrong. As of and
26 subject to the occurrence of the Effective Date of the Settlement, Upon the Effective Date of this
27 Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the
28 PAGA Employees will be deemed to have fully, finally, and forever released, settled,
compromised, relinquished, and discharged the Released PAGA Claims with respect to
Defendant and its past and present officers, directors, shareholders, unit holders, managers,
employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its
respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys.
The released PAGA claims shall include all known or unknown claims for civil penalties,
attorneys’ fees and costs, or any other relief under PAGA arising out of the Labor Code claims
and allegations expressly plead in the operative Complaint and all other Labor Code claims that
could have been asserted based on the facts and allegations plead in the operative Complaint,
including but not limited to: California Labor Code Sections 201-203, 204, 221, 226, 226.7, 510,
512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

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

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

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

10 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
11 or to ask questions about the claims process. If you have any questions, you may call or write to
12 CPT Group, Inc. (the Settlement Administrator) using the contact information at the top of this
correspondence.

EXHIBIT 3



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED U.S. MAIL

December 23, 2020

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

RE: *Tuan Hoang/MDC Vacuum Products, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 et seq., Tuan Hoang (hereafter “Hoang”) provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to expeditors and workers employed in comparable positions (hereafter “the Aggrieved Employees”) by MDC Vacuum Products, LLC, a Delaware limited liability company, and MDC Precision, LLC, a Delaware limited liability company, (hereafter collectively referred to as “MDC”), of violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, MDC has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Hoang and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission wage order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “aggrieved employees” within the meaning of Labor Code section 2699, subdivision (c).

Statement of Facts

MDC hired Hoang as an hourly expeditor at its San Jose, California manufacturing facility in or about January 9, 2017, and continuously employed him in this capacity until on or about September 1, 2020. MDC at all relevant times paid Hoang and the Aggrieved Employees on a bi-weekly basis at an hourly rate of pay. At all relevant times, Hoang and the Aggrieved Employees were non-exempt hourly employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, MDC failed to provide Hoang and the Aggrieved Employees with all timely rest and meal periods. Due to their work load and several daily morning meetings with management, Hoang and the other Aggrieved Employees were denied their 30-minute off-duty meal period within the first five hours of work. MDC required Hoang and the Aggrieved Employees to clock-out for their meal periods at the same time every day, even if the meal period did not occur at that time. At all relevant times, MDC required Hoang and the Aggrieved Employees to perform work while clocked out. Further, Hoang and the Aggrieved Employees were frequently forced to work while eating when meal periods were delayed. MDC also failed to authorize and permit Hoang and the Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof, as required by the Wage Order. MDC management never authorized breaks and the heavy work load MDC assigned the Aggrieved Employees to complete did not permit them. MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with a timely meal period in compliance with California law. Additionally, MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with a timely rest period in compliance with California law.

At all relevant times, MDC failed to compensate Hoang and the Aggrieved Employees for all hours worked at the correct rates of pay, including but not limited to, overtime and double-time wages. Many times, MDC required Hoang and the Aggrieved Employees to work all seven days in the same work week.

Further, MDC required Hoang and the Aggrieved Employees to provide their own transportation to perform their travel-related duties, including travel between MDC facilities and MDC customer. However, MDC did not reimburse them for mileage expenses. MDC also required Hoang and the Aggrieved Employees to use their personal mobile phones for work purposes but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones.

At all relevant times, MDC paid Hoang and the Aggrieved Employees with a non-discretionary productivity bonus. Hoang and the Aggrieved Employees often earned the productivity bonuses during workweeks in which they worked more than eight hours in a workday or more than 40 hours in a workweek. MDC, however, failed to include the productivity bonuses in its calculations of the regular rates of pay for purposes of calculating overtime wages. Consequently, MDC underpaid overtime wages earned by Hoang and the Aggrieved Employees during those periods in which they worked overtime hours and earned productivity bonuses.

MDC failed to issue to Hoang and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages. MDC also failed to timely pay Hoang and the Aggrieved Employees all earned wages. Moreover, MDC failed to maintain accurate employee records of Hoang and the Aggrieved Employees.

For the reasons herein, Hoang alleges the following violations of the Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- (a) MDC failed to pay Hoang and the Aggrieved Employees all wages earned for all hours worked.
- (b) MDC failed provide Hoang and the Aggrieved Employees with all uninterrupted meal and paid rest periods.

- (c) MDC failed to pay Hoang and the Aggrieved Employees premium wages for all workdays it failed to provide them with one or more uninterrupted meal or paid rest periods.
- (d) MDC failed to indemnify Hoang and the Aggrieved Employees for all automobile and phone expenses incurred during the course of performing their duties.
- (e) MDC failed to provide Hoang and the Aggrieved Employees with accurate wage statements.
- (f) MDC failed to timely pay Hoang and the Aggrieved Employees all earned and unpaid wages during their employment at MDC.
- (g) MDC failed to maintain accurate employee records of Hoang and the Aggrieved Employees.

Accordingly, Hoang now seeks civil penalties on behalf of himself and the Aggrieved Employees based on MDC's alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the manufacturing industry." (*Id.* § 1.) "'Manufacturing Industry' means any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part." (*Id.* § 2, subd. (H).)

At all relevant times during the applicable limitations period, MDC's main purpose of business was to produce vacuum technology. Therefore, Hoang and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

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 ($1\frac{1}{2}$) 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 ($1\frac{1}{2}$) 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.

(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.

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

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, Labor Code section 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wages 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.

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."

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

MDC failed to pay Hoang and the Aggrieved Employees for all hours worked by failing to pay them for all hours worked in excess of eight hours per day, in excess of eight hours on the seventh consecutive day of work, on-duty meal periods, and unpermitted rest periods.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code section 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 Labor Code section 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
4. \$100 for each aggrieved hourly employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each aggrieved hourly 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 Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203 (penalties set by California Labor Code section 1197.1).

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

In relevant part, California Labor Code section 1198 states:

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

In relevant part, California 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 no 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 relevant part, section 12 of the Wage Order states:

Rest Periods

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate

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.

California 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 recover period is not provided.

MDC failed to provide all meal and paid rest periods to Hoang and the Aggrieved Employees in compliance with California law. MDC often required Hoang and the Aggrieved Employees to clock out while still working, and take late meal

periods. MDC also required Hoang and the Aggrieved Employees to work during their meal or rest periods. Moreover, MDC failed to provide ten minute rest breaks every four hours or major fraction thereof. MDC failed to pay Hoang and the Aggrieved Employees premium wages on workdays it failed to provide them with one or more meal periods in compliance with California law. Additionally, MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with one or more timely rest periods in compliance with California law.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other 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));
2. \$50 for each aggrieved employee for each initial violation of California Labor Code section 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 section 558); and
3. \$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 Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, Labor Code section 2802, subdivision (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.”

MDC required Hoang and the Aggrieved Employees to travel between MDC facilities and vendors without reimbursing them for doing so. They also required Hoang and the Aggrieved Employees to use their personal phones for working purposes, and did not reimburse them for phone expenses.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows: \$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)).

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and 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.

An employee is deemed to have suffered injury under section 226 if the employer fails to provide accurate and complete information as required by any one or more items listed in Labor Code section 226, subdivisions (a)(1)–(9) and the employee cannot “promptly and easily” ascertain one or more of the following without reference to other documents or information:

- The amount of gross wages or net wages paid during the pay period;
- The total number of hours worked if the employee is not salaried; and
- The number of piece-rate units earned and the piece rate.

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

MDC’s violation was knowing and intentional. Hoang and the Aggrieved Employees often complained about MDC’s Labor Code violations to human resources. Hoang and the Aggrieved Employees notified MDC that it failed to provide them with duty free meal and rest periods. MDC ignored their complaints.

Accordingly, Hoang seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226, subdivision (a), and \$1,000 for each aggrieved

employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 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.

MDC failed to pay Hoang and the Aggrieved Employees all wages earned, including but not limited to all minimum, hourly, and overtime wages and premium wages on workdays it failed to provide them with a meal or paid rest period in compliance with California law, within the time periods set by Labor Code section 204. As a result, MDC failed to timely pay Hoang and the Aggrieved Employees all wages due during employment.

Accordingly, Hoang seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee, plus 25 percent of the amount unlawfully withheld from each aggrieved employee, for each subsequent violations (penalties set by Labor Code section 210).

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

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

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

MDC failed to pay Hoang and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with MDC. By failing to pay Hoang and the Aggrieved Employees as set forth above by such time, MDC is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Hoang seeks civil penalties from MDC as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

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

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 and 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.

MDC has failed to maintain the records required by section 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Hoang and the Aggrieved Employees. Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699, subdivision (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: Tuan Hoang
Walter Haines, Esq.

MDC Vacuum Products, LLC
c/o Agent for Service of Process
Paul Downey
30962 Santana St
Hayward, CA 94544

MDC Vacuum Products, Inc., an entity of unknown form
c/o Paul Downey
30962 Santana St
Hayward, CA 94544

MDC Precision Products, LLC
c/o HR Generalist/Recruiter
Sam Patel
30962 Santana St
Hayward, CA 94544

EXHIBIT 4

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6 Telephone: (213) 275-9094
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8 Attorneys for Plaintiff,
TUAN HOANG, and all others similarly situated
9

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

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

16 *Plaintiff(s),*

17 vs.

18 MDC VACUUM PRODUCTS, LLC, a
19 Delaware limited liability company; MDC
20 PRECISION, LLC, a Delaware limited liability
company; and DOES 1-50, inclusive,

21 *Defendants.*
22
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Case No.: **21CV376678**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201–203);
6. Failure to Maintain Accurate Employment Records (Lab. Code §§ 1174, 1174.5, and 1998);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, TUAN HOANG (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant MDC
5 VACUUM PRODUCTS, LLC, a Delaware limited liability company, MDC PRECISION, LLC,
6 a Delaware limited liability company, and DOES 1-50, inclusive (collectively “Defendants”) for
7 alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 1-
8 2001 (hereafter “the Wage Order”), and the Business and Professions Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him 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) Provide all
12 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
13 worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for
14 reasonable expenses incurred while performing their duties, (4) Provide accurate and complete
15 itemized written wage statements, (5) Timely pay all final wages upon termination of
16 employment, (6) Maintain accurate employment records, and (7) Fairly compete. Accordingly,
17 Plaintiff now seeks to recover unpaid wages and related relief through this class and representative
18 action.

19 **PARTIES**

20 3. Plaintiff TUAN HOANG is a resident of California.

21 4. Defendants hired Hoang as an hourly expeditor at their San Jose, California
22 manufacturing facility in or about January 9, 2017, and continuously employed him in this
23 capacity until on or about September 1, 2020.

24 5. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
25 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of
26 Labor Code § 2699(c).

27 6. Defendant MDC VACUUM PRODUCTS, LLC, is a limited liability company
28 organized and existing under the laws of Delaware and a citizen of California based on Plaintiff’s
information and belief.

7. Defendant MDC PRECISION, LLC, is a limited liability company organized and
existing under the laws of Delaware and a citizen of California based on Plaintiff’s information



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1 and belief.

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

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

12 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
14 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
described class in accordance with applicable laws as alleged herein.

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

20 CLASS ALLEGATIONS

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

25 13. **Class Definition:** The Class is defined as follows: All California-based persons
26 Defendants employed on an hourly basis, including as expeditors and in comparable positions, at
27 any time during the period beginning four years prior to the filing of this action and ending on the
28 date that final judgment is entered in this action (“Class” or “Class Members”).



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1 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765 (b), Plaintiff reserves the
2 right to amend or modify the class definition with greater specificity, by further division into
3 subclasses and/or by limitation to particular issues.

4 15. **Numerosity:** The Class Members are so numerous that the individual joinder of
5 each individual Class Member is impractical. While Plaintiff does not currently know the exact
6 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
7 minimum required for numerosity under California laws.

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

11 A. Whether Defendants failed to provide the Class Members with all meal and
12 rest periods in compliance with California law;

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

15 C. Whether Defendants failed to indemnify the Class Members for the
16 reasonable expenses they incurred during the course of performing their duties;

17 D. Whether Defendants knowingly and intentionally failed to provide the
18 Class Members with accurate written wage statements;

19 E. Whether Defendants willfully failed to provide the Class Members with
20 timely final wages upon termination of employment;

21 F. Whether Defendants willfully failed to maintain accurate employment
22 records of the Class Members;

23 G. Whether Defendants engaged in unfair competition within the meaning of
24 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

25 H. Whether Class Members are entitled to restitution of money or property
26 that Defendants may have acquired from them through alleged Labor Code violations.

27 17. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
28 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
Code, the Wage Order, and the Business and Professions Code.

 18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative



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1 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
2 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
3 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
4 Members.

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

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

19 **STATEMENT OF FACTS**

20 21. Defendants hired Plaintiff as an hourly expeditor at their San Jose, California
21 manufacturing facility on or about January 9, 2017, and continuously employed him in this
22 capacity until on or about September 1, 2010. Defendants at all relevant times paid Plaintiff and
23 the Class Members on a bi-weekly basis at an hourly rate of pay. At all relevant times, Plaintiff
24 and the Class Members were non-exempt hourly employees entitled to the protections of both the
25 Labor Code and the Wage Order.

26 22. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
27 with all timely rest and meal periods. Due to their work load and several daily morning meetings
28 with management, Plaintiff and the Class Members were denied their 30-minute off-duty meal
period within the first five hours of work. Defendants required Plaintiff and the Class Members
to clock-out for their meal periods at the same time every day, even if the meal period did not
occur at that time. At all relevant times, Defendants required Plaintiff and the Class Members to



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perform work while clocked-out. Further, Plaintiff and the Class Members were frequently forced to work while eating when meal periods were delayed.

23. Defendants also failed to authorize and permit Plaintiff and the Class Members to take ten-minute rest breaks every four hours or major fraction thereof, as required by the Wage Order. Defendants' management never authorized breaks and the heavy work load Defendants assigned the Class Members to complete did not permit them.

24. Defendants failed to pay Plaintiff and the Class Members premium wages for each workday they failed to provide them with a timely meal period in compliance with California law. Additionally, Defendants failed to pay Plaintiff and the Class Members premium wages for each workday they failed to provide them with a timely rest period in compliance with California law.

25. At all relevant times, Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay, including but not limited to, overtime and double-time wages. Many times, Defendants required Plaintiff and the Class Members to work all seven days in the same workweek.

26. Further, Defendants required Plaintiff and the Class Members to provide their own transportation to perform their travel-related duties, including travel between Defendants' facilities and Defendants' customers. However, Defendants did not reimburse them for mileage expenses. Defendants also required Plaintiff and the Class Members to use their personal mobile phones for work purposes but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones.

27. At all relevant times, Defendants paid Plaintiff and the Class Members with a non-discretionary productivity bonus. Plaintiff and the Class Members often earned the productivity bonuses during workweeks in which they worked more than eight hours in a workday or more than forty hours in a workweek. Defendants, however, failed to include the productivity bonuses in their calculations of the regular rates of pay for purposes of calculating overtime wages. Consequently, Defendants underpaid overtime wages earned by Plaintiff and the Class Members during those periods in which they worked overtime hours and earned productivity bonuses.

28. Defendants failed to issue to Plaintiff and the Class Members complete and accurate wage statements as a result of their failure to state all hours worked at the correct rates of pay, and all wages earned including rest periods and meal periods premium wages. Defendants also failed to timely pay Plaintiff and the Class Members all earned wages. Moreover, Defendants



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1 failed to maintain accurate employment records of Plaintiff and the Class Members.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

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

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

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

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

10 31. In relevant part, California Labor Code § 1198 states:

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

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

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

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

33. In relevant part, § 12 of the Wage Order states:

Rest Periods

(A) “Every employer shall authorize and permit all employees
to take rest periods, which insofar as practicable shall be in the
middle of each work period. The authorized rest period time shall
be based on the total hours worked daily at the rate of ten (10)
minutes net rest time per four (4) hours or major fraction thereof.



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1 However, a rest period need not be authorized for employees
2 whose total daily work time is less than three and one-half (3 1/2)
3 hours. Authorized rest period time shall be counted as hours
4 worked for which there shall be no deduction from wages.”

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

10 34. In relevant part, § 11 of the Wage Order states:

11 **Meal Periods**

12 (A) “No employer shall employ any person for a work period
13 of more than five (5) hours without a meal period of not less than
14 30 minutes, except that when a work period of not more than six
15 (6) hours will complete the day’s work the meal period may be
16 waived by mutual consent of the employee and the employee.
17 Unless the employee is relieved of all duty during a 30-minute
18 meal period, the meal period shall be considered an ‘on duty’ meal
19 period and counted as time worked. An ‘on duty’ meal period shall
20 be permitted only when the nature of the work prevents an
21 employee from being relieved of all duty and when by written
22 agreement between the parties an on-the-job paid meal period is
23 agreed to. The written agreement shall state that the employee
24 may, in writing, revoke the agreement at any time.”

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

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

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

(c) If an employer fails to provide an employee a meal period
or rest period in accordance with a state law, including, but not
limited to, an applicable statute or applicable regulation, standard,
or order of the Industrial Welfare Commission, the Occupational



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1 Safety and Health Standards Board, or the Division of
2 Occupational Safety and Health, the employer shall pay the
3 employee one additional hour of pay at the employee's regular rate
of compensation for each work day that the meal or rest period is
not provided.

4 36. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
5 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
6 they worked five or more hours.

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

10 38. Defendants intentionally failed to provide Plaintiff and the Class Members with
11 all required 30-minute duty-free meal periods and 10-minute rest periods free from any work
12 duties in accordance with the Wage Order.

13 39. At all relevant times, Defendants failed to provide all meal and paid rest periods
14 to Plaintiff and the Class Members in compliance California law. Defendants often required
15 Plaintiff and the Class Members to clock-out while still working, and take late meal periods.
16 Defendants also required Plaintiff and the Class Members to work during their meal or rest
17 periods. Moreover, Defendants failed to authorize and permit Plaintiff and the Class Members to
18 take 10-minute rest breaks every four hours worked or major fraction thereof as required by the
19 Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed
to provide Plaintiff and the Class Members with timely meal and rest periods.

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

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

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



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not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

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

(By Plaintiff and the Class against Defendants)

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

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

45. In relevant part, § 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 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 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.

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



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1 46. Labor Code § 510 states:

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

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

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

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

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

28 51. At all relevant times during the applicable limitations period, Defendants failed to
compensate Plaintiff and the Class Members for all hours worked by failing to pay them for all
hours worked in excess of eight hours per day, in excess of eight hours on the seventh consecutive
day of work, on-duty meal periods, and unpermitted rest periods.

52. 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 compensate Plaintiff and the other Class Members for all hours worked as required by
California law.



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

54. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff and the Class against Defendants)

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

56. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802 and the Wage Order.

57. 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.”

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

59. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify them for both during and after their employment ended. Defendants required Plaintiff and the Class Members to travel between Defendants' facilities and vendors without reimbursing them for doing so. They also required Plaintiff and the Class Members to use their personal phones for working purposes, and did not reimburse them for phone expenses.

60. 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 indemnify Plaintiff and the Class Members for the reasonable expenses they incurred



1 during the course of performing their duties.

2 61. Therefore, pursuant to California Labor Code § 2802 (b), Plaintiff and the Class
3 Members are entitled to reimbursement for all necessary expenditures and losses and interest
4 thereon, due and owing to them within four years of the date of the filing of the Complaint until
5 the entry of judgment.

6 62. Accordingly, with respect to this cause of action, on behalf of himself and the
7 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys'
8 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

9 **FOURTH CAUSE OF ACTION**

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

11 **(Lab. Code § 226)**

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

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

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

17 65. Pursuant to California Labor Code § 226 (a), Plaintiff and the other Class
18 Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate
19 itemized statement showing:

20 (1) Gross wages earned,

21 (2) Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,

24 (3) The number of piece rate units earned and any applicable piece rate if the
25 employee is paid on a piece-rate basis,

26 (4) All deductions, provided that all deductions made on written orders of the
27 employee may be aggregated and shown as one item,

28 (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



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1 employee identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) The name and address of the legal entity that is the employer, and

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

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

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

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

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

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

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

27 68. "Promptly and easily determine," as stated in California Labor Code §
28 226 (e), means a reasonable person would be able to readily ascertain the information without
reference to other documents or information.

69. As alleged herein, Defendants failed to provide Plaintiff and the other Class
Members with all meal and rest periods in compliance with California law. They also failed to



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1 provide them with premium wages on workdays they failed to provide them with one or more
2 meal and/or rest periods in compliance with California law. Further, Defendants failed to
3 compensate Plaintiff and the other Class Members for all hours worked. As a result, Defendants
4 have failed to properly itemize Plaintiff and the other Class Members' gross and net wages earned,
5 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
6 rate, and other requirements of California Labor Code § 226. As a result, Defendants have
7 violated California Labor Code § 226.

7 70. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

11 71. As a result of being provided with inaccurate wage statements by Defendants,
12 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
13 wage statements were violated and they were misled about the amount of wages they had actually
14 earned and were owed. In addition, the absence of accurate information on their wage statements
15 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
16 and mathematical computations to determine the amounts of wages owed, has caused difficulty
17 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
18 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
19 and the other Class Members were not able to ascertain from the wage statements whether
20 Defendants complied with their obligations under California Labor Code § 226 (a).

21 72. Pursuant to California Labor Code § 226 (e), Plaintiff and the other Class
22 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
23 for the initial pay period in which a violation of California Labor Code § 226 (a) occurred and
24 one hundred dollars for each violation of California Labor Code § 226 (a) in a subsequent pay
25 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member,
26 and are also entitled to an award of costs and reasonable attorneys' fees.

27 73. Accordingly, with respect to this cause of action, on behalf of himself and the other
28 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
proof.



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FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

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

75. At all relevant times during the applicable limitations period, Plaintiff and the 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.

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

77. 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.

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

79. Defendants failed to pay Plaintiff and the Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Defendants. By failing to pay Plaintiff and the Class Members as set forth above by such time, Defendants are liable for violations of Labor Code §§ 201, 202, and 203.

80. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class 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.

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

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SIXTH CAUSE OF ACTION
FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS
(Lab. Code §§ 1174, 1174.5, 1198)

(By Plaintiff and the Class against all Defendants)

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

83. At all relevant times, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 1174, 1174.5, 1198 and the Wage Order.

84. Labor Code § 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.

85. Labor Code § 1174.5 states:

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

86. Section 7 of 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.



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- 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.

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

88. Defendants have failed to maintain the records required by the Labor Code and the Wage Order, including but not limited to, the total premium wages earned for missed meal



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1 and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Class
2 Members.

3 89. Plaintiff is informed and believes that Defendants' failure to maintain the records
4 of Plaintiff and the Class have been willful in that Defendants have the duty and ability to
5 maintain accurate employment records in accordance with Labor Code §§ 1174, 1174.5, and
6 1198 and the Wage Order but have intentionally adopted policies or practice that are
incompatible with those requirements.

7 90. As a result of Defendants' unlawful conduct, Plaintiff and the other class
8 members have suffered damages in an amount, subject to proof, to the extent they were not paid
9 the full amount of wages earned during each pay period during the applicable limitations period,
10 including but not limited to the total premium wages earned for missed meal and rest periods,
11 split shift premiums, overtime records, records pertaining to unpaid hours worked and unpaid
12 reporting time pay.

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

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

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

18 92. At all relevant times during the applicable limitations period, Plaintiff and the
19 other Class Members have been employees of Defendants and entitled to the benefits and
protections of the Business and Professions Code §§ 17200, et seq.

20 93. The unlawful conduct of Defendants alleged herein amounts to and constitutes
21 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
22 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
23 unfairly gained a competitive advantage over other comparable companies doing business in
24 California that comply with their legal obligations to, among other things, pay their employees
25 premium wages for workdays in which they did not provide employees with one or more meal
26 and rest periods, reimburse their employees for reasonable expenses incurred during the course
27 of performing their duties, and pay them all earned wages for all regular and overtime hours
28 worked.

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



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1 other Class Members have suffered injuries in fact and lost money or property. Defendants
2 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
3 premium wages and reimbursement for expenses that Plaintiff and the other Class Members
4 incurred during the course of performing their duties.

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

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

12 **EIGHTH CAUSE OF ACTION**

13 **CIVIL PENALTIES**

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

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

16 98. The "Aggrieved Employees" are all members of the Class defined above who
17 Defendants employed during the period beginning December 23, 2019 and ending on the date
18 that final judgment is entered in this action.

19 99. 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 calendar
23 month, on days designated in advance by the employer as the
24 regular paydays. Labor performed between the 1st and 15th days,
25 inclusive, of any calendar month shall be paid for between the 16th
26 and the 26th day of the month during which the labor was
27 performed, and labor performed between the 16th and the last day,
28 inclusive, of any calendar month, shall be paid for between the 1st
and 10th day of the following month. ...

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

(2) An employer is in compliance with the requirements of
subdivision (a) of Section 226 relating to total hours worked by the



employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

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

101. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

102. California Labor Code §§ 2699 (a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

103. Pursuant to California Labor Code §§ 2699 (a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 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 § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226 (a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts



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1 established by California Labor Code § 226.3).

2 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
3 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
4 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
5 established by California Labor Code § 558).

6 D. For violations of California Labor Code § 1197, one hundred dollars
7 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
8 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
9 pay period (regardless of whether the initial violations were intentionally committed) (penalty
10 amounts established by California Labor Code § 1197.1).

11 E. For violations of California Labor Code § 1174, five hundred dollars
12 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
13 California Labor Code § 1174.5).

14 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
15 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
16 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
17 period for each subsequent violation (penalty amounts established by California Labor Code §
18 2699 (f) (2)).

19 104. Plaintiff has complied with the procedures for bringing suit specified in
20 California Labor Code § 2699.3. By letter dated December 23, 2020, Plaintiff filed written notice
21 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
22 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
23 to have been violated, including the facts and theories to support the alleged violations. A true
24 and correct copy of the notice to the LWDA dated December 23, 2020 is attached as **Exhibit A**.
25 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
26 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
27 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
28 does not intend to investigate these allegations.

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



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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid Wages;
- E. Actual Damages;
- F. Statutory Damages;
- G. Civil Penalties;
- H. Liquidated Damages;
- I. Restitution;
- J. Declaratory and injunctive relief;
- K. Equitable relief;
- L. Pre-judgment interest;
- M. Statutory penalties;
- 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

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 22, 2021

By



DAVID SPIVAK,
MARALLE MESSRELIAN,
MAYA CHEATANI,
Attorneys for Plaintiff, TUAN HOANG, and all
others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED U.S. MAIL

December 23, 2020

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

RE: *Tuan Hoang/MDC Vacuum Products, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 et seq., Tuan Hoang (hereafter “Hoang”) provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to expeditors and workers employed in comparable positions (hereafter “the Aggrieved Employees”) by MDC Vacuum Products, LLC, a Delaware limited liability company, and MDC Precision, LLC, a Delaware limited liability company, (hereafter collectively referred to as “MDC”), of violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, MDC has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Hoang and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission wage order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “aggrieved employees” within the meaning of Labor Code section 2699, subdivision (c).

Statement of Facts

MDC hired Hoang as an hourly expeditor at its San Jose, California manufacturing facility in or about January 9, 2017, and continuously employed him in this capacity until on or about September 1, 2020. MDC at all relevant times paid Hoang and the Aggrieved Employees on a bi-weekly basis at an hourly rate of pay. At all relevant times, Hoang and the Aggrieved Employees were non-exempt hourly employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, MDC failed to provide Hoang and the Aggrieved Employees with all timely rest and meal periods. Due to their work load and several daily morning meetings with management, Hoang and the other Aggrieved Employees were denied their 30-minute off-duty meal period within the first five hours of work. MDC required Hoang and the Aggrieved Employees to clock-out for their meal periods at the same time every day, even if the meal period did not occur at that time. At all relevant times, MDC required Hoang and the Aggrieved Employees to perform work while clocked out. Further, Hoang and the Aggrieved Employees were frequently forced to work while eating when meal periods were delayed. MDC also failed to authorize and permit Hoang and the Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof, as required by the Wage Order. MDC management never authorized breaks and the heavy work load MDC assigned the Aggrieved Employees to complete did not permit them. MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with a timely meal period in compliance with California law. Additionally, MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with a timely rest period in compliance with California law.

At all relevant times, MDC failed to compensate Hoang and the Aggrieved Employees for all hours worked at the correct rates of pay, including but not limited to, overtime and double-time wages. Many times, MDC required Hoang and the Aggrieved Employees to work all seven days in the same work week.

Further, MDC required Hoang and the Aggrieved Employees to provide their own transportation to perform their travel-related duties, including travel between MDC facilities and MDC customer. However, MDC did not reimburse them for mileage expenses. MDC also required Hoang and the Aggrieved Employees to use their personal mobile phones for work purposes but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones.

At all relevant times, MDC paid Hoang and the Aggrieved Employees with a non-discretionary productivity bonus. Hoang and the Aggrieved Employees often earned the productivity bonuses during workweeks in which they worked more than eight hours in a workday or more than 40 hours in a workweek. MDC, however, failed to include the productivity bonuses in its calculations of the regular rates of pay for purposes of calculating overtime wages. Consequently, MDC underpaid overtime wages earned by Hoang and the Aggrieved Employees during those periods in which they worked overtime hours and earned productivity bonuses.

MDC failed to issue to Hoang and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages. MDC also failed to timely pay Hoang and the Aggrieved Employees all earned wages. Moreover, MDC failed to maintain accurate employee records of Hoang and the Aggrieved Employees.

For the reasons herein, Hoang alleges the following violations of the Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- (a) MDC failed to pay Hoang and the Aggrieved Employees all wages earned for all hours worked.
- (b) MDC failed provide Hoang and the Aggrieved Employees with all uninterrupted meal and paid rest periods.

- (c) MDC failed to pay Hoang and the Aggrieved Employees premium wages for all workdays it failed to provide them with one or more uninterrupted meal or paid rest periods.
- (d) MDC failed to indemnify Hoang and the Aggrieved Employees for all automobile and phone expenses incurred during the course of performing their duties.
- (e) MDC failed to provide Hoang and the Aggrieved Employees with accurate wage statements.
- (f) MDC failed to timely pay Hoang and the Aggrieved Employees all earned and unpaid wages during their employment at MDC.
- (g) MDC failed to maintain accurate employee records of Hoang and the Aggrieved Employees.

Accordingly, Hoang now seeks civil penalties on behalf of himself and the Aggrieved Employees based on MDC's alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the manufacturing industry." (*Id.* § 1.) "'Manufacturing Industry' means any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part." (*Id.* § 2, subd. (H).)

At all relevant times during the applicable limitations period, MDC's main purpose of business was to produce vacuum technology. Therefore, Hoang and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

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 ($1\frac{1}{2}$) 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 ($1\frac{1}{2}$) 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.

(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.

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

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, Labor Code section 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wages 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.

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."

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

MDC failed to pay Hoang and the Aggrieved Employees for all hours worked by failing to pay them for all hours worked in excess of eight hours per day, in excess of eight hours on the seventh consecutive day of work, on-duty meal periods, and unpermitted rest periods.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code section 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 Labor Code section 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
4. \$100 for each aggrieved hourly employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each aggrieved hourly 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 Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203 (penalties set by California Labor Code section 1197.1).

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

In relevant part, California Labor Code section 1198 states:

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

In relevant part, California 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 no 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 relevant part, section 12 of the Wage Order states:

Rest Periods

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate

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.

California 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 recover period is not provided.

MDC failed to provide all meal and paid rest periods to Hoang and the Aggrieved Employees in compliance with California law. MDC often required Hoang and the Aggrieved Employees to clock out while still working, and take late meal

periods. MDC also required Hoang and the Aggrieved Employees to work during their meal or rest periods. Moreover, MDC failed to provide ten minute rest breaks every four hours or major fraction thereof. MDC failed to pay Hoang and the Aggrieved Employees premium wages on workdays it failed to provide them with one or more meal periods in compliance with California law. Additionally, MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with one or more timely rest periods in compliance with California law.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other 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));
2. \$50 for each aggrieved employee for each initial violation of California Labor Code section 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 section 558); and
3. \$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 Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, Labor Code section 2802, subdivision (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.”

MDC required Hoang and the Aggrieved Employees to travel between MDC facilities and vendors without reimbursing them for doing so. They also required Hoang and the Aggrieved Employees to use their personal phones for working purposes, and did not reimburse them for phone expenses.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows: \$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)).

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and 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.

An employee is deemed to have suffered injury under section 226 if the employer fails to provide accurate and complete information as required by any one or more items listed in Labor Code section 226, subdivisions (a)(1)–(9) and the employee cannot “promptly and easily” ascertain one or more of the following without reference to other documents or information:

- The amount of gross wages or net wages paid during the pay period;
- The total number of hours worked if the employee is not salaried; and
- The number of piece-rate units earned and the piece rate.

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

MDC’s violation was knowing and intentional. Hoang and the Aggrieved Employees often complained about MDC’s Labor Code violations to human resources. Hoang and the Aggrieved Employees notified MDC that it failed to provide them with duty free meal and rest periods. MDC ignored their complaints.

Accordingly, Hoang seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226, subdivision (a), and \$1,000 for each aggrieved

employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 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.

MDC failed to pay Hoang and the Aggrieved Employees all wages earned, including but not limited to all minimum, hourly, and overtime wages and premium wages on workdays it failed to provide them with a meal or paid rest period in compliance with California law, within the time periods set by Labor Code section 204. As a result, MDC failed to timely pay Hoang and the Aggrieved Employees all wages due during employment.

Accordingly, Hoang seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee, plus 25 percent of the amount unlawfully withheld from each aggrieved employee, for each subsequent violations (penalties set by Labor Code section 210).

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

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

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

MDC failed to pay Hoang and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with MDC. By failing to pay Hoang and the Aggrieved Employees as set forth above by such time, MDC is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Hoang seeks civil penalties from MDC as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

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

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 and 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.

MDC has failed to maintain the records required by section 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Hoang and the Aggrieved Employees. Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699, subdivision (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: Tuan Hoang
Walter Haines, Esq.

MDC Vacuum Products, LLC
c/o Agent for Service of Process
Paul Downey
30962 Santana St
Hayward, CA 94544

MDC Vacuum Products, Inc., an entity of unknown form
c/o Paul Downey
30962 Santana St
Hayward, CA 94544

MDC Precision Products, LLC
c/o HR Generalist/Recruiter
Sam Patel
30962 Santana St
Hayward, CA 94544

EXHIBIT 5

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MARALLE MESSRELIAN (SBN 316974)
maralle@spivaklaw.com
3 MAYA CHEAITANI (PL 507677)
maya@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 16530 Ventura Blvd., Ste. 203
Encino, CA 91436
6 Telephone: (213) 275-9094
7 Facsimile: (213) 634-2485
8 Attorneys for Plaintiff,
TUAN HOANG, and all others similarly situated
9

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

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

17 *Plaintiff(s),*

18 vs.

19 MDC VACUUM PRODUCTS, LLC, a
20 Delaware limited liability company; MDC
21 PRECISION, LLC, a Delaware limited liability
company; and DOES 1-50, inclusive,

22 *Defendants.*
23

Case No.: 21CV376678

**REQUEST TO DISMISS CLASS
ALLEGATIONS AND FILE FIRST
AMENDED COMPLAINT;
DECLARATION OF DAVID SPIVAK IN
SUPPORT; [PROPOSED] ORDER
THEREON**

Action filed: 03/01/2021
CMC: 06/23/2021, 2:30 p.m.
Department: 3, Hon. Patricia M.
Lucas



28 **SPIVAK LAW**

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
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Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



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Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 Plaintiff Tuan Hoang (“Plaintiff”), by and through his respective counsel of record, David
2 Spivak, Maralle Messrelian, and Maya Cheaitani of The Spivak Law Firm, requests as follows:

3 1. WHEREAS, on December 23, 2020, Plaintiff sent a letter to the California Labor
4 and Development Workforce Agency (“LWDA”) and Defendants with regard to the Labor Code
5 Private Attorneys General Act (“PAGA”), Lab. Code §§ 2698, *et seq.*

6 2. WHEREAS, on March 1, 2021, Plaintiff filed a class action Complaint
7 (“Complaint”) in the Superior Court of California, County of Santa Clara against Defendants,
8 styled *Tuan Hoang, et al. v. MDC Vacuum Products, LLC, et al.* Case Number 21CV376678;

9 3. WHEREAS, on March 18, 2021, Defendants produced a Mutual Arbitration
10 Agreement signed by Plaintiff on August 26, 2020.

11 4. WHEREAS, on March 2, 2021, the Court set a Case Management Conference for
12 June 23, 2021 at 2:30 p.m. and stayed the case pending the first Case Management Conference.

13 5. WHEREAS, Plaintiff seeks dismissal of MDC Precision, LLC without prejudice
14 based on Defendants’ representation that MDC Precision, LLC was not an employer of Plaintiff
15 or the other allegedly aggrieved employees, as defined in Plaintiff’s PAGA notice.

16 6. WHEREAS, Plaintiff has chosen to dismiss without prejudice his class allegations
17 because of Defendants’ representation that Plaintiff entered an arbitration agreement which
18 includes a class action waiver which Defendants contend is enforceable.

19 7. Accordingly, Plaintiff hereby requests dismissal of his class action allegations
20 from the operative Complaint without prejudice and to grant Plaintiff leave to file a First Amended
21 Complaint with only a representative cause of action for civil penalties under the PAGA only.
22 Defendants do not dispute this request.

23 8. WHEREAS, Plaintiff respectfully requests that the Court lift the stay only to allow
24 the Plaintiff to file a First Amended Complaint.

25 9. WHEREAS, Plaintiff will lodge the [Proposed] First Amended Complaint
26 (hereafter referred to as “the 1AC”) with the Court with the filing of this stipulation.

27 10. WHEREAS, the 1AC differs from the operative complaint in the following
28 respects only:

- (a) Updates Plaintiff’s Counsel’s contact information in the caption page;
- (b) Deletes defendant MDC Precision, LLC from the caption and throughout the 1AC;



- 1 (c) Deletes all class action allegations and causes of action from the operative
2 Complaint;
- 3 (d) Adds a single cause of action for Civil Penalties under the PAGA against
4 Defendants on behalf of Plaintiff, the State of California, and other Aggrieved Employees;
- 5 (e) Removes “class action” and replaces with “representative action”
6 throughout;
- 7 (f) Removes “similarly situated”, “class”, and “class members” and replaces
8 with “Aggrieved Employees” throughout;
- 9 (g) Removes reference to Business and Professions Code in paragraph 1;
- 10 (h) Amends Plaintiff’s Prayer for Relief to seek only civil penalties, costs of
11 suit, and reasonable attorneys’ fees; and
- 12 (i) Corrects minor typographical errors as a result of the deletions and
13 revisions mentioned above.

14 11. WHEREAS, the factual allegations and alleged claim in the 1AC are the same as
15 those in the operative complaint except for the changes enumerated above. The changes
16 mentioned above will not materially change any of the issues in this case for purposes of discovery
17 and trial scheduling.

18 12. WHEREAS, this request and order will not prevent Defendants from responding
19 to the 1AC by answer, demurrer, motion to strike, motion to compel arbitration, or other
20 responsive pleading.

21 13. WHEREAS, Plaintiff has yet to move for class certification. No putative class
22 members have been given written notice of the claims against Defendants, or of the lawsuit.
23 Plaintiff is unaware of any putative class member who refrained from bringing similar class action
24 allegations in reliance on the existence of this class action. Also, there is no prejudice to the
25 putative class members because the class action allegations are being dismissed without prejudice.

26 14. WHEREAS, California Rule of Court 3.770 authorizes the Court to dismiss class
27 allegations in a proposed class action without a hearing and without notice to the putative class
28 where a class has not been certified and notice has not been provided to the putative class.

15 15. WHEREAS, the 1AC will be deemed filed on the date it is lodged with the Court
16 and Plaintiff shall serve Defendants with the 1AC. This request is based on the lodged proposed

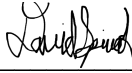


1 1AC, the attached Declaration of David Spivak, the pleadings, records and files in this action; and
2 any additional oral or documentary evidence submitted in support of the request.

3 Respectfully submitted,

4 THE SPIVAK LAW FIRM

5 Dated: June 22, 2021

6 By 
7 DAVID SPIVAK
8 MARALLE MESSRELIAN
9 MAYA CHEATANI,
10 Attorneys for Plaintiff, TUAN HOANG, and the
11 Aggrieved Employees
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SPIVAK LAW

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(818) 582-3086 Tel
(818) 582-2561 Fax
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DECLARATION OF DAVID SPIVAK

I, David G. Spivak, hereby declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of this state. I am an attorney with The Spivak Law Firm, counsel for Plaintiff Tuan Hoang (“Plaintiff”) in the above-captioned matter.

2. The following facts are stated from my personal knowledge, except those facts stated on information and belief, which I believe to be true and correct, and if called as a witness, I could and would so competently testify thereto under oath.

3. On December 23, 2020, Plaintiff sent a letter to the California Labor and Development Workforce Agency (“LWDA”) and Defendants with regard to the Labor Code Private Attorneys General Act (“PAGA”), Lab. Code §§ 2698, *et seq.*

4. On March 1, 2021, Plaintiff filed a class action Complaint (“Complaint”) in the Superior Court of California, County of Santa Clara against Defendants, styled *Tuan Hoang, et al. v. MDC Vacuum Products, LLC, et al.* Case Number 21CV376678;

5. On March 18, 2021, Defendants produced a Mutual Arbitration Agreement signed by Plaintiff on August 26, 2020.

6. On March 2, 2021, the Court set a Case Management Conference for June 23, 2021 at 2:30 p.m. and stayed the case pending the First Case Management Conference.

7. Plaintiff has chosen to dismiss without prejudice his class allegations because of Defendants’ representation that Plaintiff entered an arbitration agreement which include a class action waiver which Defendants contend is enforceable.

8. Plaintiff respectfully requests that the Court lift the stay only to allow Plaintiff to file a First Amended Complaint.

9. Accordingly, Plaintiff hereby requests dismissal of his class action allegations from the operative Complaint without prejudice and to grant Plaintiff leave to file a First Amended Complaint with only a representative cause of action for civil penalties under the PAGA only. Defendants do not dispute this request.

10. Plaintiff will lodge the [Proposed] First Amended Complaint (hereafter referred to as “the 1AC”) with the Court with the filing of this stipulation.

11. The 1AC differs from the operative complaint in the following respects only:

(a) Updates Plaintiff’s Counsel’s contact information in the caption page;



- 1 (b) Deletes all class action allegations and causes of action from the operative
2 Complaint;
- 3 (c) Adds a single cause of action for Civil Penalties under the PAGA against
4 Defendants on behalf of Plaintiff, the State of California, and other Aggrieved Employees;
- 5 (d) Removes “class action” and replaces with “representative action”
6 throughout;
- 7 (e) Removes “similarly situated”, “class”, and “class members” and replaces
8 with “Aggrieved Employees” throughout;
- 9 (f) Removes reference to Business and Professions Code in paragraph 1;
- 10 (g) Amends Plaintiff’s Prayer for Relief to seek only civil penalties, costs of
11 suit, and reasonable attorneys’ fees; and
- 12 (h) Corrects minor typographical errors as a result of the deletions and
13 revisions mentioned above.

14 14. The factual allegations and alleged claim in the 1AC are the same as those in the
15 operative complaint except for the changes enumerated above. The changes mentioned above will
16 not materially change any of the issues in this case for purposes of discovery and trial scheduling.

17 15. This request and order will not prevent Defendants from responding to the 1AC
18 by answer, demurrer, motion to strike, motion to compel arbitration, or other responsive pleading.

19 16. Plaintiff has yet to move for class certification. No putative class members have
20 been given written notice of the claims against Defendants, or of the lawsuit. Plaintiff is unaware
21 of any putative class member who refrained from bringing similar class action allegations in
22 reliance on the existence of this class action. Also, there is no prejudice to the putative class
23 members because the class action allegations are being dismissed without prejudice.

24 17. California Rule of Court 3.770 authorizes the Court to dismiss class allegations in
25 a proposed class action without a hearing and without notice to the putative class where a class
26 has not been certified and notice has not been provided to the putative class.

27 ///

28 ///

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18. No consideration is to be provided to Plaintiff or Plaintiff's counsel as part of the dismissal of the class allegations.

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

Executed on Tuesday, June 22, 2021 at Encino, California.

David Spind

DAVID G. SPIVAK,
Declarant



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 203
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

[PROPOSED] ORDER

Pursuant to Rule 3.770 of the California Rules of Court, Plaintiff's request came before the Court for approval of the dismissal of Plaintiff's class action allegations from the operative Complaint without prejudice. Pursuant to Rule 3.770(b) of the California Rules of Court, the Court may consider and grant the stipulation without hearing.

After considering Plaintiff's request and the declaration from Plaintiff's counsel in support, the Court grants the request. Pursuant to Rule 3.770(a) of the California Rules of Court, Plaintiff has supported his request for dismissal of the class action allegations with a declaration from counsel adequately setting forth the facts on which he relies in seeking dismissal of the class action allegations.

No class has been certified. No putative class members have been given written notice of the class action allegations against Defendants, or of the class action lawsuit. Accordingly, the Court finds that no putative class members will be prejudiced by the dismissal of the class action allegations and no notice to putative class members will be required pursuant to Rule 3.770(c).

Therefore, for good cause shown, (1) the Court grants Plaintiff's request for dismissal of the class action allegations from Plaintiff's operative Complaint without prejudice, (2) the First Amended Complaint which pleads a representative action for civil penalties under the PAGA is deemed filed on the date it was lodged with the Court, and (3) Plaintiff shall serve Defendants with the First Amended Complaint. Notice of this stipulation and order shall not be sent to putative class members.

IT IS SO ORDERED.

DATE

**HONORABLE PATRICIA M. LUCAS
JUDGE OF THE SUPERIOR COURT**

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 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 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 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.

10 On Tuesday, June 22, 2021, I served the foregoing document described as
11 **REQUEST TO DISMISS CLASS ALLEGATIONS AND FILE FIRST AMENDED COMPLAINT;**
12 **DECLARATION OF DAVID SPIVAK IN SUPPORT; [PROPOSED] ORDER THEREON** on interested
parties by electronic mail, addressed as follows:

13 Donald P. Sullivan, Esq.
14 Janelle J. Sahouria, Esq.
15 Jackson Lewis P.C.
16 50 California St., Fl 9
17 San Francisco, CA 94111-4615
18 Donald.Sullivan@jacksonlewis.com
19 janelle.sahouria@jacksonlewis.com
20 Suddie.Scott@jacksonlewis.com
21 Beth.Davis@jacksonlewis.com
22 Engel.Negrete@jacksonlewis.com

23 _____ (BY MAIL) I caused such an envelope to be mailed by placing it for
24 collection and mailing, in the course of ordinary business practice, with
25 other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203,
26 Encino, California 91436.

27 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
28 electronic service addresses listed above from my electronic service address
emily@spivaklaw.com.

EXECUTED on Tuesday, June 22, 2021, 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.

27
28 
EMILY HOUNG LY

EXHIBIT 6

Envelope: 6699217

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
MARALLE MESSRELIAN (SBN 316974)
maralle@spivaklaw.com
MAYA CHEAITANI (PL 507677)
maya@spivaklaw.com
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
Telephone: (213) 275-9094
Facsimile: (213) 634-2485

Attorneys for Plaintiff,
TUAN HOANG, and all others similarly situated

FILED
June 22, 2021
Clerk of The Court
Superior Court of CA
County of Santa Clara
21CV376678
By: rwalker

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

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

Plaintiff(s),

vs.

MDC VACUUM PRODUCTS, LLC, a
Delaware limited liability company; MDC
PRECISION, LLC, a Delaware limited liability
company; and DOES 1-50, inclusive,

Defendants.

Case No.: 21CV376678

**REQUEST TO DISMISS CLASS
ALLEGATIONS AND FILE FIRST
AMENDED COMPLAINT;
DECLARATION OF DAVID SPIVAK IN
SUPPORT; ~~PROPOSED~~ ORDER
THEREON**

Action filed: 03/01/2021
CMC: 06/23/2021, 2:30 p.m.
Department: 3, Hon. Patricia M.
Lucas



SPIVAK LAW

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave, Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



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5 Private Attorneys General Act (“PAGA”), Lab. Code §§ 2698, *et seq.*

6 2. WHEREAS, on March 1, 2021, Plaintiff filed a class action Complaint
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4 Defendants on behalf of Plaintiff, the State of California, and other Aggrieved Employees;
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8 with “Aggrieved Employees” throughout;
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11 suit, and reasonable attorneys’ fees; and
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13 revisions mentioned above.

14 11. WHEREAS, the factual allegations and alleged claim in the 1AC are the same as
15 those in the operative complaint except for the changes enumerated above. The changes
16 mentioned above will not materially change any of the issues in this case for purposes of discovery
17 and trial scheduling.

18 12. WHEREAS, this request and order will not prevent Defendants from responding
19 to the 1AC by answer, demurrer, motion to strike, motion to compel arbitration, or other
20 responsive pleading.

21 13. WHEREAS, Plaintiff has yet to move for class certification. No putative class
22 members have been given written notice of the claims against Defendants, or of the lawsuit.
23 Plaintiff is unaware of any putative class member who refrained from bringing similar class action
24 allegations in reliance on the existence of this class action. Also, there is no prejudice to the
25 putative class members because the class action allegations are being dismissed without prejudice.

26 14. WHEREAS, California Rule of Court 3.770 authorizes the Court to dismiss class
27 allegations in a proposed class action without a hearing and without notice to the putative class
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15 15. WHEREAS, the 1AC will be deemed filed on the date it is lodged with the Court
16 and Plaintiff shall serve Defendants with the 1AC. This request is based on the lodged proposed

1 1AC, the attached Declaration of David Spivak, the pleadings, records and files in this action; and
2 any additional oral or documentary evidence submitted in support of the request.

3 Respectfully submitted,

4 THE SPIVAK LAW FIRM

5 Dated: June 22, 2021

6 By 
7 DAVID SPIVAK
8 MARALLE MESSRELIAN
9 MAYA CHEATANI,
10 Attorneys for Plaintiff, TUAN HOANG, and the
11 Aggrieved Employees
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DECLARATION OF DAVID SPIVAK

I, David G. Spivak, hereby declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of this state. I am an attorney with The Spivak Law Firm, counsel for Plaintiff Tuan Hoang (“Plaintiff”) in the above-captioned matter.

2. The following facts are stated from my personal knowledge, except those facts stated on information and belief, which I believe to be true and correct, and if called as a witness, I could and would so competently testify thereto under oath.

3. On December 23, 2020, Plaintiff sent a letter to the California Labor and Development Workforce Agency (“LWDA”) and Defendants with regard to the Labor Code Private Attorneys General Act (“PAGA”), Lab. Code §§ 2698, *et seq.*

4. On March 1, 2021, Plaintiff filed a class action Complaint (“Complaint”) in the Superior Court of California, County of Santa Clara against Defendants, styled *Tuan Hoang, et al. v. MDC Vacuum Products, LLC, et al.* Case Number 21CV376678;

5. On March 18, 2021, Defendants produced a Mutual Arbitration Agreement signed by Plaintiff on August 26, 2020.

6. On March 2, 2021, the Court set a Case Management Conference for June 23, 2021 at 2:30 p.m. and stayed the case pending the First Case Management Conference.

7. Plaintiff has chosen to dismiss without prejudice his class allegations because of Defendants’ representation that Plaintiff entered an arbitration agreement which include a class action waiver which Defendants contend is enforceable.

8. Plaintiff respectfully requests that the Court lift the stay only to allow Plaintiff to file a First Amended Complaint.

9. Accordingly, Plaintiff hereby requests dismissal of his class action allegations from the operative Complaint without prejudice and to grant Plaintiff leave to file a First Amended Complaint with only a representative cause of action for civil penalties under the PAGA only. Defendants do not dispute this request.

10. Plaintiff will lodge the [Proposed] First Amended Complaint (hereafter referred to as “the 1AC”) with the Court with the filing of this stipulation.

11. The 1AC differs from the operative complaint in the following respects only:

(a) Updates Plaintiff’s Counsel’s contact information in the caption page;



- 1 (b) Deletes all class action allegations and causes of action from the operative
2 Complaint;
- 3 (c) Adds a single cause of action for Civil Penalties under the PAGA against
4 Defendants on behalf of Plaintiff, the State of California, and other Aggrieved Employees;
- 5 (d) Removes “class action” and replaces with “representative action”
6 throughout;
- 7 (e) Removes “similarly situated”, “class”, and “class members” and replaces
8 with “Aggrieved Employees” throughout;
- 9 (f) Removes reference to Business and Professions Code in paragraph 1;
- 10 (g) Amends Plaintiff’s Prayer for Relief to seek only civil penalties, costs of
11 suit, and reasonable attorneys’ fees; and
- 12 (h) Corrects minor typographical errors as a result of the deletions and
13 revisions mentioned above.

14 14. The factual allegations and alleged claim in the 1AC are the same as those in the
15 operative complaint except for the changes enumerated above. The changes mentioned above will
16 not materially change any of the issues in this case for purposes of discovery and trial scheduling.

17 15. This request and order will not prevent Defendants from responding to the 1AC
18 by answer, demurrer, motion to strike, motion to compel arbitration, or other responsive pleading.

19 16. Plaintiff has yet to move for class certification. No putative class members have
20 been given written notice of the claims against Defendants, or of the lawsuit. Plaintiff is unaware
21 of any putative class member who refrained from bringing similar class action allegations in
22 reliance on the existence of this class action. Also, there is no prejudice to the putative class
23 members because the class action allegations are being dismissed without prejudice.

24 17. California Rule of Court 3.770 authorizes the Court to dismiss class allegations in
25 a proposed class action without a hearing and without notice to the putative class where a class
26 has not been certified and notice has not been provided to the putative class.

27 ///

28 ///

///

///

///



18. No consideration is to be provided to Plaintiff or Plaintiff's counsel as part of the dismissal of the class allegations.

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

Executed on Tuesday, June 22, 2021 at Encino, California.

David Spivey

DAVID G. SPIVAK,
Declarant

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PROPOSED ORDER

Pursuant to Rule 3.770 of the California Rules of Court, Plaintiff's request came before the Court for approval of the dismissal of Plaintiff's class action allegations from the operative Complaint without prejudice. Pursuant to Rule 3.770(b) of the California Rules of Court, the Court may consider and grant the stipulation without hearing.

After considering Plaintiff's request and the declaration from Plaintiff's counsel in support, the Court grants the request. Pursuant to Rule 3.770(a) of the California Rules of Court, Plaintiff has supported his request for dismissal of the class action allegations with a declaration from counsel adequately setting forth the facts on which he relies in seeking dismissal of the class action allegations.

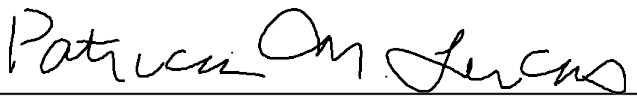
No class has been certified. No putative class members have been given written notice of the class action allegations against Defendants, or of the class action lawsuit. Accordingly, the Court finds that no putative class members will be prejudiced by the dismissal of the class action allegations and no notice to putative class members will be required pursuant to Rule 3.770(c).

Therefore, for good cause shown, (1) the Court grants Plaintiff's request for dismissal of the class action allegations from Plaintiff's operative Complaint without prejudice, (2) the First Amended Complaint which pleads a representative action for civil penalties under the PAGA ~~xx~~ may be filed by Plaintiff within ten days, ~~do not need to be filed on the date it was lodged with the Court~~, and (3) Plaintiff shall serve Defendants with the First Amended Complaint. Notice of this stipulation and order shall not be sent to putative class members.

IT IS SO ORDERED.

June 22, 2021

DATE


HONORABLE PATRICIA M. LUCAS
JUDGE OF THE SUPERIOR COURT



1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 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 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 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.

10 On Tuesday, June 22, 2021, I served the foregoing document described as
11 **REQUEST TO DISMISS CLASS ALLEGATIONS AND FILE FIRST AMENDED COMPLAINT;**
12 **DECLARATION OF DAVID SPIVAK IN SUPPORT; [PROPOSED] ORDER THEREON** on interested
parties by electronic mail, addressed as follows:

13 Donald P. Sullivan, Esq.
14 Janelle J. Sahouria, Esq.
15 Jackson Lewis P.C.
16 50 California St., Fl 9
17 San Francisco, CA 94111-4615
18 Donald.Sullivan@jacksonlewis.com
19 janelle.sahouria@jacksonlewis.com
20 Suddie.Scott@jacksonlewis.com
21 Beth.Davis@jacksonlewis.com
22 Engel.Negrete@jacksonlewis.com

23 ____ (BY MAIL) I caused such an envelope to be mailed by placing it for
24 collection and mailing, in the course of ordinary business practice, with
25 other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203,
26 Encino, California 91436.

27 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
28 electronic service addresses listed above from my electronic service address
emily@spivaklaw.com.

EXECUTED on Tuesday, June 22, 2021, 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.

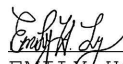
27
28 
EMILY HOUNG LY

EXHIBIT 7

Electronically Filed
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County of Santa Clara,
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Reviewed By: R. Walker
Case #21CV376678
Envelope: 6706772

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10 Telephone: (213) 275-9094
11 Facsimile: (213) 634-2485

12 Attorneys for Plaintiff,
13 TUAN HOANG

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

17 TUAN HOANG, on behalf of himself, and as an
18 “aggrieved employee” on behalf of other
19 “aggrieved employees” under the Labor Code
20 Private Attorneys General Act of 2004,

21 *Plaintiff(s),*

22 vs.

23 MDC VACUUM PRODUCTS, LLC, a
24 Delaware limited liability company; and DOES
25 1-50, inclusive,

26 *Defendants.*

Case No.: 21CV376678

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

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against Defendant MDC VACUUM
5 PRODUCTS, LLC, a Delaware limited liability company, and DOES 1-50, inclusive (collectively
6 “Defendants”) for alleged violations of the California Labor Code, Industrial Welfare
Commission Order No. 1-2001 (hereafter “the Wage Order”).

7 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
8 him, the State of California, and other aggrieved current and former employees in California,
9 including but not limited to, expeditors and workers employed in comparable positions (the
10 “Aggrieved Employees”) for civil penalties and other related relief. These claims are based on
11 Defendants’ alleged failures to: (1) Provide all meal and rest periods in compliance with
12 California law, (2) Pay all wages earned for all hours worked at the correct rates of pay, (3)
13 Indemnify Plaintiff and the other Aggrieved Employees for reasonable expenses incurred while
14 performing their duties, (4) Provide accurate and complete itemized written wage statements, (5)
15 Timely pay all final wages upon termination of employment, (6) Maintain accurate employment
16 records, and (7) Fairly compete. Accordingly, Plaintiff now seeks to recover civil penalties and
related relief through this representative action.

17 **PARTIES**

18 3. Plaintiff TUAN HOANG is a resident of California.

19 4. Defendants hired Hoang as an hourly expeditor at their San Jose, California
20 manufacturing facility in or about January 9, 2017, and continuously employed him in this
21 capacity until on or about September 1, 2020.

22 5. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
23 California Code of Regulations § 11010 and an “aggrieved employee” within the meaning of
Labor Code § 2699(c).

24 6. Defendant MDC VACUUM PRODUCTS, LLC, is a limited liability company
25 organized and existing under the laws of Delaware and a citizen of California based on Plaintiff’s
26 information and belief.

27 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
28 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but



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1 is informed and believes and thereon alleges that said Defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
4 when ascertained.

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

10 9. 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 and/or practice, or
12 lack thereof, which resulted in Defendants not paying Plaintiff and other Aggrieved Employees
13 in accordance with applicable laws as alleged herein.

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

19 **STATEMENT OF FACTS**

20 11. Defendants hired Plaintiff as an hourly expeditor at their San Jose, California
21 manufacturing facility on or about January 9, 2017, and continuously employed him in this
22 capacity until on or about September 1, 2010. Defendants at all relevant times paid Plaintiff and
23 the Aggrieved Employees on a bi-weekly basis at an hourly rate of pay. At all relevant times,
24 Plaintiff and the Aggrieved Employees were non-exempt hourly employees entitled to the
25 protections of both the Labor Code and the Wage Order.

26 12. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
27 Employees with all timely rest and meal periods. Due to their work load and several daily morning
28 meetings with management, Plaintiff and the Aggrieved Employees were denied their 30-minute
off-duty meal period within the first five hours of work. Defendants required Plaintiff and the
Aggrieved Employees to clock-out for their meal periods at the same time every day, even if the
meal period did not occur at that time. At all relevant times, Defendants required Plaintiff and the



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1 Aggrieved Employees to perform work while clocked-out. Further, Plaintiff and the Aggrieved
2 Employees were frequently forced to work while eating when meal periods were delayed.

3 13. Defendants also failed to authorize and permit Plaintiff and the Aggrieved
4 Employees to take ten-minute rest breaks every four hours or major fraction thereof, as required
5 by the Wage Order. Defendants' management never authorized breaks and the heavy work load
6 Defendants assigned the Aggrieved Employees to complete did not permit them.

7 14. Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages
8 for each workday they failed to provide them with a timely meal period in compliance with
9 California law. Additionally, Defendants failed to pay Plaintiff and the Aggrieved Employees
10 premium wages for each workday they failed to provide them with a timely rest period in
11 compliance with California law.

12 15. At all relevant times, Defendants failed to compensate Plaintiff and the Aggrieved
13 Employees for all hours worked at the correct rates of pay, including but not limited to, overtime
14 and double-time wages. Many times, Defendants required Plaintiff and the Aggrieved Employees
15 to work all seven days in the same workweek.

16 16. Further, Defendants required Plaintiff and the Aggrieved Employees to provide
17 their own transportation to perform their travel-related duties, including travel between
18 Defendants' facilities and Defendants' customers. However, Defendants did not reimburse them
19 for mileage expenses. Defendants also required Plaintiff and the Aggrieved Employees to use
20 their personal mobile phones for work purposes but did not reimburse them for their mobile phone
21 expenses, nor did they provide them with mobile phones.

22 17. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees with
23 a non-discretionary productivity bonus. Plaintiff and the Aggrieved Employees often earned the
24 productivity bonuses during workweeks in which they worked more than eight hours in a workday
25 or more than forty hours in a workweek. Defendants, however, failed to include the productivity
26 bonuses in their calculations of the regular rates of pay for purposes of calculating overtime
27 wages. Consequently, Defendants underpaid overtime wages earned by Plaintiff and the
28 Aggrieved Employees during those periods in which they worked overtime hours and earned
productivity bonuses.

18. Defendants failed to issue to Plaintiff and the Aggrieved Employees complete and
accurate wage statements as a result of their failure to state all hours worked at the correct rates



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1 of pay, and all wages earned including rest periods and meal periods premium wages. Defendants
2 also failed to timely pay Plaintiff and the Aggrieved Employees all earned wages. Moreover,
3 Defendants failed to maintain accurate employment records of Plaintiff and the Aggrieved
4 Employees.

5 **FIRST (AND ONLY) CAUSE OF ACTION**

6 **CIVIL PENALTIES**

7 **(Lab. Code §§ 2698, et seq.)**

8 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all**
9 **Defendants)**

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

11 **A. THE AGGRIEVED EMPLOYEES:** The Aggrieved Employees are all persons
12 employed by Defendants in California as hourly employees, including, but not limited to,
13 expeditors, and in other comparable positions, during the period of December 23, 2019 to the
14 present (the “PAGA Period”).

15 **B. UNPROVIDED REST AND MEAL PERIODS**

16 20. In relevant part, California Labor Code § 1198 states:

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

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

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

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



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22. In relevant part, § 12 of the Wage Order states:

Rest Periods

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

23. In relevant part, § 11 of the Wage Order states:

Meal Periods

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

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

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

(b) An employer shall not require an employee to work during



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1 a meal or rest period mandated pursuant to an applicable statute,
2 or applicable regulation, standard, or order of the Industrial
3 Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and
Health.

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

10 25. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
11 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
12 day they worked five or more hours.

13 26. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
14 to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
15 major fraction thereof.

16 27. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
17 with all required 30-minute duty-free meal periods and 10-minute rest periods free from any
18 work duties in accordance with the Wage Order.

19 28. At all relevant times, Defendants failed to provide all meal and paid rest periods
20 to Plaintiff and the Aggrieved Employees in compliance California law. Defendants often
21 required Plaintiff and the Aggrieved Employees to clock-out while still working, and take late
22 meal periods. Defendants also required Plaintiff and the Aggrieved Employees to work during
23 their meal or rest periods. Moreover, Defendants failed to authorize and permit Plaintiff and the
24 Aggrieved Employees to take 10-minute rest breaks every four hours worked or major fraction
25 thereof as required by the Wage Order. Furthermore, Defendants failed to pay premium wages
26 for days on which they failed to provide Plaintiff and the Aggrieved Employees with timely meal
and rest periods.

27 29. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
2 breaks required by California law.

3 30. As a result of Defendants' unlawful conduct, Plaintiff and the Aggrieved
4 Employees have suffered damages in an amount, subject to proof, to the extent they were not
5 paid additional wages owed for all meal periods and rest breaks not provided to them.

6 31. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
7 the Aggrieved Employees are entitled to premium wages for workdays in which one or more off-
8 duty meal periods were not provided to them, and for workdays in which one or more rest breaks
9 were not provided to them.

10 **C. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
11 **THE CORRECT RATES OF PAY**

12 32. In relevant part, § 3 of the Wage Order states:

13 (A) Daily Overtime - General Provisions

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

26 (a) One and one-half (1 ½) times the employee's regular rate of
27 pay for all hours worked in excess of eight (8) hours up to and
28 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.

(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.

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



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employee's weekly salary.

33. Labor Code § 510 states:

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

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

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

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

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

38. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked by failing to pay them for all hours worked in excess of eight hours per day, in excess of eight hours on the seventh consecutive day of work, on-duty meal periods, and unpermitted rest periods.

39. 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 compensate Plaintiff and the other Aggrieved Employees for all hours worked as



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required by California law.

D. FAILURE TO INDEMNIFY

40. 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.”

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

42. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses which they failed to indemnify them for both during and after their employment ended. Defendants required Plaintiff and the Aggrieved Employees to travel between Defendants’ facilities and vendors without reimbursing them for doing so. They also required Plaintiff and the Aggrieved Employees to use their personal phones for working purposes, and did not reimburse them for phone expenses.

43. 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 indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they incurred during the course of performing their duties.

E. INCOMPLETE AND INACCURATE WAGE STATEMENTS

44. Pursuant to California Labor Code § 226 (a), Plaintiff and the other Aggrieved Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement 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 § 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,



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(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.

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

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

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

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

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

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

47. As alleged herein, Defendants failed to provide Plaintiff and the other Aggrieved Employees with all meal and rest periods in compliance with California law. They also failed to provide them with premium wages on workdays they failed to provide them with one or more meal and/or rest periods in compliance with California law. Further, Defendants failed to compensate Plaintiff and the other Aggrieved Employees for all hours worked. As a result,



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1 Defendants have failed to properly itemize Plaintiff and the other Class Members' gross and net
2 wages earned, total hours worked, hourly rate of pay, the corresponding number of hours worked
3 at each hourly rate, and other requirements of California Labor Code § 226. As a result,
4 Defendants have violated California Labor Code § 226.

5 48. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
6 accurate wage statements was knowing and intentional. Defendants had the ability to provide
7 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
8 provided wage statements that Defendants knew were not accurate.

9 49. As a result of being provided with inaccurate wage statements by Defendants,
10 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
11 accurate wage statements were violated and they were misled about the amount of wages they
12 had actually earned and were owed. In addition, the absence of accurate information on their wage
13 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
14 discovery and mathematical computations to determine the amounts of wages owed, has caused
15 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
16 submission of inaccurate information about wages to state and federal government agencies.
17 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
18 statements whether Defendants complied with their obligations under California Labor Code
19 § 226 (a).

20 **F. UNTIMELY FINAL WAGES**

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

23 51. Labor Code § 202 provides that all earned and unpaid wages of an employee who
24 quits after providing at least 72-hours notice before quitting are due and payable at the time of
25 quitting and that all earned and unpaid wages of an employee who quits without providing at
26 least 72-hours notice before quitting are due and payable within 72 hours.

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

53. Defendants failed to pay Plaintiff and the Aggrieved Employees whose employment
ended all of the earned but unpaid wages described above by the conclusion of their employment



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1 with Defendants. By failing to pay Plaintiff and the Aggrieved Employees as set forth above by
2 such time, Defendants are liable for violations of Labor Code §§ 201, 202, and 203.

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

8 **G. UNTIMELY WAGES DURING EMPLOYMENT**

9 55. Labor Code § 204 states:

- 10 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
11 204.1, or 204.2, earned by any person in any employment are due
12 and payable twice during each calendar month, on days designated
13 in advance by the employer as the regular paydays. Labor
14 performed between the 1st and 15th days, inclusive, of any calendar
15 month shall be paid for between the 16th and the 26th day of the
16 month during which the labor was performed, and labor performed
17 between the 16th and the last day, inclusive, of any calendar month,
18 shall be paid for between the 1st and 10th day of the following
19 month. ...
- 20 (b) (1) Notwithstanding any other provision of this section, all
21 wages earned for labor in excess of the normal work period shall
22 be paid no later than the payday for the next regular payroll period.
- 23 (2) An employer is in compliance with the requirements of
24 subdivision (a) of Section 226 relating to total hours worked by the
25 employee, if hours worked in excess of the normal work period
26 during the current pay period are itemized as corrections on the
27 paystub for the next regular pay period. Any corrections set out in
28 a subsequently issued paystub shall state the inclusive dates of the
pay period for which the employer is correcting its initial report of
hours worked.
- (c) However, when employees are covered by a collective bargaining
agreement that provides different pay arrangements, those
arrangements shall apply to the covered employees.
- (d) The requirements of this section shall be deemed satisfied by the
payment of wages for weekly, biweekly, or semimonthly payroll if
the wages are paid not more than seven calendar days following the
close of the payroll period.



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

H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

57. Labor Code § 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.

58. Labor Code § 1174.5 states:

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

59. Section 7 of 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



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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.

60. On information and belief, Plaintiff alleges that Defendants failed to maintain accurate employment records for Plaintiff and the Aggrieved Employees.

I. CIVIL PENALTIES SOUGHT

61. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

62. California Labor Code §§ 2699 (a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

63. Pursuant to California Labor Code §§ 2699 (a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 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 § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226 (a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).



1 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
2 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
3 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
4 established by California Labor Code § 558).

5 D. For violations of California Labor Code § 1197, one hundred dollars
6 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
7 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
8 pay period (regardless of whether the initial violations were intentionally committed) (penalty
9 amounts established by California Labor Code § 1197.1).

10 E. For violations of California Labor Code § 1174, five hundred dollars
11 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
12 California Labor Code § 1174.5).

13 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
14 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
15 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
16 period for each subsequent violation (penalty amounts established by California Labor Code §
17 2699 (f) (2)).

18 64. Plaintiff has complied with the procedures for bringing suit specified in
19 California Labor Code § 2699.3. By letter dated December 23, 2020, Plaintiff filed written notice
20 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
21 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
22 to have been violated, including the facts and theories to support the alleged violations. A true
23 and correct copy of the notice to the LWDA dated December 23, 2020 is attached as **Exhibit A**.
24 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
25 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
26 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
27 does not intend to investigate these allegations.

28 65. Pursuant to California Labor Code § 2699 (g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
connection with their claims for civil penalties.

///



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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

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- A. Civil Penalties;
 - B. Costs of suit; and
 - C. Reasonable attorneys' fees.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: June 23, 2021

By David Spivak
DAVID SPIVAK,
MARALLE MESSRELIAN,
MAYA CHEATANI,
Attorneys for Plaintiff, TUAN HOANG, and the
Aggrieved Employees



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED U.S. MAIL

December 23, 2020

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

RE: *Tuan Hoang/MDC Vacuum Products, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 et seq., Tuan Hoang (hereafter “Hoang”) provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to expeditors and workers employed in comparable positions (hereafter “the Aggrieved Employees”) by MDC Vacuum Products, LLC, a Delaware limited liability company, and MDC Precision, LLC, a Delaware limited liability company, (hereafter collectively referred to as “MDC”), of violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, MDC has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Hoang and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission wage order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “aggrieved employees” within the meaning of Labor Code section 2699, subdivision (c).

Statement of Facts

MDC hired Hoang as an hourly expeditor at its San Jose, California manufacturing facility in or about January 9, 2017, and continuously employed him in this capacity until on or about September 1, 2020. MDC at all relevant times paid Hoang and the Aggrieved Employees on a bi-weekly basis at an hourly rate of pay. At all relevant times, Hoang and the Aggrieved Employees were non-exempt hourly employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, MDC failed to provide Hoang and the Aggrieved Employees with all timely rest and meal periods. Due to their work load and several daily morning meetings with management, Hoang and the other Aggrieved Employees were denied their 30-minute off-duty meal period within the first five hours of work. MDC required Hoang and the Aggrieved Employees to clock-out for their meal periods at the same time every day, even if the meal period did not occur at that time. At all relevant times, MDC required Hoang and the Aggrieved Employees to perform work while clocked out. Further, Hoang and the Aggrieved Employees were frequently forced to work while eating when meal periods were delayed. MDC also failed to authorize and permit Hoang and the Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof, as required by the Wage Order. MDC management never authorized breaks and the heavy work load MDC assigned the Aggrieved Employees to complete did not permit them. MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with a timely meal period in compliance with California law. Additionally, MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with a timely rest period in compliance with California law.

At all relevant times, MDC failed to compensate Hoang and the Aggrieved Employees for all hours worked at the correct rates of pay, including but not limited to, overtime and double-time wages. Many times, MDC required Hoang and the Aggrieved Employees to work all seven days in the same work week.

Further, MDC required Hoang and the Aggrieved Employees to provide their own transportation to perform their travel-related duties, including travel between MDC facilities and MDC customer. However, MDC did not reimburse them for mileage expenses. MDC also required Hoang and the Aggrieved Employees to use their personal mobile phones for work purposes but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones.

At all relevant times, MDC paid Hoang and the Aggrieved Employees with a non-discretionary productivity bonus. Hoang and the Aggrieved Employees often earned the productivity bonuses during workweeks in which they worked more than eight hours in a workday or more than 40 hours in a workweek. MDC, however, failed to include the productivity bonuses in its calculations of the regular rates of pay for purposes of calculating overtime wages. Consequently, MDC underpaid overtime wages earned by Hoang and the Aggrieved Employees during those periods in which they worked overtime hours and earned productivity bonuses.

MDC failed to issue to Hoang and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages. MDC also failed to timely pay Hoang and the Aggrieved Employees all earned wages. Moreover, MDC failed to maintain accurate employee records of Hoang and the Aggrieved Employees.

For the reasons herein, Hoang alleges the following violations of the Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- (a) MDC failed to pay Hoang and the Aggrieved Employees all wages earned for all hours worked.
- (b) MDC failed provide Hoang and the Aggrieved Employees with all uninterrupted meal and paid rest periods.

- (c) MDC failed to pay Hoang and the Aggrieved Employees premium wages for all workdays it failed to provide them with one or more uninterrupted meal or paid rest periods.
- (d) MDC failed to indemnify Hoang and the Aggrieved Employees for all automobile and phone expenses incurred during the course of performing their duties.
- (e) MDC failed to provide Hoang and the Aggrieved Employees with accurate wage statements.
- (f) MDC failed to timely pay Hoang and the Aggrieved Employees all earned and unpaid wages during their employment at MDC.
- (g) MDC failed to maintain accurate employee records of Hoang and the Aggrieved Employees.

Accordingly, Hoang now seeks civil penalties on behalf of himself and the Aggrieved Employees based on MDC's alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the manufacturing industry." (*Id.* § 1.) "'Manufacturing Industry' means any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part." (*Id.* § 2, subd. (H).)

At all relevant times during the applicable limitations period, MDC's main purpose of business was to produce vacuum technology. Therefore, Hoang and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

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 ($1\frac{1}{2}$) 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 ($1\frac{1}{2}$) 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.

(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.

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

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, Labor Code section 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wages 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.

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."

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

MDC failed to pay Hoang and the Aggrieved Employees for all hours worked by failing to pay them for all hours worked in excess of eight hours per day, in excess of eight hours on the seventh consecutive day of work, on-duty meal periods, and unpermitted rest periods.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code section 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 Labor Code section 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
4. \$100 for each aggrieved hourly employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each aggrieved hourly 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 Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203 (penalties set by California Labor Code section 1197.1).

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

In relevant part, California Labor Code section 1198 states:

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

In relevant part, California 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 no 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 relevant part, section 12 of the Wage Order states:

Rest Periods

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate

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.

California 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 recover period is not provided.

MDC failed to provide all meal and paid rest periods to Hoang and the Aggrieved Employees in compliance with California law. MDC often required Hoang and the Aggrieved Employees to clock out while still working, and take late meal

periods. MDC also required Hoang and the Aggrieved Employees to work during their meal or rest periods. Moreover, MDC failed to provide ten minute rest breaks every four hours or major fraction thereof. MDC failed to pay Hoang and the Aggrieved Employees premium wages on workdays it failed to provide them with one or more meal periods in compliance with California law. Additionally, MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with one or more timely rest periods in compliance with California law.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other 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));
2. \$50 for each aggrieved employee for each initial violation of California Labor Code section 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 section 558); and
3. \$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 Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, Labor Code section 2802, subdivision (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.”

MDC required Hoang and the Aggrieved Employees to travel between MDC facilities and vendors without reimbursing them for doing so. They also required Hoang and the Aggrieved Employees to use their personal phones for working purposes, and did not reimburse them for phone expenses.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows: \$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)).

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and 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.

An employee is deemed to have suffered injury under section 226 if the employer fails to provide accurate and complete information as required by any one or more items listed in Labor Code section 226, subdivisions (a)(1)–(9) and the employee cannot “promptly and easily” ascertain one or more of the following without reference to other documents or information:

- The amount of gross wages or net wages paid during the pay period;
- The total number of hours worked if the employee is not salaried; and
- The number of piece-rate units earned and the piece rate.

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

MDC’s violation was knowing and intentional. Hoang and the Aggrieved Employees often complained about MDC’s Labor Code violations to human resources. Hoang and the Aggrieved Employees notified MDC that it failed to provide them with duty free meal and rest periods. MDC ignored their complaints.

Accordingly, Hoang seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226, subdivision (a), and \$1,000 for each aggrieved

employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 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.

MDC failed to pay Hoang and the Aggrieved Employees all wages earned, including but not limited to all minimum, hourly, and overtime wages and premium wages on workdays it failed to provide them with a meal or paid rest period in compliance with California law, within the time periods set by Labor Code section 204. As a result, MDC failed to timely pay Hoang and the Aggrieved Employees all wages due during employment.

Accordingly, Hoang seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee, plus 25 percent of the amount unlawfully withheld from each aggrieved employee, for each subsequent violations (penalties set by Labor Code section 210).

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

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

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

MDC failed to pay Hoang and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with MDC. By failing to pay Hoang and the Aggrieved Employees as set forth above by such time, MDC is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Hoang seeks civil penalties from MDC as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

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

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 and 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.

MDC has failed to maintain the records required by section 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Hoang and the Aggrieved Employees. Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699, subdivision (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: Tuan Hoang
Walter Haines, Esq.

MDC Vacuum Products, LLC
c/o Agent for Service of Process
Paul Downey
30962 Santana St
Hayward, CA 94544

MDC Vacuum Products, Inc., an entity of unknown form
c/o Paul Downey
30962 Santana St
Hayward, CA 94544

MDC Precision Products, LLC
c/o HR Generalist/Recruiter
Sam Patel
30962 Santana St
Hayward, CA 94544

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 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 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 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.

10 On Wednesday, June 23, 2021, I served the foregoing document described
11 as **FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE LABOR CODE AND CIVIL**
12 **PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR**
CODE §§ 2698, ET SEQ. on interested parties by electronic mail, addressed as
follows:

13 Donald P. Sullivan, Esq.
14 Janelle J. Sahouria, Esq.
15 Jackson Lewis P.C.
16 50 California St., Fl 9
17 San Francisco, CA 94111-4615
18 Donald.Sullivan@jacksonlewis.com
janelle.sahouria@jacksonlewis.com
Suddie.Scott@jacksonlewis.com
Beth.Davis@jacksonlewis.com
Engel.Negrete@jacksonlewis.com

19 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
20 electronic service addresses listed above from my electronic service address
emily@spivaklaw.com.

21 EXECUTED on Wednesday, June 23, 2021, at Los Angeles, California.

22 XXXX (State) I declare under penalty of perjury under the laws of the State
23 of California that the above is true and correct.

24 _____ (Federal) I declare that I am employed in the office of a member of the
25 bar of this court at whose direction the service was made.

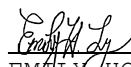
26 
27 _____
28 EMILY HOUNG LY

EXHIBIT 8

EXHIBIT 9

41
FILED

Superior Court Of California
County Of Los Angeles

JUN 21 2012

John A. Clarke, Executive Officer/Clerk
BY Nancy Sandoval Deputy

Received

MAY 18 2012

Fax Filing

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
(UNLIMITED JURISDICTION)**

ALINA GHRDILYAN; EVGENIA
SULTANIAN; and all others similarly situated,

Plaintiffs,

vs.

RJ FINANCIAL, INC., a California
corporation; RAMIL ABALKHAD, an
individual; and DOES 1 through 50, inclusive,

Defendants.

Case No.: BC430633

**~~(PROPOSED)~~ JUDGMENT AGAINST
DEFENDANT RAMIL ABALKHAD**

Action filed: 01/28/2010
CMC: 09/29/2010, 8:30 a.m.
FSC: 04/09/2012, 8:30 a.m.
Trial: 04/09/2012, 8:30 a.m.
Dept: 41, Hon. Ronald M.
Sohigian

Plaintiffs Alina Ghrdilyan and Evgenia Sultanian ("Plaintiffs") filed a complaint Defendant RJ Financial, Inc., a California corporation, on January 28, 2010. On February 24, 2010, Plaintiffs filed a First Amended Complaint which added Ramil Abalkhad, an individual, as a defendant, and a claim against him for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("The PAGA"). In the First Amended Complaint, the Plaintiffs contended that Defendants violated Labor Code sections 226.7, 510, 512, 1194, 1197, and 1198 and Industrial Welfare Commission Wage Order 7-2001 and in so doing, was liable to the Plaintiffs and other aggrieved employees under the PAGA.

On July 26, 2011, the Court granted Plaintiffs' motion to compel further responses to deposition questions, and ordered Defendant Ramil Abalkhad to pay monetary sanctions to

1 Plaintiffs in the amount of \$2,700.00. Defendant Ramil Abalkhad has not paid such amount to
2 date.

3 On April 10 through 23, 2012, the case was tried in Department 41 of the above-entitled
4 court, the Honorable Ronald M. Sohigian, presiding. Defendant Ramil Abalkhad was present
5 throughout the trial. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian appeared for the trial.
6 David Spivak of the Spivak Law Firm and Louis Benowitz of the Law Offices of Louis
7 Benowitz represented the Plaintiffs, Alina Ghrdilyan and Evgenia Sultanian, and the other
8 aggrieved employees. F. Michael Sabzevar of the Law Office of Michael Sabzevar represented
9 the Defendant Ramil Abalkhad.

10 Before the trial without a jury began, Defendant RJ Financial, Inc. petitioned for
11 bankruptcy protection. Pursuant to 11 U.S.C. section 362, the claims against RJ Financial, Inc.
12 were stayed, and the case proceeded to trial against Defendant Ramil Abalkhad only on the
13 claim for civil penalties under the PAGA.

14 The jury was waived. Testimony was heard and documentary evidence was admitted.
15 Following argument, the court considered the evidence. Only Plaintiffs requested a written
16 statement of decision, however, on April 23, 2012, the Court orally presented its tentative
17 statement of decision on the record.

18 **Plaintiff Alina Ghrdilyan**

19 In its tentative statement of decision, the Court awarded the following amounts to
20 Plaintiff Alina Ghrdilyan: (1) For violations of Labor Code sections 510 and 512, \$7,654.60
21 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and
22 Wage Order 7, \$14,218.00 pursuant to Labor Code section 1197.1. This totals \$21,872.60 for
23 Plaintiff Alina Ghrdilyan, of which \$4,572.60 is wages. Of the \$17,300.00 in civil penalties that
24 do not represent wages, twenty-five percent (25%), \$4,325.00, is awarded to Plaintiff Alina
25 Ghrdilyan, and the remaining seventy-five percent (75%), \$12,975.00, is awarded to the
26 California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

27 **Plaintiff Evgenia Sultanian**

28 Additionally, the Court awarded the following amounts to Plaintiff Evgenia Sultanian:
(1) For violations of Labor Code sections 510 and 512, \$5,264.19 pursuant to Labor Code
section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$13,936.50
pursuant to Labor Code section 1197.1. This totals \$19,200.69 for Plaintiff Evgenia Sultanian,

of which \$3,000.69 represents wages. Of the \$16,200.00 in civil penalties that do not represent wages, twenty-five percent (25%), \$4,050.00, is awarded to Plaintiff Evgenia Sultanian, and the remaining seventy-five percent (75%), \$12,150.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

Other Aggrieved Employees

Moreover, the Court awarded the following amounts to the other aggrieved employees:

(1) For violations of Labor Code sections 510 and 512, \$125,000.00 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$200,000.00 pursuant to Labor Code section 1197.1. This totals \$325,000.00 for the aggrieved employees. Of the \$325,000.00 in civil penalties, twenty-five percent (25%), \$81,250.00, is awarded to the aggrieved employees other than the two named-Plaintiffs, and the remaining seventy-five percent (75%), \$243,750.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

As part of its statement of decision, the Court stated that, in committing the acts that led to the Court's award, Defendant Ramil Abalkhad had "the intention simply of trying to run things through and get off as cheaply as he could while he was running his businesses."

After more than ten days had passed from the Court's tentative statement of decision, Defendant Ramil Abalkhad did not request a written statement of decision, object to the tentative statement of decision, nor specify omitted issues to be included in the statement of decision. The Court adopted that tentative statement of decision as its final statement of decision in the manner prescribed by Rule of Court 3.1590(c)(4).

In accordance with the court's Statement of Decision, it is hereby ORDERED, ADJUDGED AND DECREED:

~~1. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian shall have judgment against Defendant Ramil Abalkhad in the amount of \$2,700.00 as sanctions against Defendant Ramil Abalkhad pursuant to the Court's July 26, 2011 decision on Plaintiffs' motion to compel.~~

1 Plaintiff Alina Ghrdilyan shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$8,897.60.

2 Plaintiff Evgenia Sultanian shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$7,050.69.

1 **43** The aggrieved employees shall have judgment under the PAGA against
2 Defendant Ramil Abalkhad in the amount of \$81,250.

3 **4** The California Labor & Workforce Development Agency shall have judgment
4 against Defendant Ramil Abalkhad in the amount of \$268,875.00.

5 The total amount awarded against Defendant Ramil Abalkhad, exclusive of interest,
6 attorneys' fees and costs, is ~~\$268,875.00~~ **\$366,073.29**

7 Defendant Ramil Abalkhad must pay the Plaintiffs and their attorneys on the First
8 Amended Complaint attorneys' fees in the amount of **\$581,770.78** and costs in the amount
9 of **\$21,272.88**.

10 The total amount awarded against Defendant Ramil Abalkhad, inclusive of attorneys'
11 fees and costs, is **\$969,116.95**, plus interest thereon at the legal rate of ten percent (10%)
12 per year.

13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14 **JUNE 21, 2012**
15 DATE

Ronald M. Sohigian
16 THE HONORABLE RONALD
17 SOHIGIAN, JUDGE OF THE
18 SUPERIOR COURT
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25
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27
28

1 PROOF OF SERVICE

2
3 State of California,
County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 9454 Wilshire Blvd., Suite
303, Beverly Hills, California 90212.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 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.

10 On Friday, May 18, 2012, I served the foregoing document described as
11 [PROPOSED] JUDGMENT AGAINST DEFENDANT RAMIL ABALKHAD on interested parties by
placing a true and correct copy thereof enclosed in a sealed envelope, with
12 postage fully prepaid, addressed as follows:

13 F. Michael Sabzevar, Esq.
Law Ofc F Michael Sabzevar
16633 Ventura Blvd #555
14 Encino, CA 91436
msabzevar@aol.com

15
16 XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for
collection and mailing, in the course of ordinary business practice, with
17 other correspondence of The Spivak Law Firm, 9454 Wilshire Boulevard, Suite
303, Beverly Hills, California 90212.

18
19 (BY PERSONAL SERVICE) My agent delivered such envelope by hand to the
home/offices of the addressee.

20 EXECUTED on Friday, May 18, 2012, at Beverly Hills, California.

21 XXXX (State) I declare under penalty of perjury under the laws of the State
22 of California that the above is true and correct.

23 (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.

24 
25 BROCK OYAMA

26
27
28
7/1/2012

EXHIBIT 10

1 DAVID G. SPIVAK, State Bar # 179684

2 THE SPIVAK LAW FIRM

3 9454 Wilshire Blvd.

4 Suite 303

5 Beverly Hills, CA 90212

6 Telephone (310) 499-4730

7 Facsimile (310) 499-4739

8 Email david@spivaklaw.com

9 Attorney for Plaintiffs,

10 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
13 **(UNLIMITED JURISDICTION)**

14 ALINA GHRDILYAN; EVGENIA
15 SULTANIAN; and all others similarly situated,

16 *Plaintiffs,*

17 vs.

18 RJ FINANCIAL, INC., a California
19 corporation; RAMIL ABALKHAD, an
20 individual; and DOES 1 through 50, inclusive,

21 *Defendants.*

Case No.: BC430633

CLASS ACTION

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

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

22 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
23 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
24 RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Executive Officer/Clerk
[Signature]
BY MARY GARCIA, Deputy

THE
SPIVAK
LAW FIRM

1 “Defendants”) for violations of the California Labor Code, the applicable Industrial Welfare
2 Commission Order(s) (“Wage Order(s)”), and the California Business and Professions Code,
3 and as grounds therefore alleges:

4 INTRODUCTION

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 CLASS ACTION ALLEGATIONS

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

30 **Meal Periods Class:** All persons employed by Defendants in California
31 who were not provided with uninterrupted thirty (30) minute meal periods
32 during each work period of five (5) or more hours during the period
33 beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class, and/or Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class, Overtime Class,**
6 **Rest Periods Class, Meal Periods Class, Inaccurate Wage Statement**
7 **Class, Unauthorized Deduction Class, Former Employee Class, and/or**
8 **Indemnification Class.**

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

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

25 27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully
26 alleged herein.

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 "Management Recognition Days," without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

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

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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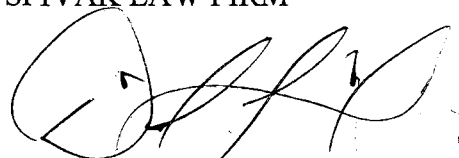
- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

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

OCT 24 2017

Sherri R. Carter, Executive Officer/Clerk
By: V. Jalme, Deputy

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

Jon N. Shields, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

Security Paving Company, Inc.,

Defendant.

Case No. BC492828

Proposed Statement of Decision

Having concluded the trial, the Court now issues a Proposed Statement of Decision.

Pursuant to CCP Section 632 and Cal. Rules of Court 3.1590 (g), the parties shall have fifteen days from the issuance of this decision to object, concur or correct the Proposed Statement of Decision.

The Court shall hold a hearing on the objections on November 17, 2017 at 11:00 a.m.

1 I. BACKGROUND

2 On September 26, 2012, plaintiff filed an individual and class action against Security Paving
3 Company, Inc. ("Security Paving"), a licensed contractor that performs construction work on
4 public works projects throughout California.
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6 The operative First Amended Complaint alleges a class action and representative action for
7 violations of the California Labor Code and Wage Order 16, breach of contract and a violation of
8 the Business and Professions Code arising from Security Paving's operations.¹
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10 In 2016, the Court denied plaintiff's motion to certify the class. The case proceeded solely on the
11 individual claims of plaintiff Jon Shields and a representative action under PAGA brought by
12 Shields as an aggrieved employee.
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14 In August 2017, the Court granted the defendant's motion for summary adjudication as to the
15 PAGA claim for failure to provide meal periods, but denied the motion as to the PAGA claim
16 based on the defendant's alleged failure to provide rest breaks.
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18 In that decision, the court considered whether Labor Code §512(e), which became effective on
19 January 1, 2011, exempted Security Paving from meal period requirements. The court found that
20 Security Paving was exempted from the meal period requirements as a union-signatory
21 construction contractor. Further, the court concluded that because plaintiff's PAGA claim is
22 subject to a one-year statute of limitations and covers the period from September 26, 2011 onward
23 only,² it could not include challenges based on meal-period violations.³
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26 ¹ The plaintiff abandoned his cause of action for breach of contract at closing argument.

27 ² This date is one year prior to the September 26, 2012 filing date of the original complaint.

28 ³ PAGA claims are subject to CCP §340(a)'s one-year statute of limitations period governing "actions for a penalty or forfeiture."

1 As for the PAGA claim for rest break violations, the court considered whether Wage Order 16
2 barred that claim and concluded that it did not. Under section 11(D) of that Wage Order, in cases
3 where a valid collective bargaining agreement provides a final and binding mechanism for
4 resolving disputes regarding rest breaks, the collective bargaining agreement shall prevail. But,
5 under section 11(E) of that order, the collective bargaining agreement exemption shall not apply
6 unless the collective bargaining agreement provides “equivalent protection” to Wage Order 16.
7 The Court found that the collective bargaining agreements at issue in this case did not afford the
8 same protection as the three-year statute of limitations period to recover premium pay for missed
9 rest periods. The court also found that the collective bargaining agreements did not expressly
10 provide for the one-hour premium pay for missed rest breaks. They are either silent on this issue
11 or they provide for pay “at the rate of two times the standard straight-time and overtime” rates.
12 Accordingly, the court denied summary adjudication on the rest period portion of plaintiff’s PAGA
13 claim.

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15 The Court also denied the defendant’s motion for summary adjudication on plaintiff’s individual
16 claims for failure to provide meal periods,⁴ failure to authorize and permit rest breaks, breach of
17 contract, unfair business practices and failure to provide accurate itemized wage statements.

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19 A court trial on these causes of action began on September 19, 2017 and concluded on October 2,
20 2017.⁵ The parties filed post-trial briefs on October 16, 2017. The defendant, thereafter, filed a
21 motion to strike the plaintiff’s pre-trial brief on October 18, 2017. The plaintiff filed an
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24 ⁴ The protections afforded under Labor Code §512(e) foreclose the individual meal period claim for a small
25 period of plaintiff’s individual three-year meal break claim. It would exempt only the period of after January 1, 2011
26 (i.e., Labor Code §512(e)’s effective date). As defendant’s argument under Section 512(e) did not dispose of the
plaintiff’s individual meal period claim, it could not be resolved by way of a motion for summary adjudication. CCP
§437c(f)(1).

27 ⁵ The Court reserved ruling on the defendant’s motion for judgment, which Security Paving filed at the close of the
28 plaintiff’s case, and declined to render any judgment until all evidence was presented. *See Watt v. Kantel* (1970) 13
Cal. App. 3d 249, 253. For the reasons set forth in this decision, that motion is denied.

1 opposition to that motion on October 23, 2017. Thereafter, the Court took the matter under
2 submission and now renders a proposed statement of decision.

3 4 II. OUTLINE OF ISSUES DECIDED AT TRIAL

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6 The Court begins by setting forth the issues to be decided in this trial:

- 7 (1) Did defendant violate the Labor Code by failing to authorize and permit rest breaks to
8 the representative plaintiff and other aggrieved employees for the period from
9 September 2011 to the present? If so, what penalties are owed under the PAGA cause
10 of action as a result of these violations?
- 11 (2) Did defendant violate Labor Code sections 226.7 and 512 by failing to provide plaintiff
12 Jon Shields meal periods for the period September 26, 2009 until December 31, 2010?
13 If so, what unpaid wages are owed to Jon Shields for missed meal periods?
- 14 (3) Did defendant violate Labor Code sections 226.7 by failing to authorize and permit rest
15 breaks to Jon Shields? If so, what unpaid rest break premiums for the period from
16 September 26, 2009 until September 26, 2012 are owed to Jon Shields?
- 17 (4) Did defendant violate Labor Code Section 226 by failing to provide Jon Shields with
18 accurate wage statements for the period from September 26, 2009 until September 26,
19 2012? If so, what penalties are owed to Jon Shields?
- 20 (5) Is Jon Shields owed "waiting time" penalties under Labor Code §§ 201-203?
- 21 (6) Is plaintiff entitled to any relief based on his claim that defendant violated Business
22 and Professions Code Section 17200 *et seq.* If so, what is an appropriate remedy?

23 24 III. PAGA REST BREAK CLAIMS

25 Jon Shields, as a representative plaintiff for himself and other aggrieved employees, alleges that
26 Security Paving violated the law by failing to afford certain of its crewmembers the rest periods
27 mandated by the applicable Wage Order. The plaintiff's PAGA rest break claim covers the period
28 September 2011 through the present.⁶

⁶ Jon Shields began working for Security Paving in late 2008. (Trial Exhibit ("Exh.") 506 at 14-16). The defendant terminated his employment in October 2011 (Exh. 506 at 17). At closing, the Court inquired of plaintiff's counsel whether an employee who did not work for the defendant during a substantial portion of the relevant period of the PAGA claim was properly characterized as an aggrieved employee. Certainly, in a class action setting, such a representative might be challenged on the basis of his adequacy to testify accurately and competently regarding the

1 A. Labor Code Provisions and Wage Order 16

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3 Labor Code section 226.7 prohibits employers from requiring employees to work during any rest
4 period mandated by a Wage Order. It establishes a premium if an employer fails to provide
5 employees a meal or rest period required by the Wage Orders. Under the rule, employers must
6 pay employees one additional hour's pay for failure to provide one or more rest periods. The
7 employer must pay the premium in addition to the compensation owed for the worked time,
8 including time worked during a missed meal or rest period.

9
10 The applicable Wage Order in this case -- Wage Order 16 -- provides that "[e]very employer *shall*
11 *authorize and permit* all employees to take rest periods, which insofar as practicable, shall be in
12 the middle of each work period The authorized rest period shall be based on the total hours
13 worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major
14 fraction thereof." Wage Order 16-2001, § 11(A)(emphasis added).

15
16 Work Order 16 -- covering the construction industry -- contains a measure of flexibility regarding
17 rest breaks not found in other wage orders. (See Exhibit 513 at 7). Employers in the construction
18 industry may stagger rest periods to avoid interruption in the flow of work and to maintain
19 continuous operations, or may schedule rest periods to coincide with breaks in the flow of work
20 that occur in the course of a workday. Rest periods are to take place at designated areas, which
21 may include or be limited to the employees' immediate work area. Rest periods need not be
22 authorized in limited circumstances when the disruption of continuous operations would
23 jeopardize the product or process of the work. However, the employer shall make up the missed

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27 defendant's practices during much of the relevant period. PAGA, however, does not impose class action requirements
28 on its representatives. *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985. Further, the testimony of other witnesses,
including the defendant's witnesses, supported the finding that in certain settings -- most specifically in crews working
on overnight road paving projects with required lane closures -- the defendant's rest break practices were the same in
2015 as they were in 2011.

1 rest period within the same workday or compensate the employee for the missed ten minutes of
2 rest time at his regular rate of pay within the same pay period.⁷

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4 A rest period -- whenever it is authorized and wherever it occurs -- must be "duty-free."
5 *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 237. In 2016, the Supreme
6 Court in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, clarified the rest period
7 obligations. It explained that employers must relieve employees of all duties and relinquish any
8 control over how employees spend their time during rest periods. However, the Division of Labor
9 Standards Enforcement will not find a rest period violation where an employee who is authorized
10 and permitted to take a rest period freely chooses, without any coercion or encouragement, to
11 forego or waive it. In *Augustus*, the court also explained that circumstances may occasionally
12 arise that prevent employees from taking a rest period at a scheduled time or cause an interruption
13 in a rest period. If this occurs, employers can reschedule rest periods when the need arises, or if
14 they interrupt employees during a rest period, provide them another rest period to replace the one
15 that was interrupted.

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17 If an employer fails to provide an employee a rest period in accordance with the applicable
18 provisions of the wage order, "the employer shall pay the employee one (1) hour of pay at the
19 employee's regular rate of compensation for each work day that the rest period is not provided."
20 (Wage Order 16-2001 §11(D); Cal. Lab. Code § 226.7).

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25 ⁷ As for timing, California Wage Orders require employers to authorize and permit rest periods for non-exempt
26 employees whose total daily work time is at least 3 and a half hours. The mandatory rest periods must be, insofar as is
27 practicable, in the middle of each work period and must be at the minimum rate of ten consecutive minutes for each
28 four hours or major fraction thereof. The employer must count rest periods as working time and, accordingly, must
pay for such periods. For a shift longer than 3 and a half hours and less than six hours, a ten minute rest break is
required. For a shift over six hours and up to ten hours, twenty minutes of rest is required. For a shift of over ten up
to fourteen hours, thirty minutes of rest is mandated. The Wage Orders do not mandate when the breaks are taken,
only that they fall in the middle of work periods "insofar as practicable."

1 B. The Credible Evidence Establishes that Defendant Did Not “Authorize and Provide”
2 Duty-Free Rest Breaks During Production Downtimes to Nighttime Road Repair and
3 Replacement Crews.

4 At closing argument, plaintiff’s counsel confusingly conceded, then repudiated, then later
5 conceded after questioning by the court, that the focus of the plaintiff’s PAGA claim was not
6 directed at the defendant’s employees who worked on daylight crews in those locations where
7 there were no time-pressures associated with lane closures. Rather, the crux of the challenged
8 practice in this case was directed at defendant’s failure to afford employees working on nighttime
9 road paving and replacement crews rest breaks in which they were relieved of all duties and in
10 which management relinquished all control.⁸

11 Both plaintiff and defense witnesses testified that during these nighttime road replacement jobs –
12 which generally entail time-limited lane closures -- workers do not receive fixed rest breaks at
13 defined intervals during the shift.⁹ Instead, Security Pacific expected that rest breaks could be
14 accomplished by having their crews take breaks during downtimes in the overnight construction
15 process.¹⁰

17 ⁸ In the post-trial brief, plaintiff once again attempted to re-define its “aggrieved employees” group to extend
18 beyond the defendant’s nighttime freeway paving operations employees. Defendant objected strenuously to this
19 “about face” by the plaintiff. (See Defendant’s Motion to Strike Plaintiff’s Post Trial Brief at 3). The Court agrees
20 with the defendant. After five years of litigation and nine years of trial, and two recesses for the plaintiff’s counsel
21 to confer during their closing statement and rebuttal, the plaintiff identified a representative group upon which the
22 action was asserted. This decision cannot be revisited two weeks after the close of the case.

23 ⁹ Defendant’s witness Jeremy Strobl testified that the defendant’s rest break policies were no different on the lane-
24 closure road replacement jobs than on jobs where lane closures were not required. That testimony was flatly
25 contradicted by defendant’s witnesses Shane Hunter and Ray Guillen, both of whom supervised night crews on Cal
26 Trans road replacement policies. Unlike many defense witnesses, these supervisors testified that break times were
27 not fixed and that employees were told and were expected to take their breaks during “downtimes” in the
28 production process. This admitted practice stands in stark contrast – and contradicts – the testimony of many of the
29 defendant’s witnesses who worked almost exclusively on day shifts that they were authorized and permitted to take
30 fixed and regular rest periods.

31 ¹⁰ As for this group, the credible testimony provided by both plaintiff’s and defendant’s witnesses clearly supports
32 that roadway replacement and repair crews, who operated largely overnight and subject to Cal Trans lane closures,
33 generally did not receive fixed rest breaks but, instead, were instructed by their supervisors to use “downtime” for
34 meal and rest breaks. This evidence provides a basis upon which the plaintiff can claim a shared employment
35 practice by Security Paving – at least as to a cognizable group of employees -- upon which a representative action
36 can be based. Cf. *Bronco Wine Co. v. Frank A. Logoluso Farms* (1989) 214 Cal.App.3d 699, 720.

1 According to the defense witnesses, during these downtimes, employees were free to leave their
2 equipment, leave the location and otherwise absent themselves from the immediate vicinity in
3 order to take a legally compliant rest period during which they would not be subject to managerial
4 control.

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6 The credible testimony at trial clearly failed to corroborate the defendant's version of how
7 downtimes were, in fact, used by nighttime construction crews. The credible testimony of a
8 number of witnesses established that a heavy equipment worker was not free to leave his vehicle
9 or that laborers performing traffic control could not abandon their positions during "downtimes" in
10 order to receive a legally compliant – management control-free – rest period. Carpenters were not
11 allowed to simply stop working on pouring forms in order to take a ten-minute break. Credible
12 and compelling testimony from a number of foremen and crewmembers supports the court's
13 finding that workers were instructed to "stay busy" during downtimes. In fact, on more than one
14 occasion, Jon Shields was "written up" for sleeping in his truck during a downtime. If, as
15 defendant argues, an employee was free of management control during this period, why would the
16 defendant have written him up for the exercise of that autonomy?

17 The credible testimony of a number of witnesses called by both plaintiff and defendant establishes
18 by a preponderance of the evidence that Security Paving did not relinquish control over these
19 employees at any time once they arrived at nighttime road paving worksites.¹¹ Throughout these
20 shifts, the various trades were performing interrelated and time-critical functions. Supervisorial
21 control over their activities – including being directed by walkie-talkie – was continuous.

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25 ¹¹ Darrel Matheson, a foreman for Security Paving for four years, credibly testified that during the "set up work" part
26 of a paving process -- which accounted for about 20 percent of his shift working on highway projects -- you could take
27 a meal or rest break, but that after the "pour" started -- usually about 80 percent of the shift time -- you could not take
28 any breaks. Work during that part of the shift continued without interruption. As he explained, when you are pouring
concrete, "it's not stopping . . . because you can't have a cold joint on your concrete slab you're pouring." To afford the
crew a break (even of ten minutes) would mean that "all your concrete is going to be hard behind you by the time you
take off again." And, while authorized or permitted breaks would have been possible had additional "relief"
crewmembers been provided, Security Paving did not typically structure its crews with relief workers.

1 Moreover, the credible testimony of a number of workers on these nighttime paving crews
2 corroborated that they were expressly told by their foremen to stay busy at all times. To quote one
3 witness who patiently tried to correct defense counsel during cross-examination: "You're not
4 understanding, sir. There's no rest breaks. It's not a matter of taking one. You don't get them.
5 They're not there." Dennis Hake, who worked as a grading foreman, was instructed by his
6 superintendent to have the crewmembers work through meal breaks.

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8 Plaintiff's witnesses credibly testified that they were not free to use pauses in the production
9 process to rest. In fact, one witness credibly testified that the company's reputation was that if you
10 couldn't work and eat at the same time, you didn't eat. While waiting their turn to perform a task,
11 workers were instructed to stay busy – sweeping, chipping the cement trucks, cleaning the interior
12 – any number of tasks. Credible testimony established that if you didn't stay busy or if you left
13 even for the minute or two it would take to relieve yourself, you might find yourself out of a job.

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15 Ryan Tevelde, a heavy equipment operator called by the defense, credibly testified that he never
16 believed that he could walk away from the equipment during "downtime." Shane Hunter, another
17 of the defendant's witnesses, testified that although he expected employees to use a slow period
18 for breaks, he also talked to them during their breaks and wanted them to stay busy removing
19 cement from their vehicles and standing by their trucks while waiting in the line for the cement
20 pour.¹² Hunter complained that he caught Jon Shields napping while waiting in line to pour
21 concrete – without ever ascertaining whether Shields was, in fact, taking a rest break.

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23 John Guerra testified credibly about once trying to take a break during one such "downtime."
24 While waiting for dowel bars as part of a cement road replacement job, he bent down to take a
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27 ¹² A compelling piece of testimony by Dennis Hake underscores that "downtimes" were not duty-free. When he got
28 "mad," Hake would instruct his crew that they were taking a lunch break today – and during that period of time, they
would be duty-free. When he wasn't fed up with the company, however, he followed his bosses' instruction and
instructed his crews to "work through."

1 rock out of his shoe and reached into his lunch box and took out a Gatorade and drank it. During
2 that brief moment, his Superintendent Shane Hunter, pulled up in his truck and instructed him to
3 get to work. As Guerra testified (in a version where the language had been cleaned up for court),
4 he was told by Shane that "there's something for you to do -- do it." As shown by this testimony
5 and that of other plaintiff's witnesses, even during downtimes, these crewmembers were told to
6 keep busy.

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8 The Court finds, based on this credible testimony, that production "downtimes" were not free of
9 supervisory control. In fact, the named plaintiff and aggrieved employee, Jon Shields, testified
10 about the practical limitations on affording rest breaks (in which supervisory control was
11 surrendered) given the size of the crews and the amount of work undertaken by Security Paving
12 during any one shift. As he credibly and competently described, the process of removing and
13 replacing highway surfaces is a continuous one.¹³ The workers operate, essentially a train, of
14 complementary and interconnected tasks. Each one of which is dependent on the "just in time"
15 presence of the next step. As a member of a cement paving crew, the pour required continuous
16 and uninterrupted work. And, supervisors ensured that continuity by ongoing and constant
17 supervision and control. While it might have been possible to hire relief workers to allow these
18 breaks to occur, Security Paving did not do so. Nor did they pay these workers premiums when
19 the nature of the work occasioned missed rest breaks.¹⁴

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24 ¹³ Exacerbating the continuous nature of the construction work being performed by pavement crews was the additional
25 pressure of Cal Trans' lane closure rules. As credibly testified to by Darren Jones, the closure time of a freeway lane
is limited. The work to be done has to be completed in a short period of time. "Once we got started, we didn't stop
until we were -- the job was finished for the night."

26 ¹⁴ The only evidence showing the payment of premium pay was for the period after January 2015 and shows only 19
27 premiums paid for the entire two and a half year period. Darren Jones credibly testified that in his experience if a rest
28 break could not be afforded, they were entitled to compensation for those missed breaks. He never received extra pay
from Security Paving for those missed rest breaks. Dennis Hake also credibly testified that neither he nor his crew
received premiums for missed rest breaks.

1 The company also monitored its crews to ensure that the workers kept busy all the time. Hake
2 testified that his Superintendent – who was Security Paving’s owner’s son Jason – would sit in a
3 pick-up truck across from work sites and monitor the crews to ensure that they remained busy at
4 all times. As Hake described it, he was "bird-dogged" by Jason to ensure that his crew did not
5 take breaks.

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7 On occasion, especially at the beginning of a shift during which the project was being set up,
8 workers might be able to take a single rest break during which they were not subject to the control
9 of their supervisors. For example, on a night paving project, the volumetric truck drivers might be
10 able to take a ten-minute break on their way to the freeway location after filling up their truck.
11 Once they arrived at the work site, however, there were no periods of time in which they were free
12 to leave their vehicles, or even take a nap while in their vehicles. Second rest breaks during an
13 eight-hour shift did not occur.

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15 A number of these witnesses credibly testified that they were either expressly told or were led to
16 believe that you would be fired if you requested or took a rest break. Darren Jones testified that
17 "we knew we weren't allowed to [take a rest break]." And, that if you tried to take a break or
18 lunch, then there was a good chance you probably weren't going to work the next night. John
19 Guerra credibly testified that when workers complained about the absence of breaks, they would
20 not be working at the job site the next day.

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22 The absence of any written policy or any means by which the company could verify that
23 employees were receiving their required rest breaks further supports the Court’s finding that
24 legally compliant rest breaks were neither authorized nor permitted. Although there was a
25 contention by the defendant that it orally described its meal and rest break policy at every
26 “tailgate” safety meeting and obtained signed statements from employees attesting to that fact, the
27 Court believes the credible testimony that such presentations did not occur. According to the
28 credible testimony of a former foreman for Security Paving, Darrel Matheson, he never spoke with

1 management regarding any rest break policy and he irregularly attended or conducted tailgate
2 meetings. He estimated that he had maybe 15 or 20 of such meetings during his four-year tenure
3 at Security Paving. And, at those meetings, he never discussed rest breaks. Rather, as makes
4 sense, he discussed the work that they were to be performing that week and any unique safety
5 concerns posed by that work. Matheson also credibly testified to handing out multiple, blank
6 forms to his crews to sign before they could receive their paychecks.¹⁵

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8 Nor did complaints made by these workers as to the unavailability of rest breaks to their unions
9 obtain needed redress. As credibly testified to by several of the plaintiff's witnesses, they told
10 business agents and union officials that they were not getting bargained for rest breaks. But, those
11 complaints were not acted upon.¹⁶ For a significant portion of the relevant period, the economy
12 and construction industry were in steep decline. Work was scarce. Unions were unwilling to
13 lodge complaints against contractors when "we just started to get work again." The unions were
14 unwilling to "piss off" Security Paving – a large employer -- by lodging a complaint about missed
15 rest breaks. And, employees were concerned that if they complained about missed breaks, that
16 they would be "blackballed" at the union hiring hall. As John Guerra reminded everyone, "I
17 wanted just to work, man . . . I lost everything in 2009, you know. I was just getting on my feet
18 again. I was just happy to be working." When Bret Leutzinger complained to his union, he was

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22 ¹⁵ Being handed blank forms to have their crews sign was also testified to credibly by Hake. He also recalled being
handed "stacks of sheets" by his superintendents when they were trying to catch up on their paperwork.

23 ¹⁶ The court finds entirely not credible the testimony of a number of union representatives called by the defendant as
24 witnesses. Unlike the characterization of these witnesses as disinterested, they clearly had an interest in appearing to
25 have performed their role as protecting their members. And, surprisingly, one representative in particular, testified as
26 if he currently worked for Security Paving. His testimony was remarkably similar to answers given by current
27 employees of the firm, even though he hadn't worked at the company in some time. The union reps claimed to have
28 never heard a complaint; claimed that their business agents routinely monitored working conditions at these worksites
and generally testified to policies at Security Paving for which they had no personal knowledge. Their demeanor
while testifying was hostile and defensive and they expressed no real concern about the possibility that their union
members had received unfair treatment by an employer. They appeared to be entirely captured by a large employer
who afforded their members regular and high-paying work. The court affords the testimony of these witnesses no
weight.

1 told that there were over 500 operators on the union hall hiring list and that he was lucky to have a
2 job.

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4 Providing the plaintiff's witnesses with an extra measure of credibility is the fact that the testimony
5 that these witnesses provided at this trial is potentially adverse to their financial interests. These
6 workers work for a number of different contractors and remain busy by moving from one project
7 to the next. It is not without considerable risk to future employment that a worker comes forward
8 to report the types of violations testified about in this case. That they were willing to do so, and
9 that they did so in such a credible fashion, gives even more weight to this testimony.¹⁷

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11 The witnesses called by Security Paving to rebut the aggrieved employee's claims fell into two
12 general groups -- union officials who had every reason to deny ever hearing or grieving a
13 complaint about missed breaks, and current employees, who also had financial and employment
14 reasons to testify as they did.¹⁸ Every single defense witness who worked for Security paving
15 testified that he had not missed a single rest or meal break (although it might have been briefly
16 postponed for less than ten minutes) or, if he had, he had been paid a premium.

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18 These witnesses and their testimony were neither credible nor was the testimony corroborated by
19 contemporaneous employment or payroll records. Despite testimony that missed rest breaks were
20 recorded by foremen on timesheets, the defendant failed to mark or admit as a separate exhibit
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23 ¹⁷ By contrast, the defendant's current employees uniformly sponsored the wholly incredible testimony that they were
24 indifferent to losing their jobs -- all of which were incredibly high-paying positions. These defense witnesses had an
25 obvious and clear financial motive to testify in a way to assist the company. When each and every one of them
26 testified that they were indifferent to the possibility of losing their six-figure salaries, they lost a good deal of
credibility. Equally problematic to their credibility was the recurrent admission that they'd spoken with defense
counsel and had been told what questions to expect to be asked.

27 ¹⁸ The union witnesses -- all of whom uniformly testified to hearing nothing and knowing nothing -- were entirely not
28 credible. They actually testified to rest period practices at Security Paving despite their testimony that they personally
had not investigated any complaints nor had they regularly visited Security Paving work sites.

1 even one of those handwritten, amended timesheets.¹⁹ Nor did the company produce any evidence
2 of the premium payments made for most of the relevant period for these missed breaks. The
3 payroll system evidence of premium payments showed 19 missed rest periods since January 2015
4 -- a remarkably small number in light of the company's 500 or more employees and the nature of
5 the work being performed.²⁰

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7 Many of the witnesses called by the defendant did not work on projects that involved lane closures
8 or night work. Jeremy Strobl rarely worked on freeway repair and panel replacement. Kenneth
9 Dahlke worked at the concrete plant. Charles Graham and Jose Munoz both worked day shifts as
10 carpenter journeymen and carpenter foremen. Robert Walsh worked as a laborer on day shifts.
11 Ryan Tevelde, Chris Manoukian, Abel Lemus, Raymond Reames, Eduardo Castaneda, Kamran
12 Sepanlou and Dan Jelenicki predominantly worked on day shifts at locations where there were no
13 temporary lane closures.

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15 Of those witnesses who worked day shifts, their testimony was inconsistent and failed to establish
16 defendant's claim that it had a consistent and enforced policy of authorizing and permitting two
17 rest periods -- one in the morning and one in the afternoon. Many of these defense witnesses
18 testified to different rest break practices in key aspects. Graham's crew had fixed rest and meal
19 breaks and would be required to ask permission if they wanted to take a break at a different time.
20 Jose Munoz, also a carpenter foreman, instructed his crew when to take their breaks. Walsh took
21 his breaks at fixed times and never deviated from that schedule for "any reason." Ryan Tevelde,
22 an equipment operator, took regular breaks but would deviate from a fixed schedule if necessitated
23 by the work being performed without asking permission.

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26 ¹⁹ In defendant's post-trial brief, defendant drew the court's attention to two pages of an admitted exhibit of hundreds
27 of certified payroll records -- an exhibit that was so voluminous that it was submitted in the form of a thumb drive.
(Exh. 55). The absolutely scarcity of such examples supports the conclusion that, in the vast, vast, vast majority of
occasions, missed rest break premiums were not paid by the defendant.

28 ²⁰ Until 2015, defendant did not have a time-keeping system that was capable of capturing or preserving this
information.

1 Only five of the defendant's nineteen witnesses worked on the types of shifts that are being
2 challenged by these aggrieved employees -- overnight road replacement and paving shifts
3 involving lane closures during which work assignments for lane removal and replacement had to
4 be performed within a relatively short time period. As to the small number of defense witnesses
5 who had worked on night shifts, they did not testify consistently or credibly as to whether and
6 when rest breaks were provided during those assignments. As discussed above, two defense
7 witnesses testified that they instructed their crews to use "downtimes" for meal and rest breaks.
8 Tevelde testified that he took breaks and he never believed that he could walk away from the
9 equipment during "downtime." Abel Lemus testified that he took his breaks during downtime.
10 But, Kamran Sepanlou, testified that he took breaks whenever he wanted to and he was free to
11 take a break and walk away from his equipment during a cement pour if he wanted and no
12 questions would be asked.

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14 Other of these defense witnesses were impeached by prior testimony or appeared during their
15 testimony as evasive, defensive and not credible. Michael Rodriguez, the defendant's "PMQ" was
16 entirely not credible. His demeanor while testifying was hostile and defensive. His testimony, in
17 critical aspects, defied common sense. For example, although he testified that there was no
18 record-keeping by the defendant regarding rest breaks until 2015, he was confident that before this
19 change in 2015 employees had been paid premiums "many times" for missed rest breaks.²¹ This
20 testimony was contradicted by his deposition testimony. At his deposition, he testified that he was
21 not aware of employees being paid a one-hour penalty for rest breaks.²² He also incredibly
22 testified that meal and rest breaks were discussed at *every* tailgate meeting, even though he was
23 personally present at only maybe 20 of the more than 2000 weekly meetings held over his seven-

24
25
26 ²¹ The documents show that Security Paving has only paid 19 hours of missed rest periods since the new program was introduced in January 2015.

27 ²² Equally incredible was defendant's witnesses' claim that Wage Order 16 was prominently posted at all the
28 overnight road paving job sites. There was no fixed location based on the nature of these projects at which such a posting could have been provided. The credible testimony of plaintiff's witnesses is that they never saw any postings because they worked hours in which the main offices were closed.

1 year employment history at Security Paving. His most incredible testimony was his claim that the
2 2015 improvement in record-keeping at Security Paving had nothing to do with this lawsuit,
3 despite a complete lack of foundation as to that question because he admitted that he'd never
4 attended a meeting during which the lawsuit was discussed.

5
6 Shane Hunter, a superintendent for Security Paving, provided some of the most unbelievable
7 testimony at the trial. He acknowledged that the road replacement crews were expected to
8 complete a target of pavement removed and pavement replaced for each shift. He also testified
9 that Cal Trans lane closure requirements and stipulated time for completion in contracts are factors
10 in making work schedules. He then, however, went on to testify that these conditions have no
11 effect on the pace at which work is performed and whether breaks are authorized and permitted.
12 He admitted that even though there are liquidated damages as much as \$30,000 per hour, the
13 workers would never work through lunch or breaks for the sake of contract completion. He then,
14 amended his testimony and admitted that although he did discuss daily project completion
15 deadlines with the foremen who reported to him, he never discussed project completion targets
16 with them. How one can discuss one without discussing the other was never made apparent. His
17 inconsistent testimony severely affected the credibility of his testimony regarding whether rest
18 breaks were authorized and permitted by the defendant.

19
20 The defense witness who offered the most unbelievable testimony was Ray Guillen, the foreman
21 who worked, at least for some relevant period, with plaintiff Jon Shields. Guillen was sullen,
22 defensive and avoidant while testifying. His posture and attitude revealed an unbelievable
23 antipathy for the plaintiff. Like other defense witnesses, Guillen started answering questions
24 before defense counsel even finished asking them -- showing that he clearly had been told what
25 questions would be asked and had prepared answers with the assistance of someone else. During
26 cross-examination, Guillen was visibly angry with plaintiff's counsel.

1 Moreover, Guillen's testimony made no sense. His version of Bret Leutzinger's complaint about
2 the absence of breaks is one example. Why would an employee voluntarily retreat from a
3 complaint about receiving breaks -- as Guillen testified? The only logical explanation -- which
4 was proffered by Leutzinger himself -- would be that the employee believed that he would be
5 retaliated against if he continued to complain.

6
7 Another incredible part of Guillen's testimony is that he told his crews -- each and every week at
8 every single tailgate meeting -- about the company's meal and rest break policies. And, what
9 would he have told them? According to him, crews were to take breaks while there was
10 "downtime." The problem with that testimony is that when Jon Shields took a nap during such a
11 "downtime" break, he was written up -- twice. So, if you are disciplined for taking a nap during
12 downtime, how can you take a break during which you are free from management control? How
13 does a foreman know if the nap you are taking is your break or not? How can you be relieved of
14 all responsibility, and yet be disciplined for taking a nap during the same downtime?

15
16 That the defendant is subject to oversight by Cal Trans and other regulatory agencies does not
17 persuade the court that duty-free rest breaks during downtime were authorized and permitted. It
18 would be virtually impossible for the intermittent presence of government representatives during a
19 nighttime road replacement operation -- who would be focused on progress of the task,
20 engineering/plans or questions of safety compliance -- to detect the absence of rest breaks and/or
21 the failure to pay a premium wage for those missed breaks. Even the occasional business agent of
22 the unions failed to detect the defendant's non-compliance. As credibly testified to by a number of
23 plaintiff's witnesses, employees were too scared to complain and business agents were too
24 captured by the employer to investigate. Again and again, the absence of a complaint was
25 considered by the union to be a reason not to investigate.

26
27 Nor does the existence of a number of collective bargaining agreements -- all of which were
28 admitted as exhibits during the defendant's case -- exonerate or excuse the failure by Security

1 Paving to authorize and permit nighttime road repair and replacement crews to take legally
2 compliant rest breaks. While the defendant may have believed that it provided a complete defense
3 for the workplace practices it engaged in, it does not – as a matter of law – provide that protection.
4 And, that the company was required to pay for an eight-hour shift, even if the shift workers
5 completed their tasks before eight hours elapsed does not provide an excuse or defense to the
6 company’s failure to authorize and permit employees to take rest periods, or to pay premiums for
7 missed periods.²³

8
9 In conclusion, the plaintiff has met his burden of proving that the defendant failed to comply -- at
10 least with regard to nighttime road replacement and repair crews -- with the Labor Code's
11 requirements with regard to rest breaks.

12
13 C. The Petersen Survey and Damage Study Are Entitled to No Weight

14
15 Having established the factual existence of a violation of the labor laws based on Security
16 Paving’s failure to afford nighttime road repair and replacement crews legally compliant rest
17 breaks, the next question is how many aggrieved employees on how many shifts failed to receive a
18 legally compliant rest break?

19
20 Under Labor Code Section 2699(a), aggrieved employees can initiate actions to recover civil
21 penalties for Labor Code violations that may be recovered by the Labor and Workforce
22 Development Agency (“LWDA”) or any of its departments, divisions or employees. To prevail in
23 his representative claims, Plaintiff must prove Labor Code violations with respect to each and
24 every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA. *See*
25 *Hibbs-Rines v. Seagate Tech., LLC* (N.D. Cal. Mar. 2, 2009) 2009 WL 513496, at *4.

26
27 ²³ Although one or two witnesses testified to leaving early on those days when rest breaks were missed, the vast
28 majority of the witnesses for both sides testified to working an eight-hour shift and remaining at work until the end of
the shift.

1
2 Such actions are fundamentally law enforcement actions, with the aggrieved employee acting as a
3 private attorney general to collect penalties from employers who violate labor laws. *Esparza v. KS*
4 *Industries* (2017) 13 Cal.App.5th 1240-1241 (the employee plaintiff represents the same legal right
5 and interest as the LWDA). In a PAGA representative action, the government enforcement entity
6 is “always the real party in interest in the suit.” This is an important distinction between civil
7 penalties and statutory damages. *Id.* at 1241.

8
9 To establish the number of Security Paving employees who were not afforded and permitted a
10 legally compliant rest break during the PAGA period, plaintiff proffered a survey and report
11 prepared by Dr. Jeffrey Petersen. This survey was undertaken to measure how many aggrieved
12 employees during the PAGA period missed a legally compliant rest break and to compute their
13 unpaid wage amounts, penalties and interest.²⁴

14
15 As a preliminary matter, Dr. Petersen received from plaintiff’s counsel a list (“the July 2017 list”)
16 of individuals provided by the defendant as part of a “contact list” process. Of the 1013 names on
17 that list, 858 of these individuals had phone numbers. If an individual did not have a phone
18 number, he or she would be excluded from consideration for the survey.²⁵

19
20 Dr. Petersen then randomly ordered the remaining names from the July 2017 contact list provided
21 by the defendant and identified the first 400 persons on this list.²⁶

22
23 ²⁴ Before trial began, defendant moved to exclude Dr. Petersen’s survey as unsupported by general scientific theory
24 and having been conducted using improper scientific survey techniques. *See Sargon Enterprises, Inc. v. University of*
25 *Southern California* (2012) 55 Cal.4th 747, 772. Although the court denied that motion, it did so with the
understanding that the weight to be given to the plaintiff’s evidence would be independently evaluated after the
conclusion of all the testimony. *Cf. Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 60.

26 ²⁵ Although Dr. Petersen testified that the elimination of employees without phone numbers would have no effect on
27 the survey results because whether or not an individual has a working phone number is not likely a source of bias, his
only authority for this proposition was an article that he wrote. (Exh. 41 at 3, n.12).

28 ²⁶ Dr. Petersen testified that he believed that 400 was a sufficient size for his survey based on his “pilot study” that he
claims to have performed previously. Dr. Petersen did not perform a pilot for his 2017 survey. The survey that he

1 Dr. Petersen then contacted Susan Allman to survey these persons. Ms. Allman is a CPA and is
2 his business partner's daughter-in-law. Ms. Allman has received no formal training in survey
3 techniques; but she conducted two other surveys for Dr. Petersen. Dr. Petersen gave Ms. Allman
4 instructions on the telephone as to the "proper survey protocol."²⁷ Dr. Petersen instructed Ms.
5 Allman to keep a call log to detail her interaction with potential survey participants, including
6 whether she was able to validate that the phone numbers belonged to the people on the random
7 list.

8
9 Ms. Allman attempted to call each individual on the list of 400 four times. Out of the 400, 162
10 had valid phone numbers and 91 participated in the survey.²⁸

11
12 In the survey that Dr. Petersen prepared, he asked the participants whether they had *received* rest
13 breaks, which he defined as a ten-minute period where they were relieved of their job
14 responsibilities.²⁹ (Exh. 41 at 22 (emphasis added)).

15
16 If the participant provided an answer, such as "everyday" or "always," the survey would conclude.

17
18 submitted to the court for purposes of the 2016 motion for class certification was not a "pilot" for this survey – despite
19 his testimony to the contrary. The declaration filed by Dr. Petersen in support of the 2016 survey did not mention nor
20 did it describe the survey conducted in 2016 as a "pilot" survey. Further, the 2016 survey asked different questions
21 than those posed in the 2017 survey. Dr. Petersen's testimony where he claimed that the 2016 survey was a pilot for
22 the 2017 survey is wholly not credible and generally (adversely) affected his credibility with regards to his entire
23 testimony.

24
25 ²⁷ That protocol and the particular training received by Ms. Allman was not described in Dr. Petersen's report, other
26 than by citing to a chapter in a book written by Robert Groves. Ms. Allman was not given scripts regarding certain
27 responses to particular inquiries by the participants; she was told only to refer questions to Dr. Petersen. Ms. Allman
28 was not told to make her phone calls during identified times of the day, nor was she instructed on how to record
information provided by the participants fully and accurately. At the time that she conducted the survey, Ms. Allman
was aware of the lawsuit, the company and that the survey sought to obtain information regarding the participant's
employment.

²⁸ Listed employees who spoke Spanish were eliminated from participation in the survey because Ms. Allman did not
speak Spanish. (Exh. 41-1).

²⁹ Specifically, the survey asked each participant: "[t]hinking about your entire employment period at Security
Paving and all the different projects you worked on; if you worked a five day work week, how many of those days
would you receive a 10 minute paid rest break for every four hours worked, on average?"

1 For all other respondents, the survey asked each participant to estimate the exact number of days
2 that they had *received* a rest break. (Id.)

3
4 Then, the survey presented the participants with an open-ended question: “What was the reason,
5 or reasons, you did not receive the rest breaks?” (Id.)

6
7 If the participant reported that they did not receive a rest break, the survey then asked whether
8 they’d received a payment for their missed rest break time. (Id.)

9
10 The survey also asked the participants if the frequency regarding receiving rest breaks changed
11 depending on the project and they were asked, by year, to estimate for each year worked how
12 many rest breaks they received, on average. (Id.)

13
14 The potential survey participants knew about the litigation-related purpose of the survey in
15 advance of receiving a phone call. In a letter sent by plaintiff’s counsel to those employees on the
16 July 2017 list in advance of the survey being conducted, the plaintiff’s counsel told the potential
17 interviewees that they were “potentially” aggrieved employees. (Exh. 41 at 4, 25). In the event a
18 survey participant didn’t read or forgot about the letter, Ms. Allman reminded the participants that
19 they were potentially interested parties in a lawsuit: “[w]e have been asked by the lawyers who
20 seek to represent employees who performed work for Security Paving in a collective action
21 lawsuit to conduct a survey.” (Exh. 41 at 21).

22
23 The survey was conducted over a very brief period of time – during approximately six days in late
24 August 2017. (Exh. 41-1 (Excel spreadsheet of Allman call-log contained on disc attached to the
25 hard copy portion of Exhibit 41)).

1 For those persons who participated in the survey, their responses to the open-ended question 6
2 were recorded by Ms. Allman.³⁰ These answers were provided to Dr. Petersen who reviewed and
3 coded the information obtained in the survey. Specifically, Dr. Petersen took these answers to the
4 open-ended question 6 asking the participant to explain why a rest break had not been provided
5 and then assigned either a 1 or 0 to those responses. A 1 was used to signify that a break had been
6 provided and a 0 was used to show that a legally-compliant break had not been received. (See CD
7 attached as part of Exhibit 41 at Excel Tab Analy L2). Thus, coding was used by Dr. Petersen to
8 interpret answers to the open-ended question 6 ("What was the reason, or reasons, you did not
9 receive the rest breaks?") to determine how frequently a violation occurred.

10
11 Dr. Hildreth, defendant's expert, challenged certain of the coding decisions made by Dr. Petersen.
12 For example, he declined to agree with Dr. Petersen that an answer of "Don't know just went
13 along with the program" should be counted as a rest break violation. Another example, "pouring
14 concrete they would leave early" was also recorded as a violation, even though the employee can
15 elect to take their rest break at the end of the shift by leaving early.

16
17 When asked to explain the methodology that he used in assigning a violation to an explanation,
18 Dr. Petersen vaguely testified that these answers didn't "indicate any personal choice to me." As
19 he explained further why he coded certain answers as violations:

20
21 "Well, they were just – the situation, as I understood it, is they're just out there working
22 and they didn't get a break, so they don't know why they didn't get a break. It just didn't
23 happen."

24
25
26
27
28 ³⁰ An additional four responses were included by Dr. Petersen in his report, but they were obtained in an earlier survey
conducted by him as part of plaintiff's class certification motion.

1 Based on this coding, Dr. Petersen then computed the percentage of survey participants who stated
2 that they did not receive all of their required rest breaks due to reasons other than personal choice
3 and computed PAGA penalties based upon this information.

4
5 Dr. Hildreth, who testified for the defendant, criticized a number of errors in the design and
6 implementation of this survey and further challenged the conclusions reached by Dr. Petersen.

7
8 The Court finds the testimony of Dr. Hildreth very credible and adopts, as findings, many of his
9 conclusions with regard to the unscientific nature of Dr. Petersen's survey.

10
11 First, the sample employed by Dr. Petersen was self-selected and biased. Before the survey
12 process even began, the plaintiff's law firm sent a letter out to persons on the 2017 contact list to
13 inform them of the impending survey contact and questionnaire. The letter explicitly stated the
14 plaintiff's law firm was preparing for trial and that, although none of them would be required to
15 appear or attend the trial, they were potentially aggrieved employees. In this way, the letter
16 entreated future participants in the upcoming survey by a promise of potential financial gain.³¹
17 (Exh. 41 at 25). Similarly, the interviewer in this case also knew about the lawsuit. Thus both
18 respondents and interviewer were on notice of the possibility of financial gain associated with
19 certain answers to the questions that were to be posed. This survey design is clearly contrary to
20 the "double blind" standard methods of scientific survey research.³²

21
22 The survey letter and script also allowed participants to believe that their answers would not
23 subject them to legal process, thus providing them with a degree of anonymity. These notices

24
25
26 ³¹ In the event that survey participants had not received the letter or had forgotten its contents, they were reminded as
27 part of the telephone script that "this survey is part of a collective action lawsuit." While an advance letter may have
been useful to improve respondent cooperation, Dr. Hildreth competently testified that these should be written without
mentioning the purpose or the sponsor of the survey.

28 ³² Although Dr. Petersen (again citing only to his own article) opined that double-blind surveys were impossible in
wage and hour cases, he cited no factual basis for that conclusion.

1 gave the impression that any information the survey provided would be anonymous. As Dr.
2 Petersen himself acknowledged in one of his articles, the promise of anonymity increases bias
3 because the participants will exaggerate their reported harm. Both the letter and the survey taker's
4 remarks in this case alerted and informed a specific sub-section of the sample that they were
5 aggrieved and could exaggerate their alleged harms without consequence.

6
7 Second, the sample size selected by Dr. Petersen was too small to obtain the 95 percent confidence
8 estimates sponsored by Dr. Petersen. Moreover, the reason provided by Dr. Petersen to support
9 his decision to limit the sample size to 400 (i.e., that a pilot study was performed previously and
10 supported this sample size) is found by the court to be factually untrue.

11
12 Third, even if the survey methodology were proper, the survey questions themselves failed to
13 elicit how often a violation of the relevant Labor Code rest break provisions had occurred. By
14 asking whether they received breaks, employees were incorrectly directed to report every instance
15 in which a rest break was not 'received,' not whether the employer authorized or permitted such
16 breaks – which is what the law requires.³³

17
18 Fourth, the use of an open-ended question failed to convert the improper "received" breaks
19 question into one that discovered whether employees were "authorized and permitted" but simply
20 elected not to take breaks. Dr. Petersen coded answers from respondents in a biased and
21 unscientific manner, thus rendering the survey's conclusion as to the frequency of violations
22 invalid. A number of Dr. Petersen's coding decisions demonstrate his partisan viewpoint and his
23 lack of objectivity – taking this survey well outside the bounds of proper scientific study.³⁴

24
25 ³³ An employer is obligated only to authorize and permit rest breaks; it has no obligation to ensure that employees take
26 rest breaks. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033. Employees are free to decline rest
27 breaks. *Id.* Thus, the survey (which inquires as to whether a rest break was received in four separate questions) did
28 not gather relevant information regarding the defendant's liability.

³⁴ Another example of Dr. Petersen's embroilment in this litigation is his computation of the margin of error, which he
admitted was underestimated. Performing the correct scientific calculations and accepting Dr. Petersen's 95%
confidence level, the relative margin of error using a t-distribution (due to the small sample size) was 23.7%. In other

1 Fifth, Dr. Petersen's damages analysis, based on his survey results, failed to utilize rates of pay of
2 specific employees to calculate the amounts due for allegedly unpaid premiums for missed rest
3 breaks. Instead he impermissibly used a 'blended' rate averaging the pay rates of the entire
4 Security Paving workforce. This aggregation is legally impermissible for two reasons. By
5 looking at the entire workforce, Dr. Petersen failed to use the pay rates only of those nighttime
6 shift employees who suffered the violations. Secondly, this use of a blended average is flatly
7 contrary to the requirement of Labor Code section 226.7, which requires a premium be computed
8 as "one additional hour of pay *at the employee's* regular rate of compensation for each workday
9 that the . . . rest . . . period is not provided. *See Medlock v. Taco Bell Corp.* (E.D. Cal. Dec. 11,
10 2015) 2015 WL 10791410 at *5.

11
12 In short, the court concludes that the plaintiff's survey results cannot be used to identify each and
13 every employee who did not receive a legally compliant rest break, nor does it permissibly
14 compute back wages or PAGA penalties for aggrieved employees in this case.

15
16 D. If the Petersen Survey and Damage Study Are Entitled to No Weight, What Is the Effect of that
17 Failure of Proof?

18 The only evidence adduced by the plaintiff to quantify how frequently the defendant failed to
19 provide its nighttime road replacement and repair crews with legally compliant rest breaks was the
20 Petersen survey. The only evidence adduced by the plaintiff to quantify unpaid wages and
21 penalties for the aggrieved employees was the Petersen damage study.³⁵

22
23 words, to give an estimate of the proper penalty with 95 percent confidence, Dr. Petersen's estimate would have to
24 vary by almost a quarter from the lower end to the higher end. While this is, admittedly, better than the 49 percent
25 margin of error in the *Duran* case, it is substantially worse than the 5 or 10 margins of error that Dr. Hildreth testified
26 were found in well-performed statistical studies.

27 ³⁵ Although in his post-trial brief, plaintiff's counsel attempted to reopen the trial to adduce two more evidentiary
28 bases by which to identify the number of rest breaks missed by aggrieved employees, such evidence cannot be
"deduced" from Exhibit 55. Exhibit 55 is a "thumb drive" that holds pdf copies of thousands of handwritten
signatures on the bottom of numerous Security Paving "tail gate meeting" forms and other undifferentiated payroll
reports and business records. It is incapable – without considerable review, selection, computation and handwriting
discernment – of becoming the basis by which to "deduce" the basis for any employee's claim for rest break
violations. It is not, as plaintiff contends, nothing more than "simple math." Moreover, even if it were, defendant has

1 The individual plaintiff, Jon Shields, did not testify regarding the number of rest breaks (or meal
2 breaks) that he contended were not received. None of the witnesses from these crews called by the
3 plaintiff testified regarding the number of shifts they worked during the relevant period and how
4 often, once or twice per eight-hour shift, they were not afforded and provided a legally compliant
5 rest break. Nor did any of these witnesses testify as to their hourly or regular rate of pay.

6
7 Where, as here, the plaintiff has met his burden of proof of establishing the fact of a Labor Code
8 violation but has failed to answer by competent evidence how often that violation occurred, what
9 is the effect of that failure of proof?

10
11 Defendant contends that as plaintiff has failed to adduce any competent evidence as to the
12 measurement of how often the aggrieved employees suffered this violation, it should be granted
13 judgment in this case. In support of that contention, defendant cites a number of cases holding
14 that a plaintiff's failure to establish an amount of damage is fatal to the claim. *See, e.g., City of*
15 *Oakland v. Pacific Gas & Elec. Co.* (1941) 47 Cal.App.2d 444, 450; *Saunders v. Taylor* (1996) 42
16 Cal.App.4th 1538, 1543.

17
18 The court agrees that, in general except as otherwise provided by law, a party has the burden of
19 proof as to each fact the existence or non-existence of which is essential to the claim for relief or
20 defense that he is asserting. *Amaral v. Cintas* (2008) 163 Cal. App. 4th 1157, 1188. On occasion,
21 however, courts may alter the normal allocation of the burden of proof. *Id.* In determining
22 whether the normal allocation of proof should be altered, courts consider a number of factors: the
23 knowledge of the parties concerning the particular fact, the availability of the evidence to the

24
25 been deprived of the opportunity to question a witness who has conducted that mathematical analysis. Plaintiff's
26 attempt to reopen the trial at this late date to adduce alternative evidence to the Petersen survey violates due process
27 and shall not be considered by the Court. *See People v. Bolton* (1979) 23 Cal.3d 208, 213 n.2 (axiomatic that new
28 evidence cannot be adduced in closing argument."); *Garcia v. ConMed Corp.* (2014) 204 Cal.App.4th 144, 159.
Defendant Security Paving's motion to strike Exhibit A and B of Plaintiff's Post-Trial Brief. There is no basis upon
which to reopen the proceeding and to allow plaintiff to present new evidence that could have been presented at trial.
See Town of Atherton v. California High-Speed Rail Auth. (2014) 228 Cal.App.4th 314, 325.

1 parties, the most desirable result in terms of public policy in the absence of proof of a particular
2 fact, and the probability of the existence or nonexistence of the fact. *Id.*

3
4 A long-standing application of burden-shifting occurs in the wage and hour context when an
5 employer's compensation records are so incomplete or inaccurate that an employee cannot prove
6 his or her damages.³⁶ *Id.* Even when the records at issue are not legally required to be maintained,
7 the burden may be shifted. *Id.* at 1190 ("fundamental principle of American jurisprudence that for
8 every wrong there is a remedy, and that, unless countered by public policy, an injured party should
9 be compensated for all damage proximately caused by the wrongdoer.")

10
11 The problem in this case, however, is that the aggrieved plaintiff never argued for that burden-
12 shifting to be applied and defendant adduced no evidence whatsoever from which an estimate
13 could be made of the frequency of the violations or the employees on the nighttime road repair and
14 replacement crews who suffered them. Accordingly, while the lack of this evidence may not be
15 fatal to the plaintiff's PAGA case – as the burden had shifted to the defendant to provide this
16 critical, missing information – it still presents the problem that the Court does not have any
17 competent evidence by which to award unpaid wages or penalties to the aggrieved employees.

18
19 Where, as here, the fact that the defendant has failed to comply with the Labor Code's requirement
20 of authorizing and permitting rest breaks during which employees are free from supervisory
21 control has been established, but the frequency of occurrence of this violation and the employees
22 who suffered this deprivation cannot be identified, nominal damages should be available.

23 Nominal damages are granted neither to compensate the plaintiff nor punish the defendant.

24 Nominal damages can be awarded when the defendant has invaded a cognizable legal interest of
25 the plaintiff, *i.e.*, to be afforded legally compliant rest breaks, even when the plaintiff cannot prove

26
27
28 ³⁶ Outside of the wage and hour context, when the parties have unequal access to evidence necessary to prove a
disputed issue, the party who exclusively possesses facts essential to that claim bears the burden of going forward with
the evidence on the issue, although it is not the party asserting the claim. *See Amaral*, 163 Cal.App.4th at 1189-1190.

1 compensatory damages and sues only to establish a right or to obtain a ruling regarding the
2 defendant's conduct. *See Restatement 2d of Torts* § 907. The award of nominal damages in such
3 cases avoids allowing a wrongdoer to avoid punishment and furthers the public's interest in the
4 robust enforcement of the labor laws. Nominal damages are properly awarded when, although the
5 claimant has shown significant harm, its amount is not proved with sufficient certainty to entitle
6 him to an award of compensatory damages. *Id.*

7
8 In this case, therefore, the aggrieved employees have shown significant harm, but its amount has
9 not been proved with sufficient certainty to allow the court to compute or award civil penalties.
10 Accordingly, the court awards a nominal civil penalty assessment of \$50 for an initial violation of
11 Labor Code § 558.³⁷

12 IV. SHIELDS' INDIVIDUAL CLAIMS

13
14 Jon Shields also alleged individual causes of action for lost wages due to missed meal and rest
15 breaks, waiting period penalties and an individual claim for restitution and/or injunctive under the
16 UCL based on these statutory violations.

17 A. Meal and Rest Breaks

18 California's meal period rules are set forth in Labor Code Section 512 and the Wage Orders.
19 These rules generally prohibit employers from employing an employee for a work period of more
20 than five hours without providing a meal period of at least 30 minutes. As explained and
21

22
23 ³⁷ Injunctive relief is not available under PAGA. PAGA actions can recover only statutory penalties in fixed amounts
24 per violation. *Plaisted v. Dress Barn, Inc.* (C.D. Cal. Sept. 20, 2012) 2012 WL 4356158, *2). Moreover, even if such
25 relief were available, plaintiff adduced no evidence after March 27, 2015 with regard to Security Paving's rest break
practices. Thus, there is no basis to find an ongoing violation that would occasion the need for an injunction.

26 The court declines to award a separate PAGA statutory penalty in this case. PAGA is simply a procedural statute
27 allowing aggrieved employees to recover civil penalties for Labor Code violations. PAGA's plain language confirms
28 that the statute allows only civil penalties. The civil penalty awarded in this case of \$50 must be distributed 75% to
the Labor and Workforce Development Agency and 25% to the aggrieved employees. *See* Labor Code § 2699(i).
Where, as here, Labor Code Section 558 provides a civil penalty, PAGA does not allow a separate double penalty to
be imposed. *See Wert v. U.S. Bancorp* (S.D. Cal. Jun. 23, 2014) 2014 WL 2860287, *2-3.

1 examined in *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, it is not a duty of
2 an employer to ensure that no work is performed. Rather, an employer satisfies its obligation if it
3 (1) relieves employees of all duties; (2) relinquishes control over their activities; (3) permits them
4 a reasonable opportunity to take a 30-minute break, and (4) does not discourage or impede them
5 from doing so.

6
7 Employers must also comply with the meal period timing rules when providing meal periods. In
8 the absence of a waiver, Labor Code Section 512 requires a first meal period no later than the end
9 of an employee's fifth hour of work, and a second meal period no later than the end of an
10 employee's tenth hour of work. This has been construed to mean that a meal break should be
11 afforded no later than the start of an employee's sixth hour of work and no later than what would
12 be the start of the 11th hour of work.³⁸

13
14 Shields' individual claim for missed rest breaks, as discussed *supra*, are controlled by Wage Order
15 16, which provides that "[e]very employer *shall authorize and permit* all employees to take rest
16 periods, which insofar as practicable, shall be in the middle of each work period The
17 authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
18 net rest time for every four (4) hours worked, or major fraction thereof." Wage Order 16-2001, §
19 11(A).

20
21
22 ³⁸ The plaintiff -- at a very late point in the case -- asserted that his individual meal break claim could also be proved
23 based on the absence of potable water, soap and towels with which to wash his hands before eating. *See* Wage Order
24 Section 10(c). Defendant objects, understandably, to the lateness of these allegations. The plaintiff's complaint fails
25 to mention a claim for individual meal period violations pursuant to Section 10(c). Section 10(c) requires that
26 employers provide "an adequate supply of potable water, soap, or other suitable cleansing agent, and single use towels
27 for handwashing." There is nothing that requires the potable water to be provided at any particular location or to be
28 located proximately to the soap and towels. The credible testimony adduced from the witnesses proffered by both
plaintiff and defendant established that defendant's work sites had both potable water and separate wash stations with
soap and hand towels -- albeit at different locations. There was no testimony adduced by the plaintiff suggesting that it
was a problem for soap and towels to be taken over to the potable water for use in handwashing. Thus, it is not
necessary to rule on defendant's late objection to the claim because plaintiff failed to meet his burden of proving that
defendant violated 10(c).

1 Shields testified credibly that he had not been provided legally compliant meal and rest breaks
2 during the eight months that he drove a volumetric mixer for Security Paving as part of a night
3 roadway repair and replacement crews. He did not, however, quantify that claim. He did not
4 testify how often he missed his meal and/or rest breaks, how many shifts he worked for Security
5 Paving during the eight months that he worked on overnight road crews, what his regular or hourly
6 rate was, or any other fact upon which his individual losses could be calculated with reasonable
7 certainty.

8
9 Unlike the position that the PAGA aggrieved employees found themselves in, however, Shields
10 possessed all of the information required to perfect his individual claims. He testified that he
11 verified the hours appearing on his paychecks against his personally maintained work records and,
12 on occasion, brought errors to the attention of his employer.³⁹ Unlike the representative group of
13 employees, Shields as an individual plaintiff possessed the information from which a reasonable
14 estimate of missed meal and/or rest breaks during this eight-month period could have been
15 computed and sponsored at trial.⁴⁰ And, he testified that he knew the number of occasions for
16 which he had received premium pay for missed breaks. But, for reasons not entirely clear to the
17 court, he failed to provide any evidence concerning his damages at trial.

18
19 Where, as here, there is no basis to shift the burden of demonstrating damages to the defendant,
20 the plaintiff's failure to prove the amount of his loss is fatal to his individual meal and rest break
21 claims. *See City of Oakland*, 47 Cal.App.2d at 450.

22
23
24

³⁹ He further testified that he received premium payments for some missed meal periods during the time that he
25 worked on asphalt projects and could answer the question of how often by referring to his "notes." (Trial Transcript --
26 September 20, 2017 at 26:2-3).

27
28
⁴⁰ Jon Shields kept track of every hour that he worked for Security Paving and followed up with the company if his
records did not match the company records. (See Exh. 508 at 2.) The company also maintained payroll records to the
same effect for his days of employment. (Id. at 17-21.) The Court, however, declines to consider the plaintiff's late
interjection of this information -- which has been extracted, manipulated and computed -- in the post-trial brief as
proof of individual damages for Jon Shields. *See supra* n. 35.

1
2 B. Derivative Wage Statement Claims and Waiting Time Penalties

3
4 Not only did plaintiff Jon Shields fail to adduce competent evidence with which to establish his
5 damages from missed meal periods and rest breaks during the time that he worked with nighttime
6 road paving crews, he adduced no evidence on either his derivative wage statement claim or his
7 cause of action for waiting time penalties.

8 C. UCL Claims

9
10 Jon Shields' final individual cause of action asserts a claim for restitution and injunctive relief
11 under the UCL. There is no evidence in this record as to the amount of any unpaid wages that
12 might be claimed by the individual plaintiff as restitution. Nor is there any basis for injunctive
13 relief presented in this case. Jon Shields was fired by Security Paving many years ago. A UCL
14 representative plaintiff who is no longer employed by or otherwise affiliated in any way with a
15 defendant-employer apart from a lawsuit lacks standing to pursue an injunction against his former
16 employer as he faces no "real and immediate threat of repeated injury from such practices."
17 *Cleveland v. Groceryworks.com LLC* (N.D. Cal. 2016) 200 F. Supp.3d 924, 961-962.

18
19 CONCLUSION

20
21 Shields, as an aggrieved employee on behalf of the representative group, shall receive a nominal
22 award in the amount of \$50. Defendant has prevailed on the remaining causes of action. Plaintiff
23 shall prepare a judgment consistent with this ruling.

24
25 DATED: October 24, 2017

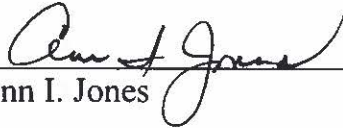
26 
Hon. Ann I. Jones

EXHIBIT 13

TSLF TIME HOANG

Attorney/Paralegal	Total Hours	Rate	Pre-Multiplier Lodestar
David Spivak (26th Year Attorney)	21.00	\$ 700.00	\$ 14,700.00
Maralle Messrelian (Formerly Employed 4th Year Attorney)	19.29	\$ 350.00	\$ 6,751.50
Breck Oyama (13th Year Paralegal)	12.59	\$ 300.00	\$ 3,777.00
Lizzett Cortez (9th Year Paralegal)	2.47	\$ 250.00	\$ 617.50
Maya Cheaitani (2nd Year Attorney)	44.42	\$ 250.00	\$ 11,105.00
Nora Greer (15+ Year Paralegal)	3.40	\$ 200.00	\$ 680.00
Elizabeth Contreras (Formerly Employed 1st Year Legal Secretary)	0.08	\$ 150.00	\$ 12.00
Anel Tovar (Formerly Employed 1st Year Intake Assistant)	6.76	\$ 150.00	\$ 1,014.00
Daniela Linares (1st Year Intake Assistant)	6.64	\$ 150.00	\$ 996.00
Emily Ly (1st Year Paralegal)	66.67	\$ 150.00	\$ 10,000.50
Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	0.32	\$ 150.00	\$ 48.00
Grand Total	183.64		\$ 49,701.50

Firm	Total Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	183.64	\$ 49,701.50
United Employees Law Group	26.30	\$ 19,067.50
Grand Total	209.94	\$ 68,769.00

Fees Requested	\$160,000.00
Multiplier	2.327

TSLF TIME LOG HOANG

Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
11/9/2020	David Spivak (26th Year Attorney)	intake and prepare file	0.75	\$ 700.00	\$ 525.00
11/18/2020	Lizzett Cortez (9th Year Paralegal)	Saved retainer agreement. emailed to dgs, sent out FAQ	0.33	\$ 250.00	\$ 82.50
11/18/2020	Breck Oyama (13th Year Paralegal)	review/fwd emails to team; update FV tabs	0.25	\$ 300.00	\$ 75.00
11/18/2020	Lizzett Cortez (9th Year Paralegal)	Calendared SOL	0.08	\$ 250.00	\$ 20.00
11/24/2020	Breck Oyama (13th Year Paralegal)	call/text client	0.17	\$ 300.00	\$ 51.00
11/25/2020	Breck Oyama (13th Year Paralegal)	call with client re pcms	0.25	\$ 300.00	\$ 75.00
12/2/2020	Breck Oyama (13th Year Paralegal)	calls w/ client, email DGS	0.75	\$ 300.00	\$ 225.00
12/8/2020	David Spivak (26th Year Attorney)	call with client re status of case [REDACTED] claim	0.17	\$ 700.00	\$ 119.00
12/14/2020	Maya Cheaitani (2nd Year Attorney)	review files/facts	1.00	\$ 250.00	\$ 250.00
12/16/2020	Maya Cheaitani (2nd Year Attorney)	research applicable wage order	1.50	\$ 250.00	\$ 375.00
12/17/2020	Maya Cheaitani (2nd Year Attorney)	draft LWDA letter	3.00	\$ 250.00	\$ 750.00
12/17/2020	Maya Cheaitani (2nd Year Attorney)	research MDC + employee reviews	0.50	\$ 250.00	\$ 125.00
12/17/2020	Maya Cheaitani (2nd Year Attorney)	Text/email client	0.17	\$ 250.00	\$ 42.50
12/17/2020	Maya Cheaitani (2nd Year Attorney)	Call w client for more info	0.25	\$ 250.00	\$ 62.50
12/17/2020	Maya Cheaitani (2nd Year Attorney)	email client	0.25	\$ 250.00	\$ 62.50
12/17/2020	Maya Cheaitani (2nd Year Attorney)	Editing LWDA letter after phone call with client	1.00	\$ 250.00	\$ 250.00
12/20/2020	David Spivak (26th Year Attorney)	review and revise LWDA notice	0.58	\$ 700.00	\$ 406.00
12/21/2020	Maya Cheaitani (2nd Year Attorney)	revise LWDA letter + email client	1.67	\$ 250.00	\$ 417.50
12/22/2020	Maya Cheaitani (2nd Year Attorney)	research on MDC bonuses	0.50	\$ 250.00	\$ 125.00
12/23/2020	Lizzett Cortez (9th Year Paralegal)	filed LWDA lt, mailed cert	1.00	\$ 250.00	\$ 250.00
12/23/2020	Maya Cheaitani (2nd Year Attorney)	finalize lwda	0.25	\$ 250.00	\$ 62.50
12/23/2020	Maya Cheaitani (2nd Year Attorney)	email DGS abt LWDA lt	0.25	\$ 250.00	\$ 62.50
12/23/2020	Maya Cheaitani (2nd Year Attorney)	research unknown corporation	0.50	\$ 250.00	\$ 125.00
12/23/2020	Maya Cheaitani (2nd Year Attorney)	research	1.00	\$ 250.00	\$ 250.00
12/28/2020	Breck Oyama (13th Year Paralegal)	f/u DGS re WT	0.17	\$ 300.00	\$ 51.00
12/28/2020	Lizzett Cortez (9th Year Paralegal)	calendared 65 day, emailed client lwda, and added expense	0.25	\$ 250.00	\$ 62.50
1/11/2021	Maya Cheaitani (2nd Year Attorney)	email MM	0.08	\$ 250.00	\$ 20.00
1/13/2021	Maya Cheaitani (2nd Year Attorney)	review file arb agr.	0.25	\$ 250.00	\$ 62.50
2/18/2021	Maya Cheaitani (2nd Year Attorney)	msg MM abt complaint	0.17	\$ 250.00	\$ 42.50
2/18/2021	David Spivak (26th Year Attorney)	Review and revise court complaint	0.42	\$ 700.00	\$ 294.00
2/18/2021	Maya Cheaitani (2nd Year Attorney)	draft class complaint	2.33	\$ 250.00	\$ 582.50

TSLF TIME LOG HOANG

Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
2/22/2021	Maya Cheaitani (2nd Year Attorney)	finalize complaint	0.58	\$ 250.00	\$ 145.00
2/22/2021	Maya Cheaitani (2nd Year Attorney)	msg BO/LC abt complaint	0.17	\$ 250.00	\$ 42.50
3/1/2021	Breck Oyama (13th Year Paralegal)	review SOS and save to file, upload SOP order onelegal	0.50	\$ 300.00	\$ 150.00
3/1/2021	Breck Oyama (13th Year Paralegal)	prep S&C for filing, emails w/ team, calendar deadlines	1.75	\$ 300.00	\$ 525.00
3/2/2021	Breck Oyama (13th Year Paralegal)	download/review court order, update calendar	0.17	\$ 300.00	\$ 51.00
3/3/2021	Breck Oyama (13th Year Paralegal)	save/review pos summons	0.17	\$ 300.00	\$ 51.00
3/4/2021	Breck Oyama (13th Year Paralegal)	prep POS, prep notice entry, file/serve, email client copies	1.00	\$ 300.00	\$ 300.00
3/10/2021	Breck Oyama (13th Year Paralegal)	add contacts/update pos, email OC re mtg, circulate vcards	0.50	\$ 300.00	\$ 150.00
3/12/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review LWDA letter, complaint, intake notes, research re company, and draft summary in advance of call with OC	1.00	\$ 350.00	\$ 350.00
3/12/2021	Breck Oyama (13th Year Paralegal)	notes re conf call w/ OC	0.25	\$ 300.00	\$ 75.00
3/12/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	conf call w OC, DGS, MC	0.33	\$ 350.00	\$ 115.50
3/15/2021	Breck Oyama (13th Year Paralegal)	mail/email N&A to OC, calendar deadline	0.50	\$ 300.00	\$ 150.00
3/15/2021	Breck Oyama (13th Year Paralegal)	prep N&A to OC	0.75	\$ 300.00	\$ 225.00
3/22/2021	Maya Cheaitani (2nd Year Attorney)	call client abt dismissal class	1.00	\$ 250.00	\$ 250.00
3/22/2021	Maya Cheaitani (2nd Year Attorney)	msg DGS/MM abt client call	0.17	\$ 250.00	\$ 42.50
3/22/2021	Breck Oyama (13th Year Paralegal)	review LWDA notice and save USPS tracking, email team re sending to OC	0.33	\$ 300.00	\$ 99.00
3/22/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review arb. agreement; emails w/MC/DGS re arb/ email MC re calling client, review BO/DGS emails re LWDA letter	0.50	\$ 350.00	\$ 175.00
3/23/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w BO re next steps; email OC re req. dismissal/amending complaint	0.17	\$ 350.00	\$ 59.50
3/24/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	draft 1AC, request for dismissal/leave to file 1AC, email to DGS for review	1.75	\$ 350.00	\$ 612.50
3/30/2021	David Spivak (26th Year Attorney)	Review and revise stipulation for dismissal and I	0.33	\$ 700.00	\$ 231.00
4/2/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails w BO re call w OC	0.08	\$ 350.00	\$ 28.00
4/2/2021	Maya Cheaitani (2nd Year Attorney)	msg MM abt tolling agreement	0.17	\$ 250.00	\$ 42.50
4/2/2021	Maya Cheaitani (2nd Year Attorney)	draft tolling agmt	2.50	\$ 250.00	\$ 625.00
4/5/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review MC draft tolling and DGS redlines to tolling, review revised draft and emails w MC	0.25	\$ 350.00	\$ 87.50
4/5/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails and call w OC re amended complaint/tolling agreement	0.17	\$ 350.00	\$ 59.50
4/5/2021	Maya Cheaitani (2nd Year Attorney)	msg MM abt tolling agreement	0.17	\$ 250.00	\$ 42.50

TSLF TIME LOG HOANG

Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
4/5/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	finalize stip 1AC/proposed 1AC and email to OC	0.33	\$ 350.00	\$ 115.50
4/5/2021	Maya Cheaitani (2nd Year Attorney)	emailed OC tolling agmt	0.08	\$ 250.00	\$ 20.00
4/5/2021	David Spivak (26th Year Attorney)	review and revise tolling agreement	0.42	\$ 700.00	\$ 294.00
4/5/2021	Breck Oyama (13th Year Paralegal)	review/email MM re SOP	0.08	\$ 300.00	\$ 24.00
4/5/2021	Maya Cheaitani (2nd Year Attorney)	revised tolling agmt	0.58	\$ 250.00	\$ 145.00
4/6/2021	Breck Oyama (13th Year Paralegal)	file/serve pos summons	0.50	\$ 300.00	\$ 150.00
4/6/2021	Breck Oyama (13th Year Paralegal)	prep POS summons	0.25	\$ 300.00	\$ 75.00
5/18/2021	Emily Ly (1st Year Paralegal)	phone call with client re witness list	0.08	\$ 150.00	\$ 12.00
5/18/2021	Emily Ly (1st Year Paralegal)	left voicemail with client re witnesses	0.08	\$ 150.00	\$ 12.00
5/26/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	call w OC re req dismissal/tolling/CMC/next steps; follow up email to OC;	0.58	\$ 350.00	\$ 203.00
5/26/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w DGS re mediator proposal; emails w EL re mediation availability	0.17	\$ 350.00	\$ 59.50
5/27/2021	Nora Greer (15+ Year Paralegal)	Fwd Mediator Contact info to EL	0.08	\$ 200.00	\$ 16.00
6/6/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	draft joint initial CMC statement	1.75	\$ 350.00	\$ 612.50
6/18/2021	David Spivak (26th Year Attorney)	Review tolling agreements revisions by OC	0.25	\$ 700.00	\$ 175.00
6/18/2021	Emily Ly (1st Year Paralegal)	filed joint initial cmc statement and circulate	0.33	\$ 150.00	\$ 49.50
6/21/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	email EL re req dismiss	0.08	\$ 350.00	\$ 28.00
6/21/2021	Lizzett Cortez (9th Year Paralegal)	reviewed Emails	0.08	\$ 250.00	\$ 20.00
6/21/2021	Maya Cheaitani (2nd Year Attorney)	review new client docs/MM email about MDC/research entity	0.25	\$ 250.00	\$ 62.50
6/21/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	texts and call w client; follow up email to team	0.42	\$ 350.00	\$ 147.00
6/21/2021	David Spivak (26th Year Attorney)	Email MM re her conf with client	0.08	\$ 700.00	\$ 56.00
6/22/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails w OC re tolling agreement sigs; texts and emails w BO/EL re req dismissal/proposed 1AC, finalize 1AC and save clean version,	0.50	\$ 350.00	\$ 175.00
6/22/2021	Emily Ly (1st Year Paralegal)	filed Request to Dismiss Class Allegations and File First Amended Complaint; Declaration of David Spivak in Support; [Proposed] Order Thereon, got signatures for tolling agreement, and circulated	0.75	\$ 150.00	\$ 112.50
6/22/2021	Emily Ly (1st Year Paralegal)	prep notice of posting jury fees, filed, and circulate	0.67	\$ 150.00	\$ 100.50
6/22/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails	0.08	\$ 250.00	\$ 20.00
6/22/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emial EL re updated mediator availability	0.08	\$ 350.00	\$ 28.00
6/23/2021	Breck Oyama (13th Year Paralegal)	mtg w/ EL	0.17	\$ 300.00	\$ 51.00
6/23/2021	Breck Oyama (13th Year Paralegal)	check EL calendar, review MM notes and update deadline chains	0.25	\$ 300.00	\$ 75.00

TSLF TIME LOG HOANG

Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
6/23/2021	Breck Oyama (13th Year Paralegal)	email EL re calendar resp pldg, add litigation chain	0.17	\$ 300.00	\$ 51.00
6/23/2021	Emily Ly (1st Year Paralegal)	calendared D response due to 1AC	0.08	\$ 150.00	\$ 12.00
6/23/2021	Breck Oyama (13th Year Paralegal)	mtg w/ EL re order 1AC and 1AC	0.17	\$ 300.00	\$ 51.00
6/23/2021	Breck Oyama (13th Year Paralegal)	review emails re notice/1AC	0.08	\$ 300.00	\$ 24.00
6/23/2021	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
6/23/2021	Emily Ly (1st Year Paralegal)	Discuss with BO filing 1AC. Prepped Notice of Entry of Order. Filed Notice of Entry of Order and 1AC. Circulated. Spoke to MM about her CMC.	2.42	\$ 150.00	\$ 363.00
6/23/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	prep for CMC call; Courtcall, follow up email to team re hearing notes	0.75	\$ 350.00	\$ 262.50
6/24/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
6/24/2021	David Spivak (26th Year Attorney)	Review request for dismissal	0.17	\$ 700.00	\$ 119.00
6/24/2021	Breck Oyama (13th Year Paralegal)	review deadlines	0.08	\$ 300.00	\$ 24.00
6/25/2021	Breck Oyama (13th Year Paralegal)	remind EL re upload LWDA	0.08	\$ 300.00	\$ 24.00
6/28/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
6/28/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails	0.08	\$ 150.00	\$ 12.00
6/28/2021	Emily Ly (1st Year Paralegal)	Check docket for MO. Sent f/u email to OC re mediator.	0.50	\$ 150.00	\$ 75.00
6/28/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
6/28/2021	Nora Greer (15+ Year Paralegal)	Confer with EL re Upload 1AC to LWDA	0.25	\$ 200.00	\$ 50.00
6/28/2021	Emily Ly (1st Year Paralegal)	Met with NG. Uploaded 1AC to LWDA	0.25	\$ 150.00	\$ 37.50
6/29/2021	Elizabeth Contreras (Formerly Employed 1st Year Legal Secretary)	Reviewed emails	0.08	\$ 150.00	\$ 12.00
6/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails	0.08	\$ 150.00	\$ 12.00
6/29/2021	Emily Ly (1st Year Paralegal)	Reply to OC's email.	0.08	\$ 150.00	\$ 12.00
6/29/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.17	\$ 350.00	\$ 59.50
6/29/2021	Emily Ly (1st Year Paralegal)	Reviewed and rep	0.08	\$ 150.00	\$ 12.00
6/29/2021	Breck Oyama (13th Year Paralegal)	review emails/deadline chain, move email to FV	0.08	\$ 300.00	\$ 24.00
6/29/2021	Emily Ly (1st Year Paralegal)	Email to mediator for updated dates.	0.08	\$ 150.00	\$ 12.00
6/30/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
6/30/2021	Lizzett Cortez (9th Year Paralegal)	Reviewed emails	0.08	\$ 250.00	\$ 20.00
7/6/2021	Breck Oyama (13th Year Paralegal)	review emails/calendar	0.08	\$ 300.00	\$ 24.00
7/6/2021	Nora Greer (15+ Year Paralegal)	Review emails, accept calendar invites	0.08	\$ 200.00	\$ 16.00

TSLF TIME LOG HOANG

Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
7/6/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails	0.08	\$ 150.00	\$ 12.00
7/6/2021	Lizzett Cortez (9th Year Paralegal)	Reviewed emails	0.08	\$ 250.00	\$ 20.00
7/6/2021	Emily Ly (1st Year Paralegal)	F/U with OC re mediation date. Reviewed emails. Circulated MO. Calendared.	0.33	\$ 150.00	\$ 49.50
7/7/2021	Emily Ly (1st Year Paralegal)	Reviewed emails and calendared.	0.17	\$ 150.00	\$ 25.50
7/7/2021	Breck Oyama (13th Year Paralegal)	mtg w/ EL	0.08	\$ 300.00	\$ 24.00
7/8/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails	0.08	\$ 250.00	\$ 20.00
7/12/2021	Emily Ly (1st Year Paralegal)	Calendared tentative mediation dates.	0.08	\$ 150.00	\$ 12.00
7/12/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails	0.08	\$ 150.00	\$ 12.00
7/12/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Updated calendared re further CMC. Circulated.	0.25	\$ 150.00	\$ 37.50
7/12/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to email from OC re mediation dates.	0.17	\$ 150.00	\$ 25.50
7/12/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. F/U with OC re mediator dates.	0.17	\$ 150.00	\$ 25.50
7/12/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails	0.08	\$ 250.00	\$ 20.00
7/12/2021	Breck Oyama (13th Year Paralegal)	review/fwd email to team	0.08	\$ 300.00	\$ 24.00
7/12/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to email from OC. Checked docket.	0.17	\$ 150.00	\$ 25.50
7/12/2021	Nora Greer (15+ Year Paralegal)	Email EL re Mediation, review emails.	0.17	\$ 200.00	\$ 34.00
7/12/2021	Breck Oyama (13th Year Paralegal)	review emails/calendar entries	0.08	\$ 300.00	\$ 24.00
7/14/2021	Breck Oyama (13th Year Paralegal)	review emails/calendar re mediation	0.08	\$ 300.00	\$ 24.00
7/14/2021	Emily Ly (1st Year Paralegal)	Reviewed emails and calendared mediation date.	0.17	\$ 150.00	\$ 25.50
7/15/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Filled in info for informal mediaton discovery requests.	0.33	\$ 150.00	\$ 49.50
7/16/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Emailed mediation case manager the information they requested.	0.58	\$ 150.00	\$ 87.00
7/16/2021	Breck Oyama (13th Year Paralegal)	email EL re mediation	0.08	\$ 300.00	\$ 24.00
7/19/2021	David Spivak (26th Year Attorney)	review email re mediation	0.08	\$ 700.00	\$ 56.00
8/2/2021	Emily Ly (1st Year Paralegal)	Call from REDACTED mediation case manager. Replied to email. Calendared.	0.42	\$ 150.00	\$ 63.00
8/2/2021	Emily Ly (1st Year Paralegal)	Left voicemail for REDACTED case manager re mediation notice.	0.08	\$ 150.00	\$ 12.00
8/13/2021	Emily Ly (1st Year Paralegal)	Reviewed case. Emailed DB to cut a check for the mediation fees.	0.17	\$ 150.00	\$ 25.50
8/18/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Call to PCM REDACTED	0.50	\$ 150.00	\$ 75.00
8/19/2021	Emily Ly (1st Year Paralegal)	Sent authorization to pcm REDACTED	0.17	\$ 150.00	\$ 25.50
8/23/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
8/24/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Call to witness REDACTED Prepared evs. pres email to OC.	0.50	\$ 150.00	\$ 75.00
8/30/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Sent email to OC.	0.25	\$ 150.00	\$ 37.50
8/30/2021	Maya Cheaitani (2nd Year Attorney)	review emails/employ records/review case	1.00	\$ 250.00	\$ 250.00
9/7/2021	Emily Ly (1st Year Paralegal)	F/U email to OC.	0.08	\$ 150.00	\$ 12.00
9/7/2021	Maya Cheaitani (2nd Year Attorney)	review emails/review witnesses/revise case/PF	1.50	\$ 250.00	\$ 375.00
9/9/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00

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Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
9/13/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w EL re status of mediation info requests	0.08	\$ 350.00	\$ 28.00
9/13/2021	Breck Oyama (13th Year Paralegal)	review lwda cert mail receipts, task EL	0.08	\$ 300.00	\$ 24.00
9/13/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	call with client re pcm	0.17	\$ 150.00	\$ 25.50
9/13/2021	Emily Ly (1st Year Paralegal)	Messages with MM. Reviewed FV feed.	0.17	\$ 150.00	\$ 25.50
9/14/2021	Emily Ly (1st Year Paralegal)	Sent f/u email to OC. Reviewed and responded to FV task. Call to witness REDACTED	0.33	\$ 150.00	\$ 49.50
9/14/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails and FV msgs re LWDA	0.17	\$ 350.00	\$ 59.50
9/16/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Prepped cover ltr to OC re LWDA ltr. Called witness REDACTED. Reviewed emails. Saved documents and OCCR. Called witness REDACTED again.	1.17	\$ 150.00	\$ 175.50
9/17/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails; email EL/DGS re PF	0.17	\$ 350.00	\$ 59.50
9/17/2021	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
9/20/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Call to witness REDACTED	0.33	\$ 150.00	\$ 49.50
9/20/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails; msgs w BO re witness PF	0.17	\$ 350.00	\$ 59.50
9/20/2021	Emily Ly (1st Year Paralegal)	Reviewed emails from witness REDACTED. Saved and document OCCR documents. Emailed team.	0.67	\$ 150.00	\$ 100.50
9/21/2021	Lizzett Cortez (9th Year Paralegal)	mtg w/ EL re witness docs	0.08	\$ 250.00	\$ 20.00
9/21/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Messaged MM.	0.17	\$ 150.00	\$ 25.50
9/21/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Call PCM/Client/Partial Intake/ Sent Team PCM update	0.92	\$ 150.00	\$ 138.00
9/21/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Met with LC. Sent email.	0.25	\$ 150.00	\$ 37.50
9/21/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Call PCM	0.17	\$ 150.00	\$ 25.50
9/21/2021	David Spivak (26th Year Attorney)	review and email EHL re witness docs	0.08	\$ 700.00	\$ 56.00
9/21/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w EL re LWDA ltr service	0.08	\$ 350.00	\$ 28.00
9/22/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
9/22/2021	Emily Ly (1st Year Paralegal)	Met with MM.	0.17	\$ 150.00	\$ 25.50
9/22/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	mtg w EL re lwda service OC/mediation/securing data analyst	0.17	\$ 350.00	\$ 59.50
9/23/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
9/23/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Met with BO.	0.25	\$ 150.00	\$ 37.50
9/23/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails to/from witness REDACTED	0.08	\$ 350.00	\$ 28.00
9/27/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Called mediation, case manager, client, and REDACTED. Emailed data analyst.	0.58	\$ 150.00	\$ 87.00

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Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
9/27/2021	Maya Cheaitani (2nd Year Attorney)	review OC emails	0.33	\$ 250.00	\$ 82.50
9/27/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Download pictures from emails.	0.58	\$ 150.00	\$ 87.00
9/27/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	sent EL sample email re data analysis; reviewed emails; msgs w EL	0.25	\$ 350.00	\$ 87.50
9/27/2021	Emily Ly (1st Year Paralegal)	Met with BO. Emailed team.	0.17	\$ 150.00	\$ 25.50
9/28/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	draft mediation info/discovery requests	0.50	\$ 350.00	\$ 175.00
9/28/2021	Maya Cheaitani (2nd Year Attorney)	review emails&questions for data analyst	0.50	\$ 250.00	\$ 125.00
9/28/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails; review witness produced docs/pics	0.25	\$ 350.00	\$ 87.50
9/29/2021	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
9/29/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	finalize and email med. requests to DGS, review redlines	0.33	\$ 350.00	\$ 115.50
9/30/2021	Emily Ly (1st Year Paralegal)	Sent f/u email to OC.	0.08	\$ 150.00	\$ 12.00
10/4/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
10/4/2021	Emily Ly (1st Year Paralegal)	Left vm and texted client. Called pcm REDACTED	0.25	\$ 150.00	\$ 37.50
10/4/2021	Emily Ly (1st Year Paralegal)	Met with MM.	0.08	\$ 150.00	\$ 12.00
10/4/2021	Emily Ly (1st Year Paralegal)	Messages with MM. Listen to vm from REDACTED Called REDACTED	0.17	\$ 150.00	\$ 25.50
10/4/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	call w EL re time records	0.08	\$ 350.00	\$ 28.00
10/4/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	finalize and email mediation requests to OC, email OC re electronic time records	0.50	\$ 350.00	\$ 175.00
10/4/2021	Emily Ly (1st Year Paralegal)	Left vm for witness REDACTED and replied to email.	0.08	\$ 150.00	\$ 12.00
10/5/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	LinkedIn message draft - sent to case team for review.	1.00	\$ 150.00	\$ 150.00
10/5/2021	Emily Ly (1st Year Paralegal)	Call from Client.	0.08	\$ 150.00	\$ 12.00
10/6/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Sent team update	0.08	\$ 150.00	\$ 12.00
10/7/2021	Emily Ly (1st Year Paralegal)	Left vm and texted Client.	0.08	\$ 150.00	\$ 12.00
10/7/2021	Maya Cheaitani (2nd Year Attorney)	review emails	0.25	\$ 250.00	\$ 62.50
10/8/2021	Emily Ly (1st Year Paralegal)	Reviewed emails from witness REDACTED Saved. Emailed team.	0.50	\$ 150.00	\$ 75.00
10/8/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Messages with MM. Called witness REDACTED	0.25	\$ 150.00	\$ 37.50
10/8/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails; read witness email re wrongful term, email DGS, msgs w EL; review AT email re PCM interviews	0.33	\$ 350.00	\$ 115.50
10/8/2021	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
10/10/2021	David Spivak (26th Year Attorney)	Review and respond to AT list of witness questions	0.25	\$ 700.00	\$ 175.00
10/13/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w EL, emails w OC re scheduling call	0.17	\$ 350.00	\$ 59.50
10/13/2021	Maya Cheaitani (2nd Year Attorney)	review emails	0.25	\$ 250.00	\$ 62.50
10/13/2021	Emily Ly (1st Year Paralegal)	Reviewed emails and calendar. Sent f/u emails to OC. Checked docket. Left vm and emailed Client.	0.33	\$ 150.00	\$ 49.50

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Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
10/14/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Searched on LinkedIn for PCM, Created a draft for PCM research for LinkedIn, Update team on the search for PCM.	1.50	\$ 150.00	\$ 225.00
10/14/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs and calls w EL re LWDA letters	0.25	\$ 350.00	\$ 87.50
10/14/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review LinkedIn message draft; review case claims; redline and email back to AT; read msgs from AT	0.50	\$ 350.00	\$ 175.00
10/14/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	call w OC re LWDA letters/REDACTED records/mediation info and data	0.67	\$ 350.00	\$ 234.50
10/14/2021	Emily Ly (1st Year Paralegal)	Reviewed emails. Call with MM.	0.17	\$ 150.00	\$ 25.50
10/14/2021	Emily Ly (1st Year Paralegal)	Call with MM and searched D's name of Secretary of State.	0.33	\$ 150.00	\$ 49.50
10/14/2021	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
10/14/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review call notes and email OC/team summary of call	0.25	\$ 350.00	\$ 87.50
10/15/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails/ msgs w AT	0.17	\$ 350.00	\$ 59.50
10/15/2021	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
10/15/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	LinkedIn Script - Email the case team.	0.75	\$ 150.00	\$ 112.50
10/15/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Called the language line to become familiar with the service. Sent team update. Arranged a time to speak to PCMs that have language barriers.	0.17	\$ 150.00	\$ 25.50
10/15/2021	David Spivak (26th Year Attorney)	review and revise LinkedIn message	0.25	\$ 700.00	\$ 175.00
10/19/2021	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
10/19/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails and msgs w AT re scheduling call to discuss witness interview questions	0.17	\$ 350.00	\$ 59.50
10/19/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	LinkedIn PCM Search, confer with MM re intake questions, scheduled a meeting to discuss.	1.00	\$ 150.00	\$ 150.00
10/20/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w AT re rescheduling call	0.08	\$ 350.00	\$ 28.00
10/21/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	LWDA letter review	0.75	\$ 150.00	\$ 112.50
11/1/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
11/1/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
11/1/2021	Maya Cheaitani (2nd Year Attorney)	review case progress/review emails	1.00	\$ 250.00	\$ 250.00
11/5/2021	Emily Ly (1st Year Paralegal)	Reviewed and responded to emails. Call to Client.	0.17	\$ 150.00	\$ 25.50
11/5/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails; msgs w AT re mtg on Monday	0.17	\$ 350.00	\$ 59.50
11/5/2021	Emily Ly (1st Year Paralegal)	Reviewed emails and sent f/y email to OC. Left vm, texted, and emailed Client.	0.25	\$ 150.00	\$ 37.50
11/8/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w AT, review AT emails; review LWDA letter/case notes; draft witness interview questions and email to AT, msgs w AT	0.83	\$ 350.00	\$ 290.50
11/9/2021	Anel Tovar (Formerly Employed 1st Year Intake Assistant)	Meeting with EL - update on PCM	0.25	\$ 150.00	\$ 37.50

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Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
11/9/2021	Emily Ly (1st Year Paralegal)	Reviewed emails, called Client, prepped cover letter to client, and sent email to copy service.	0.42	\$ 150.00	\$ 63.00
11/11/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
11/12/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
11/12/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
11/15/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails w OC re mediation info/sample data	0.17	\$ 350.00	\$ 59.50
11/15/2021	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
11/16/2021	Emily Ly (1st Year Paralegal)	Reviewed emails and called Client.	0.08	\$ 150.00	\$ 12.00
11/23/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
11/23/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
11/29/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	mtg w EL re case status/mediation data; email OC re mediation data	0.17	\$ 350.00	\$ 59.50
11/29/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Left vm and emailed Client. Entered expense. Met with MM.	0.33	\$ 150.00	\$ 49.50
11/30/2021	Emily Ly (1st Year Paralegal)	Reviewed emails, calendared, and messages with MM.	0.25	\$ 150.00	\$ 37.50
11/30/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	call w OC, msgs w EL, msgs w team, review emails re mediation rescheduling	0.25	\$ 350.00	\$ 87.50
12/1/2021	Emily Ly (1st Year Paralegal)	Call from Client. Reviewed emails and calendared.	0.42	\$ 150.00	\$ 63.00
12/1/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
12/6/2021	Daniela Linares (1st Year Intake Assistant)	Making a list for potential witnesses.	1.33	\$ 150.00	\$ 199.50
12/6/2021	Emily Ly (1st Year Paralegal)	Meeting with DL.	0.33	\$ 150.00	\$ 49.50
12/6/2021	Daniela Linares (1st Year Intake Assistant)	Meeting w/ EL	0.33	\$ 150.00	\$ 49.50
12/7/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
12/7/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
12/9/2021	Daniela Linares (1st Year Intake Assistant)	Calling witness [REDACTED] w/ EL	0.67	\$ 150.00	\$ 100.50
12/9/2021	Emily Ly (1st Year Paralegal)	Met with DL. Call with witness.	1.25	\$ 150.00	\$ 187.50
12/9/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review DL linkedin message, fwd previous one, review emails	0.25	\$ 350.00	\$ 87.50
12/9/2021	Lizzett Cortez (9th Year Paralegal)	fwd linkedin message to EL	0.08	\$ 250.00	\$ 20.00
12/9/2021	Emily Ly (1st Year Paralegal)	Messages with DL.	0.08	\$ 150.00	\$ 12.00
12/9/2021	Daniela Linares (1st Year Intake Assistant)	Email. Responding to LinkedIn messages.	0.25	\$ 150.00	\$ 37.50
12/10/2021	Daniela Linares (1st Year Intake Assistant)	Call w/ witness. Prepping interview notes. Follow up call.	1.25	\$ 150.00	\$ 187.50
12/10/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails/witness interview notes	0.17	\$ 350.00	\$ 59.50
12/10/2021	Emily Ly (1st Year Paralegal)	Call with DL and witness.	0.83	\$ 150.00	\$ 124.50
12/13/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails w OC re mediation data	0.08	\$ 350.00	\$ 28.00

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Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
12/13/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
12/13/2021	Maralle Messrelan (Formerly Employed 4th Year Attorney)	reviewed emails from analyst re status of receiving data	0.08	\$ 350.00	\$ 28.00
12/14/2021	Daniela Linares (1st Year Intake Assistant)	Call to client. Left VM.	0.08	\$ 150.00	\$ 12.00
12/15/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
12/16/2021	Maralle Messrelan (Formerly Employed 4th Year Attorney)	start working on mediation brief	1.50	\$ 350.00	\$ 525.00
12/17/2021	Daniela Linares (1st Year Intake Assistant)	Email reminder.	0.08	\$ 150.00	\$ 12.00
12/20/2021	Maralle Messrelan (Formerly Employed 4th Year Attorney)	email OC re mediation info requests	0.08	\$ 350.00	\$ 28.00
12/20/2021	Daniela Linares (1st Year Intake Assistant)	Email from EL. Call to f/u w/ witness.	0.08	\$ 150.00	\$ 12.00
12/20/2021	Emily Ly (1st Year Paralegal)	Called and texted Client. Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
12/20/2021	Maralle Messrelan (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
12/28/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Texted and called Client. Calendared.	0.50	\$ 150.00	\$ 75.00
12/30/2021	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
1/4/2022	Lizzett Cortez (9th Year Paralegal)	mtg w/ EL re case	0.17	\$ 250.00	\$ 42.50
1/4/2022	Daniela Linares (1st Year Intake Assistant)	Call w/REDACTED	0.08	\$ 150.00	\$ 12.00
1/4/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.33	\$ 150.00	\$ 49.50
1/5/2022	Nora Greer (15+ Year Paralegal)	TC with EL re sample	0.08	\$ 200.00	\$ 16.00
1/5/2022	David Spivak (26th Year Attorney)	prepare witness questions for Daniela	1.17	\$ 700.00	\$ 819.00
1/5/2022	David Spivak (26th Year Attorney)	prepare for mediation	5.25	\$ 700.00	\$ 3,675.00
1/5/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Selected sample for mediation. Met with NG and DGS. Began to fill out Avoid the Brief for the mediation.	1.75	\$ 150.00	\$ 262.50
1/6/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Worked on ATB and emailed team. Multiple calls with DGS. Met with NG. Left vm for OC. Call to data analyst and calendared. Reviewed sample from Defendant and additional documents.	2.00	\$ 150.00	\$ 300.00
1/6/2022	Daniela Linares (1st Year Intake Assistant)	Call w/ CL. Review interview notes. Emailed team.	1.92	\$ 150.00	\$ 288.00
1/6/2022	Nora Greer (15+ Year Paralegal)	TC w/ EL re case	0.25	\$ 200.00	\$ 50.00
1/6/2022	Daniela Linares (1st Year Intake Assistant)	Called CL back. LVM	0.08	\$ 150.00	\$ 12.00
1/7/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Left vm for OC.	0.17	\$ 150.00	\$ 25.50
1/9/2022	David Spivak (26th Year Attorney)	review and review "avoid the brief" form	2.58	\$ 700.00	\$ 1,806.00
1/10/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Reviewed avoid the brief. Participated in phone call with DGS and data analyst. Call to Client. Call with DL re witnesses.	1.42	\$ 150.00	\$ 213.00
1/10/2022	Daniela Linares (1st Year Intake Assistant)	Looking for more witnesses.	0.25	\$ 150.00	\$ 37.50

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Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
1/11/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Reviewed data analysis and called data analyst. Participated in phone call with DGS and OC. Sent notes to team. Phone call with DGS and data analyst. Reviewed Avoid the Brief and circulated. Call with data analyst	2.83	\$ 150.00	\$ 424.50
1/12/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Call with data analyst.	0.67	\$ 150.00	\$ 100.50
1/13/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Reviewed data analyst data. Call from Client. Calculated fees and costs. Calls from data analyst.	2.33	\$ 150.00	\$ 349.50
1/13/2022	David Spivak (26th Year Attorney)	mediation prep	2.00	\$ 700.00	\$ 1,400.00
1/14/2022	Emily Ly (1st Year Paralegal)	Reviewed def doc productions. Calls with data analyst. Reviewed and replied to emails. Participated in mediation.	5.17	\$ 150.00	\$ 775.50
1/14/2022	Breck Oyama (13th Year Paralegal)	mtg w/ EL re future costs/mediation	0.17	\$ 300.00	\$ 51.00
1/24/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
1/27/2022	Daniela Linares (1st Year Intake Assistant)	Follow up email for OC	0.08	\$ 150.00	\$ 12.00
1/27/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Scheduled CourtCall. Checked docket.	0.58	\$ 150.00	\$ 87.00
1/28/2022	Breck Oyama (13th Year Paralegal)	review emails, check w/ team re JSR	0.17	\$ 300.00	\$ 51.00
1/28/2022	Emily Ly (1st Year Paralegal)	Prepped Joint Notice of Class Action Settlement. Reviewed and replied to emails. Served, filed, and circulated.	1.00	\$ 150.00	\$ 150.00
2/1/2022	Emily Ly (1st Year Paralegal)	Checked docket, calendared, prepped Notice of Entry.	0.50	\$ 150.00	\$ 75.00
2/1/2022	Breck Oyama (13th Year Paralegal)	update litigation chain, check w/ EL re court notice	0.08	\$ 300.00	\$ 24.00
2/2/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Served, filed, and served Notice of Entry of Order.	0.33	\$ 150.00	\$ 49.50
2/8/2022	Emily Ly (1st Year Paralegal)	Call to pcm and emailed team.	0.08	\$ 150.00	\$ 12.00
2/10/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Checked docket.	0.17	\$ 150.00	\$ 25.50
2/16/2022	David Spivak (26th Year Attorney)	Review and revise settlement MOU	0.58	\$ 700.00	\$ 406.00
2/16/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
2/17/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/17/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Emailed TPA bids.	1.00	\$ 150.00	\$ 150.00
2/17/2022	David Spivak (26th Year Attorney)	prepare long form settlement agreement and notice letter	2.17	\$ 700.00	\$ 1,519.00
2/18/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/18/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/18/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
2/22/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
2/24/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
2/25/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.17	\$ 150.00	\$ 25.50
2/25/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/2/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/3/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Sent long form settlement to OC.	0.33	\$ 150.00	\$ 49.50
3/7/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00

TSLF TIME LOG HOANG

Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
3/7/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/10/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
3/10/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/14/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
3/15/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/23/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
3/24/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/31/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Checked docket.	0.08	\$ 150.00	\$ 12.00
4/4/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
4/5/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
4/6/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Ran redline comparison of MOU and emailed team. Checked docket. Circulated MOU and called Client.	0.67	\$ 150.00	\$ 100.50
4/8/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
4/8/2022	Emily Ly (1st Year Paralegal)	Call to Client re MOU.	0.08	\$ 150.00	\$ 12.00
4/12/2022	Emily Ly (1st Year Paralegal)	Call with Client. Calendared and texted Client.	0.25	\$ 150.00	\$ 37.50
4/18/2022	Emily Ly (1st Year Paralegal)	Texted Client and calendared.	0.08	\$ 150.00	\$ 12.00
4/19/2022	Breck Oyama (13th Year Paralegal)	review/update tasks	0.08	\$ 300.00	\$ 24.00
4/21/2022	Breck Oyama (13th Year Paralegal)	review emails, check w/ team re status	0.08	\$ 300.00	\$ 24.00
4/22/2022	David Spivak (26th Year Attorney)	prep for call and call with client and EHL to explain settlement details	0.33	\$ 700.00	\$ 231.00
4/25/2022	Emily Ly (1st Year Paralegal)	Texts with Client and reviewed and replied to emails .	0.25	\$ 150.00	\$ 37.50
4/25/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to texts from Client.	0.08	\$ 150.00	\$ 12.00
5/9/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/11/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
5/16/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails re MOU and PAGA settlement papers.	0.33	\$ 150.00	\$ 49.50
5/20/2022	Emily Ly (1st Year Paralegal)	Checked docket, prepped stip to continue CMC, and emailed team.	0.58	\$ 150.00	\$ 87.00
5/24/2022	Emily Ly (1st Year Paralegal)	Reviewed emails and emailed team. Reviewed stip and emailed OC.	0.25	\$ 150.00	\$ 37.50
5/25/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Checked docket for continued CMC date and calendared. Updated CourtCall.	0.17	\$ 150.00	\$ 25.50
5/26/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/27/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
6/6/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
6/10/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
6/10/2022	Breck Oyama (13th Year Paralegal)	pin note to FV	0.08	\$ 300.00	\$ 24.00
6/20/2022	Emily Ly (1st Year Paralegal)	Left vm and emailed pcm. Call from pcm. Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
6/27/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
7/11/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
7/13/2022	Daniela Linares (1st Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
7/13/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
7/13/2022	Daniela Linares (1st Year Intake Assistant)	call w LT re arb intake	0.08	\$ 150.00	\$ 12.00
7/14/2022	Emily Ly (1st Year Paralegal)	Met with NG re jsr. Reviewed and replied to emails. Edited JSR and sent to OC.	0.50	\$ 150.00	\$ 75.00

TSLF TIME LOG HOANG

Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
7/14/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Prepped Plaintiff's Status Report.	1.25	\$ 150.00	\$ 187.50
7/14/2022	Nora Greer (15+ Year Paralegal)	TC with EL re Status Report	0.25	\$ 200.00	\$ 50.00
7/18/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
7/25/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
7/28/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
8/2/2022	Emily Ly (1st Year Paralegal)	Reviewed emails. Saved docs.	0.08	\$ 150.00	\$ 12.00
8/2/2022	David Spivak (26th Year Attorney)	review and revise settlement agreement revisions by OC; respond to OC	0.67	\$ 700.00	\$ 469.00
8/5/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
8/18/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
8/23/2022	Emily Ly (1st Year Paralegal)	Updated hearing info. Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
9/9/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
9/12/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
9/16/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
9/19/2022	Emily Ly (1st Year Paralegal)	Ran a redline comparison of settlement agreement. Called pcm. Reviewed and replied to emails.	0.33	\$ 150.00	\$ 49.50
9/20/2022	Nora Greer (15+ Year Paralegal)	TC with EL re MX Paga Approval FV tabs	0.50	\$ 200.00	\$ 100.00
9/20/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
9/20/2022	Emily Ly (1st Year Paralegal)	Begin to fill FV settlement tab for Mx for PAGA approval. Reviewed settlement agreement and sent team redlines. Reviewed and replied to emails. Went over FV settlement tab with NG.	2.08	\$ 150.00	\$ 312.00
9/21/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails re MOU. Reviewed MOU. Left vm for OC.	1.00	\$ 150.00	\$ 150.00
9/21/2022	Nora Greer (15+ Year Paralegal)	TC with EL re MX Paga Approval FV tabs	0.50	\$ 200.00	\$ 100.00
9/23/2022	Emily Ly (1st Year Paralegal)	Circulated settlement agreement for signatures. Called Client. Continue to fill in FV settlement tab.	0.33	\$ 150.00	\$ 49.50
9/25/2022	David Spivak (26th Year Attorney)	Review and revise data for motion for private attorney general settlement approval	0.92	\$ 700.00	\$ 644.00
9/26/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails re Settlement Agreement and PAGA notice. Reviewed settlement tab.	0.75	\$ 150.00	\$ 112.50
9/28/2022	Emily Ly (1st Year Paralegal)	Reviewed settlement tab.	0.42	\$ 150.00	\$ 63.00
9/29/2022	Maya Cheaitani (2nd Year Attorney)	review emails/case research for mx approval	2.75	\$ 250.00	\$ 687.50
9/29/2022	David Spivak (26th Year Attorney)	prepare PAGA settlement approval mxl instructions to staff	1.50	\$ 700.00	\$ 1,050.00
9/29/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Checked docket for Defendant's answer. Finished Settlement tab.	0.92	\$ 150.00	\$ 138.00
10/3/2022	Maya Cheaitani (2nd Year Attorney)	draft mx paga approval	5.00	\$ 250.00	\$ 1,250.00
10/4/2022	Maya Cheaitani (2nd Year Attorney)	draft paga approval mx	4.50	\$ 250.00	\$ 1,125.00
10/4/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
10/5/2022	Maya Cheaitani (2nd Year Attorney)	draft all moving papers mx paga approval/email team	5.50	\$ 250.00	\$ 1,375.00
10/11/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails re TPA, mx moving papers, and PAGA notice.	0.33	\$ 150.00	\$ 49.50
10/14/2022	Maya Cheaitani (2nd Year Attorney)	review emails/mx paga stlement/review tpa bids	1.00	\$ 250.00	\$ 250.00
10/14/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
10/19/2022	Maya Cheaitani (2nd Year Attorney)	review mx paga stlment	0.50	\$ 250.00	\$ 125.00
10/21/2022	Emily Ly (1st Year Paralegal)	Reviewed mx for PAGA approval.	1.08	\$ 150.00	\$ 162.00

TSLF TIME LOG HOANG

Time Date	Attorney/Paralegal	Description	Hours (Decimal)	Rate	Pre- Multiplier Lodestar
10/25/2022	Nora Greer (15+ Year Paralegal)	TC with EL re Mx	0.25	\$ 200.00	\$ 50.00
10/25/2022	Emily Ly (1st Year Paralegal)	Met with NG re mx for PAGA approval.	0.25	\$ 150.00	\$ 37.50
10/26/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Edited mx for PAGA approval sent draft to OC.	1.25	\$ 150.00	\$ 187.50
10/26/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Reviewed mx for PAGA approval.	0.08	\$ 150.00	\$ 12.00
10/28/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
11/8/2022	Breck Oyama (13th Year Paralegal)	review emails/FV/calendar, add deadline chain	0.17	\$ 300.00	\$ 51.00
11/16/2022	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
12/1/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Prep jsr re mx for settlement and emailed team.	0.25	\$ 150.00	\$ 37.50
12/5/2022	Emily Ly (1st Year Paralegal)	Checked MOU and replied to emails.	0.25	\$ 150.00	\$ 37.50
12/6/2022	Emily Ly (1st Year Paralegal)	Reviewed status report and prepped Notice of Change of Address.	0.58	\$ 150.00	\$ 87.00
12/8/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Call with NG re client time log.	0.58	\$ 150.00	\$ 87.00
12/8/2022	Nora Greer (15+ Year Paralegal)	TC with EL re client time log	0.33	\$ 200.00	\$ 66.00
12/13/2022	Breck Oyama (13th Year Paralegal)	review emails, assemble emails to/from client for time log	0.08	\$ 300.00	\$ 24.00
12/19/2022	Emily Ly (1st Year Paralegal)	Calendared and worked on Client time log.	1.92	\$ 150.00	\$ 288.00
12/19/2022	Nora Greer (15+ Year Paralegal)	TC with EL re Client Time Log	0.08	\$ 200.00	\$ 16.00
12/20/2022	Nora Greer (15+ Year Paralegal)	TC with EL re client time log, mx	0.50	\$ 200.00	\$ 100.00
12/20/2022	Emily Ly (1st Year Paralegal)	Met with NG re Client time log. Reviewed and replied to emails.	0.67	\$ 150.00	\$ 100.50
12/21/2022	Emily Ly (1st Year Paralegal)	Reviewed and replied to emails. Calendared. Met with BO re Client time log.	0.33	\$ 150.00	\$ 49.50
12/21/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, update litigation chain	0.08	\$ 300.00	\$ 24.00
12/28/2022	Breck Oyama (13th Year Paralegal)	review client time log	0.50	\$ 300.00	\$ 150.00
12/28/2022	Emily Ly (1st Year Paralegal)	Further reviewed client time log.	0.33	\$ 150.00	\$ 49.50
12/29/2022	Nora Greer (15+ Year Paralegal)	Run TOA for Mx	0.08	\$ 200.00	\$ 16.00
		TOTAL PRE-MULTIPLIER AS OF 1/23/23	183.64		\$ 49,701.50

EXHIBIT 14

TSLF COSTS HOANG

Date	Expense Type	Expense Description	Expense Amount
12/23/2020	LWDA Filing Fee	LWDA Receipt Order Number: ORD-REDACTED	\$ 75.00
1/4/2021	Postage	Postage Dec 2020	\$ 22.05
3/1/2021	Attorney Service-Filing	Odyssey e-filing envelope REDACTED	\$ 5.72
3/1/2021	Attorney Service-Filing	Odyssey e-filing REDACTED, complaint fee REDACTED complex fee REDACTED	\$ 1,483.77
3/4/2021	Attorney Service-Service	onelegal #REDACTED	\$ 79.53
3/4/2021	Attorney Service-Filing	Odyssey e-filing #REDACTED	\$ 5.72
3/4/2021	Attorney Service-Service	onelegal #REDACTED	\$ 120.71
3/15/2021	Photocopies	printing N&A for service	\$ 15.00
4/1/2021	Postage	Postage Mar 2021	\$ 2.73
4/6/2021	Attorney Service-Filing	Odyssey e-filing REDACTED	\$ 5.72
6/16/2021	CourtCall	21.06.16 CourtCall Inv. No. REDACTED re CMC 6-23-21	\$ 94.00
6/18/2021	Attorney Service-Filing	21.06.18 Odyssey File & Serve - Envelope ID REDACTED - Joint CMC Statement	\$ 5.72
6/22/2021	Attorney Service-Filing	21.06.22 Odyssey File & Serve - Envelope Receipt REDACTED - Request to Dismiss Class Allegations	\$ 5.72
6/22/2021	Attorney Service-Filing	21.06.22 Odyssey File & Serve - Envelope Receipt REDACTED - Notice of Posting Jury Fees	\$ 160.22
6/23/2021	Attorney Service-Filing	21.06.23 Odyssey File & Serve - Envelope Receipt REDACTED - 1AC	\$ 5.72
6/23/2021	Attorney Service-Filing	21.06.23 Odyssey File & Serve - Envelope Receipt REDACTED - Notice of Entry of Order	\$ 5.72
7/19/2021	Mediator Fees	21.07.19 MEDIATION INVOICE	\$ 7,000.00
11/19/2021	Postage	21.11.19 Excelsior Invoice # REDACTED	\$ 33.73
1/14/2022	Expert or Data Analysis	22.01.14 REDACTED Invoice # REDACTED	\$ 1,350.00
1/28/2022	Attorney Service-Filing	22.01.28 Odyssey File & Serve - Envelope Receipt	\$ 5.72
2/2/2022	Attorney Service-Filing	22.02.02 Odyssey File & Serve - Envelope Receipt	\$ 5.72
11/2/2022	Lexis or Westlaw	Lexis usage Oct 2022	\$ 0.39
12/2/2022	Lexis or Westlaw	Lexis usage Nov 2022	\$ 6.47
TBD	Attorney Service - Filing	Estimated Attorney Service Charges for Paga Settlement Motion	\$ 67.52
TBD	Attorney Service - Filing	Estimated Attorney Service Charges Supplemental Briefing for Paga Settlement Motion	\$ 5.72
TBD	Attorney Service - Filing	Estimated Attorney Service Charges for Notice of Entry of Order on Paga Settlement	\$ 5.72
TBD	Attorney Service - Filing	Estimated Attorney Service Charges for Final Accounting Hearing	\$ 5.72

TSLF COSTS HOANG

Date	Expense Type	Expense Description	Expense Amount
TBD	Attorney Service - Filing	Estimated Attorney Service Charges for Final Accounting Hearing	\$ 5.72
	THE SPIVAK LAW FIRM COSTS THROUGH 01/23/2023		\$ 10,495.08
	THE SPIVAK LAW FIRM ESTIMATED FUTURE COSTS		\$ 90.40
	UNITED EMPLOYEES LAW GROUP COSTS THROUGH 1/23/2023		\$ 4.00
	TOTAL COSTS THROUGH FINAL ACCOUNTING OF SETTLEMENT		\$ 10,589.48

EXHIBIT 15

Case Name: Hoang v. MDC

Date: February 18, 2022

PAGA Disbursement Only

Requesting Attorney: **Emily Houg Ly**

* Class Members: 328

Plaintiff or Defense: **Plaintiff**

Postage Total: **\$300.30**

Firm Name: **The Spivak Law Firm**

Grand Total: **\$11,758.25**

Telephone: **(818) 582-3086**

***** DISCOUNTED FLAT FEE: \$7,750.00**

Email: emily@spivaklaw.com

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / NCOA / TFN Establish, Setup & Support / Spanish Translation / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	3	\$285.00
System Programming/Data Base Setup	\$150.00	3	\$450.00
Project Manager-Notice Format	\$95.00	1	\$95.00
NCOA	\$150.00	1	\$150.00
Call Center Support	\$3.00	66	\$198.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Total			\$2,878.00

* Up to 120 days after disbursement

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	328	\$65.60
Total			\$500.60

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Notice, Checks/1099's

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Notice, Checks & 1099	\$3.00	328	\$984.00
Estimated Postage (up to 2 oz.)	\$0.78	328	\$255.84
Total			\$3,079.84

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	4	\$20.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	26	\$32.50
Remail Undeliverable Checks	\$3.00	26	\$78.00
Estimated Postage (up to 2 oz.)	\$0.78	30	\$23.40
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
Project Supervisor - Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$3,153.90

*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	69	\$10.35
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	7	\$34.50
1st Class Postage for Reissues	\$0.58	7	\$4.00
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			\$2,145.91

Grand Total: **\$11,758.25**

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 16

Class Action Claims Administration, Inc.

Karin Peternel
 59 Damonte Ranch Parkway Ste. B224
 Reno, NV 89521
karin@classactionclaimsadmin.net
 (775) 378-5458

Estimate for PAGA Settlement

February 18, 2022
 To: Emily Hough Ly
 The Spivak Law Firm
 HOANG/MDC

Eligible Employees 328
 Postage Total \$989.52
COST ESTIMATE \$18,587

1. Employee list provided must be excel delimited with names, addresses, SSNs, weeks worked in separate columns
2. 14 page notice plus exclusion form
3. Unclaimed fund distribution: LWDA
4. 1099 forms only

Case Setup**Case Setup/Data Management/Create Mailing List/Website**

<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
Case Manager	50	2	\$100.00
Document Review/Database Management	35	2	\$70.00
Website	500	1	\$500.00
Calculations (incl taxes)	750	1	\$750.00
TOTAL			\$1,420.00

Notification Process**National Change of Address Search/Notice**

<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
NCOA	150	1	\$150.00
Merge Data	35	2	\$70.00
Notice	2.5	328	\$820.00
Postage	1	400	\$400.00
Spanish Translation	14	120	\$1,680.00
TOTAL			\$3,120.00

SSN Verification**Verify SSN for Validity with IRS/IRS Backup Withholdings**

<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
Programming for Upload to SSA	35	2	\$70.00
PM/Staff Review	50	2	\$100.00
SSN Verification	0.5	328	\$164.00
TOTAL			\$334.00

Disbursement**Calculations/Data Management/Create and Manage QSF/Print and Mail Checks, 1099**

<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
Prepare Database/Tax Calculations	35	6	\$210.00
PM Review/Atty Corr	50	2	\$100.00
Obtain EIN/CA EIN, QSF Bank Account	50	4	\$200.00
Program/Setup and Printing of Checks	35	8	\$280.00
Print Mail checks	1.5	328	\$492.00
Print Mail 1099	1.5	328	\$492.00
Submit checks to Atty, Plaintiff, LWDA	50	2	\$100.00
Process Exclusions	35	12	\$420.00
Weekly Admin Updates	35	24	\$840.00
Initial skip trace	1.6	328	\$524.80
Postage checks and 1099	1.2	800	\$960.00
Administration insurance - not to exceed	1	5000	\$5,000.00
TOTAL			\$9,618.80

Post-Disbursement & Tax Reporting

Account Maintenance/Skip Trace/Reissue Checks/Annual Tax Reporting/Final Reporting and Declaration			
<i>Task</i>	<i>Unit Price</i>	<i>Pieces/Hours</i>	<i>Cost</i>
Re-issue Checks as Necessary (25%)	1.5	82	\$123.00
PM Data/Bank Acct Management	35	16	\$560.00
Follow up Skip Trace	1.6	33	\$52.48
Remail Undeliverable Checks	0.6	49	\$29.52
Postage	0.6	49	\$29.52
Prepare Final Reports/Declaration/Corr	50	4	\$200.00
CA Tax Preparation	2500	0	\$0.00
Annual Tax Reporting to IRS	2500	1	\$2,500.00
QSF Annual Tax Reporting	150	1	\$150.00
Unclaimed Funds Distribution	450	1	\$450.00
TOTAL			\$4,094.52

EXHIBIT 17

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: HOANG/MDC

Friday, February 18, 2022

Law Firm Contact:

Emily Hounq Ly

E-Mail Address:

emily@spivaklaw.com

ILYM Contact:

Sean Hartranft

E-Mail Address:

Sean@ilymgroupclassaction.com

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggrieved Employees	328
Certified Spanish Translation	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	4	\$600.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	6	\$720.00
NCOA	Flat Rate	\$75.00	1	\$75.00
Toll-Free Telephone Support	Flat Rate	\$117.00	1	\$117.00
Certified Spanish Translation	Flat Rate	\$500.00	1	\$500.00
ILYM Group Static Website, Includes Hosting	Flat Rate	\$750.00	1	\$750.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$2,762.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Fulfillment of Notice & Check - (including 1099)	Per Check	\$1.50	328	\$492.00
USPS First Class Postage	Per Piece	\$0.55	328	\$180.40
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	33	\$65.60
Preparation of Taxes	Hourly	\$125.00	10	\$1,250.00
Annual Filing of Tax Return	Per Year	\$1,000.00	1	\$1,000.00

*Additional Bank fees may apply

Subtotal \$3,813.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	3	\$300.00
Processing Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	3	\$375.00

Subtotal \$1,425.00

Will Not Exceed: \$8,000.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 18



CASE ASSUMPTIONS

Class Members	328
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	328
Subtotal Admin Only	\$7,035.01

Not-to-Exceed Total \$5,000.00

For 328 Class Members

Pricing Good for Scope of Estimate Only

Spanish Translation & Mailing Included

February 18, 2022

Case: Hoang v. MDC, PAGA Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Hoang

Firm: Spivak Law Firm

Contact Number: (818) 205-9033

Email: emily@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **328** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	31		\$77.50
NCOA (USPS)	\$85.00	1		\$85.00
Total				\$662.50

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage / Spanish Translation & Mailing

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.09	328		\$29.52
Spanish Translation	\$800.00	1		\$800.00
Notice and Check Packet	\$1.30	328		\$426.40
Estimated Postage (up to 1 oz.)*	\$0.73	328		\$239.44
Total				\$1,695.36

* 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	3		\$165.00
Skip Tracing Undeliverables	\$0.75	82		\$61.50
Remail Notice Packets	\$0.50	79		\$39.50
Estimated Postage	\$0.73	79		\$57.67
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$373.67

Database Programming				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	6		\$330.00
Case Manager	\$85.00	4		\$340.00
Total				\$820.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	3		\$405.00
Total				\$1,310.00

* 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 / Reporting and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Undeliverable Checks (Postage Included)	\$1.50	62		\$93.48
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Reporting	\$115.00	1		\$115.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	4		\$460.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$400.00	1		\$400.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated <u>7</u> Total Class Members	\$300.00	1		TBD
Total				\$2,173.48

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,035.01



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 19



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	14480	Prepared By:	Mike Sutherland
Estimate Date:	2/22/2022	Direct Dial #	321-223-5067
		Email:	msutherland@simpluris.com

Plaintiff Attorney
Attorney/Client: **Emily Houg Ly , David Spivak**
Firm: Spivak Law
Email: [Emily Houg Ly <emily@spivaklaw.com>](mailto:Emily.Houg.Ly@spivaklaw.com)

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: HOANG/MDC: Opt Out Settlement

Anticipated Total Cost	\$7,813
Capped Fee*	\$7,400

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:	328	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	10%
Mailing Document Language:	English	Redistribution:	No
Reminder Postcard:	No	State(s):	Single
Unclaimed Funds:	Escheat	Tax Years	Single

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case/Email Setup	\$125.00	4	\$500.00
Static Website Development & Maintenance	\$250.00	1	\$250.00
Database Manager - Initial Data Analysis	\$140.00	4	\$560.00
Total			\$1,310.00

Notification

Notice Packet: 8 pg Notice - Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.00	328	\$328.00
Postage	\$0.58	328	\$190.24
NCOA/CASS/LACS	\$75.00	1	\$75.00
Undeliverable Processing	\$0.25	33	\$8.20
Skip Trace RUM	\$1.00	33	\$32.80
Remail Notice Packet	\$1.25	28	\$34.85
Remail Postage	\$0.58	28	\$16.17
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$735.26

Call Center

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	3	\$225.00
800 # Charges	\$0.10	180	\$18.00
Total			\$225.00



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Resolving Mismatched TINs	\$75.00	1	\$75.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	3	\$8.20
Opt Out Processing	\$2.00	3	\$6.56
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	2	\$250.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$639.76

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	3	\$225.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$3.00	328	\$984.00
Postage	\$0.58	328	\$190.24
Process Returned Checks	\$0.50	3	\$1.64
Skip Trace Search Undeliverable Checks	\$5.00	3	\$16.40
Remail Checks (Includes Postage)	\$4.00	3	\$13.12
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	5	\$24.60
Postage	\$0.58	5	\$2.85
Escheat management	\$100.00	1	\$100.00
Disbursement Manager	\$125.00	4	\$500.00
Total			\$4,427.85



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc	\$50.00	2	\$100.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$475.00

Postage \$399.50

Total Case Costs

\$7,812.87

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT 20

PROPOSED FEES & EXPENSES

RE: HOANG/MDC

Proposal Dated: March 3, 2022

CAC SERVICES GROUP - CONFIDENTIAL

Key Assumptions

Class Size - Class Members		100.00%	328	Persons
Notification				
Direct Mail	(% of Total Class)	100.00%	328	Pieces
Returned Mail Processing				
RFND	(% of Total Class)	18.00%	60	Pieces
ACPO	(% of Total Class)	0.50%	2	Pieces
ACCO	(% of Total Class)	0.50%	2	Pieces
Exclusion / Opt Out	(% of Total Class)	0.25%	1	Pieces
Distribution				
Payments - Valid Claims	(% of Total Class - Opt Outs)	99.75%	327	Pieces

Program Requirements	Estimated Quantity	Units	Per Unit	Cost	Estimated Total
Program Set-Up & Reporting					\$ 1,000.00
Class Member Database	1	N/A	\$ 350.00	\$ 350.00	
Settlement Website	1	N/A	\$ 650.00	\$ 650.00	
Direct Mail Notification					\$ 3,505.00
NCOA / CASS / LACS Processing	1	N/A	\$ 150.00	\$ 150.00	
Notice Package	328	Pcs	\$ 5.000	\$ 1,640.00	
<i>The notice package includes the following (English and Spanish versions):</i> ► 50# 8.5" x 11" Notice - English (14 pages) ► 6 x 9 Window Envelope ► 50# 8.5" x 11" Notice - Spanish (14 pages)					
Translate Notice to Spanish	4,900	Words	\$ 0.35	\$ 1,715.00	
Returned Mail Processing					\$ 408.40
Notices Returned for Non-Delivery (RFND)					
Process RFND Mail	60	Pcs	\$ 0.250	\$ 15.00	
Skip Trace RFND Mail	60	Pcs	\$ 0.750	\$ 45.00	
Re-print Notice Package	42	Pcs	\$ 7.500	\$ 315.00	
<i>Estimate: 70% of RFND is traceable</i>					
Notices returned as Address Change Post Office (ACPO)					
Process ACPO Mail	2	Pcs	\$ 0.350	\$ 0.70	
Re-print Notice Package	2	Pcs	\$ 7.500	\$ 15.00	
Address Change Correspondence (ACCO)					
Process ACPO Mail	2	Pcs	\$ 0.350	\$ 0.70	
Re-print Notice Package	2	Pcs	\$ 7.500	\$ 15.00	
Receive Request for Exclusion					
Process Request for Exclusion	1	Pcs	\$ 2.000	\$ 2.00	

Program Requirements	Estimated Quantity	Units	Per Unit	Cost	Estimated Total
Fund Distribution					\$ 2,188.05
Processing of Checks					
Print and Mail Payment	327	Pcs	\$ 2.650	\$ 866.55	
▶ 60# MOCR Bond 8.5" x 11" Check; Top Third Tear-Away					
▶ 45# 8.5" x 11" 1099 MISC					
▶ #10 Window Envelope - Security Tint					
Payment Reissue	10	Pcs	\$ 3.975	\$ 39.75	
<i>Estimate: 3% of check distribution</i>					
Check Clearing	327	Pcs	\$ 0.250	\$ 81.75	
Fund Management / Bank Fees	30	Months	\$ 40.000	\$ 1,200.00	
Tax Reporting					\$ 700.00
Annual Fee - Qualified Settlement Fund Taxes	1	Years	\$ 350.00	\$ 350.00	
<i>Federal & State Filings</i>					
Quarterly/Annual Payroll Taxes	1	Years	\$ 350.00	\$ 350.00	
<i>Employer/Employee Withholding/Reporting</i>					
Postage¹⁾					\$ 376.83
Postage - Notice Package	328	Pcs	\$ 0.530	\$ 173.84	
Postage - Remails, Notice Package	46	Pcs	\$ 0.530	\$ 24.38	
Postage - Check Distribution	327	Pcs	\$ 0.530	\$ 173.31	
Postage - Re-issue, Check Distribution	10	Pcs	\$ 0.530	\$ 5.30	
<i>Postage will be invoiced at cost</i>					
Program Management					\$ 2,810.00
Principal Consultant	1	Hours	\$ 150.00	\$ 150.00	
Project Manager	4	Hours	\$ 125.00	\$ 500.00	
Technical Consultant	8	Hours	\$ 135.00	\$ 1,080.00	
Support Staff	18	Hours	\$ 60.00	\$ 1,080.00	
Grand Total²⁾					\$ 10,988.28
Grand Total²⁾ NOT TO EXCEED					\$ 11,000.00



Other Project-Related Costs	Units	Cost
FedEx / UPS Shipments	N/A	At Cost
Photocopies	Per Copy	\$ 0.15
Storage of 1.2 Cubic Foot Boxes	Box/Month	\$ 0.75
Removal and Secured Destruction of 1.2 Cubic Foot Boxes	Per Box	\$ 3.00
Project-Related Materials	N/A	At Cost
Other Case-Related Out-of-Pocket Expenses	N/A	At Cost

Other CAC Services ³⁾	Hourly Rate
Principal Consultant	\$ 150.00
Senior Consultant	\$ 140.00
Technical Consultant	\$ 135.00
Project Manager	\$ 125.00
Project Supervisor	\$ 80.00
Support Staff	\$ 60.00

Notes:

- 1) Postage is estimated and will be qualified for automation discounts.
- 2) The grand total reflects the estimated quantities of individual tasks performed. Should the actual quantities differ from the estimated quantities of tasks performed, the grand total (billable amount) will reflect such changes. Estimates were based on the assumptions listed above.
- 3) Fees for project-related services, other than what is covered elsewhere in this proposal, will be charged at CAC's standard hourly rate shown above. The above rates are effective as of March 2022. The rates are subject to possible revision on an annual basis, during the contract period, to allow for possible hourly rate changes.

