

1 DAVID G. SPIVAK (SBN 179684)  
david@spivaklaw.com

2 MAYA CHEAITANI (SBN 335777)  
maya@spivaklaw.com

3 THE SPIVAK LAW FIRM  
4 8605 Santa Monica Bl  
PMB 42554  
5 West Hollywood, CA 90069  
Telephone: (213) 725-9094  
6 Facsimile: (213) 634-2485

7 WALTER HAINES (SBN 71075)  
whaines@uelglaw.com  
8 UNITED EMPLOYEES LAW GROUP  
9 4276 Katella Ave, #301  
Los Alamitos, CA 90720  
10 Telephone: (562) 256-1047  
11 Facsimile: (562) 256-1006

12 Attorneys for Plaintiff,  
13 THERESEA RIVES

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

17 THERESEA RIVES, as an “aggrieved  
18 employee” on behalf of other “aggrieved  
19 employees” under the Labor Code Private  
Attorneys General Act of 2004,

20 *Plaintiff,*

21 vs.

22 CF SAN RAFAEL, LLC, a California  
23 limited liability company; ~~CAMBRIDGE~~  
24 ~~HEALTHCARE SERVICES, LLC, a~~  
25 ~~California limited liability company;~~ and  
DOES 1–50, inclusive,

26 *Defendant(s).*

Case No.: CIV2100671

**DECLARATION OF DAVID SPIVAK IN  
SUPPORT OF PLAINTIFF THERESEA  
RIVES’ MOTION FOR APPROVAL OF  
PAGA SETTLEMENT**

Action filed: 2/18/2021

Hearing Date:

Hearing 1:30 p.m.

Time:

Department: Courtroom B, Hon. James Chou



**SPIVAK LAW**  
Employee Rights Attorneys

Mail:  
8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

Office:  
15303 Ventura Bl  
Ste 900  
Sherman Oaks, CA 91403

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff THERESEA RIVES (hereafter referred to as “Plaintiff” or “Rives”) in this action against Defendant CF San Rafael, LLC (“Defendant” or “CF San Rafael”). I am a member in good standing of the State Bar of California. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

2. A true and correct copy of the PAGA Settlement Agreement (the “Agreement” or “PAGA Settlement” or “Settlement”) is attached hereto as **Exhibit 1**. A true and correct copy of the parties agreed upon notice to the PAGA Members (the “Notice Letter”) is attached hereto as **Exhibit 2**.

### *Factual and Procedural Background*

3. Defendant CF San Rafael is a California limited liability company. CF San Rafael operates Professional Post-Acute Center, a 99-bed skilled nursing facility located in San Rafael, California. The private facility provides rehabilitation, care, skilled nursing and other services to short and long-term residents. Defendant began to employ Rives on or about September 9, 2019 to work as a medical records supervisor (though she and the other PAGA Members with “supervisor” in their title did not hold any supervisory duties), and continuously employed her in this capacity until October 2, 2020 when her employment ended.

4. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under PAGA. By letter dated December 7, 2020, Plaintiff, on behalf of herself and other aggrieved hourly employees, gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. True and correct copies of Plaintiff’s letter to the LWDA is attached as **Exhibit 3**.

5. Plaintiff and the PAGA Members are subject to arbitration agreements with Defendant. Plaintiff filed her lawsuit in Marin County Superior Court on February 18, 2021. A true and correct copy of Plaintiff's Complaint is attached as **Exhibit 4**. Plaintiff's complaint



## Employee Rights Attorneys

Mail:  
8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

Office:  
15303 Ventura Bl  
Ste 900  
Sherman Oaks, CA 91403

1 presents one cause of action for civil penalties under PAGA. On May 11, 2021, Plaintiff filed a  
2 request for dismissal of Defendant Cambridge Healthcare Services, LLC, based on a tolling  
3 agreement executed by the Parties. The Request for Dismissal is attached as **Exhibit 5**.

4 6. On December 2, 2021, the Parties participated in mediation with mediator Glenn  
5 E. Lerman, an experienced and well-respected mediator, in an attempt to resolve the PAGA  
6 claim. The Parties engaged in arm's-length negotiations and ultimately reached a resolution of  
7 the PAGA claims asserted in the Action. The PAGA Settlement was reached after exchanges of  
8 data, information and documents, and is a result of extensive arms-length negotiations. At all  
9 times, the negotiations were adversarial and contentious, although still professional in nature.  
10 The Parties conducted informal discovery for purposes of potential resolution through which  
11 they ascertained the size of the aggrieved employee group and the number of pay periods worked  
12 by them during the PAGA Period to ascertain the total value of Plaintiff's PAGA claim. Now  
13 that the parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for  
14 approval. In addition to the PAGA Settlement, the Parties entered into an individual confidential  
15 settlement agreement, pursuant to which, Plaintiff provided Defendant with a release of any and  
16 all of her individual claims, suits, causes of action, known or unknown, which Plaintiff may have  
17 or holds against Defendant in exchange for the consideration provided.

18 7. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(1)(2).  
19 The Court necessarily has broad discretion in making the decision to approve or reject a  
20 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,  
21 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount  
22 of penalties based on the facts and circumstances of the particular case. Although the PAGA  
23 does not set forth the particular standards against which a PAGA settlement should be evaluated,  
24 the LWDA has provided guidance for approval that mirrors the standards for evaluating class  
25 action settlements.

26 8. PAGA imposes two requirements for the settlement of a PAGA claim. Both are  
27 met here. First, any civil penalties recovered, whether by judgment or settlement, must be  
28 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved  
employees. See *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.  
Code, § 2699(i). The Parties' Settlement so provides. Second, the LWDA must be given notice  
of the settlement so that it may be heard before the Court decides whether to grant approval. Cal.



**SPIVAK LAW**  
Employee Rights Attorneys

Mail:  
8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

Office:  
15303 Ventura Bl  
Ste 900  
Sherman Oaks, CA 91403

1 Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA concurrently with the filing of  
2 this motion. Here, notice is being given to the LWDA concurrently with the filing of this motion.  
3 A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is  
4 attached as **Exhibit 6**. As a result, Plaintiff has met all procedural statutory requirements for  
5 settling a PAGA action.

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

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

### 24 ***Background of Counsel***

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

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

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

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

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

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

Legal Services.

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

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

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

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

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

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

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

D. *Deckard v. MSL Community Management LLC*, Riverside County Superior Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of

1 class action settlement on behalf of caregivers and medical technicians).

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

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

9 G. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No.  
10 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class  
11 action settlement on behalf of medical devices employees).

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

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

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

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

24 L. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-  
25 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement  
26 on behalf of dairy and agricultural laborers).

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

N. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior  
Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class



1 action settlement by the court on behalf of hourly employees).

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

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

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

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

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

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

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

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

W. *Volney-Parris v. Southern California Edison Company*, Los Angeles  
Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of



class action settlement on behalf of customer specialist employees).

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

### ***Exposure & Risk Analysis***

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

- Defendant produced and Plaintiff reviewed Plaintiff's and other PAGA Members' personnel files.
- Defendant produced and Plaintiff reviewed and analyzed time and payroll records for approximately 16 PAGA Members.
- Plaintiff requested that Defendant produce any and all relevant policies regarding Plaintiff's claims and Defendant produced those policies including its employee handbooks in effect during the relevant time period.
- Plaintiff interviewed other employees about the claims at issue.
- Plaintiff analyzed the state of caselaw on PAGA.
- Plaintiff surveyed the outcomes of PAGA cases that went to trial or otherwise concluded before trial.

15. In preparation for mediation and during the settlement negotiations that followed, Defendant disclosed that there were approximately 183 potential PAGA Members and 4,400 pay periods/paychecks. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period. Unfortunately for the employees concerned, the potential for recovery of the maximum possible civil penalties depends on circumstances that are extremely unlikely independently and in combination. It would depend on the Court stacking the maximum recoverable civil penalties for unpaid minimum wage violations, unpaid overtime violations, unprovided meal breaks violations, unprovided rest breaks violations, unreimbursed expenses violations, untimely, and faulty wage statement violations per pay period for all 4,400 pay periods for all 183 potentially PAGA Members during the PAGA Period.<sup>1</sup> Plaintiff's counsel is

---

<sup>1</sup> If the Court were to stack the maximum recoverable civil penalties for each Labor Code violation, the recoverable civil penalties would be over \$2.6 million. A true and correct copy of the Civil Penalties Exposure calculation sheet is attached as **Exhibit 7**.



not aware of any California State court decision awarding a plaintiff and the other PAGA Members she represents multiple civil penalties for the same pay period under different Labor Code provisions. Plaintiff's counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons (outlined below).

16. There are risks to Plaintiff's claims for off-the-clock work as Defendant's policies expressly prohibits non-exempt employees from performing work off the clock. There are also risks to Plaintiff's meal and rest period claims. Defendant's employee handbook that was in effect for the majority of the PAGA Period contained meal period and rest break policies. A Court could find that these policies were compliant with California law. Defendant further contends that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal.4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining, by a review of Defendant's time records, the exact reasons why a meal period appears to be missed, short or late would be difficult and pinpointing those days in which Plaintiff and the PAGA Members worked during their meal periods will be a challenge.

17. Further, Defendant contends it provided its non-exempt employees the opportunity to take rest periods in accordance with California law, and, accordingly, Plaintiff's rest break claim has no support. Additionally, there are other risks to Plaintiff's rest period claim. Employers are not required to record rest periods and such periods are paid. 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. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective.

18. There is a risk that the Court may consider Plaintiff's claims as to Defendant's



alleged failure to indemnify for business expenses to be individual in nature.

19. The sole source of money recoverable for the PAGA Members and the State is civil penalties available under PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above, Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Member suffered a minimum wage violation; (2) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Member suffered an overtime wage violation; (3) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Member suffered a meal period violation; (4) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Member suffered a rest period violation; and (5) Every paycheck that Defendant issued to employees during the PAGA Period represents a pay period in which every PAGA Member suffered an unreimbursed expense violation. There are no California state court decisions under the PAGA to date with substantial awards of civil penalties. Plaintiff's counsel is aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts, one of which was overturned on May 28, 2021.<sup>2</sup>

---

<sup>2</sup> In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from 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 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 defendants' 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).



20. 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 at least one violation for each pay period for all 183 PAGA Members, Plaintiff could expect to recover \$22,000 (4,400 x \$5= \$22,000). Under *Carrington*, assuming 3 violations for each pay period for all 183 PAGA Members, will result in a recovery of \$66,000 (4,400 x 3 x \$5= \$66,000). The GSA is more than three times the amount Plaintiff could expect to recover under *Carrington*.

21. Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the amended judgment is attached as **Exhibit 8**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript is attached as **Exhibit 9**, 19:8-20:19. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court awarded the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result could occur here.

22. Defendant could also convince the Court to dismiss the claims due to unmanageability because determining whether each PAGA Member worked off the clock or why each employee missed a meal or rest period would require separate mini-trials. *Id. See, Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at \*3-4 (N.D. Cal. 2014). The *Ortiz* court cited the "multitude of individualized assessments" that case would have required in ordering dismissal. *Id.* at \*4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals whose claims

1 require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at \*3  
2 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at \*4 (C.D. Cal. 2015); *see*  
3 *also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at \*2–4 (E.D. Cal. 2014)  
4 (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number of  
5 potential aggrieved employees, judicial economy favors deferring the representative portion of  
6 the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at \*16 (N.D. Cal. May 13,  
7 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision  
8 in *Wesson v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh'g  
9 denied (Sept. 27, 2021) holding that trial courts have authority to ensure that claims under PAGA  
are manageable, and that courts may limit or strike unmanageable PAGA claims.

10 23. The United States Supreme Court announced on December 15, 2021 that, in the  
11 near future, it will hear the matter of *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, and  
12 decide (likely no later than the end of summer 2022) whether or not to overrule the California  
13 Supreme Court’s decision in *Iskanian v. CLS Transportation* (2014) 59 Cal.4<sup>th</sup> 348 that a private  
14 arbitration agreement cannot deprive an employee of his right to sue under PAGA in a court of  
15 law. If the Supreme Court sides with the Petitioner, Plaintiff’s PAGA claim may be subject to  
16 an arbitration agreement allowing only bilateral arbitration and, consequently, inhibiting the  
17 claim altogether. While such an outcome would conflict squarely with *EEOC v. Waffle*  
18 *House* (2002) 534 US 279 (private settlement agreements do not preclude government  
19 prosecutions on behalf of employee signatories to such agreements), this potential outcome is a  
20 risk. While the evidence gathered through Plaintiff’s discovery supports the merits of the claims  
21 asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the risks  
22 associated with the merits of Plaintiff’s claims, the uncertainties of complex litigation, the cost  
23 of pretrial and trial proceedings, the Court’s discretion to lower the amount of penalties  
ultimately awarded, and the secured benefit to the PAGA Members and the LWDA promoting  
compliance with the Labor Code.

24 24. Each PAGA Member will receive a portion of the civil penalties on a pro-rata  
25 basis depending on the number of pay periods Defendant employed them for during the PAGA  
26 Period. Agreement, ¶ 6. With a total of approximately 183 PAGA Members, the average  
27 estimated individual Settlement Payment for each PAGA Member is approximately \$175  
28 (\$32,083/183 PAGA Members). Although an average payment of \$175 per PAGA Member is



1 not an enormous sum of money, it is an excellent result given the uncertainties this lawsuit  
2 entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA is not a  
3 restitution statute with a traditional damages provision designed to restore victims to the position  
4 they would have been in had the Labor Code violations not taken place. Rather, it is at best a  
5 punishment statute designed to reduce future Labor Code violations. It provides for civil  
6 penalties only.

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

#### 15 ***Attorneys' Fees and Costs***

16 26. My co-counsel and I intend to request attorneys' fees of \$66,666.00 (1/3 of the  
17 Gross Settlement Amount exclusive of the payment to Plaintiff for her General Release Payment)  
18 and up to \$15,000 in reasonable litigation costs through the conclusion of matters related to the  
19 Settlement. The written retainer agreement I entered into with Plaintiff provides that I may elect  
20 to recover either (a) statutorily awarded attorney fees or (b) up to 40% of any recovery.

21 27. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for  
22 awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's  
23 Counsel's fee request of \$66,666 (one-third of the Gross Settlement Amount) is fair and  
24 reasonable based on their lodestar as cross-checked against the percentage of the recovery. In  
25 this case, Plaintiff's Counsel have a total lodestar of approximately \$58,632.00 yielding a  
26 multiplier of approximately 1.137 that would be applied to reach the percentage of fund  
27 requested here.<sup>3</sup> A true and correct summary of the time records of my firm is attached as **Exhibit**

28 <sup>3</sup> Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See Chavez v. Netflix, Inc.* (2008)  
162 Cal.App.4th 43, 49; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849, \*4 ("This Court and numerous cases have applied multipliers  
of between 4 and 12 to counsel's lodestar in awarding fees."); *In re California Indirect Purchases* (Cal. Sup. Ct.



10 to this declaration. I will make the detailed copies of such records available to the Court for in camera inspection upon its request. I will have waited for nearly two years to be awarded attorneys' fees for work performed since 2020, when Plaintiff first contacted my office, compared to Defendant's counsel who have been paid as they performed work during this case. Moreover, my co-counsel and I have expended time, effort, and money that we could have expended on less risky cases instead.

28. My firm's current litigation costs total approximately \$7,656.44. A true and correct summary of my firm's costs and expense is attached as **Exhibit 11** to this declaration. I will make detailed copies of such records available to the Court for in camera inspection upon its request. I anticipate that I will incur an additional \$1,130.14 in costs, which consist of filing fees and attorney service fees for filing this motion and notice of entry of order. I anticipate my firm's litigations costs will total approximately \$8,794.58 through final accounting of the Settlement. Including the out-of-pocket expenses incurred by my co-counsel<sup>4</sup>, Plaintiff's Counsel request a total of \$8.00 in reasonable litigation costs.<sup>5</sup>

29. In addition, based on my experience in wage and hour class action and PAGA matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat*

---

1998) 1998 WL 1031494, \*10 (citing *Wilson v. Bank of America Nat'l Trust & Sav. Ass'n.*, (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate awarded) (cited in 3 Newberg & Conte, Newberg on Class Actions, section 1403, at 14-5 n. 21), and *Glendora Community Redevelopment Agency v. Demeter* (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee award 12 times estimated lodestar multiplier).

<sup>4</sup> My co-counsel's current out of pocket expenses total approximately \$8.00. See Haines Decl. ¶ 11.

<sup>5</sup> My co-counsel and I do not seek reimbursement for the wages I paid to the attorneys, paralegals, 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.



**SPIVAK LAW**  
Employee Rights Attorneys

Mail:  
8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

Office:  
15303 Ventura Bl  
Ste 900  
Sherman Oaks, CA 91403

1 *Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund);  
2 *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-  
3 CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles  
4 Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles  
5 Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*,  
6 Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S.  
7 District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund);  
8 *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case No. BC431249 (one-  
9 third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court,  
10 Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare  
11 Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles  
12 Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles  
13 Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No.  
14 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No.  
15 BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case  
16 No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court,  
17 Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v.*  
18 *National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of  
19 fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado,  
20 Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/*  
21 *Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California,  
22 Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard*  
23 *Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris*  
24 *v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-  
25 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).

26 30. My previous experience in litigating wage and hour class actions supports the  
27 reasonableness of the fee request, as does the caliber of opposing counsel. My previous  
28 experience in similar matters was integral in evaluating the strengths and weaknesses of the case



**SPIVAK LAW**  
Employee Rights Attorneys

Mail:  
8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

Office:  
15303 Ventura Bl  
Ste 900  
Sherman Oaks, CA 91403

1 against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage  
2 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law,  
3 state and federal, as well as the procedural law of class action litigation. Because it is reasonable  
4 to compensate me commensurate with my skill, reputation, and experience, attorneys' fees of  
5 approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber  
6 and experience of opposing counsel in labor and employment litigation support the fairness and  
7 reasonableness of the requested fee award.

### 8 ***Settlement Administration Duties***

9 31. The duties of the Settlement Administrator are spelled out in the in the bid by  
10 CPT Group, Inc., a true and correct copy of which is attached as **Exhibit 12**.

11 32. With regard to the settlement administration costs provision, it is reasonable.  
12 Before agreeing to CPT Group, Inc. the Parties sought and reviewed bids from other reputable  
13 third-party administrators and CPT Group Inc.'s bid was comparable:

14 A. ILYM Group, Inc.= \$5,485.00;

15 B. CPT Group, Inc.= \$5,750.00; and

16 C. Class Action Claims Administration = \$6,800.00

17 A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 13**. A  
18 true and correct copy of the bid from Class Action Claims Administration is attached hereto as  
19 **Exhibit 14**. Thus, settlement administration costs provision should be given approval.

### 20 ***Uncashed Checks***

21 33. Those funds represented by un-cashed checks which remain outstanding 180 days  
22 after the mailing of the settlement checks by the Settlement Administrator will be tendered to the  
23 Unclaimed Property Fund of The State Controller's Office. All settlement payments to Aggrieved  
24 Employees will be treated as miscellaneous income for which a 1099 will be issued (Agreement,  
25 ¶ 11).

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

28 Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

05 / 12 / 2022



DAVID SPIVAK,  
Declarant

# **EXHIBIT 1**

1 DAVID G. SPIVAK (SBN 179684)  
2 david@spivaklaw.com  
3 MARALLE MESSRELIAN (SBN 316974)  
4 maralle@spivaklaw.com  
5 MAYA CHEAITANI (SBN 335777)  
6 maya@spivaklaw.com  
7 THE SPIVAK LAW FIRM  
8 16530 Ventura Blvd., Suite 203  
9 Encino, CA 91436  
10 Telephone: (213) 725-9094  
11 Facsimile: (213) 634-2485

12 Attorneys for Plaintiff,  
13 THERESA RIVES, and all others similarly situated  
14 (Additional attorneys for parties on following page)

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF MARIN**  
17 **(UNLIMITED JURISDICTION)**

18 THERESA RIVES, as an “aggrieved employee”  
19 on behalf of other “aggrieved employees” under  
20 the Labor Code Private Attorneys General Act of  
21 2004,

22 *Plaintiff,*

23 *vs.*

24 CF SAN RAFAEL, LLC , a California limited  
25 liability company; CAMBRIDGE  
26 HEALTHCARE SERVICES, LLC, a California  
27 limited liability company; and DOES 1–50,  
28 inclusive,

*Defendant(s).*

Case No. CIV2100671

**PAGA SETTLEMENT AGREEMENT**

Action filed: 2/18/2021

Department: Courtroom B, The Honorable  
James Chou

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ADDITIONAL ATTORNEYS FOR PLAINTIFF**

WALTER L. HAINES (SBN 71075)  
    walter@uelglaw.com  
UNITED EMPLOYEES LAW GROUP  
4276 Katella Ave, Suite 301  
Los Alamitos, CA 90720  
Telephone: (562) 256-1047  
Facsimile: (562) 256-1006

**ATTORNEYS FOR DEFENDANT**

JAMES S. COOPER (SBN 162469)  
    jcooper@laklawyers.com  
LEVINSON ARSHONSKY & KURTZ, LLP  
15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
Telephone: (818) 382-3434 Work  
Facsimile: (818) 382-3433

Attorneys for Defendant,  
CF SAN RAFAEL, LLC

1 Subject to Court approval by the Superior Court for the State of California, County of  
2 Marin ("Court"), Plaintiff Theresa Rives ("Plaintiff") and Defendant CF San Rafael, LLC  
3 ("Defendant") (collectively, Plaintiff and Defendant are the "Parties") hereby agree to the  
4 following binding settlement ("Settlement" or "Settlement Agreement") of the PAGA claims in  
5 the Action entitled Theresa Rives v. CF San Rafael, LLC, Marin County Superior Court case  
6 no. CIV2100671 (the "Action").

7  
8 **PAGA MEMBERS BY THE SETTLEMENT**

9 1. **PAGA Members**: This Settlement covers all current and former non-exempt,  
10 hourly California employees Defendant employed any time during the PAGA Period (the  
11 "PAGA Members").

12 2. **PAGA Period**: The Settlement covers the period from December 8, 2019 through  
13 the date of Court approval or April 1, 2022, whichever is earlier (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 that apply: (a) if no objections to the Settlement are filed, the  
16 date the Court approves the Settlement; (b) if there are objections filed, but no appeal is taken on  
17 the Court's order approving the Settlement, sixty-five (65) calendar days after the date of entry  
18 of an order and judgment approving this Settlement; (c) if there are intervenors to the Action,  
19 and if an appeal, review or writ is not sought from the order granting approval of the settlement,  
20 then upon the expiration date of the time for the filing or noticing of any appeal from, or other  
21 challenge to, the judgment; or (d) if an appeal, review or writ is sought from the judgment, thirty  
22 (30) calendar days after the judgment is affirmed or the appeal, review or writ is dismissed or  
23 denied, and the judgment is no longer subject to further judicial review. Prior to the Effective  
24 Date of the Settlement, Defendant will not be required to fund the Settlement, in whole or in part,  
25 through the Settlement Administrator or any third party. Any subsequent distribution shall be at  
26 PAGA Counsel's expense. If the Effective Date falls on a holiday or weekend, the Effective  
27 Date shall be the next calendar day.

28 ///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

4. **Gross Settlement Amount:** Defendant will pay \$215,000.00 to settle the PAGA

- a. Third-Party Settlement Administration Fees of up to Five Thousand

1           5.       **Escalator Clause.** With respect to the Joint Stipulation re PAGA Settlement,  
2 Defendant estimated for purposes of mediation that Defendant had issued 4,400 pay periods to  
3 83 PAGA Members for the period of December 08, 2019 through the date of Court approval or  
4 April 1, 2022, whichever is earlier. These numbers would be expected to increase proportionately  
5 for the passage of time between that date and the time of court approval. Before the Parties seek  
6 or a Party seeks court approval of the Settlement, the Settlement Administrator will advise  
7 Plaintiff's counsel of Defendant's report of the total number of pay periods and PAGA Members.  
8 If the pay periods as of the date the Court approves the settlement exceeds the referenced 4,400  
9 pay periods by more than 10%, the Gross Settlement Amount will increase proportionally  
according to the number of additional pay periods.

10           6.       **Distribution of the Net Settlement Amount.** The Net Settlement Amount shall  
11 be designated as PAGA penalties in full satisfaction of all claims for PAGA civil penalties under  
12 the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to  
13 have been violated in or reasonably related to the operative Complaint with respect to PAGA  
14 Members, allocated between the LWDA and the PAGA Members pursuant to Labor Code  
15 Section 2699(i) with 75.0% paid to the LWDA and 25.0% paid to the PAGA Members on a pro-  
16 rata basis ("PAGA Penalties Fund"). The 25.0% of the Net Settlement Amount will be paid to  
17 all PAGA Members according to the following formula: Settlement Payment to each PAGA  
18 Member = \$[25.0% of Net Settlement Amount] × [Pay Periods Worked by Individual PAGA  
19 Member During PAGA Period ÷ Total Pay Periods Worked by All PAGA Members during  
PAGA Period].

20           7.       **Settlement Administration.** Settlement Administrator CPT Group, Inc., or as  
21 otherwise agreed to by the Parties and approved by the Court, will administer this Settlement and  
22 will be responsible for issuing payments and appropriate tax forms to PAGA Members, the  
23 LWDA, Plaintiff, and PAGA Counsel. The estimate of costs of administration for the  
24 disbursement of the PAGA Penalties Fund is no more than \$5,000.00. If less than \$5,000.00 is  
25 spent on the Settlement Administrator, the unused funds will be re-allocated to the Net Settlement  
26 Amount.  
27  
28

1           8.       **Court Approval of the Settlement and Distribution of Settlement Payments.**

2       The Parties will present this Settlement Agreement to the Court and will request that the Court  
3       issue a Court Approval Order and Judgment approving and incorporating by reference the terms  
4       and conditions of the Settlement Agreement (the “Court Approval Order and Judgment”),  
5       dismissing the Action with prejudice, and entering judgment. The Parties shall submit this  
6       Settlement Agreement for the Court’s approval by stipulation and order, unless the Court requires  
7       a motion, in which event, Plaintiff will undertake that responsibility.

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

11          10.       **Funding of the Settlement.** Within thirty (30) calendar days after the Effective  
12       Date and notice by the Court or Plaintiff that the Action has been dismissed with prejudice,  
13       Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator, who  
14       shall issue payment to PAGA Counsel and Plaintiff within thirty (30) calendar days of receipt of  
15       the Gross Settlement Amount. Within twenty (20) calendar days after the Effective Date,  
16       Defendant shall provide the Settlement Administrator with the a list of all PAGA Members with  
17       each listed employee’s full name, hiring, and, if applicable, termination dates in connection with  
18       the employee’s employment with Defendant during the PAGA Period, last known mailing  
19       address, and social security number. Within twenty (20) calendar days of receipt of the list of all  
20       PAGA Members, the Settlement Administrator shall run all the addresses of PAGA Members  
21       through the United States Postal Service NCOA database to obtain current address information,  
22       and issue payments to (a) PAGA Members; (b) the LWDA; and (c) itself. The Settlement  
23       Administrator will skip-trace return mail and re-mail within five (5) calendar days. The  
24       Settlement Administrator will issue the appropriate tax forms for all payments issued under this  
25       Settlement. If the Effective Date falls on a holiday or weekend, the Effective Date shall be the  
26       next calendar day.

27          11.       **Settlement Payments to PAGA Members:** The Settlement Administrator will  
28       issue each PAGA Member a check for his or her share of the Net Settlement Amount along with  
29       an explanatory letter in the form attached as Exhibit A. Checks will remain negotiable for one

1 hundred eighty (180) days. Any checks returned as non-deliverable on or before the check  
2 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address  
3 affixed thereto. Funds represented by settlement checks returned as undeliverable and those  
4 settlement checks remaining un-cashed for more than 180 days after issuance shall be paid to the  
5 California State Controller's Office Unclaimed Property Fund with an identification of the  
6 amount of unclaimed funds attributable to each PAGA Member. The Parties do not bear any  
7 liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of  
8 checks. Unless responsible by its own acts of omission or commission, the same is true for the  
9 Settlement Administrator. All settlement payments to PAGA Members will be treated as  
10 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement  
Administrator if required by law.

11 12. **Release of Plaintiff's Individual Claims:** Upon the Effective Date, Plaintiff, for  
12 herself and for her heirs, executors, administrators, successors and assigns, hereby releases,  
13 acquits and forever discharges Defendant, and each of its parents, subsidiaries and related  
14 entities, and each of their respective officers, directors, shareholders, persons, employees, agents,  
15 servants, representatives, members, attorneys, insurers, re-insurers, assigns, and affiliates and  
16 any and all other entities with whom they have been, are now, or may hereafter be affiliated, and  
17 any of its affiliated companies, predecessors, successors and assigns, as well as its past or present  
18 officers, directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees  
19 (collectively "Releasees"), from any and all claims, demands, obligations, actions, causes of  
20 action, liabilities, debts, promises, agreements, demands, attorneys' fees, losses and expenses,  
21 known or unknown, suspected or unsuspected, filed or unfiled, that she may have or have had  
22 arising out of any known or unknown fact, condition or incident occurring prior to the date of  
23 this Agreement, including but not limited to those arising out of or in connection with any claims,  
24 demand, charges, or complaints, specifically including but not limited to the Action, arising out  
25 of or in connection with her employment and its cessation and any and all other interactions or  
26 relations with Releasees. This release includes, without limiting the generality of the foregoing:  
27 any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys' fees,  
28 costs, actual, compensatory and punitive damages, and all claims for any other type of relief  
relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or  
retaliation in violation of State or Federal law; all claims for failure to prevent harassment,

1 discrimination, and/or retaliation; any and all claims for failure to engage in the good faith  
2 interactive process and/or provide reasonable accommodation; all claims of violation of public  
3 policy, including a claim for wrongful and/or constructive termination of employment; all claims  
4 based on tort and/or breach of contract, whether written or oral, express or implied, and any  
5 covenant of good faith and fair dealing, all claims for unpaid commissions, wages, or other  
6 benefits, including minimum wage, overtime, double time, vacation, associated penalties and/or  
7 premiums, and expense reimbursement; all claims for rest or meal periods and associated  
8 penalties and/or premiums, and any and all claims for alleged violations of the California *Labor*  
9 *Code* generally; any claim for unlawful or unfair business practices; all claims for emotional  
10 distress; any and all claims which were or could have been asserted by Plaintiff; and all claims  
11 generally relating to Plaintiff's employment relationship, any type of relationship, and/or  
12 interactions with Releasees and the cessation thereof, including any alleged violation of any  
13 federal, state or other governmental statute, regulation, ordinance, or executive order, including  
14 without limitation:

- 15 (1) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- 16 (2) 42 U.S.C. § 1981;
- 17 (3) The California Fair Employment and Housing Act;
- 18 (4) Section 503 of the Rehabilitation Act of 1973;
- 19 (5) The Fair Labor Standards Act (including the Equal Pay Act);
- 20 (6) The California and United States Constitutions;
- 21 (7) The California Labor Code, specifically including, but not limited to the  
22 Private Attorneys General Act ("PAGA") pursuant to *Labor Code* §  
23 2699, *et seq.*;
- 24 (8) The California Business & Professions Code;
- 25 (9) The Employee Retirement Income Security Act, as amended;
- 26 (10) The Americans with Disabilities Act;
- 27 (11) The Age Discrimination in Employment Act;
- 28 (12) The Family Medical Leave Act;

- 1 (13) The California Family Rights Act;
- 2 (14) The California Pregnancy Discrimination Act;
- 3 (15) The California Wage Orders;
- 4 (16) The National Labor Relations Act;
- 5 (17) The Immigration Reform and Control Act;
- 6 (18) The California Occupational Safety and Health Act, and the Federal
- 7 equivalent; and
- 8 (19) The Worker Adjustment and Retraining Notification Act; and
- 9 (20) The Families First Coronavirus Response Act.

10 Plaintiff acknowledges the existence of and, with respect to the release given in Paragraph 13

11 herein, expressly waives and relinquishes any and all rights and benefits Plaintiff has or may

12 have under California Civil Code, Section 1542, which provides:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR

14 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR

15 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF

16 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER

SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

17 Plaintiff acknowledges that she may hereafter discover facts different from or in addition to those

18 which each she or her attorneys now know or believe to be true with respect to the matters

19 released in this settlement, and agrees that the release so given in Paragraph 12, shall be and

20 remain in effect as a full and complete release of all claims, notwithstanding any such different

21 or additional facts.

22 13. **Settled and Released PAGA Claims.** As of and subject to the occurrence of the

23 Effective Date, and in consideration for the Gross Settlement Amount, the claims settled, fully

24 released and forever discharged by the LWDA and the PAGA Members, including Plaintiff,

25 constitute any and all claims for civil penalties Plaintiff, the PAGA Members, and the State of

26 California may have against the Released Parties under the California Labor Code, Wage Orders,

27 regulations, and/or any other provisions of state and federal law arising from allegations that the

28 PAGA Members suffered Labor Code violations based on Failure to pay employees all earned

1 wages, Failure to provide meal periods, Failure to authorize and permit rest periods, Failure to  
2 indemnify for business expenses, Failure to issue proper wage statements, Failure to timely pay  
3 wages, and any other Labor Code violations that were alleged in the Action, or that could have  
4 been alleged in the Action based on the facts alleged in the Action, which includes, but is not  
5 limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7,  
6 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 2802, and 2698 *et seq.* (“PAGA Released  
7 Claims”). The “Released Parties” are CF San Rafael, LLC and its present and former parent  
8 companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders,  
9 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and all persons  
10 acting by or through or in concert with any of them, and each of them (hereinafter “Released  
Parties”).

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

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

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

25 17. **Continued Jurisdiction.** After entry of the Court Approval Order and Judgment,  
26 the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6  
27 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the  
28

1 Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval matters as  
2 may be appropriate under court rules or as set forth in this Settlement.

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

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

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

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

22 22. **California Law Governs.** All terms of this Settlement Agreement and Exhibit(s)  
23 hereto will be governed by and interpreted according to the laws of the State of California.

24 23. **Execution and Counterparts.** This Settlement Agreement is subject only to the  
25 execution of all Parties. However, the Settlement Agreement may be executed in one or more  
26 counterparts. All executed counterparts and each of them, including facsimile and scanned  
27 copies of the signature page, will be deemed to be one and the same instrument.  
28

1           24.     **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties  
2 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action  
3 and have arrived at this Settlement after arm's-length negotiations by experienced counsel before  
4 Glenn E. Lerman, an experienced and well-respected mediator who focuses on mediation of  
5 employment matters involving alleged wage and hour violations. The Parties further  
6 acknowledge that they are each represented by competent counsel and that they have had an  
7 opportunity to consult with their counsel regarding the fairness and reasonableness of this  
8 Settlement.

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

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

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  
16 will not be construed more strictly against one party than another merely by virtue of the fact that  
17 it 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 the 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 PAGA Members will be limited  
12 to a statement that a settlement has been reached and the details will be communicated in a  
13 forthcoming notice letter in the form attached hereto as Exhibit A. Plaintiff is prohibited from  
14 discussing the terms or the fact of this PAGA Settlement with third parties other than (1) her  
15 immediate family members, and (2) her respective accountants or lawyers as necessary for tax  
16 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 Dated: 02 / 09 / 2022

  
Theresa Rives, Plaintiff

20 Dated: \_\_\_\_\_

21 Staci Le Trang  
22 General Counsel  
23 Defendant CF San Rafael, LLC

24 **APPROVED AS TO FORM**

25 THE SPIVAK LAW FIRM

26 Dated: \_\_\_\_\_

27 David Spivak for Plaintiff Theresa Rives

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 the 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 PAGA Members will be limited  
12 to a statement that a settlement has been reached and the details will be communicated in a  
13 forthcoming notice letter in the form attached hereto as Exhibit A. Plaintiff is prohibited from  
14 discussing the terms or the fact of this PAGA Settlement with third parties other than (1) her  
15 immediate family members, and (2) her respective accountants or lawyers as necessary for tax  
16 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 Dated: \_\_\_\_\_

20 Dated: February 23, 2022

Theresa Rives, Plaintiff

Staci Le Trang  
General Counsel  
Defendant CF San Rafael, LLC

24 **APPROVED AS TO FORM**

THE SPIVAK LAW FIRM

26 Dated: 02 / 09 / 2022

David Spivak  
David Spivak for Plaintiff Theresa Rives

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: February 9, 2022

UNITED EMPLOYEES LAW GROUP

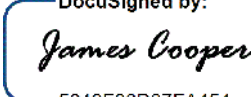


Walter Haines for Plaintiff Theresa Rives

Dated: February 10, 2022

LEVINSON ARSHONSKY & KURTZ, LLP

DocuSigned by:



5649F88D37FA454...

James Cooper for Defendant  
CF San Rafael, LLC

# **EXHIBIT 2**

1 **NOTICE OF PAGA SETTLEMENT**

2 *Theresea Rives v. CF San Rafael, LLC*  
3 *(Superior Court of California, Marin County*  
4 *Case No. CIV2100671*

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 Theresea Rives (“Plaintiff”) and the defendant is CF San Rafael,  
18 LLC (“Defendant”). The Action seek civil penalties for purported violations of the California  
19 Labor Code on behalf of all Defendant’s current and former California non-exempt employees  
20 (“PAGA Members”) who Defendant employed during the PAGA Period of December 8, 2019  
21 through the date of Court approval or April 1, 2022, whichever is earlier. Defendant denies all  
22 claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully  
23 complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time  
24 in defending the Action, Defendant has settled the case and the Court has approved the settlement  
25 and release of claims. By settling the Action, Defendant is not admitting that it has done anything  
26 wrong. As of and subject to the occurrence of the Effective Date of the Settlement, the Settlement  
27 resolves, and in consideration for the Gross Settlement Amount, the claims settled, fully released  
28 and forever discharged by the LWDA and the PAGA Members, including Plaintiff, constitute  
any and all claims for civil penalties Plaintiff, the PAGA Members, and the State of California  
may have against the Released Parties under the California Labor Code, Wage Orders,  
regulations, and/or any other provisions of state and federal law arising from allegations that the  
PAGA Members suffered Labor Code violations based on Failure to pay employees all earned  
wages, Failure to provide meal periods, Failure to authorize and permit rest periods, Failure to  
indemnify for business expenses, Failure to issue proper wage statements, Failure to timely pay  
wages, and any other Labor Code violations that were alleged in the Action, or that could have  
been alleged in the Action based on the facts alleged in the Action, which includes, but is not  
limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7,  
246, 248.2, 248.5, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and 2698 et seq.  
 (“PAGA Released Claims”). The “Released Parties” are CF San Rafael, LLC and its present and  
former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and  
its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and  
assigns, and all persons acting by or through or in concert with any of them, and each of them  
(hereinafter “Released Parties”).

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

3 According to the Defendant's records, you are an PAGA Member and therefore entitled  
4 to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice  
5 is your check for your share. The settlement check shall remain valid for 180 days. Thereafter,  
6 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.

7 Please Note: One hundred percent (100%) of your individual PAGA payment under this  
8 Settlement will be considered penalties and may be subject to local, state, or federal tax  
9 withholdings and will be reported to the IRS and state tax authorities. You should rely on your  
10 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff  
11 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.

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

# **EXHIBIT 3**



SPIVAK LAW

**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL\***

December 7, 2020

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

RE: Theresea Rives/CF San Rafael, LLC

To whom it may concern:

This notice concerns the following employers:

1. CF San Rafael, LLC
2. Cambridge Healthcare Management Services, LLC
3. Cambridge Healthcare Services, LLC
4. Jacob Wintner

Collectively, the aforementioned employers are herein referred to as "Cambridge".

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.), Theresea Rives (hereafter "Rives") provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to, medical records supervisor, and other comparable positions (hereafter referred to as "Aggrieved Employees"), by Cambridge of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174.5, 1194, 1197, 1198 and 2802.

At all relevant times, Cambridge has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Rives and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

### **Statement of Facts**

Cambridge first employed Rives on or about September 9, 2019 to work as a medical records supervisor (though she and the other Aggrieved Employees with “supervisor” in their title did not hold any supervisory duties) at its Professional Post Acute Center located at 81 Professional Center Pkwy in San Rafael, California. Rives worked at Professional Post Acute Center for Cambridge continuously from the time of her hire until approximately October 2, 2020 when Cambridge terminated her employment.

At all relevant times, Cambridge paid Rives and the other Aggrieved Employees at an hourly rate of pay on a semi-monthly basis. At all relevant times, Cambridge classified Rives and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Rives and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Cambridge failed to provide Rives and the Aggrieved Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Cambridge expected Rives and the Aggrieved Employees to respond to the communications of coworkers at all times regardless of whether they were on a rest break or meal period. Thus, when Rives and the Aggrieved Employees took rest and/or meal periods, other Cambridge employees and managers, including Administrator Dennis Noss, past Administrators Kristine Pacheco, Mike (last name unknown), and Wagner Tuleu, Director of Nursing Wanda Knowles, Social Services Director David O’Sullivan, Activities Director Ritzchell Carolino, and Director

of Staff Development Leticia Barahona (collectively “the Cambridge Directors”) knowingly interrupted them with requests for information, assistance, and for other Cambridge business. Further, Cambridge required Rives and the Aggrieved Employees to remain on the premises at all times during state inspections, which occurred regularly and frequently, and became a daily occurrence during the COVID-19 pandemic. Cambridge did not request an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Cambridge also often failed to provide Rives and the Aggrieved Employees with 30-minute meal periods before the end of their fifth work hour. Cambridge required Rives and the other Aggrieved Employees to attend daily “triple check meetings” with the other Cambridge Directors, which often lasted 4-5 hours and prevented them from taking their rest breaks and meal periods within the time periods set out in the Wage Order. On a number of occasions, the payroll department notified the Administrator about Cambridge’s failure to provide Rives and the Aggrieved Employees with timely rest and meal periods. In spite of this, Cambridge refused to make changes.

Cambridge failed to pay Rives and the Aggrieved Employees premium wages for days on which it failed to provide them with all timely meal periods and unrestricted rest periods as outlined above.

At all relevant times, Cambridge required Rives and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and rest periods. During such periods, the Cambridge Directors frequently interrupted Rives and the Aggrieved Employees’ meal periods to attend to tasks needing immediate attention, including responding to requests for medical records, responding to calls, text messages and emails, creating new patient charts, copying records and documents for billing, compiling data and information for reports, and preparing necessary patient documents. Cambridge, however, did not compensate Rives and the Aggrieved Employees for this off-the-clock work. Cambridge did not enter into valid on-duty meal period agreements with Rives or any of the Aggrieved Employees, nor did the nature of their work require on duty meal periods or rest breaks. The Cambridge Directors also sent text messages to Rives and the Aggrieved Employees after they had already clocked out at the end of

their shifts and during weekends. Cambridge did not compensate Rives and the Aggrieved Employees for this off the clock work.

At all relevant times, Cambridge required Rives and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Cambridge required Rives and other Aggrieved Employees to use their personal cell phones in the course of performing their duties. The Cambridge Directors communicated with Rives and the other Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work related issues and did not provide mobile phones or an alternative to them for this purpose. Additionally, Cambridge did not reimburse Rives and the Aggrieved Employees for their cell phone expenses.

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

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

- a) Cambridge failed to pay Rives and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum and overtime wages;
- b) Cambridge failed to provide Rives and the Aggrieved Employees with all meal periods;
- c) Cambridge failed to pay Rives and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;

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

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

### **The Wage Order**

Wage Order 5 applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

“(2) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;...”...

§ 2(P)(4). At all relevant times during the applicable limitations period, Rives was employed by Cambridge as a medical records supervisor who performed the majority of her duties in a nursing home setting. Accordingly, Rives and the Aggrieved Employees are entitled to the protections provided under the Wage Order

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

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

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

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

Within the health care industry, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during

which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223.

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

(A) Daily Overtime - General Provisions

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

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

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

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

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

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

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

#### **Failure to Provide Meal Periods**

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

In relevant part, Labor Code section 1198 states,

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is

required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223.

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680.

29 C.F.R. § 785.7.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the

employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19. "It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period." *Id.* Respiratory therapists required to wear pagers and respond to patient emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their

responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect. Wage Order 5, § 11(D).

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer

shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

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

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

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

to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.

In relevant part, Labor Code section 1198 states,

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

In relevant part, 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.

In addition, Labor Code section 226.7 states:

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

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

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

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

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

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

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

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

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

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

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

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

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

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

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

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

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

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar

month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

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

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

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under section 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the Employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or

until an action therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

1. For violations of Labor Code section 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 201 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 202 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 203 occurred, and \$200 per Aggrieved Employee per pay

period in which subsequent violations of section 203 occurred (penalties set by Labor Code section 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 7 of the Wage Order states,

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

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

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

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

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

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

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

all deductions made on written orders of the employee may be aggregated and shown as one item.

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

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

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

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

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

**Individual Liability**  
**(Labor Code § 558.1)**

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee’s representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

At all relevant times herein, Jacob Wintner was the “owner,” “director,” “officer,” or “managing agent” of CF San Rafael, LLC, and Cambridge Healthcare Services, LLC, and employed Rives and the Aggrieved Employees. Jacob Wintner directly or indirectly, or through an agent or any other person,

employed and exercised control over the wages, hours, or working conditions of Rives and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

### **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: Theresea Rives  
Walter Haines, Esq.

CF San Rafael, LLC  
c/o Jacob Winter, Agent for service of process  
6300 Wilshire Blvd., Ste 1800  
Los Angeles, CA 90048

Cambridge Healthcare Management Services, LLC  
c/o Legalzoom.com, inc., Agent for service of process  
101 N Brand Blvd., 11th Floor  
Glendale Ca 91203

Cambridge Healthcare Services, LLC  
c/o Jacob Winter, Agent for service of process  
6300 Wilshire Blvd., Ste 1800  
Los Angeles, CA 90048

*LWDA / Cambridge*

*12/7/2020*

*Page 28 of 28*

Jacob Wintner  
6300 Wilshire Blvd., Ste 1800  
Los Angeles, CA 90048

# **EXHIBIT 4**

1 DAVID G. SPIVAK (SBN 179684)  
2 [david@spivaklaw.com](mailto:david@spivaklaw.com)  
3 MARALLE MESSRELIAN (SBN 316974)  
4 [maralle@spivaklaw.com](mailto:maralle@spivaklaw.com)  
5 MAYA CHEATANI (PL 507677)  
6 [maya@spivaklaw.com](mailto:maya@spivaklaw.com)  
7 THE SPIVAK LAW FIRM  
16530 Ventura Blvd., Suite 203  
Encino, CA 91436  
Telephone (818) 582-3086  
Facsimile (818) 582-2561

8 Attorneys for Plaintiff,  
9 THERESA RIVES, and all other similarly situated

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

14 THERESA RIVES, as an "aggrieved  
15 employee" on behalf of other similarly situated  
16 "aggrieved employees" under the Labor Code  
Private Attorney General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 CF SAN RAFAEL, LLC, a California limited  
20 liability company; CAMBRIDGE  
21 HEALTHCARE SERVICES, LLC, a  
22 California limited liability company; and  
DOES 1 through 50, inclusive,

23 *Defendant(s),*

**FILED**

**FEB 18 2021**

**JAMES M. KIM, Court Executive Officer**  
**MARIN COUNTY SUPERIOR COURT**  
*By: T. Jones, Deputy*

Case No.: *CIV 2100671*

**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**

By Fax



**SPIVAK LAW**

Employee Rights Attorneys  
16530 Ventura Bl., Ste 203  
Encino CA 91436  
(818) 582-3086 Tel  
(818) 582-2561 Fax  
[SpivakLaw.com](http://SpivakLaw.com)

**ADDITIONAL ATTORNEY FOR PLAINTIFF**

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



**SPIVAK LAW**

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

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

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the  
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the  
6 Wage Order”), against Defendants CF SAN RAFAEL, LLC, a California limited liability  
7 company; CAMBRIDGE HEALTHCARE SERVICES, LLC, a California limited liability  
8 company; and DOES 1 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
10 her, the State of California, and other similarly situated aggrieved current and former employees  
11 who worked in California as hourly, non-exempt employees, including, but not limited to,  
12 medical records supervisors, and persons in similar positions, at any time during the period of  
13 December 7, 2019, to the present, for civil penalties and other related relief. These claims are  
14 based on Defendants’ failures to: (1) Provide all rest and meal periods; (2) Indemnify for  
15 necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct  
16 rates of pay; (4) Provide accurate and complete written wage statements; (5) Timely pay wages  
17 during and upon termination of employment; and (6) Maintain accurate employment records.  
18 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this  
19 representative action.

20 **II. JURISDICTION AND VENUE**

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

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

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

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



**SPIVAK LAW**

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

### **III. THE PARTIES**

7. Plaintiff, THERESA RIVES, is an individual and resident of California. Defendants first employed Plaintiff on or about September 9, 2019 to work as a medical records supervisor. Plaintiff worked for Defendants continuously from the time of her hire until approximately October 2, 2020, when Defendants terminated her employment. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050, and an “aggrieved employee” within the meaning of California Labor Code § 2699(c).

8. Defendant CF SAN RAFAEL, LLC, is a limited liability company organized and existing under the laws of California based on Plaintiff’s information and belief.

9. Defendant CAMBRIDGE HEALTHCARE SERVICES, LLC, is a limited liability company organized and existing under the laws of California based on Plaintiff’s information and belief.

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

#### **A. THE AGGRIEVED EMPLOYEES**

11. The “Aggrieved Employees” are all individuals Defendants employed in California as hourly, non-exempt employees, including, but not limited to medical records supervisors, and persons in comparable positions, at any time during the period of December 7, 2019, and entry of judgment (“the PAGA Period”).

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

13. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack



**SPIVAK LAW**

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

of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

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

#### **IV. FACTUAL ALLEGATIONS**

15. On approximately September 9, 2019, Defendants first employed Plaintiff to work as a medical records supervisor (though she and the Aggrieved Employees with “supervisor” in their title did not hold any supervisory duties) at its Professional Post Acute Center located at 81 Professional Center Pkwy in San Rafael, California. Plaintiff worked at the Professional Post Acute Center for Defendants continuously from the time of her hire until approximately October 2, 2020, when Defendants terminated her employment.

16. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees at an hourly rate of pay on a semi-monthly basis. At all relevant times, Defendants classified Plaintiff and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

17. At all relevant times, Plaintiff and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods pursuant to California law, including but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Defendants expected Plaintiff and the Aggrieved Employees to respond to the communications of coworkers at all times regardless of whether they were on a rest break or meal periods. For example, when Plaintiff and the Aggrieved Employees took rest and/or meal periods, other employees and managers, including Administrator Dennis Noss, past Administrators Kristine Pacheco, Mike (last name unknown), and Wagner Tuley, Director of Nursing Wanda Knowles, Social Services Director David O’Sullivan, Activities Director Ritzchell Carolino, and Director of Staff Development Leticia Barahona (collectively “the Cambridge Directors”) knowingly interrupted them with requests for information, assistance, and for other work-related



**SPIVAK LAW**

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

activities. Further, Defendants required Plaintiff and the Aggrieved Employees to remain on the Defendants' premises at all times during state inspections, which occurred regularly and frequently, and became a daily occurrence during the COVID-19 pandemic. Defendants did not request an exemption from California's rest period law from the Division of Labor Standards Enforcement.

18. Defendants also often failed to provide Plaintiff and the Aggrieved Employees with 30-minute meal periods before the end of their fifth work hour. Defendants required Plaintiff and the Aggrieved Employees to attend daily "triple check meetings" with the other Cambridge Directors, which often lasted 4-5 hours and prevented them from taking their rest breaks and meal periods with the time periods set out in the Wage Order. On a number of occasions, the payroll department notified Defendants' Administrator about Defendants' failure to provide Plaintiff and the Aggrieved Employees with timely rest and meal periods. In spite of this, Defendants refused to make changes.

19. Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages for days on which they failed to provide them with all timely meal periods and unrestricted rest periods as outlined above.

20. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and rest periods. During such periods, the Defendants' Directors frequently interrupted Plaintiff and the Aggrieved Employees' meal periods to attend to tasks needing immediate attention, including responding to requests for medical records, responding to calls, text messages and emails, creating new patient charts, copying records and documents for billing, compiling data and information for reports, and preparing necessary patient documents. Defendants, however, did not compensate Plaintiff and the Aggrieved Employees for this off-the-clock work. Defendants did not enter into valid on-duty meal period agreements with Plaintiff or any of the Aggrieved Employees, nor did the nature of their work require on duty meal periods or rest breaks. The Defendants' Directors also sent text messages to Plaintiff and the Aggrieved Employees after they had already clocked-out at the end of their shifts and during weekends. Defendants did not compensate Plaintiff and the Aggrieved Employees for this off-the-clock work.

21. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Defendants required



**SPIVAK LAW**

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

1 Plaintiff and the Aggrieved Employees to use their personal cell phones in the course of  
2 performing their duties. The Defendants' Directors communicated with Plaintiff and the  
3 Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work-  
4 related issues and did not provide mobile phones or an alternative to them for this purpose.  
5 Additionally, Defendants did not reimburse Plaintiff and the Aggrieved Employees for their cell  
6 phone expenses.

7 22. As a result of the practices described above, Defendants failed to provide Plaintiff  
8 and the Aggrieved Employees with accurate wage statements that properly and accurately  
9 itemize Plaintiff and the Aggrieved Employees' gross and net wages earned and the total hours  
10 worked. As a further result, Defendants failed to timely pay Plaintiff and the Aggrieved  
11 Employees all earned and unpaid wages during, and upon termination of their employment

12 23. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'  
13 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 14 A. Not provided with all off duty meal periods;
- 15 B. Not provided with all rest break periods as required by law;
- 16 C. Not paid one hour's pay for each workday in which Defendants failed to  
17 provide them with one or more timely rest periods;
- 18 D. Not paid one hour's pay for each workday in which Defendants failed to  
19 provide them with one or more timely meal periods;
- 20 E. Not paid all wages earned, including, but not limited to, regular and  
21 overtime wages for work performed while clocked out;
- 22 F. Not indemnified for all necessary business expenditures incurred during  
23 the discharge of their duties;
- 24 G. Not provided with accurate and complete wage statements; and
- 25 H. Not timely paid all earned and unpaid wages during their employment with  
26 Defendants and at the time such employment ended.

27 **V. FIRST (AND ONLY) CAUSE OF ACTION**

28 **CIVIL PENALTIES**

**(Lab. Code §§ 2698, et seq.)**

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



**SPIVAK LAW**

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

- 1           24.     Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.
- 2           25.     At all relevant times, Plaintiff and the Aggrieved Employees have been non-
- 3 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

4     **A.     FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

- 5           26.     In relevant part, California Labor Code § 1198 states:

6                     “The maximum hours of work and the standard conditions of labor fixed by

7                     the commission shall be the maximum hours of work and the standard

8                     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.”

- 9           27.     In relevant part, California Labor Code § 512 states:

10                    An employer shall not employ an employee for a work period of more than

11                    five hours per day without providing the employee with a meal period of not

12                    less than 30 minutes, except that if the total work period per day of the

13                    employee is no more than six hours, the meal period may be waived by mutual

                      consent of both the employer and employee.

14                    An employer shall not employ an employee for a work period of more than

15                    10 hours per day without providing the employee with a second meal period

16                    of not less than 30 minutes, except that if the total hours worked is no more

17                    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.

- 18           28.     In relevant part, Section 11 of the Wage Order states:

19                    **Meal Periods**

20                    (A)        “No employer shall employ any person for a work

21                    period of more than five (5) hours without a meal period of

22                    not less than 30 minutes, except that when a work period of

23                    not more than six (6) hours will complete the day’s work the

24                    meal period may be waived by mutual consent of the

25                    employee and the employee. Unless the employee is relieved

26                    of all duty during a 30-minute meal period, the meal period

27                    shall be considered an ‘on duty’ meal period and counted as

28                    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.”



**SPIVAK LAW**

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

(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."

...

(D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

29. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations, 29 C.F.R. § 778.223 states:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

30. 29 C.F.R. § 785.7 states:

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business."



**SPIVAK LAW**

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

(Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123 (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” Armour & Co. v. Wantock (1944) 323 U.S. 126; Skidmore v. Swift (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” Anderson v. Mt. Clemens Pottery Co. (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.

31. 29 C.F.R. § 785.18 states:

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (Mitchell v. Greinetz, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); Ballard v. Consolidated Steel Corp., Ltd., 61 F. Supp. 996 (S.D. Cal. 1945))

32. 29 C.F.R. § 785.19 states:

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. Culkin v. Glenn L. Martin, Nebraska Co., 97 F. Supp. 661 (D. Neb. 1951), aff’d 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); Thompson v. Stock & Sons, Inc., 93 F. Supp. 213 (E.D. Mich 1950), aff’d 194 F. 2d 493 (C.A. 6, 1952); Biggs v. Joshua Hendy Corp., 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); Walling v. Dunbar Transfer & Storage Co., 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); Lofton v. Seneca Coal and Coke Co., 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff’d 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); Mitchell v.



SPIVAK LAW

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

Tampa Cigar Co., 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); Douglass v. Hurwitz Co., 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

33. 29 C.F.R. § 785.19 states:

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

34. Wage Order 5, § 11(D) states:

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

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

#### **Rest Periods**

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



**SPIVAK LAW**

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

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.”

36. In addition, California Labor Code § 226.7 states:

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

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

37. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on days they worked more than ten hours.

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

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

40. As described above, at all relevant times during the applicable time period, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely 30-minute duty-free meal periods. Defendants also required Plaintiff and the Aggrieved Employees to work into and/or through their rest periods. Moreover, by requiring Plaintiff and the Aggrieved Employees to remain on work premises during their rest periods, Defendants have intentionally



**SPIVAK LAW**

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

1 and improperly failed to provide Plaintiff and the Aggrieved Employees with all duty-free rest  
2 periods. Further, Defendants failed to compensate Plaintiff and the Aggrieved Employees at one  
3 hour's pay for each workday in which they failed to provide them with one or more timely rest  
4 periods as provided by California law.

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

9 **B. FAILURE TO INDEMNIFY**

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

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

15 44. As described above, during the applicable limitations period, Defendants required  
16 Plaintiff and the Aggrieved Employees to use their personal vehicles and personal mobile phones  
17 for work-related activities without reimbursing them for their mileage and phone expenses.  
18 Defendants failed to indemnify Plaintiff and the Aggrieved Employees for these expenses both  
19 during and after their employment ended.

20 45. Plaintiff is informed and believes and thereon alleges that, at all relevant time,  
21 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants'  
22 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they  
23 incurred during the course of performing their duties.

24 **C. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

25 46. Section 2 of the Wage Order defines "hours worked" as "the time during which  
26 an employee is subject to the control of an employer, and includes all the time the employee is  
27 suffered or permitted to work, whether or not required to do so[.]"

28 47. Section 4 of the Wage order requires an employer to pay non-exempt employees  
at least the minimum wage set forth therein for all hours worked, which consist of all hours that  
an employer has actual or constructive knowledge that employees are working.



**SPIVAK LAW**

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

1           48.     Within the health care industry, the term “hours worked” means the time during  
2     which an employee is suffered or permitted to work for the employer, whether or not required to  
3     do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”).  
4     Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is  
5     defined by federal regulations. 29 C.F.R. § 778.223 states:

6                     ...As a general rule the term “hours worked” will include: (a) All time during  
7                     which an employee is required to be on duty or to be on the employer’s  
8                     premises or at a prescribed workplace and (b) all time during which an  
9                     employee is suffered or permitted to work whether or not he is required to do  
10                    so. Thus, working time is not limited to the hours spent in active productive  
11                    labor, but includes time given by the employee to the employer even though  
12                    part of the time may be spent in idleness. Some of the hours spent by  
13                    employees, under certain circumstances, ... in meal periods and rest periods  
14                    are regarded as working time and some are not. The governing principles are  
15                    discussed in part 785 of this chapter (interpretative bulletin on “hours  
16                    worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal  
17                    Act of 1947). ...

18           49.     In relevant part, California Labor Code § 510 states,

19                     Any work in excess of eight hours in one workday and any work in excess of  
20                     40 hours in any one workweek and the first eight hours worked on the seventh  
21                     day of work in any one workweek shall be compensated at the rate of no less  
22                     than one and one-half times the regular rate of pay for an employee. Any work  
23                     in excess of 12 hours in one day shall be compensated at the rate of no less  
24                     than twice the regular rate of pay for an employee. In addition, any work in  
25                     excess of eight hours on any seventh day of a workweek shall be compensated  
26                     at the rate of no less than twice the regular rate of pay of an employee.

27           50.     Section 3 of the applicable Wage Order states:

28                     (A) Daily Overtime - General Provisions

                   (1)     The following overtime provisions are applicable to employees 18  
                   years of age or over and to employees 16 or 17 years of age who  
                   are not required by law to attend school and are not otherwise  
                   prohibited by law from engaging in the subject work. Such  
                   employees shall not be employed more than eight (8) hours in any  
                   workday or more than 40 hours in any workweek unless the  
                   employee receives one and one-half (1 1/2) times such employee’s  
                   regular rate of pay for all hours worked over 40 hours in the  
                   workweek. Eight (8) hours of labor constitutes a day’s work.  
                   Employment beyond eight (8) hours in any workday or more than  
                   six (6) days in any workweek is permissible provided the employee  
                   is compensated for such overtime at not less than:



- 1 (a) One and one-half (1 1/2) times the employee's regular  
2 rate of pay for all hours worked in excess of eight (8)  
3 hours up to and including 12 hours in any workday, and  
4 for the first eight (8) hours worked on the seventh (7th)  
5 consecutive day of work in a workweek; and
- 6 (b) Double the employee's regular rate of pay for all hours  
7 worked in excess of 12 hours in any workday and for all  
8 hours worked in excess of eight (8) hours on the seventh  
9 (7th) consecutive day of work in a workweek.
- 10 (c) The overtime rate of compensation required to be paid to  
11 a nonexempt full-time salaried employee shall be  
12 computed by using the employee's regular hourly salary  
13 as one-fortieth (1/40) of the employee's weekly salary.

14 51. Labor Code § 1194 invalidates any agreement between an employer and an  
15 employee to work for less than the minimum or overtime wage required under the applicable  
16 Wage Order.

17 52. Under Labor Code § 1197, "The minimum wage for employees fixed by the  
18 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
19 the minimum so fixed is unlawful."

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

22 54. In conjunction, these provisions of the Labor Code require employers to  
23 compensate non-exempt employees for "off-the-clock" work (before punching in or after  
24 punching out on a time clock) if the employers knew or should have known that the employees  
25 were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

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

56. Plaintiff is informed and believes that, at all relevant times, Defendants have  
applied centrally devised policies and practices to her and the Aggrieved Employees with respect  
to working conditions and compensation arrangements.



SPIVAK LAW

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

1           57. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
2 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'  
3 failure to compensate the Aggrieved Employees for all hours worked, including but not limited  
4 to, regular and overtime hours at the correct rates of pay.

5           **D. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

6           58. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved  
7 Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an  
8 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all  
9 applicable hourly rates in effect during the pay period; and d) the corresponding number of hours  
10 worked at each hourly rate by the employee.

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

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

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

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

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

26               E. The number of piece-rate units earned and the piece rate.

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

          61. Defendants did not pay Plaintiff and the Aggrieved Employees minimum, and  
overtime wages for work it required them to perform during their off-the-clock meal periods and



**SPIVAK LAW**

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

1 after clocking-out at the end of their shifts. Defendants failed to provide Plaintiff and the  
2 Aggrieved Employees with all meal and rest periods in compliance with California law.  
3 Defendants also failed to provide Plaintiff and the Aggrieved Employees with premium wages  
4 on workdays they failed to provide them with one or more meal or rest periods in compliance  
5 with California law. Defendants knowingly and intentionally did not state this worktime and  
6 wages earned on the itemized wage statements they issued to Plaintiff and the Aggrieved  
7 Employees. As a result, Defendants have failed to properly itemize Plaintiff and the Aggrieved  
8 Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other  
9 requirements of California Labor Code § 226. As a result, Defendants have violated California  
Labor Code § 226.

10 62. Defendants' failure to provide Plaintiff and the Aggrieved Employees with  
11 accurate wage statements was knowing and intentional. Defendants had the ability to provide  
12 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided  
13 wage statements that Defendants knew were not accurate.

14 63. As a result of being provided with inaccurate wage statements by Defendants,  
15 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive  
16 accurate wage statements were violated and they were misled about the amount of wages they  
17 had actually earned and were owed. In addition, the absence of accurate information on their  
18 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has  
19 required discovery and mathematical computations to determine the amounts of wages owed, has  
20 caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to  
21 the submission of inaccurate information about wages to state and federal government agencies.  
22 Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage  
23 statements whether Defendants complied with their obligations under California Labor Code §  
24 226(a) and 226.2.

25 **E. UNTIMELY WAGES DURING EMPLOYMENT**

26 64. Labor Code § 204 states:

27 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,  
28 or 204.2, 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



**SPIVAK LAW**

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

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. ...

(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.

65. 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 including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided, and all regular and overtime wages for work performed off-the-clock. 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.

#### **F. UNTIMELY FINAL WAGES**

66. 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.

67. 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.

68. By failing to pay Plaintiff and the Aggrieved Employees 1) all earned regular and overtime wages at the correct rates and 2) premium wages for all late or missed rest breaks and/or meal periods, Defendants failed to timely pay them all earned and unpaid wages in violation of



**SPIVAK LAW**

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

Labor Code § 201 or § 202.

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

**G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

70. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

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

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

71. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) 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).

72. 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.



**SPIVAK LAW**

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

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.

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

74. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and 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 Plaintiff and the Aggrieved Employees.

#### **H. CIVIL PENALTIES SOUGHT**

75. Labor Code § 204 states

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, 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.  
...

- (b)
  - (i) 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.

- (ii) 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



**SPIVAK LAW**

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

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.

76. 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.

77. 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.

78. 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.

79. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees 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) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established



**SPIVAK LAW**

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

by Labor Code § 1174.5).

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

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

**I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

80. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated December 7, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated December 7, 2020, is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s letter.

81. 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.

**VI. PRAYER FOR RELIEF**

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

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and
- D. Such other relief as the Court deems just and proper.

**VII. DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury



**SPIVAK LAW**

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

trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 16, 2021

By: \_\_\_\_\_

*Maralle Messrelia*

DAVID SPIVAK,  
MARALLE MESSRELIA,  
MAYA CHEAITANI,  
Attorneys for Plaintiff, THERESA RIVES,  
the State of California, and the Aggrieved  
Employees



**SPIVAK LAW**

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

# EXHIBIT A



SPIVAK LAW

**\*SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL\***

December 7, 2020

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

RE: Theresea Rives/CF San Rafael, LLC

To whom it may concern:

This notice concerns the following employers:

1. CF San Rafael, LLC
2. Cambridge Healthcare Management Services, LLC
3. Cambridge Healthcare Services, LLC
4. Jacob Wintner

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

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.), Theresea Rives (hereafter “Rives”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to, medical records supervisor, and other comparable positions (hereafter referred to as “Aggrieved Employees”), by Cambridge of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558.1, 1174.5, 1194, 1197, 1198 and 2802.

At all relevant times, Cambridge has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Rives and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

### **Statement of Facts**

Cambridge first employed Rives on or about September 9, 2019 to work as a medical records supervisor (though she and the other Aggrieved Employees with “supervisor” in their title did not hold any supervisory duties) at its Professional Post Acute Center located at 81 Professional Center Pkwy in San Rafael, California. Rives worked at Professional Post Acute Center for Cambridge continuously from the time of her hire until approximately October 2, 2020 when Cambridge terminated her employment.

At all relevant times, Cambridge paid Rives and the other Aggrieved Employees at an hourly rate of pay on a semi-monthly basis. At all relevant times, Cambridge classified Rives and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Rives and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Cambridge failed to provide Rives and the Aggrieved Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three ten-minute rest periods on workdays they worked more than ten hours. Cambridge expected Rives and the Aggrieved Employees to respond to the communications of coworkers at all times regardless of whether they were on a rest break or meal period. Thus, when Rives and the Aggrieved Employees took rest and/or meal periods, other Cambridge employees and managers, including Administrator Dennis Noss, past Administrators Kristine Pacheco, Mike (last name unknown), and Wagner Tuleu, Director of Nursing Wanda Knowles, Social Services Director David O’Sullivan, Activities Director Ritzchell Carolino, and Director

of Staff Development Leticia Barahona (collectively “the Cambridge Directors”) knowingly interrupted them with requests for information, assistance, and for other Cambridge business. Further, Cambridge required Rives and the Aggrieved Employees to remain on the premises at all times during state inspections, which occurred regularly and frequently, and became a daily occurrence during the COVID-19 pandemic. Cambridge did not request an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Cambridge also often failed to provide Rives and the Aggrieved Employees with 30-minute meal periods before the end of their fifth work hour. Cambridge required Rives and the other Aggrieved Employees to attend daily “triple check meetings” with the other Cambridge Directors, which often lasted 4-5 hours and prevented them from taking their rest breaks and meal periods within the time periods set out in the Wage Order. On a number of occasions, the payroll department notified the Administrator about Cambridge’s failure to provide Rives and the Aggrieved Employees with timely rest and meal periods. In spite of this, Cambridge refused to make changes.

Cambridge failed to pay Rives and the Aggrieved Employees premium wages for days on which it failed to provide them with all timely meal periods and unrestricted rest periods as outlined above.

At all relevant times, Cambridge required Rives and the Aggrieved Employees to perform tasks during their off-the-clock meal periods and rest periods. During such periods, the Cambridge Directors frequently interrupted Rives and the Aggrieved Employees’ meal periods to attend to tasks needing immediate attention, including responding to requests for medical records, responding to calls, text messages and emails, creating new patient charts, copying records and documents for billing, compiling data and information for reports, and preparing necessary patient documents. Cambridge, however, did not compensate Rives and the Aggrieved Employees for this off-the-clock work. Cambridge did not enter into valid on-duty meal period agreements with Rives or any of the Aggrieved Employees, nor did the nature of their work require on duty meal periods or rest breaks. The Cambridge Directors also sent text messages to Rives and the Aggrieved Employees after they had already clocked out at the end of

their shifts and during weekends. Cambridge did not compensate Rives and the Aggrieved Employees for this off the clock work.

At all relevant times, Cambridge required Rives and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Cambridge required Rives and other Aggrieved Employees to use their personal cell phones in the course of performing their duties. The Cambridge Directors communicated with Rives and the other Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work related issues and did not provide mobile phones or an alternative to them for this purpose. Additionally, Cambridge did not reimburse Rives and the Aggrieved Employees for their cell phone expenses.

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

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

- a) Cambridge failed to pay Rives and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum and overtime wages;
- b) Cambridge failed to provide Rives and the Aggrieved Employees with all meal periods;
- c) Cambridge failed to pay Rives and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;

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

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

### **The Wage Order**

Wage Order 5 applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

“(2) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;...”...

§ 2(P)(4). At all relevant times during the applicable limitations period, Rives was employed by Cambridge as a medical records supervisor who performed the majority of her duties in a nursing home setting. Accordingly, Rives and the Aggrieved Employees are entitled to the protections provided under the Wage Order

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

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

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

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

Within the health care industry, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during

which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223.

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

(A) Daily Overtime - General Provisions

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

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

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

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

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

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

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

#### **Failure to Provide Meal Periods**

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

In relevant part, Labor Code section 1198 states,

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act ("FLSA"). Wage Order 5, § 2(K). The FLSA does not define the phrase "hours worked." However, it is defined by federal regulations:

...As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is

required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, ... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223.

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer’s property may be treated by the parties as a benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680.

29 C.F.R. § 785.7.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the

employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19. "It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period." *Id.* Respiratory therapists required to wear pagers and respond to patient emergencies during meal breaks are entitled to payment from their employer for meal breaks because their employer has not fully relieved them of their

responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect. Wage Order 5, § 11(D).

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer

shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

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

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

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

to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked. Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.

In relevant part, Labor Code section 1198 states,

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

In relevant part, 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.

In addition, Labor Code section 226.7 states:

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

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

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

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

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

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

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

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

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

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

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

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

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

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

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

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

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

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar

month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

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

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

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under section 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the Employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or

until an action therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

1. For violations of Labor Code section 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 201 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 202 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 203 occurred, and \$200 per Aggrieved Employee per pay

period in which subsequent violations of section 203 occurred (penalties set by Labor Code section 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 7 of the Wage Order states,

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

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

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

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

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

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

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

all deductions made on written orders of the employee may be aggregated and shown as one item.

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

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

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

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

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

**Individual Liability**  
**(Labor Code § 558.1)**

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee’s representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

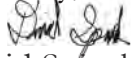
At all relevant times herein, Jacob Wintner was the “owner,” “director,” “officer,” or “managing agent” of CF San Rafael, LLC, and Cambridge Healthcare Services, LLC, and employed Rives and the Aggrieved Employees. Jacob Wintner directly or indirectly, or through an agent or any other person,

employed and exercised control over the wages, hours, or working conditions of Rives and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

### **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: Theresa Rives  
Walter Haines, Esq.

CF San Rafael, LLC  
c/o Jacob Winter, Agent for service of process  
6300 Wilshire Blvd., Ste 1800  
Los Angeles, CA 90048

Cambridge Healthcare Management Services, LLC  
c/o Legalzoom.com, inc., Agent for service of process  
101 N Brand Blvd., 11th Floor  
Glendale Ca 91203

Cambridge Healthcare Services, LLC  
c/o Jacob Winter, Agent for service of process  
6300 Wilshire Blvd., Ste 1800  
Los Angeles, CA 90048

*LWDA / Cambridge*

*12/7/2020*

*Page 28 of 28*

Jacob Wintner  
6300 Wilshire Blvd., Ste 1800  
Los Angeles, CA 90048

# **EXHIBIT 5**

1 DAVID G. SPIVAK (SBN 179684)  
david@spivaklaw.com  
2 MARALLE MESSRELIAN (SBN 316974)  
maralle@spivaklaw.com  
3 MAYA CHEAITANI (SBN 335777)  
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,  
9 THERESA RIVES, and all others similarly situated

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

14 THERESA RIVES, as an “aggrieved  
15 employee” on behalf of other similarly situated  
“aggrieved employees” under the Labor Code  
Private Attorney General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18  
19 CF SAN RAFAEL, LLC, a California limited  
liability company; CAMBRIDGE  
20 HEALTHCARE SERVICES, LLC, a  
California limited liability company; and  
21 DOES 1 through 50, inclusive,

22 *Defendants.*  
23

Case No.: CIV2100671

**REQUEST FOR DISMISSAL WITHOUT  
PREJUDICE OF DEFENDANT  
CAMBRIDGE HEALTHCARE  
SERVICES, LLC; DECLARATION OF  
DAVID SPIVAK IN SUPPORT THEREOF**

Action filed: 02/18/2021  
CMC: 08/09/2021  
Trial: None Set  
Department: B, Hon. James Chou



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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



SPIVAK LAW

Employee Rights Attorneys  
16530 Ventura Bl. Ste 203  
Encino CA 91436  
(213) 275-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Plaintiff Theresa Rives ("Plaintiff") by and through her respective counsel of record,  
3 hereby requests that the Court dismiss without prejudice Defendant Cambridge Healthcare  
4 Services, LLC ("Cambridge") from the operative complaint. This request does not seek dismissal  
5 of any other Defendant.

6 Plaintiff is requesting dismissal of Cambridge because Defendant contends that only  
7 Defendant CF San Rafael, LLC, ("Defendant") employed Plaintiff and the other California  
8 Aggrieved Employees, as defined in Plaintiff's lawsuit, that Plaintiff seeks to represent.

9 On May 5, 2021 the parties executed a Statute of Limitations Tolling Agreement as to  
10 Plaintiff's claims under California's Private Attorneys' General Act ("PAGA") regarding the  
11 dismissal of only Cambridge without prejudice based on Defendant's representations that  
12 Cambridge was not an employer of Plaintiff or other California aggrieved employees, as defined  
13 in Plaintiff's lawsuit, that Plaintiff seeks to represent. If discovery reveals that Cambridge was an  
14 employer of Plaintiff or the employees that she seeks to represent (as described in her lawsuit),  
15 Plaintiff can refile her PAGA claim against Cambridge, subject to the Statute of Limitations  
16 Tolling Agreement as to Plaintiff's claims under PAGA.

17 No Aggrieved Employees have been given written notice of the claims against such  
18 Defendants, Cambridge, or of the lawsuit.

19 Accordingly, Plaintiff hereby requests dismissal without prejudice of only Defendant  
20 Cambridge Healthcare Services, LLC.

21 This Request for dismissal does not request dismissal of CF SAN RAFAEL, LLC, a  
22 California limited liability company; or DOES 1 through 50, inclusive.

23 This Request is based on the attached Declaration of David Spivak, the pleadings, records  
24 and filed in this action, and any additional oral or documentary evidence submitted in support of  
25 the Request.

26 Respectfully submitted,

27 THE SPIVAK LAW FIRM

28 Dated: May 11, 2021

By 

DAVID SPIVAK  
MARALLE MESSRELIAN  
MAYA CHEAITANI,  
Attorneys for Plaintiff, THERESA RIVES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 Theresa Rives (“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. Plaintiff is requesting dismissal of only Defendant Cambridge Healthcare Services, LLC (“Cambridge”). This request does not seek dismissal of any other Defendant.

4. Plaintiff is requesting dismissal of Cambridge because Defendant contends that only Defendant CF San Rafael, LLC (“Defendant”) employed Plaintiff and the other California Aggrieved Employees, as defined in Plaintiff’s lawsuit, that Plaintiff seeks to represent.

5. On December 7, 2020, Plaintiff sent a letter to the California Labor and Development Workforce Agency (“LWDA”), Defendant, and Cambridge with regards to the Labor Code Private Attorneys’ General Act (“PAGA”), Lab. Code §§ 2698, *et seq.*

6. On February 18, 2021, Plaintiff filed a representative action lawsuit under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”) in the Marin County Superior Court, case number CIV210067, against the Defendant and Cambridge on behalf of herself and other Aggrieved Employees.

7. On March 23, 2021, the Court set an Initial Status Conference for August 9, 2021, at 9:00 a.m.

8. On May 5, 2021, the Parties executed a Statute of Limitations Tolling Agreement regarding the dismissal of only Cambridge without prejudice based on Defendants’ representation that Cambridge was not an employer of Plaintiff or the other California Aggrieved Employees, as defined in Plaintiff’s lawsuit, that Plaintiff seeks to represent. If discovery reveals that Cambridge was an employer of Plaintiff or the employees that she seeks to represent (as described in her lawsuit), Plaintiff can refile her PAGA claim against Cambridge.

9. No consideration is to be provided as part of the dismissal of Cambridge.

10. Accordingly, Plaintiff hereby requests dismissal without prejudice of only

1 Defendant Cambridge.

2 11. Plaintiff's request for dismissal does not request dismissal of CF SAN RAFAEL,  
3 LLC, a California limited liability company; or DOES 1 through 50, inclusive.

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

6 Executed on Tuesday, May 11, 2021 at Encino, California.

7 

8 

---

DAVID G. SPIVAK,  
9 Declarant



28 SPIVAK LAW

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, May 11, 2021, I served the foregoing document described as  
11 **REQUEST FOR DISMISSAL WITHOUT PREJUDICE OF DEFENDANT CAMBRIDGE HEALTHCARE**  
12 **SERVICES, LLC; DECLARATION OF DAVID SPIVAK IN SUPPORT THEREOF** on interested  
parties by placing a true and correct copy thereof enclosed in a sealed  
envelope, with postage fully prepaid, addressed as follows:

13 **James S. Cooper, Partner**  
14 **Levinson Arshonsky & Kurtz, LLP**  
15 **15303 Ventura Blvd., Suite 1650**  
16 **Sherman Oaks, CA 91403**  
17 **Telephone: (818) 382-3434**  
18 **jcooper@laklawyers.com**

19 \_\_\_\_\_ (BY MAIL) I caused such an envelope to be mailed by placing it for  
20 collection and mailing, in the course of ordinary business practice, with  
21 other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203,  
22 Encino, California 91436.

23 \_\_\_\_\_ (BY EMAIL) Based on a court order or an agreement of the parties to  
24 accept electronic service, I caused the documents to be sent to the persons  
at the electronic service addresses listed above from my electronic service  
address nora@spivaklaw.com.

25 EXECUTED on Tuesday, May 11, 2021, at Burbank, California.

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

28 \_\_\_\_\_ (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.

\_\_\_\_\_  
NORA GREER

1 DAVID G. SPIVAK (SBN 179684)  
david@spivaklaw.com  
2 MARALLE MESSRELIAN (SBN 316974)  
maralle@spivaklaw.com  
3 MAYA CHEAITANI (SBN 335777)  
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,  
9 THERESA RIVES, and all others similarly situated

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

14 THERESA RIVES, as an “aggrieved  
15 employee” on behalf of other similarly situated  
“aggrieved employees” under the Labor Code  
Private Attorney General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18  
19 CF SAN RAFAEL, LLC, a California limited  
liability company; CAMBRIDGE  
20 HEALTHCARE SERVICES, LLC, a  
California limited liability company; and  
21 DOES 1 through 50, inclusive,

22 *Defendants.*  
23

Case No.: CIV2100671

**[PROPOSED] ORDER ON REQUEST  
FOR DISMISSAL WITHOUT  
PREJUDICE OF DEFENDANT  
CAMBRIDGE HEALTHCARE  
SERVICES, LLC**

Action filed: 02/18/2021  
CMC: 08/09/2021  
Trial: None Set  
Department: B, Hon. James Chou



**[PROPOSED] ORDER**

Plaintiff's request came before the Court for approval of the dismissal without prejudice of only Defendant Cambridge Healthcare Services, LLC ("Cambridge").

After considering Plaintiff's request and declaration from Plaintiff's counsel in support, the Court grants the request. Plaintiff has supported her request for dismissal with a declaration from counsel adequately setting forth the facts on which she relies in seeking dismissal of Cambridge.

No Aggrieved Employees have been given written notice of the claims against Defendants, Cambridge, or of the lawsuit. Accordingly, the Court finds that no Aggrieved Employees will be prejudiced by the dismissal of Cambridge.

Therefore, for good cause shown, the Court grants the Plaintiff's request for dismissal without prejudice of only Defendants Cambridge Healthcare Services, LLC.

This order on Plaintiff's request for dismissal does not dismiss CF SAN RAFAEL, LLC, a California limited liability company; or DOES 1 through 50, inclusive.

**IT IS SO ORDERED.**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**HONORABLE JAMES CHOU  
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, May 11, 2021, I served the foregoing document described as  
11 **[PROPOSED] ORDER ON REQUEST FOR DISMISSAL WITHOUT PREJUDICE OF DEFENDANT**  
12 **CAMBRIDGE HEALTHCARE SERVICES, LLC** on interested parties by placing a true and  
correct copy thereof enclosed in a sealed envelope, with postage fully  
prepaid, addressed as follows:

13 **James S. Cooper, Partner**  
14 **Levinson Arshonsky & Kurtz, LLP**  
15 **15303 Ventura Blvd., Suite 1650**  
16 **Sherman Oaks, CA 91403**  
**Telephone: (818) 382-3434**  
**jcooper@laklawyers.com**

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

19  
20 \_\_\_\_\_ (BY EMAIL) Based on a court order or an agreement of the parties to  
21 accept electronic service, I caused the documents to be sent to the persons  
at the electronic service addresses listed above from my electronic service  
address nora@spivaklaw.com.

22 EXECUTED on Tuesday, May 11, 2021, at Burbank, California.

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

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

27   
28 \_\_\_\_\_  
NORA GREER

# **EXHIBIT 6**

# **EXHIBIT 7**

|               |                                      |
|---------------|--------------------------------------|
| Case title:   | Theresea Rives v. CF San Rafael, LLC |
| Case no.:     | CIV2100671                           |
| Court:        | Marin                                |
| Judge:        | Hon. James Chou                      |
| Page subject: | <b>Data</b>                          |

**Important Dates**

|                                                  |                             |
|--------------------------------------------------|-----------------------------|
| Lab.Code § 2699 (civil penalties) period begins: | Sunday, December 8, 2019    |
| LWDA Notice:                                     | Monday, December 7, 2020    |
| Lawsuit:                                         | Thursday, February 18, 2021 |
| Sample begin:                                    | Saturday, December 14, 2019 |
| Sample end:                                      | Friday, October 15, 2021    |
| Sample calendar days:                            | 671                         |
| Mediation:                                       | Thursday, December 2, 2021  |
| Anticipated Settlement Period end date:          | Friday, April 1, 2022       |
| Settlement Period to Sample Period:              | 108.05%                     |
| PAGA Aggrieved Employees:                        | 183                         |
| PAGA Wage Statements:                            | 4,400                       |

**Averages**

|                          |    |       |
|--------------------------|----|-------|
| Average Hourly Rate:     | \$ | 26.58 |
| Average Overtime Rate:   | \$ | 39.87 |
| Average Doubletime Rate: | \$ | 53.16 |

|                                |                                      |
|--------------------------------|--------------------------------------|
| Average Work Hours Per Day:    | 8.91                                 |
| Average Work Hours Per Week:   | 41.81                                |
| Average Workdays Per Week:     | 5.0000                               |
| Workdays to Calendar Days (%): | 71.43%                               |
| Paycycle:                      | semimonthly (24 paychecks/year)      |
| Paychecks Per Year:            | 24                                   |
| Case title:                    | Theresea Rives v. CF San Rafael, LLC |
| Case no.:                      | CIV2100671                           |
| Court:                         | Marin                                |
| Judge:                         | Hon. James Chou                      |
| Page subject:                  | <b>PAGA Civil Penalties</b>          |
| Applicable law:                | Lab.Code §§ 2698, et seq.            |

| Labor Code violation                  | Labor Code Civil | Initial penalty | Subsequent | Pay periods | Total        |
|---------------------------------------|------------------|-----------------|------------|-------------|--------------|
| Minimum wages (Lab.Code § 1197):      | Lab.Code § 1197  | \$ 100.00       | \$ 250.00  | 4,400 \$    | 1,099,850.00 |
| Overtime wages (Lab.Code § 510):      | Lab.Code § 558   | \$ 50.00        | \$ 100.00  | 4,400 \$    | 439,950.00   |
| Meal periods Lab.Code § 512):         | Lab.Code § 558   | \$ 50.00        | \$ 100.00  | 4,400 \$    | 439,950.00   |
| Rest periods (Lab.Code § 1198):       | Lab.Code § 2699  | \$ 100.00       | \$ 200.00  | 4,400 \$    | 879,900.00   |
| Business expenses (Lab.Code § 2802):  | Lab.Code § 2699  | \$ 100.00       | \$ 200.00  | 4,400 \$    | 879,900.00   |
| Improper pay stubs (Lab.Code § 226):  | Lab.Code § 2699  | \$ 100.00       | \$ 200.00  | 4,400 \$    | 879,900.00   |
| Untimely wages (Lab.Code §§ 201-204): | Lab.Code § 2699  | \$ 100.00       | \$ 200.00  | 4,400 \$    | 879,900.00   |

|               |    |                     |
|---------------|----|---------------------|
| <b>Total:</b> | \$ | <b>5,499,350.00</b> |
|---------------|----|---------------------|

**Amaral v. Cintas formula:**

| Labor Code violation                  | Labor Code Civil | Initial penalty | Subsequent | Pay periods | Total      |
|---------------------------------------|------------------|-----------------|------------|-------------|------------|
| Minimum wages (Lab.Code § 1197):      | Lab.Code § 1197  | \$ 100.00       | \$ 100.00  | 4,400 \$    | 440,000.00 |
| Overtime wages (Lab.Code § 510):      | Lab.Code § 558   | \$ 50.00        | \$ 50.00   | 4,400 \$    | 220,000.00 |
| Meal periods Lab.Code § 512):         | Lab.Code § 558   | \$ 50.00        | \$ 50.00   | 4,400 \$    | 220,000.00 |
| Rest periods (Lab.Code § 1198):       | Lab.Code § 2699  | \$ 100.00       | \$ 100.00  | 4,400 \$    | 440,000.00 |
| Business expenses (Lab.Code § 2802):  | Lab.Code § 2699  | \$ 100.00       | \$ 100.00  | 4,400 \$    | 440,000.00 |
| Improper pay stubs (Lab.Code § 226):  | Lab.Code § 2699  | \$ 100.00       | \$ 100.00  | 4,400 \$    | 440,000.00 |
| Untimely wages (Lab.Code §§ 201-204): | Lab.Code § 2699  | \$ 100.00       | \$ 100.00  | 4,400 \$    | 440,000.00 |

|               |    |                     |
|---------------|----|---------------------|
| <b>Total:</b> | \$ | <b>2,640,000.00</b> |
|---------------|----|---------------------|

# **EXHIBIT 8**

41  
**FILED**

Superior Court Of California  
County Of Los Angeles

JUN 21 2012

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

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  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

State of California,  
County of Los Angeles

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

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

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

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

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 other correspondence of The Spivak Law Firm, 9454 Wilshire Boulevard, Suite 303, Beverly Hills, California 90212.

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

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

  
BROCK OYAMA

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

CENTRAL DISTRICT-STANLEY MOSK COURTHOUSE  
CIVIL DIVISION **ROOM 118**  
111 NORTH HILL STREET  
LOS ANGELES, CALIFORNIA 90012



THE SPIVAK LAW FIRM  
David Spivak, Esq.  
9454 Wilshire Blvd., Suite 303  
Beverly Hills, CA 90212

9021232904 C077



# **EXHIBIT 9**

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.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

(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.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DEPARTMENT 41                      HON. RONALD M. SOHIGIAN, JUDGE

**CERTIFIED COPY**

MONDAY, APRIL 23, 2012

REPORTED BY:  
ANGELA ZARATAN PARADELA  
OFFICIAL COURT REPORTER  
CSR NO. 9659

# **EXHIBIT 10**

TSLF TIME RIVES

| Date       | Attorney/Paralegal                     | Description                                                                                                                                        | Hours<br>(decimal) | Rate     | Lodestar   |
|------------|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------|------------|
| 10/28/2020 | Nora Greer (15+ Year Paralegal)        | Open file in drive, save docs to file                                                                                                              | 0.30               | \$200.00 | \$60.00    |
| 11/1/2020  | David Spivak (26th Year Attorney)      | review research into cases against the owner                                                                                                       | 0.25               | \$700.00 | \$175.00   |
| 11/2/2020  | Nora Greer (15+ Year Paralegal)        | send retainer to DGS for signature, TC and Text to CL re Intake                                                                                    | 0.25               | \$200.00 | \$50.00    |
| 11/2/2020  | Nora Greer (15+ Year Paralegal)        | Client Intake                                                                                                                                      | 0.67               | \$200.00 | \$134.00   |
| 11/2/2020  | Nora Greer (15+ Year Paralegal)        | Calendar SOL, Send CL Retainer Agreement and FAQ, Client Doc Checklist, and Client questionnaire                                                   | 0.70               | \$200.00 | \$140.00   |
| 11/6/2020  | Maralle Messrelian (4th Year Attorney) | text client re scheduling call                                                                                                                     | 0.08               | \$350.00 | \$28.00    |
| 11/6/2020  | Maralle Messrelian (4th Year Attorney) | review NG intake notes, client docs                                                                                                                | 0.25               | \$350.00 | \$87.50    |
| 11/13/2020 | Maralle Messrelian (4th Year Attorney) | texts w/client re scheduling call                                                                                                                  | 0.08               | \$350.00 | \$28.00    |
| 11/16/2020 | Maralle Messrelian (4th Year Attorney) | review client docs and UELG research; research owner and related entities                                                                          | 1.75               | \$350.00 | \$612.50   |
| 11/16/2020 | Maralle Messrelian (4th Year Attorney) | call w client                                                                                                                                      | 0.75               | \$350.00 | \$262.50   |
| 12/4/2020  | Maralle Messrelian (4th Year Attorney) | call w DGS re LWDA letter                                                                                                                          | 0.17               | \$350.00 | \$59.50    |
| 12/4/2020  | Maralle Messrelian (4th Year Attorney) | case/entities/competing case research; draft LWDA letter and email to DGS for review                                                               | 3.00               | \$350.00 | \$1,050.00 |
| 12/4/2020  | David Spivak (26th Year Attorney)      | Conf with MM re theories of recovery and class def; review file notes                                                                              | 0.25               | \$700.00 | \$175.00   |
| 12/5/2020  | David Spivak (26th Year Attorney)      | Review and revise LWDA notice                                                                                                                      | 0.50               | \$700.00 | \$350.00   |
| 12/7/2020  | Nora Greer (15+ Year Paralegal)        | Save texts to file, linked in searches, sos searches                                                                                               | 0.30               | \$200.00 | \$60.00    |
| 12/7/2020  | Nora Greer (15+ Year Paralegal)        | Prepare LWDA for cert mailing with 4 entities, send lwda to dgs for signature, upload to LWDA, circulate to client, update calendar, enter expense | 2.25               | \$200.00 | \$450.00   |
| 12/14/2020 | Nora Greer (15+ Year Paralegal)        | Run USPS tracking on 4 cert mails, save returned cert mail to file                                                                                 | 0.25               | \$200.00 | \$50.00    |
| 12/14/2020 | Nora Greer (15+ Year Paralegal)        | file and circulate Supplemental LWDA to cl, cc, and 4 entities, upload same to lwda                                                                | 2.00               | \$200.00 | \$400.00   |
| 2/9/2021   | David Spivak (26th Year Attorney)      | Review and revise complaint                                                                                                                        | 0.42               | \$700.00 | \$294.00   |
| 2/9/2021   | Maya Cheaitani (1st Year Attorney)     | draft complaint                                                                                                                                    | 3.42               | \$250.00 | \$855.00   |
| 2/12/2021  | Nora Greer (15+ Year Paralegal)        | Review complaint, email mm, confer with bo, update calendar                                                                                        | 0.25               | \$200.00 | \$50.00    |
| 2/16/2021  | Nora Greer (15+ Year Paralegal)        | Prepare Summons, Civil Case Cover Sheet, file complaint docs with One Legal, prepare and send evidence prez lt re cell phone                       | 1.00               | \$200.00 | \$200.00   |
| 2/17/2021  | Nora Greer (15+ Year Paralegal)        | TC with One Legal re Summons, send summons to One Legal                                                                                            | 0.17               | \$200.00 | \$34.00    |
| 2/25/2021  | Nora Greer (15+ Year Paralegal)        | Upload not filed complaint to LWDA                                                                                                                 | 0.17               | \$200.00 | \$34.00    |

TSLF TIME RIVES

|           |                                    |                                                                                                                                                                                       |      |          |          |
|-----------|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|----------|----------|
| 3/8/2021  | Breck Oyama (13th Year Paralegal)  | check docket                                                                                                                                                                          | 0.08 | \$300.00 | \$24.00  |
| 3/11/2021 | Nora Greer (15+ Year Paralegal)    | Email One Legal re order status                                                                                                                                                       | 0.08 | \$200.00 | \$16.00  |
| 3/15/2021 | Breck Oyama (13th Year Paralegal)  | check docket for case#                                                                                                                                                                | 0.08 | \$300.00 | \$24.00  |
| 3/16/2021 | Breck Oyama (13th Year Paralegal)  | check docket for case#                                                                                                                                                                | 0.08 | \$300.00 | \$24.00  |
| 3/17/2021 | Breck Oyama (13th Year Paralegal)  | check docket for case#                                                                                                                                                                | 0.08 | \$300.00 | \$24.00  |
| 3/18/2021 | Breck Oyama (13th Year Paralegal)  | check docket for case#                                                                                                                                                                | 0.08 | \$300.00 | \$24.00  |
| 3/19/2021 | Nora Greer (15+ Year Paralegal)    | TC with One Legal re status of order                                                                                                                                                  | 0.25 | \$200.00 | \$50.00  |
| 3/19/2021 | Breck Oyama (13th Year Paralegal)  | check docket for case#                                                                                                                                                                | 0.08 | \$300.00 | \$24.00  |
| 3/23/2021 | Nora Greer (15+ Year Paralegal)    | Download conformed documents, update calendar, email CL conformed Summons and Complaint docs, upload conformed complaint to LWDA, send out S and C for personal service on 2 entities | 0.75 | \$200.00 | \$150.00 |
| 3/30/2021 | Nora Greer (15+ Year Paralegal)    | TC with One Legal re address for service                                                                                                                                              | 0.17 | \$200.00 | \$34.00  |
| 3/31/2021 | Nora Greer (15+ Year Paralegal)    | Update calendar, update FV with OC info                                                                                                                                               | 0.17 | \$200.00 | \$34.00  |
| 4/7/2021  | Maya Cheaitani (1st Year Attorney) | draft tolling agmt                                                                                                                                                                    | 2.83 | \$250.00 | \$707.50 |
| 4/12/2021 | Maya Cheaitani (1st Year Attorney) | email DGS abt tolling agmt                                                                                                                                                            | 0.08 | \$250.00 | \$20.00  |
| 4/13/2021 | Breck Oyama (13th Year Paralegal)  | check status SOP, task NG re deadlines, update litigation chains                                                                                                                      | 0.25 | \$300.00 | \$75.00  |
| 4/14/2021 | Maya Cheaitani (1st Year Attorney) | Msg MM/BO abt request dismissal defendant                                                                                                                                             | 0.17 | \$250.00 | \$42.50  |
| 4/14/2021 | Maya Cheaitani (1st Year Attorney) | revise tolling agmt/email OC                                                                                                                                                          | 1.42 | \$250.00 | \$355.00 |
| 4/14/2021 | Maya Cheaitani (1st Year Attorney) | draft request dismiss defendant                                                                                                                                                       | 2.50 | \$250.00 | \$625.00 |
| 4/14/2021 | Maya Cheaitani (1st Year Attorney) | email OC request dismissal                                                                                                                                                            | 0.17 | \$250.00 | \$42.50  |
| 4/15/2021 | Maya Cheaitani (1st Year Attorney) | revise tolling/rquest dismissal                                                                                                                                                       | 1.00 | \$250.00 | \$250.00 |
| 4/19/2021 | Nora Greer (15+ Year Paralegal)    | TC with Court re status of Proof of Service of Summons                                                                                                                                | 0.17 | \$200.00 | \$34.00  |
| 4/26/2021 | Nora Greer (15+ Year Paralegal)    | Email CL re Status of Client docs and Questionnaire, Prepare letter re ee docs with SASE, update FV with New address                                                                  | 0.50 | \$200.00 | \$100.00 |
| 5/7/2021  | Nora Greer (15+ Year Paralegal)    | Circulate Executed Tolling Agreement without exhibits to OC                                                                                                                           | 0.17 | \$200.00 | \$34.00  |
| 5/11/2021 | Nora Greer (15+ Year Paralegal)    | Finalize, file, serve Request to Enter Default, update calendar                                                                                                                       | 0.50 | \$200.00 | \$100.00 |
| 5/11/2021 | Nora Greer (15+ Year Paralegal)    | Email CL re client docs                                                                                                                                                               | 0.08 | \$200.00 | \$16.00  |
| 5/18/2021 | Nora Greer (15+ Year Paralegal)    | Email OC and CL fully executed tolling agreement with exhibits                                                                                                                        | 0.17 | \$200.00 | \$34.00  |
| 5/19/2021 | Nora Greer (15+ Year Paralegal)    | Email Mediators re Availability                                                                                                                                                       | 0.40 | \$200.00 | \$80.00  |
| 5/20/2021 | Nora Greer (15+ Year Paralegal)    | TC with CL re Mediation, email OC Mediation dates                                                                                                                                     | 0.30 | \$200.00 | \$60.00  |
| 6/1/2021  | Nora Greer (15+ Year Paralegal)    | Check docket for stip                                                                                                                                                                 | 0.08 | \$200.00 | \$16.00  |
| 6/2/2021  | Nora Greer (15+ Year Paralegal)    | Save complaint to file, circulate same to CL, email OC re TSLF contacts                                                                                                               | 0.25 | \$200.00 | \$50.00  |
| 6/4/2021  | Nora Greer (15+ Year Paralegal)    | Check docket for request for dismissal, update calendar, email One Legal for update on order, email OC re Mediator/Date                                                               | 0.40 | \$200.00 | \$80.00  |
| 6/11/2021 | Nora Greer (15+ Year Paralegal)    | Check Docket for Minute Order                                                                                                                                                         | 0.08 | \$200.00 | \$16.00  |

TSLF TIME RIVES

|           |                                                              |                                                                                                                        |      |          |          |
|-----------|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|------|----------|----------|
|           |                                                              | Save completed client questionnaire to file, update witness list with names and contact info, text to cl               |      |          |          |
| 6/17/2021 | Nora Greer (15+ Year Paralegal)                              |                                                                                                                        | 0.25 | \$200.00 | \$50.00  |
| 6/18/2021 | Nora Greer (15+ Year Paralegal)                              | Check docket for dismissal                                                                                             | 0.08 | \$200.00 | \$16.00  |
| 6/18/2021 | Nora Greer (15+ Year Paralegal)                              | Email with OC re Mediators, Email Mediator re CV                                                                       | 0.25 | \$200.00 | \$50.00  |
| 6/24/2021 | Breck Oyama (13th Year Paralegal)                            | review deadlines                                                                                                       | 0.08 | \$300.00 | \$24.00  |
| 6/25/2021 | Nora Greer (15+ Year Paralegal)                              | Check docket for dismissal                                                                                             | 0.08 | \$200.00 | \$16.00  |
| 6/29/2021 | Breck Oyama (13th Year Paralegal)                            | review emails, block spammed texts                                                                                     | 0.08 | \$300.00 | \$24.00  |
| 6/30/2021 | Nora Greer (15+ Year Paralegal)                              | LVM for all witnesses, update fv                                                                                       | 0.25 | \$200.00 | \$50.00  |
| 6/30/2021 | Jessica Bencomo (Formerly Employed 1st Year Legal Secretary) | reviewed emails                                                                                                        | 0.08 | \$150.00 | \$12.00  |
| 6/30/2021 | Nora Greer (15+ Year Paralegal)                              | TC with Witness, update FV, prepare and send autho                                                                     | 0.60 | \$200.00 | \$120.00 |
| 7/2/2021  | Nora Greer (15+ Year Paralegal)                              | Check docket for dismissal                                                                                             | 0.08 | \$200.00 | \$16.00  |
| 7/6/2021  | Breck Oyama (13th Year Paralegal)                            | review/block spam texts, review deadlines                                                                              | 0.08 | \$300.00 | \$24.00  |
| 7/6/2021  | Jessica Bencomo (Formerly Employed 1st Year Legal Secretary) | review emails                                                                                                          | 0.08 | \$150.00 | \$12.00  |
| 7/7/2021  | Nora Greer (15+ Year Paralegal)                              | F/U email to OC re Mediation, forward same to DGS                                                                      | 0.08 | \$200.00 | \$16.00  |
| 7/7/2021  | Breck Oyama (13th Year Paralegal)                            | review emails                                                                                                          | 0.08 | \$300.00 | \$24.00  |
| 7/8/2021  | Nora Greer (15+ Year Paralegal)                              | Send Social Media email, run been verified on CL                                                                       | 0.25 | \$200.00 | \$50.00  |
| 7/8/2021  | Breck Oyama (13th Year Paralegal)                            | review emails                                                                                                          | 0.08 | \$300.00 | \$24.00  |
| 7/8/2021  | Breck Oyama (13th Year Paralegal)                            | review emails; check w/ team re M&C                                                                                    | 0.08 | \$300.00 | \$24.00  |
| 7/8/2021  | Jessica Bencomo (Formerly Employed 1st Year Legal Secretary) | review emails                                                                                                          | 0.08 | \$150.00 | \$12.00  |
| 7/9/2021  | Nora Greer (15+ Year Paralegal)                              | Check docket for Dismissal, Update Calendar with new CMC date and deadlines                                            | 0.25 | \$200.00 | \$50.00  |
| 7/9/2021  | Jessica Bencomo (Formerly Employed 1st Year Legal Secretary) | review emails                                                                                                          | 0.08 | \$150.00 | \$12.00  |
| 7/9/2021  | Breck Oyama (13th Year Paralegal)                            | review emails/calendar                                                                                                 | 0.08 | \$300.00 | \$24.00  |
| 7/12/2021 | Jessica Bencomo (Formerly Employed 1st Year Legal Secretary) | review emails                                                                                                          | 0.08 | \$150.00 | \$12.00  |
| 7/14/2021 | Nora Greer (15+ Year Paralegal)                              | Email Proposed Mediator re availability, review calendar, email OC with Dates                                          | 0.25 | \$200.00 | \$50.00  |
| 7/14/2021 | Breck Oyama (13th Year Paralegal)                            | review emails re mediation                                                                                             | 0.08 | \$300.00 | \$24.00  |
| 7/15/2021 | Lizzett Cortez (9th Year Paralegal)                          | Mtg w/ NG re mediators                                                                                                 | 0.25 | \$250.00 | \$62.50  |
| 7/16/2021 | Nora Greer (15+ Year Paralegal)                              | Check docket for Dismissal, TC to Court re same, update calendar                                                       | 0.25 | \$200.00 | \$50.00  |
| 7/16/2021 | Nora Greer (15+ Year Paralegal)                              | Emails with OC re Mediation                                                                                            | 0.17 | \$200.00 | \$34.00  |
| 7/16/2021 | Nora Greer (15+ Year Paralegal)                              | Email to Mediator re availability, review calendars, email OC re dates                                                 | 0.25 | \$200.00 | \$50.00  |
| 7/16/2021 | Breck Oyama (13th Year Paralegal)                            | review emails, msgs w/ team                                                                                            | 0.08 | \$300.00 | \$24.00  |
| 7/16/2021 | Nora Greer (15+ Year Paralegal)                              | Emails with OC and DGS re Mediation                                                                                    | 0.17 | \$200.00 | \$34.00  |
| 7/21/2021 | Nora Greer (15+ Year Paralegal)                              | Email OC re Mediation, Calendar Mediation, email CL re Mediation, TC with CL re same, send Mediator introduction email | 0.42 | \$200.00 | \$84.00  |
| 7/22/2021 | Breck Oyama (13th Year Paralegal)                            | review emails re mediation                                                                                             | 0.08 | \$300.00 | \$24.00  |

TSLF TIME RIVES

|           |                                                          |                                                                                                             |      |          |            |
|-----------|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|------|----------|------------|
| 8/4/2021  | Nora Greer (15+ Year Paralegal)                          | Save mailed docs to file, review calendar, prepare CMC and Jury Fees, Review ROA, confer with BO re caption | 0.70 | \$200.00 | \$140.00   |
| 8/5/2021  | Nora Greer (15+ Year Paralegal)                          | Email Notice of Posting Jury fees to DGS                                                                    | 0.08 | \$200.00 | \$16.00    |
| 8/5/2021  | Breck Oyama (13th Year Paralegal)                        | check w/ team re deadlines                                                                                  | 0.08 | \$300.00 | \$24.00    |
| 8/6/2021  | Nora Greer (15+ Year Paralegal)                          | Prepare 2 POS, Finalize, file, serve, and circulate Notice of Posting Jury Fees and CMC Statement           | 0.75 | \$200.00 | \$150.00   |
| 8/11/2021 | Nora Greer (15+ Year Paralegal)                          | Reserve and circulate Notice of Posting Jury Fees                                                           | 0.17 | \$200.00 | \$34.00    |
| 8/17/2021 | Nora Greer (15+ Year Paralegal)                          | Update appearance info on calendar, save filed docs to file                                                 | 0.17 | \$200.00 | \$34.00    |
| 8/20/2021 | Nora Greer (15+ Year Paralegal)                          | Prepare pre hearing email to dgs                                                                            | 0.25 | \$200.00 | \$50.00    |
| 8/23/2021 | Nora Greer (15+ Year Paralegal)                          | Save hearing notes to file, update calendar, messages with DGS                                              | 0.42 | \$200.00 | \$84.00    |
| 8/23/2021 | David Spivak (26th Year Attorney)                        | prep for status conf and attend via zoom                                                                    | 0.92 | \$700.00 | \$644.00   |
| 8/24/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Called PCM                                                                                                  | 1.00 | \$150.00 | \$150.00   |
| 8/24/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Prep to call the PCM                                                                                        | 0.50 | \$150.00 | \$75.00    |
| 8/25/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Call PCM                                                                                                    | 0.49 | \$150.00 | \$73.50    |
| 8/25/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Resend Autho. form to Witness                                                                               | 0.42 | \$150.00 | \$63.00    |
| 8/26/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Email and Calendar                                                                                          | 0.50 | \$150.00 | \$75.00    |
| 8/26/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Evidence Preservation - Email verification for defendants side                                              | 0.42 | \$150.00 | \$63.00    |
| 8/26/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Called PCM to remind them to sign Autho letter/Preped Signed Autho letter PDF and Evid prez email.          | 0.58 | \$150.00 | \$87.00    |
| 8/26/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Schedule a time to discuss Witness intakes DSG/AT                                                           | 0.42 | \$150.00 | \$63.00    |
| 8/26/2021 | Nora Greer (15+ Year Paralegal)                          | Review AT Evidence Prez Email and Calendar Entry                                                            | 0.17 | \$200.00 | \$34.00    |
| 8/27/2021 | David Spivak (26th Year Attorney)                        | call to prepare AT for witness interviews                                                                   | 1.50 | \$700.00 | \$1,050.00 |
| 8/30/2021 | Nora Greer (15+ Year Paralegal)                          | Meet with AT re witness call.                                                                               | 0.25 | \$200.00 | \$50.00    |
| 8/30/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Cold Call a witness with NG                                                                                 | 0.10 | \$150.00 | \$15.00    |

TSLF TIME RIVES

|            |                                                          |                                                                                                                  |      |          |          |
|------------|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|------|----------|----------|
| 8/30/2021  | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Update team on the search for PCM.                                                                               | 0.25 | \$150.00 | \$37.50  |
| 8/31/2021  | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Call PCM                                                                                                         | 1.25 | \$150.00 | \$187.50 |
| 9/1/2021   | Nora Greer (15+ Year Paralegal)                          | Messages with AT re Autho, Calendar F/U re Mediation Requests                                                    | 0.17 | \$200.00 | \$34.00  |
| 9/1/2021   | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Resend Autho. form to Witness                                                                                    | 0.08 | \$150.00 | \$12.00  |
| 9/1/2021   | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Intake PCM [REDACTED] prep autho form                                                                            | 2.58 | \$150.00 | \$387.00 |
| 9/1/2021   | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Schedule an intake - PCM                                                                                         | 0.33 | \$150.00 | \$49.50  |
| 9/16/2021  | Nora Greer (15+ Year Paralegal)                          | Save revised answer to complaint to file, circulate same to CL                                                   | 0.17 | \$200.00 | \$34.00  |
| 9/28/2021  | Maya Cheaitani (1st Year Attorney)                       | OC email re records                                                                                              | 0.50 | \$250.00 | \$125.00 |
| 9/28/2021  | Nora Greer (15+ Year Paralegal)                          | Save and OCR PCM Witness File, circulate to PCM, update FV, forward to DGS                                       | 0.30 | \$200.00 | \$60.00  |
| 9/30/2021  | Maralle Messrelian (4th Year Attorney)                   | review OC email re class list; msgs w NG re picking sample/retaining data analyst                                | 0.17 | \$350.00 | \$59.50  |
| 9/30/2021  | Nora Greer (15+ Year Paralegal)                          | Email to Data Expert re availability, review EE roster, confer with BO, email to OC re excel format              | 0.25 | \$200.00 | \$50.00  |
| 10/4/2021  | Maralle Messrelian (4th Year Attorney)                   | review emails                                                                                                    | 0.08 | \$350.00 | \$28.00  |
| 10/4/2021  | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Called PCM - intake - edit and sent autho                                                                        | 1.58 | \$150.00 | \$237.00 |
| 10/5/2021  | Nora Greer (15+ Year Paralegal)                          | Email OC re CL ID number                                                                                         | 0.08 | \$200.00 | \$16.00  |
| 10/5/2021  | Nora Greer (15+ Year Paralegal)                          | Confer with EL re sample                                                                                         | 0.17 | \$200.00 | \$34.00  |
| 10/5/2021  | Emily Ly (1st Year Paralegal)                            | Met with NG.                                                                                                     | 0.17 | \$150.00 | \$25.50  |
| 10/6/2021  | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Call PCM lvm                                                                                                     | 0.08 | \$150.00 | \$12.00  |
| 10/6/2021  | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Checked email                                                                                                    | 0.33 | \$150.00 | \$49.50  |
| 10/7/2021  | Nora Greer (15+ Year Paralegal)                          | Call with MM re Mediation and Case Status                                                                        | 0.17 | \$200.00 | \$34.00  |
| 10/7/2021  | Maralle Messrelian (4th Year Attorney)                   | review emails re sample selection                                                                                | 0.08 | \$350.00 | \$28.00  |
| 10/7/2021  | Maralle Messrelian (4th Year Attorney)                   | call w NG re mediation/case status                                                                               | 0.17 | \$350.00 | \$59.50  |
| 10/8/2021  | Maralle Messrelian (4th Year Attorney)                   | review emails; emails w AT re following up re time records                                                       | 0.17 | \$350.00 | \$59.50  |
| 10/8/2021  | Nora Greer (15+ Year Paralegal)                          | Review emails, f/u with OC re Plaintiff ID #                                                                     | 0.17 | \$200.00 | \$34.00  |
| 10/8/2021  | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Email to attorney for employer about failure to produce all time and payroll records. Sent the email for review. | 1.00 | \$150.00 | \$150.00 |
| 10/14/2021 | Maralle Messrelian (4th Year Attorney)                   | review emails                                                                                                    | 0.08 | \$350.00 | \$28.00  |

TSLF TIME RIVES

|            |                                                          |                                                                                                                                                                                                     |      |          |          |
|------------|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|----------|----------|
| 10/15/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Call PCMs LVM - Check the Hello for previously sent authorization forms, called PCMs that have not opened hello sign. Added a calendar reminder to call REDACTED at 4:00 pm today. Sent team update | 0.83 | \$150.00 | \$124.50 |
| 10/15/2021 | Nora Greer (15+ Year Paralegal)                          | Confer with BO re sample selection, emails to OC                                                                                                                                                    | 0.33 | \$200.00 | \$66.00  |
| 10/15/2021 | Breck Oyama (13th Year Paralegal)                        | mtg w/ NG re sample selection                                                                                                                                                                       | 0.25 | \$300.00 | \$75.00  |
| 10/15/2021 | Maralle Messrelian (4th Year Attorney)                   | review emails                                                                                                                                                                                       | 0.08 | \$350.00 | \$28.00  |
| 10/18/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | PCM called back, returned phone lvm                                                                                                                                                                 | 0.08 | \$150.00 | \$12.00  |
| 10/21/2021 | Nora Greer (15+ Year Paralegal)                          | Review emails, email OC re payroll records, email Data Expert excel time records, and ee roster                                                                                                     | 0.25 | \$200.00 | \$50.00  |
| 10/21/2021 | Maralle Messrelian (4th Year Attorney)                   | review emails; review def. doc production, msgs w NG re def. doc prod, email OC re clarification/status of pay records/mediation info requests                                                      | 0.58 | \$350.00 | \$203.00 |
| 10/22/2021 | Maralle Messrelian (4th Year Attorney)                   | review emails                                                                                                                                                                                       | 0.08 | \$350.00 | \$28.00  |
| 10/22/2021 | Nora Greer (15+ Year Paralegal)                          | TC with MM re case                                                                                                                                                                                  | 0.17 | \$200.00 | \$34.00  |
| 10/22/2021 | Maralle Messrelian (4th Year Attorney)                   | call w NG re data for mediation                                                                                                                                                                     | 0.17 | \$350.00 | \$59.50  |
| 10/22/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Call PCM                                                                                                                                                                                            | 0.50 | \$150.00 | \$75.00  |
| 10/25/2021 | Maralle Messrelian (4th Year Attorney)                   | msgs w NG, review emails, reply to OC                                                                                                                                                               | 0.17 | \$350.00 | \$59.50  |
| 10/26/2021 | David Spivak (26th Year Attorney)                        | Review and revise LinkedIn script and review PF                                                                                                                                                     | 0.25 | \$700.00 | \$175.00 |
| 10/26/2021 | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Research PCM on LinkedIn, and created LinkedIn Message.                                                                                                                                             | 1.67 | \$150.00 | \$250.50 |
| 10/27/2021 | Maralle Messrelian (4th Year Attorney)                   | review emails                                                                                                                                                                                       | 0.08 | \$350.00 | \$28.00  |
| 10/27/2021 | Nora Greer (15+ Year Paralegal)                          | Review emails                                                                                                                                                                                       | 0.08 | \$200.00 | \$16.00  |
| 10/28/2021 | Maralle Messrelian (4th Year Attorney)                   | review emails                                                                                                                                                                                       | 0.08 | \$350.00 | \$28.00  |
| 10/28/2021 | Nora Greer (15+ Year Paralegal)                          | Email DB Mediator invoice                                                                                                                                                                           | 0.08 | \$200.00 | \$16.00  |
| 10/29/2021 | Maralle Messrelian (4th Year Attorney)                   | review OC email and handbook; email OC re prior handbooks                                                                                                                                           | 0.17 | \$350.00 | \$59.50  |
| 10/29/2021 | Nora Greer (15+ Year Paralegal)                          | Review emails, update calendar, save handbook to file                                                                                                                                               | 0.17 | \$200.00 | \$34.00  |
| 11/1/2021  | Anel Tovar (Formerly Employed 1st Year Intake Assistant) | Online PCM Search - Sent messages                                                                                                                                                                   | 1.05 | \$150.00 | \$157.50 |
| 11/5/2021  | Maralle Messrelian (4th Year Attorney)                   | review calendar, review DGS mediation chart, email MC re drafting brief                                                                                                                             | 0.08 | \$350.00 | \$28.00  |
| 11/5/2021  | Maralle Messrelian (4th Year Attorney)                   | emails w OC re mediation info requests/sample payroll records                                                                                                                                       | 0.17 | \$350.00 | \$59.50  |
| 11/8/2021  | Nora Greer (15+ Year Paralegal)                          | Review emails, download and ocr mediation discovery responses                                                                                                                                       | 0.25 | \$200.00 | \$50.00  |

TSLF TIME RIVES

|            |                                        |                                                                                                                                            |      |          |          |
|------------|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|------|----------|----------|
| 11/10/2021 | Maralle Messrelian (4th Year Attorney) | msgs w NG re mediation data                                                                                                                | 0.08 | \$350.00 | \$28.00  |
| 11/12/2021 | Nora Greer (15+ Year Paralegal)        | Email Expert re Pay records, re size records and send to expert                                                                            | 0.17 | \$200.00 | \$34.00  |
| 11/12/2021 | Maralle Messrelian (4th Year Attorney) | review emails                                                                                                                              | 0.08 | \$350.00 | \$28.00  |
| 11/15/2021 | Nora Greer (15+ Year Paralegal)        | TC with CL re Mediation practice session, emails to DGS re data entry, email to expert                                                     | 0.25 | \$200.00 | \$50.00  |
| 11/15/2021 | Maralle Messrelian (4th Year Attorney) | msgs w NG re data; email DGS re data, review emails                                                                                        | 0.25 | \$350.00 | \$87.50  |
| 11/15/2021 | Nora Greer (15+ Year Paralegal)        | LVM for CL                                                                                                                                 | 0.08 | \$200.00 | \$16.00  |
| 11/16/2021 | Maralle Messrelian (4th Year Attorney) | msgs w NG re data/ review [REDACTED] email/review emails                                                                                   | 0.17 | \$350.00 | \$59.50  |
| 11/16/2021 | Nora Greer (15+ Year Paralegal)        | Emails to Expert re data, emails to OC re docs and definitions, messages with OC re same                                                   | 0.33 | \$200.00 | \$66.00  |
| 11/17/2021 | Nora Greer (15+ Year Paralegal)        | Practice Session with Client, update calendar                                                                                              | 0.50 | \$200.00 | \$100.00 |
| 11/17/2021 | Maralle Messrelian (4th Year Attorney) | msgs w NG, review emails re data/mediation prep                                                                                            | 0.17 | \$350.00 | \$59.50  |
| 11/17/2021 | Nora Greer (15+ Year Paralegal)        | TC with Witness                                                                                                                            | 0.25 | \$200.00 | \$50.00  |
| 11/17/2021 | Nora Greer (15+ Year Paralegal)        | Emails with CL re mediation, schedule f/u practice session                                                                                 | 0.17 | \$200.00 | \$34.00  |
| 11/18/2021 | Nora Greer (15+ Year Paralegal)        | Email Expert re data                                                                                                                       | 0.08 | \$200.00 | \$16.00  |
| 11/18/2021 | Maralle Messrelian (4th Year Attorney) | msgs w NG; review emails                                                                                                                   | 0.17 | \$350.00 | \$59.50  |
| 11/18/2021 | Maralle Messrelian (4th Year Attorney) | emails w MC re mediation brief                                                                                                             | 0.08 | \$350.00 | \$28.00  |
| 11/19/2021 | Maralle Messrelian (4th Year Attorney) | review Def. produced policies(handbook)                                                                                                    | 0.50 | \$350.00 | \$175.00 |
| 11/19/2021 | Nora Greer (15+ Year Paralegal)        | F/U to email to oc re records and paycodes                                                                                                 | 0.08 | \$200.00 | \$16.00  |
| 11/19/2021 | Maralle Messrelian (4th Year Attorney) | review emails                                                                                                                              | 0.08 | \$350.00 | \$28.00  |
| 11/22/2021 | Maralle Messrelian (4th Year Attorney) | review emails, emails w [REDACTED] re data analysis/scheduling call, call w DGS re data analysis/mediation, emails w team re OC, msgs w NG | 0.50 | \$350.00 | \$175.00 |
| 11/22/2021 | Maralle Messrelian (4th Year Attorney) | review records re shift differential/OC explanations re pay code; look up past cases w/shift differential; start damages spreadsheet       | 0.67 | \$350.00 | \$234.50 |
| 11/22/2021 | Nora Greer (15+ Year Paralegal)        | Review emails, emails to expert, schedule meeting, emails to OC, TC with OC, email to DGS re TC to OC                                      | 0.25 | \$200.00 | \$50.00  |
| 11/23/2021 | Nora Greer (15+ Year Paralegal)        | TC with MM and Expert, email notes                                                                                                         | 0.50 | \$200.00 | \$100.00 |
| 11/23/2021 | Nora Greer (15+ Year Paralegal)        | Leave VM for PCM                                                                                                                           | 0.08 | \$200.00 | \$16.00  |
| 11/23/2021 | Nora Greer (15+ Year Paralegal)        | Begin estimated future fees chart, email uelg                                                                                              | 0.42 | \$200.00 | \$84.00  |
| 11/23/2021 | Nora Greer (15+ Year Paralegal)        | TC to Witness, Send Autho                                                                                                                  | 0.50 | \$200.00 | \$100.00 |
| 11/23/2021 | Nora Greer (15+ Year Paralegal)        | TC to Witness                                                                                                                              | 0.08 | \$200.00 | \$16.00  |
| 11/23/2021 | David Spivak (26th Year Attorney)      | Review and revise mediation statement                                                                                                      | 1.08 | \$700.00 | \$756.00 |
| 11/23/2021 | Maralle Messrelian (4th Year Attorney) | call w [REDACTED] and NG re data analysis                                                                                                  | 0.50 | \$350.00 | \$175.00 |

TSLF TIME RIVES

|            |                                        |                                                                                                                                                 |       |          |            |
|------------|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|------------|
| 11/23/2021 | Nora Greer (15+ Year Paralegal)        | TC to Witness, send autho                                                                                                                       | 0.25  | \$200.00 | \$50.00    |
| 11/23/2021 | Maralle Messrelian (4th Year Attorney) | review LWDA letter/complaint & prepare PAGA max. recoverable penalties spreadsheet                                                              | 0.42  | \$350.00 | \$147.00   |
| 11/23/2021 | Maralle Messrelian (4th Year Attorney) | review mediation brief draft (MC) and DGS redlines; msgs w NG re brief                                                                          | 0.33  | \$350.00 | \$115.50   |
| 11/23/2021 | Nora Greer (15+ Year Paralegal)        | Review Mediation Brief, Pull exhibits, send ev prez letter, update calendar                                                                     | 0.58  | \$200.00 | \$116.00   |
| 11/23/2021 | Maralle Messrelian (4th Year Attorney) | review emails                                                                                                                                   | 0.17  | \$350.00 | \$59.50    |
| 11/24/2021 | Maralle Messrelian (4th Year Attorney) | review 2nd draft mediation statement; review emails                                                                                             | 0.25  | \$350.00 | \$87.50    |
| 11/24/2021 | Nora Greer (15+ Year Paralegal)        | Review emails                                                                                                                                   | 0.08  | \$200.00 | \$16.00    |
| 11/24/2021 | David Spivak (26th Year Attorney)      | review and revise second draft of mediation statement                                                                                           | 0.25  | \$700.00 | \$175.00   |
| 11/24/2021 | David Spivak (26th Year Attorney)      | email OC re ev pres letter                                                                                                                      | 0.08  | \$700.00 | \$56.00    |
| 11/24/2021 | Nora Greer (15+ Year Paralegal)        | Finalize Mediation Brief, pull exhibits, OCR, Bookmark, serve and circulate                                                                     | 0.50  | \$200.00 | \$100.00   |
| 11/29/2021 | Maralle Messrelian (4th Year Attorney) | review emails; review data sent by REDACTED msgs w NG                                                                                           | 0.25  | \$350.00 | \$87.50    |
| 11/29/2021 | Nora Greer (15+ Year Paralegal)        | Practice Zoom Session with CL on computer, email to expert, prepare estimated fees chart                                                        | 0.67  | \$200.00 | \$134.00   |
| 11/30/2021 | Maralle Messrelian (4th Year Attorney) | review data analysis spreadsheets                                                                                                               | 0.17  | \$350.00 | \$59.50    |
| 11/30/2021 | Nora Greer (15+ Year Paralegal)        | Save data analysis results to file, email expert, review tasks                                                                                  | 0.25  | \$200.00 | \$50.00    |
| 11/30/2021 | Nora Greer (15+ Year Paralegal)        | Prepare mediation witness chart                                                                                                                 | 0.25  | \$200.00 | \$50.00    |
| 11/30/2021 | Maralle Messrelian (4th Year Attorney) | msgs w NG re data analysis                                                                                                                      | 0.08  | \$350.00 | \$28.00    |
| 12/1/2021  | Maralle Messrelian (4th Year Attorney) | review mediator email; msgs w NG, search case file re text msgs, texts and call with client, research re REDACTED; prep draft email to mediator | 1.33  | \$350.00 | \$465.50   |
| 12/1/2021  | Maralle Messrelian (4th Year Attorney) | email DGS damages spreadsheet; call w DGS re mediation data analysis                                                                            | 0.25  | \$350.00 | \$87.50    |
| 12/1/2021  | Maralle Messrelian (4th Year Attorney) | emails w/ REDACTED and call w REDACTED re follow up questions re mediation analysis                                                             | 0.50  | \$350.00 | \$175.00   |
| 12/1/2021  | David Spivak (26th Year Attorney)      | mediation prep                                                                                                                                  | 2.00  | \$700.00 | \$1,400.00 |
| 12/1/2021  | Nora Greer (15+ Year Paralegal)        | Review emails, save docs to file                                                                                                                | 0.25  | \$200.00 | \$50.00    |
| 12/1/2021  | Maralle Messrelian (4th Year Attorney) | review LWDA letter/mediation brief/theories of recovery; review REDACTED data analysis                                                          | 0.42  | \$350.00 | \$147.00   |
| 12/1/2021  | Maralle Messrelian (4th Year Attorney) | review REDACTED email +updated analysis/answers to follow up questions                                                                          | 0.33  | \$350.00 | \$115.50   |
| 12/2/2021  | Nora Greer (15+ Year Paralegal)        | Mediation and Mediation Day related tasks                                                                                                       | 9.00  | \$200.00 | \$1,800.00 |
| 12/2/2021  | Maralle Messrelian (4th Year Attorney) | mediation prep, zoom mediation, review MOU                                                                                                      | 8.00  | \$350.00 | \$2,800.00 |
| 12/2/2021  | David Spivak (26th Year Attorney)      | mediation prep and remote attendance                                                                                                            | 10.00 | \$700.00 | \$7,000.00 |

TSLF TIME RIVES

|            |                                             |                                                                                                                |      |          |            |
|------------|---------------------------------------------|----------------------------------------------------------------------------------------------------------------|------|----------|------------|
| 12/3/2021  | Maralle Messrelian (4th Year Attorney)      | review long form PAGA settlement                                                                               | 0.50 | \$350.00 | \$175.00   |
| 12/3/2021  | David Spivak (26th Year Attorney)           | prepare settlement agreement;<br>email OC                                                                      | 3.00 | \$700.00 | \$2,100.00 |
| 12/6/2021  | Nora Greer (15+ Year Paralegal)             | Review emails, Review tasks, save<br>settlement agreement to file,<br>messages with MM                         | 0.25 | \$200.00 | \$50.00    |
| 12/7/2021  | Maralle Messrelian (4th Year Attorney)      | emails w OC re # of EEs                                                                                        | 0.08 | \$350.00 | \$28.00    |
| 12/7/2021  | Maralle Messrelian (4th Year Attorney)      | review emails                                                                                                  | 0.08 | \$350.00 | \$28.00    |
| 12/7/2021  | Nora Greer (15+ Year Paralegal)             | Review emails, review FAB, email<br>DGS re FAB re Bids                                                         | 0.42 | \$200.00 | \$84.00    |
| 12/8/2021  | Maralle Messrelian (4th Year Attorney)      | review emails                                                                                                  | 0.08 | \$350.00 | \$28.00    |
| 12/9/2021  | Maralle Messrelian (4th Year Attorney)      | review emails to/from client/review<br><b>REDACTED</b> from DGS                                                | 0.17 | \$350.00 | \$59.50    |
| 12/10/2021 | Nora Greer (15+ Year Paralegal)             | Review emails                                                                                                  | 0.08 | \$200.00 | \$16.00    |
| 12/13/2021 | Nora Greer (15+ Year Paralegal)             | Review FAB re Settlement Admin<br>Bids, send screen shots to DGS,<br>email 3 TPA for bids, create bid<br>chart | 0.50 | \$200.00 | \$100.00   |
| 12/14/2021 | Nora Greer (15+ Year Paralegal)             | Respond to TPA re number of EEs                                                                                | 0.08 | \$200.00 | \$16.00    |
| 12/14/2021 | Nora Greer (15+ Year Paralegal)             | Save TPA bid to file, update sheet                                                                             | 0.08 | \$200.00 | \$16.00    |
| 12/14/2021 | Maralle Messrelian (4th Year Attorney)      | review emails                                                                                                  | 0.08 | \$350.00 | \$28.00    |
| 12/15/2021 | Nora Greer (15+ Year Paralegal)             | Review emails, save TPA bids to file,<br>update spread sheet, F/U email to<br>TPA re Bid                       | 0.25 | \$200.00 | \$50.00    |
| 12/17/2021 | Maralle Messrelian (4th Year Attorney)      | msgs w NG; email OC f-up<br>settlement/bids                                                                    | 0.17 | \$350.00 | \$59.50    |
| 12/17/2021 | Nora Greer (15+ Year Paralegal)             | Save TPA bid to file, update sheet,<br>messages with MM, review emails                                         | 0.25 | \$200.00 | \$50.00    |
| 12/21/2021 | Nora Greer (15+ Year Paralegal)             | Review emails                                                                                                  | 0.08 | \$200.00 | \$16.00    |
| 12/30/2021 | Nora Greer (15+ Year Paralegal)             | Save OC redlines to file, review<br>emails, update calendar                                                    | 0.08 | \$200.00 | \$16.00    |
| 1/9/2022   | David Spivak (26th Year Attorney)           | review OC changes to settlement                                                                                | 0.50 | \$700.00 | \$350.00   |
| 1/11/2022  | Nora Greer (15+ Year Paralegal)             | Circulate long form settlement,<br>send redlines of stip to cont                                               | 0.25 | \$200.00 | \$50.00    |
| 1/13/2022  | Nora Greer (15+ Year Paralegal)             | Billed in error                                                                                                | 0.00 | \$200.00 | \$0.00     |
| 1/13/2022  | Nora Greer (15+ Year Paralegal)             | Review emails                                                                                                  | 0.08 | \$200.00 | \$16.00    |
| 1/20/2022  | Nora Greer (15+ Year Paralegal)             | F/U email to oc re stip                                                                                        | 0.08 | \$200.00 | \$16.00    |
| 1/21/2022  | Nora Greer (15+ Year Paralegal)             | TC with SB re CMC, update<br>calendar, messages with DGS re<br>CMC                                             | 0.25 | \$200.00 | \$50.00    |
| 1/24/2022  | Sara Brown (2nd Year Associate<br>Attorney) | prepared for hearing, attended<br>hearing, typed up hearing<br>notes/emailed the team                          | 1.33 | \$300.00 | \$399.00   |
| 1/24/2022  | Nora Greer (15+ Year Paralegal)             | Save hearing notes to file, update<br>calendar                                                                 | 0.25 | \$200.00 | \$50.00    |
| 2/1/2022   | Sara Brown (2nd Year Associate<br>Attorney) | Review emails                                                                                                  | 0.17 | \$300.00 | \$51.00    |
| 2/9/2022   | Nora Greer (15+ Year Paralegal)             | TC with CL re Settlement<br>Agreement                                                                          | 0.08 | \$200.00 | \$16.00    |

TSLF TIME RIVES

|           |                                          |                                                                                                                            |      |          |            |
|-----------|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|------|----------|------------|
| 2/9/2022  | Nora Greer (15+ Year Paralegal)          | TC with CL re Settlement Agreement, circulate Settlement Agreement, Pull Minute Order and Circulate                        | 0.42 | \$200.00 | \$84.00    |
| 2/9/2022  | Breck Oyama (13th Year Paralegal)        | review emails/FV, block spam texts                                                                                         | 0.17 | \$300.00 | \$51.00    |
| 2/10/2022 | Nora Greer (15+ Year Paralegal)          | Circulate Settlement Agreement Signed by Plaintiffs to OC, combine signatures                                              | 0.17 | \$200.00 | \$34.00    |
| 2/10/2022 | Breck Oyama (13th Year Paralegal)        | review emails                                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 2/11/2022 | Nora Greer (15+ Year Paralegal)          | Revise Joint Statement send to oc, Prepare Notice of Change of Address and Service OC, Messages with DGS re CMC            | 0.75 | \$200.00 | \$150.00   |
| 2/11/2022 | Breck Oyama (13th Year Paralegal)        | review emails                                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 2/13/2022 | David Spivak (26th Year Attorney)        | prepare PAGA settlement approval mx; email instructions to staff                                                           | 2.58 | \$700.00 | \$1,806.00 |
| 2/14/2022 | Breck Oyama (13th Year Paralegal)        | review emails re cmc deadline                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 2/14/2022 | Nora Greer (15+ Year Paralegal)          | Review emails, circulate JSR for signature                                                                                 | 0.42 | \$200.00 | \$84.00    |
| 2/14/2022 | Breck Oyama (13th Year Paralegal)        | review emails/status                                                                                                       | 0.08 | \$300.00 | \$24.00    |
| 2/15/2022 | Nora Greer (15+ Year Paralegal)          | Prepare POS, file, serve, circulate Joint CMC and Notice of Change of Address                                              | 0.33 | \$200.00 | \$66.00    |
| 2/17/2022 | Breck Oyama (13th Year Paralegal)        | review emails                                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 2/23/2022 | Nora Greer (15+ Year Paralegal)          | Check docket for filings, emails with BO                                                                                   | 0.17 | \$200.00 | \$34.00    |
| 2/23/2022 | Nora Greer (15+ Year Paralegal)          | Circulate fully executed settlement agreement, review emails, email to DGS/MC email to OC re Brief and number of paychecks | 0.33 | \$200.00 | \$66.00    |
| 2/23/2022 | Breck Oyama (13th Year Paralegal)        | review emails/docket, check w/ team                                                                                        | 0.08 | \$300.00 | \$24.00    |
| 2/24/2022 | Breck Oyama (13th Year Paralegal)        | review emails                                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 2/25/2022 | Breck Oyama (13th Year Paralegal)        | review emails                                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 2/25/2022 | Nora Greer (15+ Year Paralegal)          | Check docket for court date                                                                                                | 0.08 | \$200.00 | \$16.00    |
| 2/28/2022 | Breck Oyama (13th Year Paralegal)        | review emails                                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 2/28/2022 | Nora Greer (15+ Year Paralegal)          | Check docket for court date, email SB re appearance                                                                        | 0.17 | \$200.00 | \$34.00    |
| 3/1/2022  | Nora Greer (15+ Year Paralegal)          | Save hearing notes to file, update calendar                                                                                | 0.25 | \$200.00 | \$50.00    |
| 3/1/2022  | Breck Oyama (13th Year Paralegal)        | review notes, update deadline chain                                                                                        | 0.08 | \$300.00 | \$24.00    |
| 3/1/2022  | Sara Brown (2nd Year Associate Attorney) | prepared for hearing and attended hearing                                                                                  | 0.58 | \$300.00 | \$174.00   |
| 3/3/2022  | Nora Greer (15+ Year Paralegal)          | Download and Circulate Minute Order                                                                                        | 0.17 | \$200.00 | \$34.00    |
| 3/4/2022  | Nora Greer (15+ Year Paralegal)          | Review emails                                                                                                              | 0.08 | \$200.00 | \$16.00    |
| 3/4/2022  | Nora Greer (15+ Year Paralegal)          | F/U email to OC, circulate bids, emails to DGS                                                                             | 0.25 | \$200.00 | \$50.00    |
| 3/4/2022  | Breck Oyama (13th Year Paralegal)        | review emails                                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 3/7/2022  | Nora Greer (15+ Year Paralegal)          | Review emails save Defendant's Mediation Brief to File                                                                     | 0.17 | \$200.00 | \$34.00    |
| 3/8/2022  | Breck Oyama (13th Year Paralegal)        | review emails                                                                                                              | 0.08 | \$300.00 | \$24.00    |
| 3/18/2022 | Nora Greer (15+ Year Paralegal)          | Review emails, save notice of court filing to file                                                                         | 0.17 | \$200.00 | \$34.00    |
| 3/23/2022 | Maya Cheaitani (1st Year Attorney)       | draft mx paga approval                                                                                                     | 6.00 | \$250.00 | \$1,500.00 |

TSLF TIME RIVES

|           |                                    |                                                                                                                                   |      |          |          |
|-----------|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|------|----------|----------|
| 3/24/2022 | Nora Greer (15+ Year Paralegal)    | Review emails, email dgs re long form settlement, save redlines to file                                                           | 0.17 | \$200.00 | \$34.00  |
| 3/24/2022 | Breck Oyama (13th Year Paralegal)  | review emails/filing                                                                                                              | 0.08 | \$300.00 | \$24.00  |
| 3/24/2022 | David Spivak (26th Year Attorney)  | review and revise DGS decl and settlement with MC changes                                                                         | 0.33 | \$700.00 | \$231.00 |
| 3/28/2022 | Breck Oyama (13th Year Paralegal)  | review emails                                                                                                                     | 0.08 | \$300.00 | \$24.00  |
| 3/30/2022 | Nora Greer (15+ Year Paralegal)    | Begin Client Time Log                                                                                                             | 0.67 | \$200.00 | \$134.00 |
| 3/30/2022 | Breck Oyama (13th Year Paralegal)  | review emails, add client time log                                                                                                | 0.08 | \$300.00 | \$24.00  |
| 3/30/2022 | Nora Greer (15+ Year Paralegal)    | Confer with BO re future costs, prepare costs chart, messages with MC                                                             | 0.83 | \$200.00 | \$166.00 |
| 3/31/2022 | Maya Cheaitani (1st Year Attorney) | revise mx paga app/msg NG/email team                                                                                              | 1.50 | \$250.00 | \$375.00 |
| 3/31/2022 | Nora Greer (15+ Year Paralegal)    | Time Exhibit and pull exhibits                                                                                                    | 0.67 | \$200.00 | \$134.00 |
| 4/4/2022  | Nora Greer (15+ Year Paralegal)    | Finalize Mx Paga Settlement, send to DGS                                                                                          | 1.67 | \$200.00 | \$334.00 |
| 4/4/2022  | Nora Greer (15+ Year Paralegal)    | Update Client's address on FV                                                                                                     | 0.08 | \$200.00 | \$16.00  |
| 4/5/2022  | Breck Oyama (13th Year Paralegal)  | review emails re fees/Iodestar, email team re correction/amendment                                                                | 0.08 | \$300.00 | \$24.00  |
| 4/8/2022  | Breck Oyama (13th Year Paralegal)  | review emails                                                                                                                     | 0.08 | \$300.00 | \$24.00  |
| 4/8/2022  | David Spivak (26th Year Attorney)  | Review and revise motion for approval of private attorney general settlement; instructions to staff                               | 0.25 | \$700.00 | \$175.00 |
| 4/8/2022  | Nora Greer (15+ Year Paralegal)    | Email CL re case status, prepare amendment to complaint, save DGS redlines to file                                                | 0.33 | \$200.00 | \$66.00  |
| 4/12/2022 | Breck Oyama (13th Year Paralegal)  | review emails/docs                                                                                                                | 0.08 | \$300.00 | \$24.00  |
| 4/12/2022 | Nora Greer (15+ Year Paralegal)    | Revise amendment to complaint, review emails, messages with MC re MX                                                              | 0.17 | \$200.00 | \$34.00  |
| 4/12/2022 | Maya Cheaitani (1st Year Attorney) | revise & finalize mx paga approval/msg NG/email OC                                                                                | 2.67 | \$250.00 | \$667.50 |
| 4/13/2022 | Maya Cheaitani (1st Year Attorney) | review emails/msg nora                                                                                                            | 0.25 | \$250.00 | \$62.50  |
| 4/15/2022 | Nora Greer (15+ Year Paralegal)    | F/U to OC re Mx Paga                                                                                                              | 0.08 | \$200.00 | \$16.00  |
| 4/18/2022 | Breck Oyama (13th Year Paralegal)  | review team/tasks                                                                                                                 | 0.08 | \$300.00 | \$24.00  |
| 4/19/2022 | Nora Greer (15+ Year Paralegal)    | F/U email to OC re MX Paga                                                                                                        | 0.08 | \$200.00 | \$16.00  |
| 4/25/2022 | Nora Greer (15+ Year Paralegal)    | Review emails, messages with DGS                                                                                                  | 0.17 | \$200.00 | \$34.00  |
| 4/25/2022 | Breck Oyama (13th Year Paralegal)  | review emails, update team                                                                                                        | 0.08 | \$300.00 | \$24.00  |
| 4/26/2022 | David Spivak (26th Year Attorney)  | Review opposing counsel revisions to settlement documents and motion for settlement approval                                      | 0.50 | \$700.00 | \$350.00 |
| 4/27/2022 | Breck Oyama (13th Year Paralegal)  | review emails                                                                                                                     | 0.08 | \$300.00 | \$24.00  |
| 4/27/2022 | Nora Greer (15+ Year Paralegal)    | Review emails, TC to Marin Court re hearing date, circulate finalized mx and settlement docs, messages with MC                    | 0.67 | \$200.00 | \$134.00 |
| 4/28/2022 | Breck Oyama (13th Year Paralegal)  | mtg w/ NG re time exhibit for mx                                                                                                  | 0.08 | \$300.00 | \$24.00  |
| 4/28/2022 | Nora Greer (15+ Year Paralegal)    | Confer with BO re Exhibit for MX, review exhibits, redact exhibit, send Client Settlement Agreement, Send CC Settlement Agreement | 0.33 | \$200.00 | \$66.00  |

TSLF TIME RIVES

|           |                                    |                                                                                         |               |          |                    |
|-----------|------------------------------------|-----------------------------------------------------------------------------------------|---------------|----------|--------------------|
| 5/4/2022  | Nora Greer (15+ Year Paralegal)    | Work on TOA, emails to OC re Mx                                                         | 1.25          | \$200.00 | \$250.00           |
| 5/4/2022  | Maya Cheaitani (1st Year Attorney) | redline changes/review emails                                                           | 0.50          | \$250.00 | \$125.00           |
| 5/4/2022  | Nora Greer (15+ Year Paralegal)    | Email to CL re case status                                                              | 0.08          | \$200.00 | \$16.00            |
| 5/4/2022  | Nora Greer (15+ Year Paralegal)    | Review emails, f/u with OC re Settlement Agreement, messages with DGS                   | 0.25          | \$200.00 | \$50.00            |
| 5/9/2022  | Breck Oyama (13th Year Paralegal)  | review emails, f/u OC re SA                                                             | 0.17          | \$300.00 | \$51.00            |
| 5/11/2022 | Nora Greer (15+ Year Paralegal)    | Review emails, email to OC re Settlement Agreement, combine SA, circulate to OC and CL. | 0.33          | \$200.00 | \$66.00            |
| 5/12/2022 | Nora Greer (15+ Year Paralegal)    | Finalize Mx Paga Approval                                                               | 1.50          | \$200.00 | \$300.00           |
|           |                                    | <b>TOTAL PRE-MULTIPLIER LODESTAR<br/>AS OF 5/12/2022</b>                                | <b>150.14</b> |          | <b>\$47,104.50</b> |

# **EXHIBIT 11**

TSLF COSTS RIVES

| Date       | Type of Expense           | Description/Invoice#                                      | Amount      |
|------------|---------------------------|-----------------------------------------------------------|-------------|
| 12/7/2020  | LWDA Filing Fee           | LWDA FILING FEE REDACTED                                  | \$ 75.00    |
| 12/7/2020  | Photocopies               | 140 pages (LWDA 28 pages x 5)                             | \$ 35.00    |
| 12/14/2020 | Photocopies               | Suppl LWDA (150 pages)                                    | \$ 37.50    |
| 1/4/2021   | Postage                   | Postage Dec 2020                                          | \$ 80.40    |
| 3/2/2021   | Postage                   | Postage Feb 2021                                          | \$ 0.51     |
| 3/23/2021  | Attorney Service-Filing   | One Legal REDACTED                                        | \$ 605.33   |
| 4/1/2021   | Attorney Service-Filing   | One Legal REDACTED                                        | \$ 119.42   |
| 4/3/2021   | Attorney Service-Filing   | One Legal REDACTED Proof of Service Summons CF san Rafael | \$ 30.89    |
| 4/5/2021   | Attorney Service-Filing   | One Legal REDACTED                                        | \$ 119.42   |
| 4/21/2021  | Attorney Service-Filing   | One Legal REDACTED Proof of Service Summons               | \$ 30.89    |
| 5/4/2021   | Postage                   | Postage Apr 2021                                          | \$ 9.10     |
| 6/15/2021  | Attorney Service-Filing   | One Legal REDACTED (Request for Dismissal)                | \$ 69.49    |
| 8/16/2021  | Attorney Service-Service  | One Legal REDACTED                                        | \$ 223.92   |
| 10/28/2021 | Mediator Fees             | Lerman & Pointer, LLP (Mediation Fee)                     | \$ 4,250.00 |
| 12/3/2021  | Expert or Data Analysis   | Sridhar Srinivasan Invoice REDACTED                       | \$ 1,900.00 |
| 3/18/2022  | Attorney Service-Filing   | One Legal REDACTED                                        | \$ 69.57    |
| TBD        | Attorney Service - Filing | Stip Cointues/Status Report                               | \$ 88.16    |
| TBD        | Attorney Service- Filing  | Motion Paga Settlement                                    | \$ 519.48   |
| TBD        | Attorney Service - Filing | Supplemental Briefing                                     | \$ 332.50   |
| TBD        | Attorney Service - Filing | Notice of Entry                                           | \$ 67.50    |
| TBD        | Attorney Service - Filing | Final Accounting                                          | \$ 122.50   |
|            |                           | THE SPIVAK LAW FIRM COSTS THROUGH 4/28/2022               | \$ 7,656.44 |
|            |                           | THE SPIVAK LAW FIRM ESTIMATED FUTURE COSTS                | \$ 1,130.14 |
|            |                           | UNITED EMPLOYEES LAW GROUP COSTS THROUGH 04/28/2022       | \$ 8.00     |
|            |                           | TOTAL COSTS THROUGH FINAL ACCOUNTING OF SETTLEMENT        | \$ 8,794.58 |

# **EXHIBIT 12**

**Case Name: Rives v Professional**

Date: **December 13, 2021**

**PAGA Disbursement Only**

Requesting Paralegal : **Nora Greer**

\* Class Members: **183**

Plaintiff or Defense: **Plaintiff**

Postage Total: **\$135.26**

Firm Name: **The Spivak Law Firm**

Grand Total: **\$8,525.31**

Telephone: **(818) 582-3073**

**\*\*\* DISCOUNTED FLAT FEE: \$5,750.00**

Email: [nora@spivaklaw.com](mailto:nora@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**

| Administrative Tasks:              | Unit Price | Pieces/Hours | Cost Estimate   |
|------------------------------------|------------|--------------|-----------------|
| Project Manager                    | \$95.00    | 1            | \$95.00         |
| System Programming/Data Base Setup | \$150.00   | 1            | \$150.00        |
| Project Manager-Notice Format      | \$95.00    | 1            | \$95.00         |
| NCOA                               | \$150.00   | 1            | \$150.00        |
| Call Center Support                | \$3.00     | 37           | \$111.00        |
| <b>Total</b>                       |            |              | <b>\$601.00</b> |

\* 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     | 183          | \$36.60         |
| <b>Total</b>                  |            |              | <b>\$471.60</b> |

## 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     | 183          | \$549.00          |
| Estimated Postage (up to 1 oz.)           | \$0.58     | 183          | \$106.14          |
| <b>Total</b>                              |            |              | <b>\$2,495.14</b> |

# 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     | 2            | \$10.00           |
| Project Supervisor -Account Recons                                                                  | \$150.00   | 6            | \$900.00          |
| Skip Trace                                                                                          | \$1.25     | 15           | \$18.75           |
| Remail Undeliverable Checks                                                                         | \$3.00     | 15           | \$45.00           |
| Estimated Postage (up to 1 oz.)                                                                     | \$0.58     | 17           | \$9.86            |
| 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*                                                                        | \$750.00   | 1            | \$750.00          |
| QSF Annual Tax Reporting                                                                            | \$500.00   | 1            | \$500.00          |
| <b>Total</b>                                                                                        |            |              | <b>\$2,833.61</b> |

*\*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     | 38           | \$5.70            |
| 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     | 4            | \$19.00           |
| 1st Class Postage for Reissues                                                                       | \$0.58     | 4            | \$2.20            |
| 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          |
| <b>Total</b>                                                                                         |            |              | <b>\$2,123.96</b> |
| <b>Grand Total:</b>                                                                                  |            |              | <b>\$8,525.31</b> |

# 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 disenabling 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

other party, (ii) reasonably cooperate with the other party in such

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
- 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

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

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party

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

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 13**

## Case Name: Rives v. Professional

Tuesday, December 14, 2021

|                      |                                                                                    |
|----------------------|------------------------------------------------------------------------------------|
| Requesting Law Firm: | The Spivak Law Firm                                                                |
| Contact:             | Nora Greer                                                                         |
| E-Mail:              | <a href="mailto:nora@spivaklaw.com">nora@spivaklaw.com</a>                         |
| ILYM Contact:        | Sean Hartranft                                                                     |
| E-Mail:              | <a href="mailto:Sean@ilymgrouppclassaction.com">Sean@ilymgrouppclassaction.com</a> |
| Contact Number:      | 949.690.2564                                                                       |

### Assumptions: PAGA Settlement

| ASSUMPTIONS                          |     |
|--------------------------------------|-----|
| Total Number of Aggrieved Employees  | 183 |
| Certified Spanish Translation        | No  |
| Remail of Undeliverables             | Yes |
| Toll-Free Telephone Support Included | Yes |

| Activity                                            | Rate Type | Unit Cost | Volume | Amount   |
|-----------------------------------------------------|-----------|-----------|--------|----------|
| <b>CASE STARTUP</b>                                 |           |           |        |          |
| Initial Setup - Import and Formatting of Data*      | Hourly    | \$150.00  | 2      | \$300.00 |
| Project Manager (Case notification and maintenance) | Hourly    | \$120.00  | 4      | \$480.00 |
| Toll-Free Telephone Support                         | Flat Rate | \$75.00   | 1      | \$75.00  |
| NCOA                                                | Flat Rate | \$45.52   | 1      | \$45.52  |

\*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                    \$900.52**

| DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)* |           |          |     |            |
|----------------------------------------------------|-----------|----------|-----|------------|
| Distribution Setup & Management                    | Hourly    | \$150.00 | 2   | \$300.00   |
| Account Reconciliation & Distribution Reporting    | Hourly    | \$125.00 | 2   | \$250.00   |
| Notice, Check, Stub & Release - (including 1099)   | Per Check | \$3.00   | 183 | \$549.00   |
| USPS First Class 1oz Postage                       | Per Piece | \$0.76   | 183 | \$139.08   |
| Remails (Forward/Skip Trace Undeliverables)        | Per Piece | \$4.00   | 37  | \$146.40   |
| Preparation of Taxes                               | Hourly    | \$125.00 | 10  | \$1,250.00 |
| Annual Filing of Tax Return                        | Per Year  | \$750.00 | 1   | \$750.00   |

\*Additional Bank fees may apply

**Subtotal                    \$3,384.48**

| CASE CONCLUSION                                      |          |          |   |          |
|------------------------------------------------------|----------|----------|---|----------|
| Data Manager Final Reporting                         | Hourly   | \$100.00 | 2 | \$200.00 |
| Process Unclaimed Funds to State Controller's Office | Flat Fee | \$750.00 | 1 | \$750.00 |
| Declaration                                          | Hourly   | \$125.00 | 2 | \$250.00 |

**Subtotal                    \$1,200.00**

**Will Not Exceed:            \$5,485.00**

# 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 14**

**Class Action Claims Administration, Inc.**

Karin Peternel  
 59 Damonte Ranch Parkway Ste. B224  
 Reno, NV 89521  
[karin@classactionclaimsadmin.net](mailto:karin@classactionclaimsadmin.net)  
 (775) 378-5458

**Estimate for PAGA Settlement Administration**

|                           |                      |                |
|---------------------------|----------------------|----------------|
| December 15, 2021         | No. Individuals      | 183            |
| To: Nora Greer            | Postage Total        | \$236.07       |
| The Spivak Law Firm       | <b>COST ESTIMATE</b> | <b>\$6,800</b> |
| <b>RIVES/PROFESSIONAL</b> |                      |                |

1. Class member list provided must be excel delimited with names, addresses, SSNs, weeks worked
2. One mailing of Notice and Check
3. 1099's issued, IRS forms

**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                | 6                   | \$210.00          |
| Website                             | 750               | 0                   | \$0.00            |
| Proprietary Calculations            | 750               | 1                   | \$750.00          |
|                                     | <b>TOTAL</b>      |                     | <b>\$1,060.00</b> |

**Disbursement****Calculations/Data Management/Create and Manage QSF/Print and Mail Checks, 1099s**

| <i>Task</i>                                         | <i>Unit Price</i> | <i>Pieces/Hours</i> | <i>Cost</i>       |
|-----------------------------------------------------|-------------------|---------------------|-------------------|
| Programming for Upload to SSA                       | 35                | 4                   | \$140.00          |
| SSN Verification/Update tax calculation spreadsheet | 35                | 6                   | \$210.00          |
| Prepare Database/Tax Calculations                   | 35                | 6                   | \$210.00          |
| Attorney, Admin, LWDA disbursement                  | 50                | 2                   | \$100.00          |
| Obtain EIN/CA EIN, QSF Bank Account                 | 50                | 4                   | \$200.00          |
| Prepare Notice and Check                            | 1.5               | 183                 | \$274.50          |
| Prepare and print 1099                              | 2.5               | 183                 | \$457.50          |
| Postage disbursement and tax forms                  | 1.2               | 183                 | \$219.60          |
|                                                     | <b>TOTAL</b>      |                     | <b>\$1,811.60</b> |

**Returned Mail****Notices Returned as Undeliverable/Skip Traces/Remail Notice Packets/Postage**

| <i>Task</i>                | <i>Unit Price</i> | <i>Pieces/Hours</i> | <i>Cost</i>     |
|----------------------------|-------------------|---------------------|-----------------|
| Staff/Update Undeliverable | 25                | 4                   | \$100.00        |
| Skip Trace                 | 1.3               | 183                 | \$237.90        |
| Remail Disbursement        | 1.5               | 37                  | \$54.90         |
| Postage                    | 0.6               | 27                  | \$16.47         |
|                            | <b>TOTAL</b>      |                     | <b>\$409.27</b> |

**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 tax forms as Necessary              | 35                | 4                   | \$140.00          |
| PM Data/Bank Acct Management                 | 35                | 8                   | \$280.00          |
| Prepare Final Reports/Declaration/Corr       | 50                | 4                   | \$200.00          |
| CA Tax Preparation NOT INCLUDED              |                   |                     | \$0.00            |
| Annual Tax Reporting to IRS                  | 2250              | 1                   | \$2,250.00        |
| QSF Annual Tax Reporting                     | 150               | 1                   | \$150.00          |
| Unclaimed Funds Distribution for Individuals | 500               | 1                   | \$500.00          |
|                                              | <b>TOTAL</b>      |                     | <b>\$3,520.00</b> |