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8 SIMONETTE VILLENA, and all others similarly situated

(Additional attorneys for parties on following page)

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

11 **FOR THE COUNTY OF SAN DIEGO**

12 **(UNLIMITED JURISDICTION)**

13 SIMONETTE VILLENA, on behalf of herself and
14 as an “aggrieved employee” on behalf of other
15 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

16 *Plaintiff,*

17 vs.

18 MIDWAY VENTURE LLC, a California limited
19 liability company; PETER BALOV, an
individual; and DOES 1–50, inclusive,

20 *Defendants.*

Case No. 37-2021-00005970-CU-OE-CTL

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
SIMONETTE VILLENA’S MOTION
FOR APPROVAL OF PAGA
SETTLEMENT**

RESERVATION: 2883081

Hearing Date: January 6, 2023

Hearing Time: 1:30 p.m.

Hearing Dept.: C-72, The Honorable
Timothy Taylor

Action filed: February 09, 2021

Trial Date: October 14, 2022



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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 Simonette Villena (“Plaintiff” or “Villena”) in this action against Defendant Midway Venture LLC (“Midway Venture LLC” or “Defendant”). 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 Aggrieved Employees (the “PAGA Notice”) is attached hereto as **Exhibit 2**.

Factual and Procedural Background

3. Defendants are licensed as an adult entertainment establishment. Plaintiff contends she performed as an adult entertainer at Defendant's adult entertainment establishment from about July 01, 2018 until December 01, 2019.

4. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under PAGA. By letters dated December 03, 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 letters to the LWDA are collectively attached as **Exhibit 3**.

5. Plaintiff and the PAGA Members are potentially subject to arbitration agreements with Defendants. Plaintiff filed her lawsuit in San Diego County Superior Court on February 09, 2021. A true and correct copy of Plaintiff's Complaint is attached as **Exhibit 4**. Plaintiff's complaint presents one cause of action for civil penalties under PAGA. Shortly after Plaintiff served her first set of discovery requests, the Parties agreed to stay formal discovery and participate in mediation. On May 06, 2021, Defendant filed an answer to Plaintiff's First Amended Complaint. A true and correct copy of Defendant's Answer to Plaintiff's First



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1 Amended Complaint is attached as **Exhibit 5**. Defendant denies all of Plaintiff's allegations
2 and strongly contends that its wage and hour policies, practices and procedures are fully
3 compliant with all applicable laws.

4 6. On May 22, 2022, the Parties participated in mediation with mediator Michael
5 Young in an attempt to resolve the PAGA claim. The Parties engaged in arm's-length
6 negotiations and ultimately reached a resolution of the PAGA claims asserted in the Action. The
7 PAGA Settlement was reached after exchanges of data, information and documents, and is a
8 result of extensive arms-length negotiations. The Parties conducted informal discovery for
9 purposes of potential resolution through which they ascertained the size of the aggrieved
10 employee group and the number of pay periods worked by them during the PAGA Period to
11 ascertain the total value of Plaintiff's PAGA claim. Now that the parties have finalized the
12 PAGA Settlement, Plaintiff submits it to this Court for approval.

13 7. Notice is being given to the LWDA concurrently with the filing of this motion.
14 Here, notice is being given to the LWDA concurrently with the filing of this motion. A true and
15 correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached as
16 **Exhibit 6**.

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

24 9. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
25 with the absent Aggrieved Employees. Plaintiff contends that she is an adequate PAGA
26 representative. Plaintiff and the Aggrieved Employees have strong and co-extensive interests in
27 this litigation because they all worked for Defendant during the relevant time period under the
28 same written and unwritten policies, allegedly suffered the same alleged injuries from the same
alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff
and the Aggrieved Employees. As this is a PAGA-only claim, there is no issue of
ascertainability. However, Plaintiff maintains that the number of Aggrieved Employees is



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1 ascertainable because they may be identified by reference to Defendant's records and Defendant
2 has agreed to share the relevant information from its records to facilitate the process. Therefore,
3 the number of Aggrieved Employees and their whereabouts are ascertainable.

4 ***Background of Counsel***

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

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

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

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

29 C. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton
(the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights



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1 claims and wrongful termination claims against employer in a month-long jury trial. The jury
2 awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost
3 His Job" by Dan Weikel, *Los Angeles Times*, September 28, 2000; "Punitive Damages Awarded
4 to Fired Social Worker" by Dan Weikel, *Los Angeles Times*, June 10, 2000; "A Whistleblower's
5 Revenge" by Susan Goldsmith, *New Times Los Angeles*, June 8, 2000.

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

13 E. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
14 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
15 Customs Agent, followed by an award of Attorneys' fees and costs.

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

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

12. 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



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1 and hour cases in which I have been counsel of record is as follows:

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

5 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-
6 2010-000382146 (appointed Class Counsel and granted final approval of class action settlement
7 by the court on behalf of nonexempt employees).

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

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

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

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

21 G. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No.
22 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
23 action settlement on behalf of medical devices employees).

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

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

J. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior
Court, Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class



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1 action settlement on behalf of non-exempt hourly employees excluding truck drivers).

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

5 L. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
6 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
7 on behalf of dairy and agricultural laborers).

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

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

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

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

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

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

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

T. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case



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No. BC462917 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of service account manager employees).

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

V. *Vang v. Burlington Coat Factory Corporation*, United States District Court Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel 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

13. If the Defendants improperly classified the Plaintiff and the other performers as exempt independent contractors instead of employees, there will be civil penalties owed. Plaintiff contends she and the other performers were misclassified as independent contractors under *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. Defendant contends that the holding in that decision, i.e., the ABC Test, has since been codified at Labor Code section 2775. The rest of Article 1.5 of that particular Chapter of the Labor Code sets forth a number of exceptions to the ABC Test. These exceptions include business-to-business contracting relationships and performance artists. (See Lab. Code, §§ 2776; 2780, subd. (c).) Defendants contend that the Plaintiff and the other performers are covered by these exceptions to the ABC test and were not misclassified.

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

- Defendant produced and Plaintiff reviewed her personnel file.



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1 • Plaintiff requested that Defendant produce any and all relevant policies
2 regarding Plaintiff's claims and Defendant produced those policies in effect during the relevant
3 time period.

4 • Plaintiff interviewed performers about the claims at issue.
5 • Plaintiff analyzed the state of caselaw on PAGA claims, claims for
6 misclassification and failure to pay employees all earned wages, failure to provide meal periods,
7 failure to authorize and permit rest periods, failure to indemnify for business expenses, failure
8 to issue proper wage statements, failure to timely pay wages, and related claims.

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

11 15. As set forth above, Defendants have posed valid defenses to the Labor Code
12 claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face
13 significant uncertainty. There is a risk that the Court would consider the maximum civil penalty
14 available to be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA
15 claims and required a significant discount for settlement purposes. For mediation purposes,
16 Plaintiff's counsel estimated a maximum exposure of approximately \$1,250,000.00 in civil
17 penalties. This estimate did not take into account any of the risks discussed above and assumed
18 a violation for every single pay period. Plaintiff's counsel also assessed multiple penalties for
19 the same pay period for the same alleged violations of different Labor Code provisions and
20 derivative violations. Although two federal district court decisions held that "stacking" PAGA
21 penalties in this fashion may be appropriate to determine the amount in controversy for purposes
22 of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding
23 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
24 Labor Code provisions. This may be because the PAGA does not provide for what many
25 employers characterize as claim splitting and not merely stacking.

26 16. In preparation for mediation and during the settlement negotiations that followed,
27 Defendant disclosed that there were approximately 50 potentially aggrieved employees and 50
28 pay periods. 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



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1 independently and in combination. It would depend on the Court stacking the maximum
2 recoverable civil penalties for failure to pay employees all earned wages, failure to provide meal
3 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
4 failure to issue proper wage statements, failure to timely pay wages per pay period for all 50 pay
5 periods for all 50 potentially aggrieved employees during the PAGA Period. Plaintiff's counsel
6 is not aware of any California State court decision awarding a plaintiff and the other aggrieved
7 employees she represents multiple civil penalties for the same pay period under different Labor
8 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).

9 17. **Risks Associated with Plaintiff's Claim That Defendant Failed To Pay All**
10 **Earned Wages at the Correct Rates of Pay.** There is a risk that Plaintiff's claim that Defendant
11 did not pay all wages at the correct rates of pay would be extremely limited at best, largely
12 because Defendant's written policies throughout the relevant time period prohibited off-the-
13 clock work. In its written employment policies, Defendant mandates that employees must record
14 all time worked accurately on its time records and strictly prohibit employees from performing
15 any work off-the-clock. Moreover, while Defendant disputes that off-the-clock work occurred,
16 it contends that any time spent off the clock was *de minimis*. Defendants contend that the *de*
minimis doctrine may apply here because the time spent off the clock were minute and
17 insignificant.

18 18. The difficulty inherent in proving that off-the-clock work occurred poses a
19 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
20 this claim. Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work
21 claim, especially given the lack of records indicating when such off-the-clock work may have
22 taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day,
23 to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis.
Accordingly, there is a significant risk that the Court would consider this evidentiary showing
insufficient as a methodology for all aggrieved employees.

24 19. **Risks Associated with Plaintiff's Claim That Defendant Failed To Provide All**
25 **Meal Periods.** There are risks to Plaintiff's claims that defendant filed to provide all meal periods.
26 If the Defendants properly classified the Plaintiff and the other performers as exempt independent
27 contractors instead of employees, there will be civil penalties owed for meal period violations.
28



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1 Defendant contends that, to establish a violation of the meal period law, a plaintiff must do more
2 than show that a meal break was not taken. Defendant contends it did not impede or discourage
3 Plaintiff, or any other employees, from taking their meal periods. Defendant's policies mandate
4 that employees take at least a 30-minute, uninterrupted meal periods and record the beginning
5 and ending time of their meal breaks each day on their time records. The time records that
6 comprise the random sample Defendant produced to Plaintiff for purposes of mediation show that
7 meal periods were taken the vast majority of the time. Of the time records that show a late, short
8 or no lunch, individualized evidence may be necessary to determine whether they occurred due
9 to conduct of the Defendant or each of the employees concerned.

10 20. **Risks Associated with Plaintiff's Claim That Defendant Failed To Authorize**
11 **or Permit Rest Breaks.** There are risks to Plaintiff's claims that Defendant failed to authorize or
12 permit rest breaks. If the Defendants properly classified the Plaintiff and the other performers as
13 exempt independent contractors instead of employees, there will be civil penalties owed for rest
14 period violations. Defendant contends it provided non-exempt employees the opportunity to take
15 rest periods in accordance with California law. Further, Defendant's written policies on meal and
16 rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often
17 records showing whether an employee clocked out or not, there is no such evidence to prove a
18 missed rest period or that the employer refused to authorize and permit one. Managing such claims
19 at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and
20 surveys to prove the claims.

21 21. **Risks Associated with Plaintiff's Claim That Defendant Failed To Indemnify**
22 **for Expenses.** There is a risk that the Court may consider Plaintiff's claim that Defendant failed
23 to indemnify for business expenses to be individual in nature and thus decline to to allow a trial
24 on behalf of all aggrieved employees and the State. If the Defendants properly classified the
25 Plaintiff and the other performers as exempt independent contractors instead of employees, there
26 will be civil penalties owed for unreimbursed expenses. Plaintiff alleges that Defendant required
27 Plaintiff and the Aggrieved Employees to use their personal items for work, including cellular
28 phones, computers and other electronic devices, vehicles, and tools, and failed to indemnify them
for these business expenses. Defendant presented evidence that they have supplied their
employees with tools, equipment, and other supplies and had an expense reimbursement policy.
As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature



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1 and unfit for class wide resolution.

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

4 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
5 PAGA penalties. If the Defendants properly classified the Plaintiff and the other performers as
6 exempt independent contractors instead of employees, there will be civil penalties owed for pay
7 stub violations. Under Labor Code section 226, wage statements must include various
8 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
9 Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is
10 derivative of them. *Id.* On their face, the wage statements issued by Defendants comply with the
11 requirements of Labor Code § 226.

12 23. **Risks Associated with Plaintiff's Claim That Defendant Failed To Timely Pay**
13 **All Wages.** Plaintiff's claim for untimely wages is predicated on Labor Code section 201 to 203.
14 Like the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were
15 willful. The evidence of good faith Defendants put forth will defeat this claim. If the Defendants
16 properly classified the Plaintiff and the other performers as exempt independent contractors
17 instead of employees, there will be civil penalties owed for untimely final wages.

18 24. **The Absence of Large Civil Penalty Awards under PAGA.** The sole source
19 of money recoverable for the PAGA Members and the State is civil penalties available under
20 PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so
21 long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above,
22 Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every
23 paycheck that Defendant issued to employees during the PAGA Period represents a pay period
24 in which every PAGA Member suffered a minimum wage violation; (2) Every paycheck that
25 Defendant issued to employees during the PAGA Period represents a pay period in which every
26 PAGA Member suffered an overtime wage violation; (3) Every paycheck that Defendant issued
27 to employees during the PAGA Period represents a pay period in which every PAGA Member
28 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



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1 violation. There are no California state court decisions under the PAGA to date with substantial
2 awards of civil penalties. Plaintiff's counsel is aware of only two significant awards under the
3 PAGA in a contested proceeding, both issued by federal district courts, one of which was
4 overturned on May 28, 2021.¹

5 25. Additionally, PAGA states a court has discretion to award a lesser amount than
6 the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management,*
7 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that
8 the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by
9 Plaintiff's evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30
10 *Cal.App.5th* 504 ("Carrington") illustrates this. In that case, the Court of Appeal affirmed a trial
11 court's heavily discounted award of only \$5 per violation because it was within the Court's
12 discretion to significantly reduce PAGA penalties even when there is a finding that a violation
13 of the California Labor Code occurred.

14 26. Moreover, judges have awarded extremely small sums to PAGA claimants in the
15 past. In *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court, case number BC430633
16 in which I represented the Plaintiffs, the employer underpaid commission overtime wages. The

17 ¹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
18 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
19 the plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
20 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
21 suffered a particularly sizeable injury – the court found that the defendant's policies caused
22 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
23 *Bernstein*, who the court noted had received "millions of dollars from the state of California" to
24 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
25 compensate its flight attendants for work performed outside of "block time" (time during which
26 the aircraft is moving), including time spent participating in pre-flight briefings, boarding
27 passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
28 1055-1058. Indeed, defendant's liability was so clear in *Bernstein* that the case was resolved on
the plaintiffs' motion for summary judgment. *Id.*

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



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1 plaintiffs sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial,
2 the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000.00 in civil penalties
3 under the PAGA. A true and correct copy of the amended judgment in *Ghrdilyan* is attached as
4 **Exhibit 7**. A true and correct copy of the complaint in *Ghrdilyan* is attached as **Exhibit 8**. A
5 true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 9**, 19:8-
6 20:19. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security*
7 *Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court
8 awarded the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result
9 could occur here. A true and correct copy of the judgment in *Shields* is attached as **Exhibit 10**.

10 27. Defendant could also convince the Court to dismiss the claims due to
11 unmanageability because determining whether each Aggrieved Employee worked off the clock
12 or why each employee missed a meal or rest period would require separate mini-trials. *Id. See,*
13 *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*,
14 the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4
15 (N.D. Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case
16 would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*,
17 and dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals
18 whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL
19 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D.
20 Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal.
21 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number
22 of potential aggrieved employees, judicial economy favors deferring the representative portion
23 of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May
24 13, 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision
25 in *Wesson v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh’g
26 denied (Sept. 27, 2021) holding that trial courts have authority to ensure that claims under
27 PAGA are manageable, and that courts may limit or strike unmanageable PAGA claims.

28 28. The arbitration agreements entered into between Defendants on the one hand,
and the Plaintiff and comparable workers, on the other, present a significant risk to the success
of Plaintiff’s representative litigation. According to Defendants, all adult entertainers and
employees entered into arbitration agreements with Defendants, which include class action and



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1 representative action waivers. *Id.* As the arbitration agreements in question restrict potential
2 litigants from bringing PAGA actions against Defendants, Plaintiff would be effectively barred
3 from pursuing claims on behalf of the Class in Court. *Id.* As such, by continuing to trial on
4 representative claims, Plaintiff would run the high risk of suffering defeat due to the existence
5 of the arbitration agreements. Also, because different defenses would apply to some workers
6 and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court
7 could determine that Plaintiff’s claims present too many individualized inquiries to allow for
manageable PAGA trial.

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

13 30. Each PAGA Member will receive a portion of the civil penalties on a pro-rata
14 basis depending on the number of pay periods Defendant employed them for during the PAGA
15 Period. Agreement, ¶ 5. With a total of approximately 50 PAGA Members, the average
16 estimated individual Settlement Payment for each PAGA Member is approximately \$155.56
17 (\$46,666/50) PAGA Members). Although an average payment of \$155.56 per Aggrieved
18 Employee is not an enormous sum of money, it is an excellent result given the uncertainties this
19 lawsuit entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA
20 is not a restitution statute with a traditional damages provision designed to restore victims to the
21 position they would have been in had the Labor Code violations not taken place. Rather, it is at
22 best a punishment statute designed to reduce future Labor Code violations. It provides for civil
penalties only.

23 31. Further, PAGA obligates the prevailing plaintiff to disburse 75% of the civil
24 penalties collected to the State. Within the framework she is bound by, Plaintiff, considering the
25 evidence she faced, achieved a phenomenal result for the employees concerned. What’s more,
26 the Settlement Plaintiff achieved permits the employees concerned who are dissatisfied with the
27 amount they received in civil penalties to pursue any unpaid restitution, wages, interest, statutory
28 penalties, and attorney fees and costs they believe they are owed in arbitration pursuant to their



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1 agreements with the Defendant. The Settlement does not require them to opt out to do so. As
2 such, there is no basis for objection even if the PAGA permitted it.

3 *Attorneys' Fees and Costs*

4 32. My co-counsel and I intend to request attorneys' fees of \$33,000.00 (1/3 of the
5 Gross Settlement Amount) and up to \$12,000.00 in litigation expenses. The written retainer
6 agreement I entered into with Plaintiff provides that I may elect to recover either (a) statutorily
7 awarded attorney fees or (b) up to 40% of any recovery.

8 33. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
9 awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's
10 Counsel's fee request of \$33,000.00 (one-third of the Gross Settlement Amount) is fair and
11 reasonable based on their lodestar as cross-checked against the percentage of the recovery. In
12 this case, Plaintiff's Counsel have a total lodestar of approximately
13 \$57,605.00 without the use of any multiplier, which results in a multiplier of 0.57% when
14 compared against the \$33,000.00 fee request. A true and correct summary of the time records
15 of my firm is attached as **Exhibit 11** to this declaration. I will make the detailed copies of such
16 records available to the Court for in camera inspection upon its request. I will have waited for a
17 lengthy period to be awarded attorneys' fees for work performed since Plaintiff first contacted
18 my office, compared to Defendant's counsel who have been paid as they performed work during
19 this case. Moreover, my co-counsel and I have expended time, effort, and money that we could
20 have expended on less risky cases instead.

21 34. My firm's current litigation costs total approximately \$9,474.77. A true and
22 correct summary of my firm's costs and expense is attached as **Exhibit 12** to this declaration. I
23 will make detailed copies of such records available to the Court for in camera inspection upon
24 its request. I anticipate that I will incur an additional \$100.38 in costs, which consist of filing
25 fees and attorney service fees for filing this motion and notice of entry of order. Thus, I anticipate
26 my firm's litigations costs will total approximately \$9,575.15 through final accounting of the
27 Settlement. Including the out-of-pocket expenses incurred by my co-counsel², Plaintiff's

28
² My co-counsel's current out of pocket expenses total approximately \$15.50. See Haines Decl.
¶ 10.



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1 Counsel request a total of \$9,590.65 in reasonable litigation costs.³

2 35. In addition, based on my experience in wage and hour class action and PAGA
3 matters, fee awards of approximately one-third of the settlement fund are routinely approved as
4 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund
5 in several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin
6 County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*,
7 San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund);
8 *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-
9 third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court,
10 Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San
11 Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The*
12 *Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of
13 fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-
14 00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*,
15 Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*,
16 Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services*
17 *Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v.*
18 *HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of
19 fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249
20 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
21 Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*,
22 Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los
23 Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los
24 Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct.,
25 Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct.,
26 Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct.,
27 Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court,
28 Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v.*

³ 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.



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1 *National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of
2 fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado,
3 Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/
4 Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California,
5 Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard
6 Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris
7 v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038
8 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808
9 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
10 1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino
11 Superior Court, Case No. CIVDS1500146 (one-third of fund).

12 36. My previous experience in litigating wage and hour class and representative
13 actions supports the reasonableness of the fee request, as does the caliber of opposing counsel.
14 My previous experience in similar matters was integral in evaluating the strengths and
15 weaknesses of the case against Defendant and the reasonableness of the Settlement. Practice in
16 the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly
17 evolving substantive law, state and federal, as well as the procedural law of class action
18 litigation. Because it is reasonable to compensate me commensurate with my skill, reputation,
19 and experience, attorneys' fees of approximately one-third of the Gross Settlement Amount is
20 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
21 litigation support the fairness and reasonableness of the requested fee award.

22 ***Plaintiff's General Release Payment***

23 37. Plaintiff's General Release Payment in the amount of \$25,000.00 is being paid
24 to Plaintiff as PAGA Representative for her general release and service to the State of California
25 and the PAGA Members in prosecuting the Action.

26 38. Plaintiff's General Release Payment of \$25,000.00 is entirely reasonable given
27 Plaintiff's efforts in the Lawsuit and the risks she undertook on behalf of the PAGA Members.
28 *See generally* Villena Decl. Plaintiff devoted many hours advancing the interests of the PAGA
Members. *Id.* Plaintiff has done this, by, among other things, retaining experienced counsel,
providing them with information about her work history with Defendant, assisting in contacting
absent PAGA Members to gather information, participating in mediation, and being actively



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1 involved in the settlement process to ensure a fair result for the PAGA Members as a whole. In
2 doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay
3 Defendant's attorneys' fees and costs if this action had been unsuccessful and in bad faith (*See*
4 Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the
5 PAGA Members show that the proposed General Release Payment to Plaintiff is fair, adequate,
6 and reasonable, and thus warrants approval. *See generally* Villena Decl.

7 ***Settlement Administration Duties***

8 39. The duties of the Settlement Administrator are spelled out in the in the bid by
9 ILYM Group, Inc. ("ILYM Group, Inc."), a true and correct copy of which is attached as
10 **Exhibit 13.**

11 40. With regard to the Third-Party Settlement Administration Fees provision, it is
12 reasonable. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from
13 other reputable third-party administrators which provided comparable bids:

- 14 A. ILYM Group, Inc. = \$4,700.00; and
- 15 B. CPT Group, Inc. = \$5,500.00; and
- 16 C. Phoenix = \$4,000.00.

17 A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 14**. A true
18 and correct copy of the bid from Phoenix is attached hereto as **Exhibit 15**. Thus, settlement
19 administration costs provision should be given approval.

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

22 Executed on Thursday, September 15, 2022 at Los Angeles, California.

23 

24 _____
25 DAVID SPIVAK,
26 Declarant



27 SPIVAK LAW
28 EMPLOYEE RIGHTS

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EXHIBIT 1

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into as of June 28, 2022 (the "Effective Date") by and among Plaintiff Simonette Villena ("Plaintiff"), on the one hand, and Defendants Midway Venture LLC ("Midway") and Peter Balov ("Balov") (jointly "Defendants"), on the other hand. Plaintiff and Defendants are sometimes collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS

WHEREAS, on or around February 9, 2021, Plaintiff filed lawsuit against Defendants entitled Simonette Villena, which is pending in the San Diego Superior Court as Case No. 37-2021-00005970 (the "Action") asserting a single cause of action for the alleged violation of the California Private Attorneys General Act of 2004, Labor Code § 2698 et seq. ("PAGA");

WHEREAS, on or around May 6, 2021, Defendants filed an Answer denying all allegations in the Action;

WHEREAS, on May 22, 2022, Plaintiff participated in mediation with Defendants before mediator Mr. Michael Young Esq. regarding claims made in the Action.

WHEREAS, [t]he Parties reached the following PAGA representative action settlement ("Settlement"), subject to Court approval, which is intended to be a full and final resolution of Plaintiff's individual claims as well as all Released Claims:

AGREEMENT

NOW, THEREFORE, in consideration for the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **No Admission.** The Parties agree the Settlement is not an admission of any liability or wrongdoing. Defendants deny any liability or wrongdoing of any kind and further denies that, for any purpose other than settling the Action, this action is or would be appropriate for representative treatment. Defendants maintain, among other things, that they have complied with California law in all aspects, and continue to do so. Nothing in this Agreement or Settlement negotiations, approval of Settlement, orders related to Settlement or any other aspect of the Settlement will be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.
2. **Settlement Period.** Plaintiff's non-individual claims will include all current and former Adult Entertainers misclassified as independent contractors and who performed at Defendant's venue in California (the "PAGA Settlement Members") from December 3, 2019 through Court approval of Settlement (the "PAGA Settlement Period") and who Plaintiff is entitled to pursue on a representative basis under existing law at the time of this Agreement.

3. Removal for Court Settlement Approval. This will be without prejudice to Defendants to remove this matter to the United States District Court if the Settlement does not receive approval by the San Diego County Superior Court for whatever reason.
4. Gross Settlement Amount. Defendants agree to pay, on an all-in and non-reversionary basis, a total of \$99,000.00 inclusive of all amounts to be paid to PAGA Settlement Members, attorney fees, costs, individual payment to the named Plaintiff, PAGA penalties to both the California Labor and Workforce Development Agency ("LWDA"), and Settlement Administration expenses. With the exception of the operation of the Escalator Clause below, under no circumstances will Defendants' settlement payment exceed the Gross Settlement Amount.
5. Escalator Clause. Defendants estimated for purposes of mediation that there are 50 periods of business relationship with Defendants for 50 PAGA Settlement Members for the period of December 3, 2019 through May 20, 2022. If the PAGA Settlement Members as of the date the Court approves the settlement exceeds the referenced 50 PAGA Settlement Members by more than 10.00% (56 or more), the Gross Settlement Amount will increase by \$1980 per additional PAGA Settlement Member.
6. Released Claims. The claims to be released by Plaintiff, acting individually and in a representative capacity on behalf of the LWDA and the PAGA Settlement Members are limited to any and all claims under PAGA arising out of the allegations expressly pleaded the Action or that could have been pleaded based on the facts pleaded in the Action. The Parties agree and acknowledge all civil penalties for any and all alleged Labor Code violations during the PAGA Settlement Period shall be conclusively deemed adjudicated and extinguished and subject to res judicata by virtue of this Agreement and the entry of a court order approving it.

Plaintiff, individually, on behalf of her respective successors and assigns, representatives, heirs, and attorneys, releases Defendants and each of their predecessors, successors, and assigns, and each of its respective present or former officers, owners, representatives, joint venturers, members, shareholders, executives, directors, employees, partners, agents, insurers, claims administrators, representatives, attorneys, parents, subsidiaries, divisions, related entities, and affiliated entities (collectively, the "Defendant Releasees") from all claims, demands, actions or other legal responsibilities of any kind, known or unknown, which Plaintiff has or may have prior to the Effective Date of this Agreement, including but not limited to those which are in any way based on, or pertaining to Plaintiff's legal, contractual, or common law relationship with Defendant or the termination of that relationship. In the broadest possible manner and construction, this release also includes, but is not limited to, any claims Plaintiff may have arising under any foreign, federal, state or local constitution, statute, ordinance, regulation, or common law, including, but not limited to, misrepresentation, fraud, deceit, concealment, invasion of privacy, breach of contract, breach of quasi-contract, breach of implied contract, breach of the covenant of good

faith and fair dealing, libel, slander, negligent or intentional infliction of emotional distress, violation of public policy, negligence, bad faith, unfair business practices, fraud, concealment or interference with business opportunity or with contracts, contractual indemnity, or equitable or implied indemnity. For the sake of clarity, this release expressly includes, but is not limited to, any and all claims for costs, attorney's fees, sanctions or any other relief sought under Cal. Code of Civ. Proc., Section 128.7 or the like

7. Released Parties. Released Parties as referenced herein and as released in this Settlement are Defendants, Defendant Releasees, and any of their 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 any individual or entity that could be liable for any of the Released Claims, and Defendants' counsel of record in the Action.
8. Unknown Claims: As part of the foregoing general release of claims, and not by way of limitation, Plaintiff expressly waives all of her rights under Section 1542 of the California Civil Code, which states:

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

The provisions of all comparable, equivalent, or similar statutes and principles of common law of California, of the other states of the United States, and of the United States are also hereby expressly waived by Plaintiff.
9. Denial of other pending claims. Defendants are unaware of any pending claims or notices to the LWDA that will be affected by the "Released Claims" provision above.
10. Net Settlement Amount. The Net Settlement Amount will be calculated by deducting all attorneys' fees, costs, the individual payment to the named Plaintiff, and Settlement Administration expenses from the Gross Settlement Amount.
11. PAGA Allocation. From the Gross Settlement Amount a total payment amount of \$33,000.00 shall be allocated for penalties under PAGA (Labor Code § 2698, *et seq.*), seventy-five percent (75%) of which is to be paid to the LWDA ("LWDA Payment").
12. Employer-Side Payroll Taxes. The Parties do not expect Defendants to have employer-side payroll taxes.

13. Notice of Settlement To LWDA. Plaintiff shall timely file a notice of claim and notice of settlement with the LWDA.
14. Tax Allocation. One hundred percent (100%) of the individual settlement awards from the Net Settlement Amount payable to eligible PAGA Settlement Members will be allocated to civil penalties. IRS Forms 1099 will be issued for individual settlement awards.
15. Settlement Administration. The Settlement Administrator shall be ILYM Group, Inc., or any other alternative as agreed by the Parties in writing and approved by the Court. The expense of the Settlement Administrator shall not increase the Gross Settlement Amount. The identities of the PAGA Settlement Members shall be held strictly confidential as between the Settlement Administrator and Defendants though they shall be made available to the Court if the Court requires.
16. Appointment of Settlement Administrator. The Settlement Administrator, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and compensation. The Settlement Administrator's duties will include issuing checks to PAGA Settlement Members to effectuate the payments due under this Agreement. The Settlement Administrator's reasonable fees and expenses, including issuing and mailing checks, will be paid out of the Gross Settlement Amount. Midway shall provide the Settlement Administrator the legal names of the PAGA Settlement Member, social security numbers, and their last known addresses. The Settlement Administrator shall not disclose to Plaintiff, Plaintiff's counsel, or any third party the legal names or any information concerning identities of the PAGA Settlement Member. Any and all information provided by Defendants to the Settlement Administrator concerning the identity of the PAGA Settlement Members for purposes of effectuating this Agreement shall be kept in the highest confidence by the Settlement Administrator, and the Settlement Administrator shall be subject to a confidentiality agreement in the form attached hereto as **Exhibit "A"** to keep this information confidential. It is recognized and agreed among the parties that adult entertainers use "stage names" to protect their privacy, and the disclosure of the identity of any of the adult entertainers that are among the PAGA Settlement Members would subject the PAGA Settlement Members to a breach of their privacy, embarrassment, harassment, and potential physical harm. Entertainers regularly ask or require Pacers to protect their privacy before they make use of the Venue.
17. Calculation of Individual Settlement Payments. The Settlement Administrator will calculate the business relationships of the PAGA Settlement Members with the Defendants during the PAGA Settlement Period, the amount to paid *pro rata*, and the individual settlement payments to eligible PAGA Settlement Members. Defendants' data will be presumed to be correct.

18. No Claim Form. There will not be a claims process requirement, and as such, PAGA Settlement Members will not be required to submit a claim form to receive their individual settlements.
19. No Right to Opt Out. The Parties agree the PAGA Settlement Members do not have any right, statutory or otherwise, to opt out of the PAGA Settlement Members group.
20. Uncashed Checks. The expiration date on the settlement checks will be one hundred and eighty (180) days from the date the settlement checks are issued. Defendant will pay those funds represented by uncashed checks to the California Unclaimed Property Fund in the name of the PAGA Settlement Members concerned.
21. Approval of Settlement Documents. This Agreement is contingent upon Court approval. The parties further agree that the negotiations of this Agreement are subject to the mediation privilege set forth in Evidence Code section 1119, and this Agreement was negotiated and drafted pursuant to the continued mediation before Mr. Michael Young Esq. The Parties will cooperate in seeking approval of this settlement contemplated by this Agreement. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Agreement, which are not inconsistent with the terms of this Agreement. Plaintiff's counsel shall draft the Plaintiff's Motion for Approval of Settlement and provide the draft to Defendants' counsel for review at least three (3) court days prior to the filing date for Plaintiff's Motion for Approval of Settlement. The Parties will jointly appear at the hearing on Plaintiff's Motion for Approval of Settlement, and the parties shall submit a proposed order granting the motion in the form evidenced by Exhibit "B" to this Agreement. If the Court does not grant approval of the settlement contemplated by this Agreement, then the Agreement will become null and void. This Agreement and all negotiations concerning this Agreement shall be deemed privileged under Evidence Code section 1119 and 1152.
22. PAGA Settlement Members Counsel. The Parties agree to the designation of David Spivak of The Spivak Law Firm and Walter Haines of United Employees Law Group as counsel for all representative claims that are being resolved by this Agreement and for purposes of entering into and administering this Agreement.
23. PAGA Settlement Members Counsel Fees and Costs. Defendants shall not oppose PAGA Settlement Members Counsel's request for fees of up to thirty-three and one third percent (33 and 1/3%) of the Gross Settlement Amount, or \$33,000.00, subject to approval by the Court. Defendants shall not oppose reasonable attorney costs, not to exceed \$12,000.00, subject to approval by the Court. The Court-approved attorney fees and costs are part of, and to be deducted from, the Gross Settlement Amount. Any portion of the PAGA Settlement Members Counsel fees and costs not awarded by the Court shall be added to the Net Settlement Amount.

24. PAGA Settlement Members Representative Individual payment. Plaintiff shall receive an individual payment at no additional cost to Defendants, subject to approval by the Court, for her role as a PAGA plaintiff in the Action and in connection with her pursuit of non-individual claims being resolved. Plaintiff agrees that she will sign a general release that includes a release of all claims arising out of and relating to her employment or other business relationship with Defendants, as well as all known and unknown claims pursuant to California Civil Code section 1542. Defendants shall not oppose an individual payment to the PAGA Settlement Members Representative in an amount not to exceed \$25,000.00, from the the Gross Settlement Amount, subject to approval by the Court. The individual payment is to be part of, and to be deducted from, the Gross Settlement Amount. An IRS Form 1099 shall issue for this individual payment. Any portion of the payment not awarded to the PAGA Settlement Members Representative shall be added to the Net Settlement Amount.
25. Confidentiality. The PAGA Settlement Members Representative and PAGA Settlement Members Counsel will keep all terms of this settlement confidential and will not make any public disclosure or social media postings of the Dispute, the Settlement or this Agreement except for what is necessary to obtain approval of this Settlement from the Court. If comment or information is requested by the media, the PAGA Settlement Members Representative and PAGA Settlement Members Counsel will provide no information other than direct the media to the public records of the action on file with the Court. PAGA Settlement Members Counsel will take all steps necessary to ensure Plaintiff is aware of this confidentiality provision, which Plaintiff shall abide by. PAGA Settlement Members Counsel and the PAGA Settlement Members Representative agree that this Confidentiality term is a material term and that breach of this provision shall be deemed a material breach of this Settlement. The Parties agree that breach of this term shall cause irreparable harm to Defendants, and injunctive relief is an appropriate remedy for the breach of this provision.
26. Mutual Cooperation. The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, to use their best effortsto obtain Court approval of the settlement, and to use any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the Settlement. PAGA Settlement Members Counsel agrees to prepare and circulate the initial draft Stipulation of Settlement and Notice of PAGA Settlement for Defendant's review within 30 days of the execution of this MOU. If there are any outstanding issues will be submitted to the Parties' mediator, Mr. Michael Young Esq., for continued mediation.
27. Authority to Execute. Counsel for the Parties agree they have authority to execute this Confidential Memorandum of Understanding for and on behalf of the Parties.
28. Enforceability. The Parties intend this Agreement enforceable and enforceable, subject to Court approval under CA Code Civ. Proc. § 664.6.

29. Attorney's Fees. Except as set forth herein, each one of the Parties shall bear all of its, his or her own attorneys' fees, costs and expenses including but not limited to those incurred in negotiating and performing this Agreement. No party shall be ever been deemed a "prevailing party" of any kind as a result of entering into this Agreement.
30. Interpretation. This Agreement shall be interpreted simply and fairly and not strictly in favor of or against any Party. To this end, the Parties agree that the terms of this Agreement are the product of an arm's length negotiation.
31. Successors and Assigns. The obligations and duties of this Agreement shall be binding upon the Parties, their successors and permitted assigns, and the rights of this Agreement shall inure to the benefit of successors and permitted assigns.
32. Final Agreement. This Agreement is the complete, final and exclusive statement of the Agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between the Parties with respect to the subject matter covered hereby. Any modification, alteration or amendment of this Agreement shall be void and have no force or effect unless it is in writing and signed by the Party sought to be bound

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Dated: 07 / 07 / 2022, 2022



Simonette Villena

Dated: _____, 2022

Peter Balov for himself and as
Owner/President
Midway Venture LLC

AGREED AS TO FORM

Dated: _____, 2022

Walter L. Haines
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: _____, 2022

David G. Spivak
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

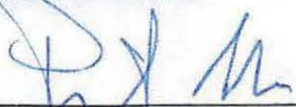
29. Attorney's Fees. Except as set forth herein, each one of the Parties shall bear all of its, his or her own attorneys' fees, costs and expenses including but not limited to those incurred in negotiating and performing this Agreement. No party shall be ever been deemed a "prevailing party" of any kind as a result of entering into this Agreement.
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32. Final Agreement. This Agreement is the complete, final and exclusive statement of the Agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between the Parties with respect to the subject matter covered hereby. Any modification, alteration or amendment of this Agreement shall be void and have no force or effect unless it is in writing and signed by the Party sought to be bound

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Dated: 07 / 07 / 2022, 2022


Simonette Villena

Dated: 7/12/2022, 2022


Peter Balov for himself and as
Owner/President
Midway Venture LLC

AGREED AS TO FORM

Dated: _____, 2022

Walter L. Haines
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: _____, 2022

David G. Spivak
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

29. Attorney's Fees. Except as set forth herein, each one of the Parties shall bear all of its, his or her own attorneys' fees, costs and expenses including but not limited to those incurred in negotiating and performing this Agreement. No party shall be ever been deemed a "prevailing party" of any kind as a result of entering into this Agreement.
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31. Successors and Assigns. The obligations and duties of this Agreement shall be binding upon the Parties, their successors and permitted assigns, and the rights of this Agreement shall inure to the benefit of successors and permitted assigns.
32. Final Agreement. This Agreement is the complete, final and exclusive statement of the Agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between the Parties with respect to the subject matter covered hereby. Any modification, alteration or amendment of this Agreement shall be void and have no force or effect unless it is in writing and signed by the Party sought to be bound

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Dated: _____, 2022

Simonette Villena

Dated: _____, 2022

Peter Balov for himself and as
Owner/President
Midway Venture LLC

AGREED AS TO FORM

Dated: _____, 2022

Walter L. Haines
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

07 / 06 / 2022

Dated: _____, 2022

David G. Spivak
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

29. Attorney's Fees. Except as set forth herein, each one of the Parties shall bear all of its, his or her own attorneys' fees, costs and expenses including but not limited to those incurred in negotiating and performing this Agreement. No party shall be ever been deemed a "prevailing party" of any kind as a result of entering into this Agreement.
30. Interpretation. This Agreement shall be interpreted simply and fairly and not strictly in favor of or against any Party. To this end, the Parties agree that the terms of this Agreement are the product of an arm's length negotiation.
31. Successors and Assigns. The obligations and duties of this Agreement shall be binding upon the Parties, their successors and permitted assigns, and the rights of this Agreement shall inure to the benefit of successors and permitted assigns.
32. Final Agreement. This Agreement is the complete, final and exclusive statement of the Agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between the Parties with respect to the subject matter covered hereby. Any modification, alteration or amendment of this Agreement shall be void and have no force or effect unless it is in writing and signed by the Party sought to be bound

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Dated: _____, 2022

Simonette Villena

Dated: _____, 2022

Peter Balov for himself and as
Owner/President
Midway Venture LLC

AGREED AS TO FORM

Dated: July 7, 2022



Walter L. Haines
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: _____, 2022

David G. Spivak
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: July 12, 2022



Jason P. Saccuzzo
Vivoli Saccuzzo, LLP
Attorneys for Defendants Midway Venture LLC
and Peter Balov

EXHIBIT "A"

Confidentiality Agreement

This Confidentiality Agreement (the "Agreement"), dated as of _____, 2022, ("Effective Date"), is between Midway Venture LLC dba Pacers, a California limited liability company located at 3334 Midway Dr, San Diego, CA 92110 ("Disclosing Party" or "Midway"), and ILYM Group, Inc., a California Corporation located at 14751 Plaza Drive, Unit J, Tustin, CA 92780-0000 ("Recipient").

1. In connection with Recipient's role as the Settlement Administrator concerning the confidential Settlement and Release Agreement dated June 28, 2022, (the "Settlement Agreement") between Plaintiff Simonette Villena ("Plaintiff"), on the one hand, and Midway and Peter Balov, on the other hand, Disclosing Party shall provide to Recipient the legal names and last known address of the PAGA Settlement Members as defined by the Settlement Agreement. Recipient shall use the Confidential Information solely for the Purpose and, subject to Section 3, shall not disclose or permit access to Confidential Information other than to its employees, officers, and directors (collectively, "Representatives") who: (a) need to know such Confidential Information for the Purpose; (b) know of the existence and terms of this Agreement; and (c) are bound by written confidentiality agreements/confidentiality obligations no less protective of the Confidential Information than the terms contained herein. Recipient shall safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. Recipient shall promptly notify Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps/use its best efforts/cooperate with Disclosing Party to prevent further use or disclosure. Recipient will be responsible for any breach of this Agreement caused by its Representatives. The Confidential Information shall not be disclosed to Plaintiff, counsel for Plaintiff, or to any of Plaintiff's counsel's employees or staff members.

2. "Confidential Information" means any and all identifying information of the PAGA Settlement Members, including all non-public, proprietary, or confidential information of Disclosing Party relating to Disclosing Party's business operations, adult entertainer information and lists, and Disclosing Party's trade secrets, in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked or designated as "confidential," and all notes, analyses, summaries, and other materials prepared by Recipient or any of its Representatives that contain, are based on, or otherwise reflect, to any degree, any of the foregoing ("Notes"). Confidential Information also includes: (i) the facts that the parties are in discussions regarding the Purpose and that Confidential Information has been disclosed; and (ii) any terms, conditions or arrangements discussed.

3. If Recipient or any of its Representatives is required by applicable law or a valid legal order to disclose any Confidential Information, Recipient shall, before such disclosure, notify Disclosing Party of such requirements so that Disclosing Party may seek a protective order or other remedy, and Recipient shall reasonably assist Disclosing Party therewith. If Recipient remains legally compelled to make such disclosure, it shall: (a) only disclose that portion of the Confidential Information that, in the written opinion of its legal counsel, Recipient is required to disclose; and (b) use reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.

4. On the expiration of this Agreement, completion of Recipient's assignment, or otherwise at Disclosing Party's request, Recipient shall within three (3) days, at Disclosing Party's option, either return to Disclosing Party or destroy all Confidential Information in its and its Representatives' possession other than Notes, and destroy all Notes, and certify in writing to Disclosing Party the destruction of such Confidential Information.

5. Disclosing Party has no obligation under this Agreement to (a) disclose any Confidential Information or (b) negotiate for, enter into, or otherwise pursue the Purpose. Disclosing Party provides all Confidential Information without any representation or warranty, expressed or implied, as to the accuracy or completeness thereof, and Disclosing Party will have no liability to Recipient or any other person relating to Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

6. Disclosing Party retains its entire right, title, and interest in and to all Confidential Information, and no disclosure of Confidential Information hereunder will be construed as a license, assignment, or other transfer of any such right, title, and interest to Recipient or any other person.

7. Recipient acknowledges and agrees that any breach of this Agreement will cause injury to Disclosing Party for which money damages would be an inadequate remedy and that, in addition to remedies at law, Disclosing Party is entitled to equitable relief as a remedy for any such breach.

8. This Agreement has been negotiated, executed, and delivered and shall be performed in the State of California and shall be governed by, construed and enforced in accordance with the laws of the State of California, without regard for its conflict of laws rules. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of California, County of California, for the purpose of enforcing this Agreement.

9. In the event any Party prevails in an action, motion, application, and/or petition to enforce or challenge any of the terms of this Agreement, to

preserve its, his or her rights under this Agreement, or in the event of breach by any Party of obligations under this Agreement, the prevailing Party shall be entitled to all costs and expenses incurred in enforcing the terms of this Agreement, including, without limitation, reasonable attorneys' fees, expert fees, and other expenses.

10. All notices must be in writing and addressed to the relevant party at its address set out in the preamble (or to such other address such party specifies in accordance with this Section 10). All notices must be personally delivered or sent prepaid by nationally recognized courier or certified or registered mail, return receipt requested, and are effective on actual receipt.

11. This Agreement is the entire agreement of the parties regarding its subject matter, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, whether written or oral, regarding such subject matter. This Agreement may only be amended, modified, waived, or supplemented by an agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Recipient:

Disclosing Party:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL

SIMONETTE VILLENA, on behalf of herself,) CASE NO: 37-2021-00005970-CU-OE-CTL
and as an "aggrieved employee" on behalf of)
other "aggrieved employees" under the Labor) [Case Assigned for All Purposes To: Hon.
Code Private Attorneys General Act of 2004) Timothy B. Taylor, Dept. C-72]
Plaintiffs,) [PROPOSED] ORDER APPROVING
vs.) PAGA SETTLEMENT
MIDWAY VENTURE, LLC, a California) Action Filed: February 9, 2021
limited liability company dba PACERS) Trial Date: October 14, 2022
SHOWGIRLS WORLDWIDE and PACERS)
SHOWGIRLS INTERNATIONAL, PETER)
BALOV, an individual; and DOES 1-50,)
inclusive,)
Defendants.)

The Court has considered Plaintiff's Motion for Approval of Settlement and Entry of
Order thereon. The matter having been submitted and good cause appearing,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The litigation in this action consists of a representative action by Plaintiff
Simonette Villena ("Plaintiff" or "PAGA Representative") against Defendants Midway Venture
LLC ("Midway") and Peter Balov ("Balov") (jointly "Defendants") under the California Private
Attorneys General Act of 2004, Labor Code § 2698 et seq. ("PAGA") for penalties on behalf of
the State of California and all current and former aggrieved Adult Entertainers who suffered one

1 or more Labor Code violations at Defendant's venue located at 3334 Midway Dr, San Diego, CA
2 92110 from December 1, 2020, through approval of the settlement and entry of this order thereon
3 (the "PAGA Settlement Members").

4 2. The Court has jurisdiction over the subject matter of this litigation, the PAGA
5 Representative, the PAGA Settlement Members, and Defendants. This order shall be binding not
6 only on the named parties to this action but also on the PAGA Settlement Members and the State
7 of California, who are hereby barred by the doctrine of res judicata from re-litigating the claims
8 in this action. See *Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 986 [holding that a judgment in a
9 representative action brought by an aggrieved employee under PAGA is binding not only on the
10 named employee but also on state labor law enforcement agencies and any aggrieved employee
11 not a party to the proceeding].

12 3. The Court hereby approves the terms of the settlement and finds that the
13 settlement is, in all respects, fair, adequate, reasonable, and just and is not arbitrary, oppressive
14 or confiscatory and directs the parties to effectuate the settlement according to its terms. The
15 Court finds that the settlement has been reached as a result of informed and non-collusive arm's-
16 length negotiations. The Court further finds that the settlement will avoid additional and
17 potentially substantial litigation costs, as well as delay and risk if the parties were to continue to
18 litigate the case. The Court has reviewed the monetary recovery being provided as part of the
19 Settlement and recognizes the significant value afforded to California Labor and Workforce
20 Development Agency ("LWDA"), Plaintiff, and the PAGA Settlement Members.

21 4. The Settlement is not an admission by Defendants, nor is this order a finding of
22 the validity of any allegations or of any wrongdoing by Defendants. Neither this Order, the
23 settlement, nor any document referred to herein, nor any action taken to carry out the Settlement,
24 may be used as an admission of any fault, wrongdoing, omission, concession, or liability
25 whatsoever by or against Defendants.

26 5. In accordance with the settlement, which the Court hereby approves based on
27 good cause showing for the reasons set forth in Plaintiff's motion, and with no objection received
28 from the LWDA: (a) The total payment under this Settlement Agreement is Ninety Nine

1 Thousand Dollars (\$99,000.00) (the "Gross Settlement Amount"), which includes any and all
2 payments to the PAGA Settlement Members, payment to the LWDA pursuant to PAGA,
3 Plaintiff's Counsel's fees and costs, any service and general release payment to the PAGA
4 Representative, and all third-party costs of settlement administration; (b) ILYM Group, Inc. is
5 hereby approved to administer this Settlement; and (c) the LWDA and all Aggrieved Employees
6 are hereby permanently enjoined from pursuing, or seeking to reopen, any Released Claims
7 against any Released Parties.

8 6. The Gross Settlement amount will be used to pay attorney fees and litigation costs
9 in the amount of [\$_____], Plaintiff's incentive award in the amount of \$25,000, and settlement
10 administration costs in the amount of [\$_____]. The Net Settlement Fund is \$33,000.00.
11 Seventy-five percent (75%) of the remaining Net Settlement Fund (*i.e.* \$24,750) will be
12 distributed to the LWDA as required by the PAGA and the remaining (25%) (\$8,250) will be
13 distributed in equal shares to the PAGA Settlement Members.

14 7. Plaintiff will be issued an IRS Form 1099 and its state and local equivalents for
15 any incentive payment amount received under the Settlement. The payments to PAGA
16 Settlement Members will not be reduced by payroll tax withholding and deductions; instead, the
17 Settlement Administrator will issue to the PAGA Settlement Members an IRS Form 1099 and its
18 state and local equivalents with respect to the payment.

19 8. The PAGA Settlement Members must receive or cash his or her settlement
20 payment within 180 calendar days after it is mailed to him or her. If a check is returned to the
21 Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-
22 mail it to the PAGA Settlement Member at his or her correct address. If a PAGA Settlement
23 Member cannot be located or if a PAGA Settlement Member fails to cash the check for his or her
24 Settlement Share within 180 days after it is mailed to him or her, the Settlement Administrator
25 will distribute the funds represented by the uncashed check to the California State Controllers'
26 Office Unclaimed Property Fund.

27 9. The Court hereby confirms David Spivak of The Spivak Law Firm as PAGA
28 counsel, Simonette Villena as the PAGA Representative, and ILYM Group, Inc. as the

1 Settlement Administrator.

2 10. The Court further orders, adjudge and decrees that upon the Court's signing of an
3 order approving the settlement, the LWDA and PAGA Settlement Members fully release and
4 forever discharge the Defendants from any and all known and unknown claims under PAGA
5 against the Defendants that were alleged in the operative complaint filed in this action, including
6 but not limited to alleged violations of California Labor Code Sections 201, 202, 203, 204, 210,
7 218.5, 221, 222, 223, 224, 226, 226(a), 226(e), 226.2, 226.3, 226.7, 233, 510, 512, 551, 552, 558,
8 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, and 2802; and Wage Order 4.

9 11. All of the Released Claims are deemed adjudicated and extinguished with
10 prejudice as to the PAGA Representative, PAGA Settlement Members, all of the other aggrieved
11 employees, and the State of California.

12 12. The Settlement Administrator shall make the payments to the LWDA, the PAGA
13 Settlement Members, the Plaintiff, Plaintiffs' counsel and to the Settlement Administrator as
14 provided for in the settlement agreement.

15 13. The Court finds that, under California law (which is applicable here), class action
16 procedural rules do not apply to representative PAGA actions that do not involve putative class
17 claims, such as the Representative PAGA Action. (See *Arias v. Super. Ct.* (2009) 46 Cal.4th
18 969.) Therefore, the Court finds that the notice requirements and other procedures applicable to
19 class action settlements do not apply to the settlement approval process for the representative
20 PAGA action.

21 14. The Court further finds that notice of the Settlement has been provided to the
22 LWDA as required by PAGA and Labor Code section 2699, subdivision (l)(2), in particular.

23 15. Any request to intervene in the Litigation and/or Settlement that is filed after the
24 date this Judgment is entered shall be and hereby is deemed untimely.

25 16. Neither the settlement nor any act performed or document executed pursuant to or
26 in furtherance of the settlement (a) is or may be deemed to be or may be used as an admission of,
27 or evidence of, the validity of any released claims, or of any wrongdoing or liability of the
28 Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of,

1 any fault or omission of the Defendants, or any of them, in any civil, criminal or administrative
2 proceeding in any court, administrative agency or other tribunal. Defendants or any of the
3 releasees may file the settlement and/or the order from this action in any other action that may be
4 brought against it or them in order to support a defense or counterclaim based on principles of
5 res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any
6 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7 17. This action is dismissed with prejudice. This Court shall retain jurisdiction,
8 pursuant to Code of Civil Procedure section 664.6, over this action and the parties and the PAGA
9 Settlement Members, to the fullest extent necessary to interpret, enforce and effectuate the terms
10 and intent of the settlement agreement and this order.

11 **IT IS HEREBY ORDERED:**

12

13 Dated: _____

14

HON. TIMOTHY B. TAYLOR
JUDGE OF THE SUPERIOR COURT

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EXHIBIT 2

NOTICE OF PAGA SETTLEMENT

Simonette Villena v. Midway Venture LLC
(Superior Court of California, San Diego County)
Case No. 37-2021-00005970-CU-OE-CTL

<<ILYM Group, Inc.>>

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”) (“the Action”). The plaintiff in the Action is Simonette Villena (“Plaintiff”) and the defendants are Midway Venture LLC (“Pacers”) and Peter Balov (collectively “Defendants”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all current and former Adult Entertainers misclassified as independent contractors and who performed at Pacer’s venue (“Aggrieved Employees”) during the PAGA Period of December 3, 2019 through the date of Court-approval of the Settlement. Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong. As of and subject to the occurrence of the Effective Date of the Settlement, the Settlement resolves all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice (“Released PAGA Claims”). The “Released Parties” are Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries, and affiliates.

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

According to the Defendants’ records, you are an Aggrieved Employee and therefore entitled to an Individual PAGA Payment, a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your Individual PAGA Payment. The settlement check shall remain valid for 180 days. Thereafter, 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 Aggrieved Employee.

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendants 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.

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

EXHIBIT 3



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

December 3, 2020

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

RE: *Simonette Villena / Peter Balov*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*, Simonette Villena (hereafter “Villena”) provides notice on behalf of herself and of all individuals currently and formerly employed or contracted with in California as employees paid by commission, piece rate employees, or independent contractors, including exotic dancers (hereafter “the Aggrieved Employees”) for Midway Venture LLC, a California limited liability company does business as Pacers Showgirls Worldwide and Pacers Showgirls International, and Peter Balov, an individual (hereafter, collectively “Pacers”) of violations of California Labor Code §§ 98.6, 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 351, 353, 450, 510, 512, 558.1, 1102.5, 1174, 1194, 1197, 1198, 2751, and 2753.

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

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Statement of Facts

Villena began working for Pacers in San Diego, California as a dancer on or about July 4, 2018. Pacers contracted with Villena to perform various services, including exotic dancing, from this date when their relationship began to late December of 2019. In doing so, Pacers misclassified Pacers and other Aggrieved Employees as independent contractors. Pacers employed Villena as a non-exempt exotic dancer that Pacers paid per each private dance she performed during her work shifts. Villena continuously worked for Pacers as a dancer until late December of 2019 when Pacers ended her employment for objecting to (1) sexual harassment by Pacers' general manager (subject of a complaint to the Department of Fair Employment and Housing and (2) compelling her to share her tips with management and others.

Villena and the Aggrieved Employees were only compensated \$20.00 for each dance. They did not receive any other compensation for their work for Pacers. Pacers did not provide Villena and the Aggrieved Employees with a commission agreement that explained their pay structure.

Pacers interrupted, delayed, or shortened their rest and meal periods so that Villena and the Aggrieved Employees did not receive ten minute paid rest periods or 30 minute meal periods free of duty. Pacers also restricted the rest periods of Villena and the Aggrieved Employees because it expected them to remain inside Pacers' establishment in San Diego for such rest periods or for meal periods. Pacers also prevented them from using their mobile phones in the establishment.

At all relevant times, Pacers required Villena and the Aggrieved Employees to work periods of over four continuous hours without a paid, continuous 10-minute rest break free of duties and restrictions. Pacers prohibited them from leaving the premises for rest breaks. Pacers only allowed payments to Villena and the Aggrieved Employees for work periods, not periods of rest and recovery.

Additionally, Pacers demanded monetary payments from Villena and the Aggrieved Employees to work a shift within the establishment. As a result of these payments to Pacers, Villena and the Aggrieved Employees at times earned less than the California minimum hourly wage during their shifts.

Pacers did not record the start and stop times of the daily work periods of Villena and the Aggrieved Employees, nor did it record the times meal periods began and ended. Furthermore, Pacers did not issue itemized wages statements to Villena and the Aggrieved Employees.

Villena and the Aggrieved Employees worked for Pacers in excess of 40 hours per week and 8 hours per day. Villena and the Aggrieved Employees worked for Pacers in excess of 12 hours per day and all 7 days in the same workweek. In spite of this, Pacers did not pay an overtime or doubletime premium rates to Villena and the Aggrieved Employees for any such overtime and doubletime hours.

Villena and the Aggrieved Employees received monetary tips from Pacers' customers for dances they performed on stage. Pacers required Villena and the Aggrieved Employees to share such monetary tips with Pacers' management. Villena notified Pacers of her objection to this practice and Pacers terminated her employment in response.

At all relevant times, Villena and the Aggrieved Employees were employees of Pacers. Pacers directed and controlled Villena and the Aggrieved Employees in all aspects of their work performance. Pacers required Villena and the Aggrieved Employees to perform exotic dancing on stage. Pacers required Villena and the Aggrieved Employees to arrive for work at fixed times. Pacers required Villena and the Aggrieved Employees to perform private exotic dances for Pacers' customers. Pacers fixed the price at \$20 for each said dance and \$150 for each private "VIP" dance without input from Villena and the Aggrieved Employees. Pacers did not allow Villena and the Aggrieved Employees to charge more or less for said dances. For the private VIP dances, Pacers' customers paid said price directly to Pacers. Pacers decided that Villena and the Aggrieved Employees could collect on \$20 from patrons as their wages for non-private dances. Pacers required Villena and the Aggrieved Employees to return a portion of such wages to Pacers' management.

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

- a) Pacers misclassified Villena and the Aggrieved Employees as independent contractors;
- b) Pacers failed to provide commission agreements to Villena and the Aggrieved Employees;
- c) Pacers failed to authorize and permit Villena and the Aggrieved Employees to take rest periods;
- d) Pacers failed to provide Villena and the Aggrieved Employees with all meal periods;
- e) Pacers failed to compensate Villena and the Aggrieved Employees at one hour's pay for each work day with one or more unprovided rest breaks;
- f) Pacers failed to separately compensate Villena and the Aggrieved Employees for rest and recovery time and for work other than the private dances they performed for Pacers' patrons;
- g) Pacers failed to compensate Villena and the Aggrieved Employees at one hour's pay for each work day with one or more unprovided meal periods;
- h) Pacers failed to pay Villena and the Aggrieved Employees minimum wages for all hours worked;
- i) Pacers required financial patronage from Villena and the Aggrieved Employees to allow them to work;
- j) Pacers failed to pay Villena and the Aggrieved Employees one and one-half times the State minimum wage for all hours worked over eight hours in one workday, over 40 hours in one workweek, and/or up to eight hours on the seventh consecutive workday in a workweek;
- k) Pacers failed to pay Villena and the Aggrieved Employees double the State minimum wage for all hours worked over twelve hours in

one workday and/or over eight hours on the seventh consecutive workday in a workweek;

- l) Pacers collected and retained tips Pacers's patrons paid to Villena and the other Aggrieved Employees;
- m) Pacers failed to provide Villena and the Aggrieved Employees with accurate wage statements; and
- n) Pacers failed to timely pay Villena and the Aggrieved Employees all earned and unpaid wages during, and at the conclusion of, their employment with Pacers.

Accordingly, Villena now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Pacers alleged violations of the California Labor Code and the Wage Order.

Wage Order 5

Wage Order 5 applies to "all persons in the public housekeeping industry." *Id.*, § 1. The phrase "public housekeeping industry" includes Pacers' night clubs/bars/cocktail lounges like those where Pacers employed Villena and the other Aggrieved Employees. *Id.*, § 2(P)(1). At all relevant times during the applicable limitations period, Pacers employed Villena as a non-exempt employee. Accordingly, Villena and the Aggrieved Employees are entitled to the protections of the Wage Order.

Willful Independent Contractor Misclassification **(Lab. Code § 226.8)**

Labor Code section 226.8 states:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
 - (1) Willful misclassification of an individual as an independent contractor.

- (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.
- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Villena and the other Aggrieved Employees were employees of Pacers. Pacers engaged, suffered, and permitted Villena and the Aggrieved Employees to work. Pacers was clearly aware that Villena and the other

Aggrieved Employees worked for it and had the power to prevent them from working for Villena. Pacers also exercised control over Villena and the other Aggrieved Employees' wages, hours, and working conditions. Further, Pacers had the right to control and exercised such control over the manner in which Villena and the other Aggrieved Employees performed their work for Pacers. They worked at Pacers's direction, and their opportunity for profit or loss did not depend in any way upon their skills. Villena and the other Aggrieved Employees required no special skill to render their services for Pacers. The services they rendered were at all times an integral part of Pacers's business. The relationship between Villena and the other Aggrieved Employees, on one hand, and Pacers, on the other, was terminable at will without cause. Despite these circumstances, Pacers willfully misclassified Villena and the other Aggrieved Employees as independent contractors. It has engaged in a pattern and/or practice of doing so.

Accordingly, Villena seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

1. \$25,000.00 for each Aggrieved Employee for each violation of California Labor Code section 226.8 as part of a pattern or practice (based on Pacers's pattern and/or practice of committing such violations) in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,
2. \$15,000.00 for each Aggrieved Employee for each violation of California Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves

commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1 . For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, Pacers has failed to provide Villena and the Aggrieved Employees with signed commission agreements. As a result, Pacers has violated California Labor Code § 2751. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees for violations of Labor Code § 2751 at \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

- (A) 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.
- (B) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

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

- (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 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 work day that the meal period is not provided.

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

- (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 (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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.

Regarding timing of the first meal period, *Brinker* states “in the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break.” *Brinker*, 53 Cal.4th at 1031-1032; *Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1275, reh’g denied (Dec. 1, 2014), review denied (Feb. 11, 2015); Dept. Industrial Relations, DLSE Opinion Letter No. 2001.09.17 (Sept. 17, 2001) at p. 4. (“As a general matter, the first rest period should come sometime before the meal break...”). This only makes sense based on the language of the meal period law. An employer must “employ” an employee before a meal period is due. An employer who requires an employee to clock out for a meal period upon arrival for work has yet to “employ” the employee at all for the day.

Pacers has intentionally and improperly failed to provide Villena and the Aggrieved Employees all rest breaks and/or meal periods, including, but not limited to, two 30-minute meal periods on workdays of over 10 hours. As a result, Pacers violated California Labor Code §§ 226.7, 512, and 1198.

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

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

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

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

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, section 2(K) of the Wage Order states, “Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

Under California Labor Code § 510,

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

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

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

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours

worked on the seventh (7th) consecutive day of work in a workweek;
and

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Because Pacers required Villena and the Aggrieved Employees to pay it at the beginning of each shift to allow them to work, required them to return a portion of the \$20 they collected from patrons for the dances they performed, and because Pacers did not allow Villena and the Aggrieved Employees to leave the premises during meal periods, Pacers failed to pay minimum, overtime and doubletime wages to Villena and the Aggrieved Employees for all hours worked. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved 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 unpaid wages and liquidated damages (penalties set by California Labor Code section 1197.1); and

4. \$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 Separately Compensate for Rest and Recovery Periods
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

...

(3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

As described above, Pacers failed to separately pay Villena and the Aggrieved Employees for rest and recovery periods and for nonproductive work time. It only paid them a rate it set for dances. Accordingly, on behalf of herself and the Aggrieved Employees, Villena seeks against Pacers civil penalties as follows:

\$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.2, subdivisions (a)(1) and (a)(4) 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)

California Labor Code § 226 require employers to furnish employees with an accurate itemized statement in writing 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.

As alleged herein, Pacers failed to provide Villena and the Aggrieved Employees with itemized wage statements. Pacers failed to properly itemize in writing each employee's gross wages earned, net wages earned, and other requirements of California Labor Code § 226. As a result, Pacers has violated California Labor Code § 226. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$250 for each Aggrieved Employee for

each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

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

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

As alleged herein, Pacers failed to provide Villena and the Aggrieved Employees all wages owed, including, but not limited to, all minimum, overtime and doubletime wages at the legal rates of pay for all minimum, overtime and doubletime hours worked. As a result, Pacers failed to pay Villena and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Pacers has violated California Labor Code § 204. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. For all initial violations of Labor Code § 204 that are deemed to be neither willful nor intentional, \$100.00 for each Aggrieved Employee per pay period for each violation (penalties set by California Labor Code § 210);
2. For all initial violations of Labor Code § 204 that are deemed to be either willful or intentional, \$200.00 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period for each violation (penalties set by California Labor Code § 210); and

For all subsequent violations of Labor Code § 204, regardless of whether the initial violation of Labor Code § 204 is deemed to be either willful or intentional, \$200.00 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period for each violation (penalties set by California Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

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

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 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.

By failing to pay wages to Villena and other Aggrieved Employees as set forth above, Pacers is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Villena seeks civil penalties from Pacers as follows:

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

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

Tip Violations
(Lab. Code §§ 351 and 353)

Under Labor Code § 350, Pacers was an “employer” and Villena and the Aggrieved Employees were at all times “employees.” Under Labor Code § 350, Pacers was at all times “employing” Villena and the Aggrieved Employees. Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 351 declares that every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for. Labor Code § 353 requires every employer to keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. At all relevant times, Pacers required Villena and the Aggrieved Employees to share their tips with Pacers’ management. Thus, Villena, on behalf of herself and other Aggrieved Employees who are/were employees, seeks civil penalties under Labor Code Section 2699(f)(2) in the amounts of \$100 per employee for Pacers’s initial violation of Labor Code Section 351, and \$200 per employee for each subsequent violation per pay period.

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Requiring Patronage
(Lab. Code § 450)

In relevant part, California Labor Code § 450 states:

- (A) No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value.

At all relevant times during the applicable limitations period, Pacers required Villena and other Aggrieved Employees to pay Pacers as a necessary condition of employment each work shift. As a result, Pacers required Villena and other Aggrieved Employees to patronize Villena in violation of California Labor Code § 450. Accordingly, Villena seeks civil penalties on behalf of herself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 450 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violation of § 450 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Maintain Accurate Employment Records
(Lab. Code §§ 1175 and 1198)

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

Every person employing labor in this state shall:

...

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

- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the

commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

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

Section 7 of Wage Order states,

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and 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.

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

Pacers willfully failed to maintain the records required by § 1174 and the Wage Order. Pacers did not maintain payroll records of all hours worked by Villena and the Aggrieved Employees and all wages earned at the correct rates. Accordingly, Villena seeks civil penalties from Pacers on behalf of herself and the Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
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)).

Retaliation
(Lab. Code § 98.6)

A person shall not discharge an employee because the employee has filed a bona fide complaint or claim relating to his or her rights that are under the jurisdiction of the Labor Commissioner or made a written or oral complaint that he or she is owed unpaid wages. Lab. Code § 98.6(a).

Pacers terminated Villena for objecting to conduct that violated the California Labor Code. During the course of her employment, Pacers required Villena and the Aggrieved Employees to return to Pacers's management a portion of the \$20 they collected from patrons as their wages for non-private dances. Pacers also required Villena and the Aggrieved Employees to share their monetary tips with Pacers' management. Villena notified Pacers of her objection to this practice and Pacers terminated her employment in response.

Villena seeks civil penalties under California Labor Code § 98.6(b)(3) in an amount not to exceed \$10,000 for each violation by Pacers, of California Labor Code § 98.6(a), as well as attorney's fees and costs under Lab. Code § 2699(g).

Retaliation
(Lab. Code § 1102.5)

An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. Lab. Code § 1102.5(c).

Pacers terminated Villena for objecting to conduct that violated the California Labor Code. During the course of her employment, Pacers required Villena and the Aggrieved Employees to return to Pacers's management a portion of the \$20 they collected from patrons as their wages for non-private dances. Pacers also required Villena and the Aggrieved Employees to share their monetary tips with Pacers' management. Villena notified Pacers of her objection to this practice. Because of her complaints regarding Pacers' noncompliance with the California Labor Code, Pacers terminated Villena in violation of California Labor Code § 1102.5(c).

Villena seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by Avalon of California Labor Code § 1102.5(c), as well as attorney's fees and costs under Labor Code § 2699(g).

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, Peter Balov owned and operated Midway Venture LLC and employed Villena and the Aggrieved Employees. Peter Balov was the “owner,” “managing agent,” and sole director of Midway Venture LLC. Peter Balov directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, or working conditions of Villena and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

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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: Simonette Villena
Walter Haines, Esq.

Midway Venture LLC
dba Pacers Showgirls International and Pacers Showgirls Worldwide
c/o Elaine M. Grant, Agent for service of process
12792 Valley View St.
Suite 203
Garden Grove, CA 92845

Peter Balov
12792 Valley View St.
Suite 203
Garden Grove, CA 92845

EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)
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2 MARALLE MESSRELIAN (SBN 316974)
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3 THE SPIVAK LAW FIRM
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6

7 Attorneys for Plaintiff,
SIMONETTE VILLENA
8 (Additional Counsel on Following Page)

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

12 SIMONETTE VILLENA, on behalf of
herself, and as an “aggrieved employee”
13 on behalf of other “aggrieved employees”
under the Labor Code Private Attorneys
14 General Act of 2004,

15 *Plaintiffs,*

16 vs.

17 MIDWAY VENTURE LLC, a California
18 limited liability company dba PACERS
19 SHOWGIRLS WORLDWIDE and PACERS
SHOWGIRLS INTERNATIONAL, PETER
20 BALOV, an individual; and DOES 1-50,
inclusive,
21

22 *Defendants.*
23
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25
26
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/09/2021 at 04:56:28 PM

Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

Case No.: 37-2021-00005970-CU-OE-CTL

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

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action against Defendants MIDWAY
5 VENTURE LLC, dba PACERS SHOWGIRLS WORLDWIDE and PACERS SHOWGIRLS
6 INTERNATIONAL, PETER BALOV, and DOES 1-50 (collectively “Defendants”) for alleged
7 violations of the California Labor Code and Industrial Welfare Commission Order No. 5-2001
8 (hereafter “the Wage Order”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and all individuals Defendants employed or contracted with in
11 California as employees paid by commission, piece rate employees, or independent contractors,
12 including exotic dancers and workers in comparable positions (“the Aggrieved Employees”), for
13 civil penalties and other related relief. These claims are based on Defendants’ alleged failures to
14 (1) properly classify all Aggrieved Employees as employees instead of independent contractors,
15 (2) provide commission agreements to the Aggrieved Employees, (3) pay all wages for all hours
16 worked at the correct rates of pay, (4) provide all meal and rest periods, (5) separately compensate
17 the Aggrieved Employees for rest and recovery time, (6) provide accurate written wage
18 statements, and (7) timely pay final wages upon termination of employment. Defendants also
19 required financial patronage from the Aggrieved Employees to allow them to work and collected
20 and retained tips paid to the Aggrieved Employees. Accordingly, Plaintiff now seeks to recover
21 civil penalties and related relief through this representative action.

22 **II. JURISDICTION**

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

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

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



6. Venue is proper in San Diego County pursuant to California Code of Civil Procedure § 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.

III. PARTIES

7. Plaintiff SIMONETTE VILLENA is a resident of California. Defendants contracted with Plaintiff to perform various services, including exotic dancing, from about July of 2018 until approximately late December of 2019 when Plaintiff's employment ended. 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 Labor Code Section 2699(c)".

8. Defendant MIDWAY VENTURE LLC, dba PACERS SHOWGIRLS WORLDWIDE and PACERS SHOWGIRLS INTERNATIONAL is a limited liability company organized and existing under the laws of California and therefore a citizen of California based on Plaintiff's information and belief.

9. Defendant PETER BALOV is a citizen of California based on Plaintiff's information and belief.

10. In relevant part, Labor Code section 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, Sections 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 Section 3294 of the Civil Code.

11. Based on Plaintiff's information and belief, Defendant PETER BALOV is a natural person and an owner, director, officer, and/or managing agent of Defendant MIDWAY VENTURE, LLC, who directly or indirectly, or through an agent or any other person, employed



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1 or exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved
2 Employees. Therefore, he is liable to Plaintiff and the Aggrieved Employees for his violations
3 of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, and the Wage Order
4 pursuant to Labor Code section 558.1.

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

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

16 14. At all relevant times, in perpetrating the acts and omissions alleged herein,
17 Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice, or
18 lack thereof, which resulted in Defendants not paying Plaintiff and other Aggrieved Employees
19 in accordance with applicable law as alleged herein.

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

25 16. **THE AGGRIEVED EMPLOYEES:** The “Aggrieved Employees” are all
26 individuals Defendants employed or contracted with in California as employees paid by
27 commission, piece rate employees, or independent contractors, including exotic dancers, and
28 workers in comparable positions, during the period of December 3, 2019 to the present (“the



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1 PAGA Period”).

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

7 18. At all relevant times, in perpetrating the acts and omissions alleged herein,
8 Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice, or
9 lack thereof, which resulted in Defendants not paying Plaintiff and other Aggrieved Employees
10 in accordance with applicable California labor laws as alleged herein.

11 **IV. FACTUAL ALLEGATIONS**

12 19. At all relevant times, Plaintiff and the Aggrieved Employees have been employees
13 of Defendants and entitled to the benefits and protections of California Labor Code sections 510,
14 1194, 1197, 1198, and the Wage Order.

15 20. At all relevant times, Defendants directed and controlled Plaintiff and the
16 Aggrieved Employees in all aspects of their work performance. Defendants required Plaintiff and
17 the Aggrieved Employees to perform exotic dancing on stage. Defendants required Plaintiff and
18 the Aggrieved Employees to arrive at work at fixed times. Defendants required Plaintiff and the
19 Aggrieved Employees to perform private exotic dances for Defendants’ customers. Defendants
20 fixed the price at \$20 for each said dance and \$150 for each private “VIP” dance without input
21 from Plaintiff or the Aggrieved Employees. Defendants did not allow Plaintiff and the Aggrieved
22 Employees to charge more or less for said dances. For the private VIP dances, Defendants’
23 customers paid said price directly to Defendants. Defendants decided that Plaintiff and the
24 Aggrieved Employees could collect on \$20 from patrons as their wages for non-private dances.
25 They did not receive any other compensation for their work for Defendants. Defendants required
26 Plaintiff and the Aggrieved Employees to return a portion of such wages to Defendants’
27 management. Defendants did not provide Plaintiff and the Aggrieved Employees with a
28 commission agreement that explained their pay structure. Additionally, Defendants operate as an



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1 adult entertainment establishment and the work Plaintiff and the Aggrieved Employees performed
2 was wholly within Defendants' usual course of business of exotic dancing and adult
3 entertainment. Defendants retained Plaintiff and the Aggrieved Employees to perform exotic
4 dances, privately and on stage, for Defendants' patrons, at worksites that Defendants designated
5 such as Pacers Showgirls International. Defendants knew or should have known their actions of
6 misclassifying employees as independent contractors violated California law.

7 21. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
8 to work periods of over four continuous hours without a paid, continuous 10-minute rest break
9 free of duties and restrictions. Defendants interrupted, delayed, or shortened Plaintiff's and the
10 Aggrieved Employees' rest and meal periods so that they did not receive ten-minute paid rest
11 periods or thirty-minute meal periods free of duty. Defendants also restricted the rest periods and
12 meal periods of Plaintiff and the Aggrieved Employees because they expected Plaintiff and the
13 Aggrieved Employees to remain inside Defendants' establishment in San Diego for such rest
14 periods or for meal periods. Defendants only allowed payments to Plaintiff and the Aggrieved
15 Employees for work periods, not periods of rest and recovery. Defendants also prevented Plaintiff
16 and the Aggrieved Employees from using their mobile phones in the establishment.

17 22. At all relevant times, Defendants demanded monetary payments from Plaintiff and
18 the Aggrieved Employees to work a shift within the establishment. As a result of these payments
19 to Defendants, Plaintiff and the Aggrieved Employees at times earned less than the California
20 minimum hourly wage during their shifts.

21 23. At all relevant times, Defendants did not record the start and stop times of the daily
22 work periods of Plaintiff and the Aggrieved Employees, nor did they record the times meal
23 periods began and ended. Furthermore, Defendants did not issue itemized wages statements to
24 Plaintiff and the Aggrieved Employees.

25 24. At all relevant times, Plaintiff and the Aggrieved Employees worked for
26 Defendants in excess of 40 hours per week and 8 hours per day. Plaintiff and the Aggrieved
27 Employees worked for Defendants in excess of 12 hours per day and all 7 days in the same
28 workweek. In spite of this, Defendants did not pay any overtime or doubletime premium rates to



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1 Plaintiff and the Aggrieved Employees for any such overtime and doubletime hours.

2 25. At all relevant times, Plaintiff and the Aggrieved Employees received monetary
3 tips from Defendants' customers for dances they performed on stage. Defendants required
4 Plaintiff and the Aggrieved Employees to share such monetary tips with other employees,
5 including management, disc jockeys, bouncers, security, and valet.

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

- 8 A. Misclassified as independent contractors;
- 9 B. Not provided with commission agreements that explained their pay
10 structure;
- 11 C. Not paid for all hours worked at the correct rates of pay, including
12 minimum, overtime, and doubletime hours
- 13 D. Not provided with all rest breaks and timely meal periods;
- 14 E. Not paid one hour's pay for each workday in which Defendants failed to
15 provide them with one or more timely rest periods;
- 16 F. Not separately compensated for rest and recovery periods and
17 nonproductive work time;
- 18 G. 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 H. Required to patronize Defendants to work a shift within the establishment;
- 21 I. Required to share their tips with Defendants' management and others;
- 22 J. Not provided with accurate and complete wage statements; and
- 23 K. Not timely paid all earned and unpaid wages during their employment with
24 Defendants and at the time such employment ended.

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

26 **CIVIL PENALTIES**

27 **(Lab. Code §§ 2698, et seq.)**

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

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



1 **A. WILLFUL INDEPENDENT CONTRACTOR MISCLASSIFICATION**

2 28. Labor Code Section 226.8 states:

3 (a) It is unlawful for any person or employer to engage in any of the following
4 activities:

5 (1) Willful misclassification of an individual as an independent contractor.

6 (2) Charging an individual who has been willfully misclassified as an
7 independent contractor a fee, or making any deductions from compensation, for
8 any purpose, including for goods, materials, space rental, services, government
9 licenses, repairs, equipment maintenance, or fines arising from the individual's
employment where any of the acts described in this paragraph would have
violated the law if the individual had not been misclassified.

10 (b) If the Labor and Workforce Development Agency or a court issues a
11 determination that a person or employer has engaged in any of the enumerated
12 violations of subdivision (a), the person or employer shall be subject to a civil
13 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
thousand dollars (\$15,000) for each violation, in addition to any other penalties or
fines permitted by law.

14 (c) If the Labor and Workforce Development Agency or a court issues a
15 determination that a person or employer has engaged in any of the enumerated
16 violations of subdivision (a) and the person or employer has engaged in or is
17 engaging in a pattern or practice of these violations, the person or employer shall
18 be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and
not more than twenty-five thousand dollars (\$25,000) for each violation, in
addition to any other penalties or fines permitted by law.

19 29. "Willful misclassification means avoiding employee status for an individual by
20 voluntarily and knowingly misclassifying that individual as an independent contractor." (Id., §
21 (i)(4)).

22 30. Labor Code § 2753 provides for joint and several liability for a person who
23 "knowingly advises an employer to treat an individual as an independent contractor to avoid
24 employee status for that individual." Plaintiff is informed and believes that PETER BALOV is
25 and was, at relevant times, an owner, director, officer, or managing agent of Defendants and
26 violated or caused to be violated the provisions regulating the misclassification of employees as
27 independent contractors. Therefore, PETER BALOV is individually liable.

28 ///



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1 31. At all relevant times, Plaintiff and the Aggrieved Employees were employees of
2 Defendants. Defendants engaged, suffered, and permitted Plaintiff and the Aggrieved Employees
3 to work. Defendants were clearly aware that Plaintiff and the other Aggrieved Employees worked
4 for them and had the power to prevent Plaintiff and the Aggrieved Employees from working.
5 Defendants also exercised control over Plaintiff and the other Aggrieved Employees' wages,
6 hours, and working conditions. Further, Defendants had the right to control and exercised such
7 control over the manner in which Plaintiff and the other Aggrieved Employees performed their
8 work for Defendants. Plaintiff and the Aggrieved Employees worked at Defendants' direction,
9 and their opportunity for profit or loss did not depend in any way upon their skills. Plaintiff and
10 the other Aggrieved Employees required no special skill to render their services for Defendants.
11 The services they rendered were at all times an integral part of Defendants' business. The
12 relationship between Plaintiff and the other Aggrieved Employees, on one hand, and Defendants,
13 on the other, was terminable at will without cause. Despite these circumstances, Defendants
14 willfully misclassified Plaintiff and the other Aggrieved Employees as independent contractors.
15 Defendants knew or should have known their actions of misclassifying employees as independent
16 contractors violated California law.

17 32. Defendants misclassified Plaintiff and the Aggrieved Employees as independent
18 contractors and engaged in a pattern and/or practice of so doing. Through their misclassification
19 of Plaintiff and the other Aggrieved Employees, Defendants have engaged in a pattern and
20 practice of willful misclassification of their employees as independent contractors for their own
21 financial benefit. Each person or entity referenced above collectively as Defendants advised the
22 other to treat Plaintiff and the Aggrieved Employees at issue in this case as independent
23 contractors.

24 **B. FAILURE TO PROVIDE SIGNED AND COMPLETE COMMISSION**
25 **AGREEMENTS**

26 33. Labor Code § 2751 states:

27 (a) Whenever an employer enters into a contract of employment with an
28 employee for services to be rendered within this state and the contemplated
method of payment of the employee involves commissions, the contract shall be



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1 in writing and shall set forth the method by which the commissions shall be
2 computed and paid.

3 (b) The employer shall give a signed copy of the contract to every employee
4 who is a party thereto and shall obtain a signed receipt for the contract from each
5 employee. In the case of a contract that expires and where the parties
6 nevertheless continue to work under the terms of the expired contract, the contract
7 terms are presumed to remain in full force and effect until the contract is
8 superseded or employment is terminated by either party.

9 (c) As used in this section, “commissions” has the meaning set forth in
10 Section 204.1. For purposes of this section only, “commission” does not include
11 any of the following:

12 (1) Short-term productivity bonuses such as are paid to retail clerks.

13 (2) (Temporary, variable incentive payments that increase, but do not
14 decrease, payment under the written contract.

15 (3) Bonus and profit-sharing plans, unless there has been an offer by
16 the employer to pay a fixed percentage of sales or profits as compensation
17 for work to be performed.

18 34. At all relevant times, Defendants have failed to provide Plaintiff and the Aggrieved
19 Employees with signed commission agreements. As a result, Defendants have violated California
20 Labor Code § 2751.

21 **C. FAILURE TO PAY ALL WAGES FOR ALL HOURS WORKED AT THE**
22 **CORRECT RATES OF PAY**

23 35. Section 2 of the Wage Order defines “hours worked” as “the time during which an
24 employee is subject to the control of an employer, and includes all the time the employee is
25 suffered or permitted to work, whether or not required to do so.” As the California Supreme Court
26 has explained, this definition is disjunctive, meaning time can be an “hour worked” if either (a)
27 the employee is subject to the employer's control, or (b) the employer suffers or permits the
28 employee to work during that time, whether or not the employee is required to do so. *Mendiola*
v. CPS Sec. Solutions, Inc. (2015) 60 Cal. 4th 833, 838 (citing *Morillion v. Royal Packing Co.*
(2000) 22 Cal.4th 575, 582-83).

36. In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions



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

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

37. 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.

38. Labor Code section 226.2 states:

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

...

(3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any



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1 premium compensation for overtime, by the total hours worked during the
2 workweek, exclusive of rest and recovery periods.

3 (ii) The applicable minimum wage.

4 39. In relevant part, California Labor Code § 510 states,

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

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

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

19 42. Labor Code section 1198 makes it unlawful for an employer to employ an
20 employee under conditions that violate the Wage Order.

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

26 44. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
27 to pay them at the beginning of each shift to allow Plaintiff and the Aggrieved Employees to
28 work, required Plaintiff and the Aggrieved Employees to return a portion of the \$20 they collected
from patrons for the dances they performed, and did not allow Plaintiff and the Aggrieved
Employees to leave the premises during meal periods. Moreover, Defendants failed to separately
pay Plaintiff and the Aggrieved Employees for rest and recovery periods and for nonproductive



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1 work time. Defendants only paid Plaintiff and the Aggrieved Employees a rate they set for dances.
2 As such, Defendants failed to pay minimum, overtime and doubletime wages to Plaintiff and the
3 Aggrieved Employees for all hours worked.

4 45. Plaintiff is informed and believes that, at all relevant times, Defendants maintained
5 a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate the
6 Aggrieved Employees for all hours worked at the correct rate of pay as required by California
7 law.

8 **D. UNPROVIDED REST PERIODS**

9 46. Labor Code § 1198 states,

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

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

15 Rest Periods:

16 (A) Every employer shall authorize and permit all employees to
17 take rest periods, which insofar as practicable shall be in the middle
18 of each work period. The authorized rest period time shall be based
19 on the total hours worked daily at the rate often (10) minutes net
20 rest time per four (4) hours or major fraction thereof. However, a
21 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.

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

26 48. In addition, Labor Code Section 226.7 states

27 (b) An employer shall not require an employee to work during a meal
28 or rest or recovery period mandated pursuant to an applicable statute, or



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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.

49. Pursuant to the Labor Code and the Wage Order, Defendants were required to compensate Plaintiff and the Aggrieved Employees separately for paid rest periods of at least 10 minutes for each four-hour period of work or major fraction thereof.

50. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to work periods of over four continuous hours without a paid, continuous ten-minute rest break free of duties and restrictions. Defendants interrupted, delayed, or shortened Plaintiff's and the Aggrieved Employees' rest periods so that they did not receive ten-minute paid rest periods free of duty. Defendants also prohibited Plaintiff and the Aggrieved Employees from leaving the premises for rest breaks. Defendants only allowed payments to Plaintiff and the Aggrieved Employees for work periods, not periods of rest and recovery. Defendants also prevented Plaintiff and the Aggrieved Employees from using their mobile phones in the establishment.

51. Plaintiff is informed and believes that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

E. UNPROVIDED MEAL PERIODS

52. Labor Code § 1198 states,

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



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1 53. In relevant part, Labor Code Section 512 states

2
3 “An employer may not employ an employee for a work period of more than
4 five hours per day without providing the employee with a meal period of
5 not less than 30 minutes, except that if the total work period per day of the
6 employee is no more than six hours, the meal period may be waived by
7 mutual consent of both the employer and employee. An employer may not
8 employ an employee for a work period of more than 10 hours per day
9 without providing the employee with a second meal period of not less than
10 30 minutes, except that if the total hours worked is no more than 12 hours,
11 the second meal period may be waived by mutual consent of the employer
12 and the employee only if the first meal period was not waived.”

13 54. In relevant part, Section 11 of the Wage Order states:

14 Meal Periods:

- 15 (A) No employer shall employ any person for a work period of more
16 than five (5) hours without a meal period of not less than 30
17 minutes, except that when a work period of not more than six (6)
18 hours will complete the day’s work the meal period may be waived
19 by mutual consent of the employer and the employee...
- 20 (B) If an employer fails to provide an employee a meal period in
21 accordance with the applicable provisions of this order, the
22 employer shall pay the employee one (1) hour of pay at the
23 employee’s regular rate of compensation for each workday that the
24 meal period is not provided.

25 55. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
26 Aggrieved Employees were entitled to be provided with uninterrupted meal periods of at least 30
27 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512,
28 they were also entitled to a second 30-minute meal period when they worked more than ten (10)
 hours in a workday.

 56. Defendants interrupted, delayed, or shortened Plaintiff’s and the Aggrieved
Employees’ meal periods so that Plaintiff and the Aggrieved Employees did not receive 30-
minute meal periods free of duty. Defendants also restricted the meal periods of Plaintiff and the
Aggrieved Employees because they expected Plaintiff and the Aggrieved Employees to remain
inside Defendants’ establishment in San Diego for such meal periods. Defendants also prevented



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1 Plaintiff and the Aggrieved Employees from using their mobile phones in the establishment.

2 57. Plaintiff is informed and believes and thereon alleges that, at relevant times within
3 the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a
4 policy which resulted in Defendants not providing the Aggrieved Employees with additional
5 wages for all meal periods not provided to them as required by California Labor Code § 226.7.

6 **F. INCOMPLETE AND INACCURATE WAGE STATEMENTS**

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

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

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

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

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

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

28 60. “Promptly and easily determine,” as stated in California Labor Code section



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226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

61. As alleged herein, as a result of Defendants' willful misclassification of Plaintiff and the other Aggrieved Employees, Defendants failed to properly itemize in written wage statements for Plaintiff and the Aggrieved Employees their gross and net wages earned, total hours worked, hourly rate of pay, and corresponding number of hours worked at each hourly rate.

62. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally failed to provide them with itemized wage statements. That Defendants' conduct was knowing and intentional is evident in that Defendants misclassified Plaintiff and the other Aggrieved Employees as independent contractors despite that Defendants exercised control over Plaintiff and the other Aggrieved Employees' wages, hours, and working conditions. Moreover, Defendants did this knowing that the work Plaintiff and the other Aggrieved Employees performed was wholly within the scope of Defendants' usual course of business of exotic dancing and adult entertainment. Defendants did this to circumvent California employment law to cheat Plaintiff and the other Aggrieved Employees out of the money they rightfully earned through their labor. Thus, Defendants' conduct was knowing and intentional.

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



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1 **G. UNTIMELY FINAL WAGES**

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

4 65. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at least
7 72-hours notice before quitting are due and payable within 72 hours.

8 66. By failing to pay wages to Plaintiff and the Aggrieved Employees, Defendants
9 failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or
10 § 202.

11 **H. UNTIMELY WAGES DURING EMPLOYMENT**

12 67. Labor Code § 204 states

13 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
14 204.1, or 204.2, earned by any person in any employment are due
15 and payable twice during each calendar month, on days designated
16 in advance by the employer as the regular paydays. Labor
17 performed between the 1st and 15th days, inclusive, of any calendar
18 month shall be paid for between the 16th and the 26th day of the
19 month during which the labor was performed, and labor performed
20 between the 16th and the last day, inclusive, of any calendar month,
21 shall be paid for between the 1st and 10th day of the following
22 month. ...

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

26 (2) An employer is in compliance with the requirements of
27 subdivision (a) of Section 226 relating to total hours worked by the
28 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



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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.

68. Defendants failed to provide Plaintiff and the Aggrieved Employees all wages owed, including, but not limited to, all minimum, overtime and doubletime wages at the legal rates of pay for all minimum, overtime and doubletime hours worked. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204.

I. UNLAWFUL TIP COLLECTION

69. In relevant part, California Labor Code § 350(e) provides as follows:

(e) “Gratuity” includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity.

70. The State of California, Department of Industrial Relations, Division of Labor Standards Enforcement issued an opinion on June 22, 2001, interpreting California Labor Code section 350(e) and the Industrial Welfare Commission Order No. 5 and 10. This opinion provides that “a patron at a striptease theater gives \$30 to a dancer, consisting of \$20 for the dance fee (which may have been pre-set by the employer) plus \$10 as an additional amount for the dancer's services. Under A.B. 2509, the dancer is entitled to keep the entire \$30.00.” The opinion goes on to discuss the history behind the current law, including its effort to ban the practice of imposing stage fees on dancers.

71. California Labor Code § 351 provides as follows:

No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or



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1 left for. An employer that permits patrons to pay gratuities by credit card shall pay
2 the employees the full amount of the gratuity that the patron indicated on the credit
3 card slip, without any deductions for any credit card payment processing fees or
4 costs that may be charged to the employer by the credit card company. Payment
of gratuities made by patrons using credit cards shall be made to the employees
not later than the next regular payday following the date the patron authorized the
credit card payment.

5 72. Labor Code section 353 requires every employer to keep accurate records of all
6 gratuities received, whether received directly from the employee or indirectly by means of
7 deductions from the wages of the employee or otherwise.

8 73. At all relevant times, Defendants did not allow Plaintiff and the Aggrieved
9 Employees to retain all of the tips they received from Defendants' customers, and instead required
10 that they share their tips with other employees, including management, disc jockeys, bouncers,
11 security, and valet.

12 74. By unlawfully collecting tips from Plaintiff and the Aggrieved Employees,
13 Defendants violated California Labor Code §§ 351 and 353.

14 **J. REQUIRING PATRONAGE**

15 75. In relevant part, California Labor Code § 450 states:

16 (A) No employer, or agent or officer thereof, or other person, may
17 compel or coerce any employee, or applicant for employment, to patronize
18 his or her employer, or any other person, in the purchase of anything of
value.

19 76. At all relevant times during the applicable limitations period, Defendants required
20 Plaintiff and other Aggrieved Employees to pay Defendants as a necessary condition of
21 employment each work shift. As a result, Defendants required Plaintiff and other Aggrieved
22 Employees to patronize Defendants in violation of California Labor Code § 450.

23 **K. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

24 77. Labor Code § 1174 states:

25 Every person employing labor in this state shall:

26 ...

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

28 (d) Keep, at a central location in the state or at the plants or
establishments at which employees are employed, payroll records showing



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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.

78. Labor Code § 1174.5 states:

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

79. Section 7 of Wage Order states,

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

1. Full name, home address, occupation and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and 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.

80. Defendants willfully failed to maintain the records required by Labor Code § 1174 and the Wage Order. Defendants did not maintain payroll records of all hours worked by Plaintiff and the Aggrieved Employees and all wages earned at the correct rates.

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1 **L. CIVIL PENALTIES SOUGHT**

2 81. During the applicable time period, Defendants violated California Labor Code §§
3 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 351, 353, 450, 510, 512, 558.1, 1174, 1194, 1197,
4 1198, 2751, and 2753.

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

8 83. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
9 Employees are entitled to recover civil penalties for each of the Defendants' violations of
10 California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 351, 353, 450, 510, 512,
11 558.1, 1174, 1194, 1197, 1198, 2751, and 2753 during the applicable limitations period in the
12 following amounts:

13 A. For violations of California Labor Code § 204, one hundred dollars
14 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
15 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
16 established by California Labor Code § 210).

17 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
18 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
19 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
20 California Labor Code § 226.3).

21 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
22 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
23 each Aggrieved Employee for each subsequent violation (penalty amounts established by
24 California Labor Code § 558).

25 D. For violations of California Labor Code § 226.8, twenty-five thousand
26 dollars (\$25,000.00) for each aggrieved employee for each violation of California Labor Code
27 section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted
28 by law (penalties set by Labor Code section 226.8(c)); or alternatively, fifteen thousand dollars



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1 (\$15,000.00) for each aggrieved employee for each violation of California Labor Code section
2 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code
3 section 226.8(b)).

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

9 F. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7,
10 351, 353, 450, 1194, 1198, 2751, and 2753, one hundred dollars (\$100.00) for each Aggrieved
11 Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
12 aggrieved employee per pay period for each subsequent violation (penalty amounts established
13 by California Labor Code § 2699(f)(2)).

14 G. For the violations of California Labor Code § 1174, \$500 for each
15 Aggrieved Employee for each violation of California Labor Code § 1174 (penalty amounts
16 established by California Labor Code § 1174.5).

17 **M. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

18 84. Plaintiff has complied with the procedures for bringing suit specified in California
19 Labor Code § 2699.3. By letter dated December 3, 2020, Plaintiff gave written notice by certified
20 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
21 provisions of the California Labor Code alleged to have been violated, including the facts and
22 theories to support the alleged violations. A true and correct copy of Plaintiff’s notice to the
23 LWDA dated December 3, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded
24 to Plaintiff’s letter.

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

28 ///



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1 **VI. PRAYER FOR RELIEF**

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

- 4 A. Civil penalties;
5 B. Costs of suit; and
6 C. Reasonable attorneys' fees.

7
8 **DEMAND FOR JURY TRIAL**

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

11 Respectfully submitted,

12 THE SPIVAK LAW FIRM

13 Dated: February 9, 2021

14 By



15 DAVID SPIVAK
16 MARALLE MESSRELIAN
17 Attorneys for Plaintiff, SIMONETTE
18 VILLENA, and the Aggrieved Employees



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

December 3, 2020

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

RE: *Simonette Villena / Peter Balov*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*, Simonette Villena (hereafter “Villena”) provides notice on behalf of herself and of all individuals currently and formerly employed or contracted with in California as employees paid by commission, piece rate employees, or independent contractors, including exotic dancers (hereafter “the Aggrieved Employees”) for Midway Venture LLC, a California limited liability company does business as Pacers Showgirls Worldwide and Pacers Showgirls International, and Peter Balov, an individual (hereafter, collectively “Pacers”) of violations of California Labor Code §§ 98.6, 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 351, 353, 450, 510, 512, 558.1, 1102.5, 1174, 1194, 1197, 1198, 2751, and 2753.

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

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Statement of Facts

Villena began working for Pacers in San Diego, California as a dancer on or about July 4, 2018. Pacers contracted with Villena to perform various services, including exotic dancing, from this date when their relationship began to late December of 2019. In doing so, Pacers misclassified Pacers and other Aggrieved Employees as independent contractors. Pacers employed Villena as a non-exempt exotic dancer that Pacers paid per each private dance she performed during her work shifts. Villena continuously worked for Pacers as a dancer until late December of 2019 when Pacers ended her employment for objecting to (1) sexual harassment by Pacers' general manager (subject of a complaint to the Department of Fair Employment and Housing and (2) compelling her to share her tips with management and others.

Villena and the Aggrieved Employees were only compensated \$20.00 for each dance. They did not receive any other compensation for their work for Pacers. Pacers did not provide Villena and the Aggrieved Employees with a commission agreement that explained their pay structure.

Pacers interrupted, delayed, or shortened their rest and meal periods so that Villena and the Aggrieved Employees did not receive ten minute paid rest periods or 30 minute meal periods free of duty. Pacers also restricted the rest periods of Villena and the Aggrieved Employees because it expected them to remain inside Pacers' establishment in San Diego for such rest periods or for meal periods. Pacers also prevented them from using their mobile phones in the establishment.

At all relevant times, Pacers required Villena and the Aggrieved Employees to work periods of over four continuous hours without a paid, continuous 10-minute rest break free of duties and restrictions. Pacers prohibited them from leaving the premises for rest breaks. Pacers only allowed payments to Villena and the Aggrieved Employees for work periods, not periods of rest and recovery.

Additionally, Pacers demanded monetary payments from Villena and the Aggrieved Employees to work a shift within the establishment. As a result of these payments to Pacers, Villena and the Aggrieved Employees at times earned less than the California minimum hourly wage during their shifts.

Pacers did not record the start and stop times of the daily work periods of Villena and the Aggrieved Employees, nor did it record the times meal periods began and ended. Furthermore, Pacers did not issue itemized wages statements to Villena and the Aggrieved Employees.

Villena and the Aggrieved Employees worked for Pacers in excess of 40 hours per week and 8 hours per day. Villena and the Aggrieved Employees worked for Pacers in excess of 12 hours per day and all 7 days in the same workweek. In spite of this, Pacers did not pay an overtime or doubletime premium rates to Villena and the Aggrieved Employees for any such overtime and doubletime hours.

Villena and the Aggrieved Employees received monetary tips from Pacers' customers for dances they performed on stage. Pacers required Villena and the Aggrieved Employees to share such monetary tips with Pacers' management. Villena notified Pacers of her objection to this practice and Pacers terminated her employment in response.

At all relevant times, Villena and the Aggrieved Employees were employees of Pacers. Pacers directed and controlled Villena and the Aggrieved Employees in all aspects of their work performance. Pacers required Villena and the Aggrieved Employees to perform exotic dancing on stage. Pacers required Villena and the Aggrieved Employees to arrive for work at fixed times. Pacers required Villena and the Aggrieved Employees to perform private exotic dances for Pacers' customers. Pacers fixed the price at \$20 for each said dance and \$150 for each private "VIP" dance without input from Villena and the Aggrieved Employees. Pacers did not allow Villena and the Aggrieved Employees to charge more or less for said dances. For the private VIP dances, Pacers' customers paid said price directly to Pacers. Pacers decided that Villena and the Aggrieved Employees could collect on \$20 from patrons as their wages for non-private dances. Pacers required Villena and the Aggrieved Employees to return a portion of such wages to Pacers' management.

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

- a) Pacers misclassified Villena and the Aggrieved Employees as independent contractors;
- b) Pacers failed to provide commission agreements to Villena and the Aggrieved Employees;
- c) Pacers failed to authorize and permit Villena and the Aggrieved Employees to take rest periods;
- d) Pacers failed to provide Villena and the Aggrieved Employees with all meal periods;
- e) Pacers failed to compensate Villena and the Aggrieved Employees at one hour's pay for each work day with one or more unprovided rest breaks;
- f) Pacers failed to separately compensate Villena and the Aggrieved Employees for rest and recovery time and for work other than the private dances they performed for Pacers' patrons;
- g) Pacers failed to compensate Villena and the Aggrieved Employees at one hour's pay for each work day with one or more unprovided meal periods;
- h) Pacers failed to pay Villena and the Aggrieved Employees minimum wages for all hours worked;
- i) Pacers required financial patronage from Villena and the Aggrieved Employees to allow them to work;
- j) Pacers failed to pay Villena and the Aggrieved Employees one and one-half times the State minimum wage for all hours worked over eight hours in one workday, over 40 hours in one workweek, and/or up to eight hours on the seventh consecutive workday in a workweek;
- k) Pacers failed to pay Villena and the Aggrieved Employees double the State minimum wage for all hours worked over twelve hours in

one workday and/or over eight hours on the seventh consecutive workday in a workweek;

- l) Pacers collected and retained tips Pacers's patrons paid to Villena and the other Aggrieved Employees;
- m) Pacers failed to provide Villena and the Aggrieved Employees with accurate wage statements; and
- n) Pacers failed to timely pay Villena and the Aggrieved Employees all earned and unpaid wages during, and at the conclusion of, their employment with Pacers.

Accordingly, Villena now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Pacers alleged violations of the California Labor Code and the Wage Order.

Wage Order 5

Wage Order 5 applies to "all persons in the public housekeeping industry." *Id.*, § 1. The phrase "public housekeeping industry" includes Pacers' night clubs/bars/cocktail lounges like those where Pacers employed Villena and the other Aggrieved Employees. *Id.*, § 2(P)(1). At all relevant times during the applicable limitations period, Pacers employed Villena as a non-exempt employee. Accordingly, Villena and the Aggrieved Employees are entitled to the protections of the Wage Order.

Willful Independent Contractor Misclassification **(Lab. Code § 226.8)**

Labor Code section 226.8 states:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
 - (1) Willful misclassification of an individual as an independent contractor.

- (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.
- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Villena and the other Aggrieved Employees were employees of Pacers. Pacers engaged, suffered, and permitted Villena and the Aggrieved Employees to work. Pacers was clearly aware that Villena and the other

Aggrieved Employees worked for it and had the power to prevent them from working for Villena. Pacers also exercised control over Villena and the other Aggrieved Employees' wages, hours, and working conditions. Further, Pacers had the right to control and exercised such control over the manner in which Villena and the other Aggrieved Employees performed their work for Pacers. They worked at Pacers's direction, and their opportunity for profit or loss did not depend in any way upon their skills. Villena and the other Aggrieved Employees required no special skill to render their services for Pacers. The services they rendered were at all times an integral part of Pacers's business. The relationship between Villena and the other Aggrieved Employees, on one hand, and Pacers, on the other, was terminable at will without cause. Despite these circumstances, Pacers willfully misclassified Villena and the other Aggrieved Employees as independent contractors. It has engaged in a pattern and/or practice of doing so.

Accordingly, Villena seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

1. \$25,000.00 for each Aggrieved Employee for each violation of California Labor Code section 226.8 as part of a pattern or practice (based on Pacers's pattern and/or practice of committing such violations) in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,
2. \$15,000.00 for each Aggrieved Employee for each violation of California Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves

commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1 . For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, Pacers has failed to provide Villena and the Aggrieved Employees with signed commission agreements. As a result, Pacers has violated California Labor Code § 2751. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees for violations of Labor Code § 2751 at \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

- (A) 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.
- (B) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

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

- (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 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 work day that the meal period is not provided.

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

- (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 (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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.

Regarding timing of the first meal period, *Brinker* states “in the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break.” *Brinker*, 53 Cal.4th at 1031-1032; *Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1275, reh’g denied (Dec. 1, 2014), review denied (Feb. 11, 2015); Dept. Industrial Relations, DLSE Opinion Letter No. 2001.09.17 (Sept. 17, 2001) at p. 4. (“As a general matter, the first rest period should come sometime before the meal break...”). This only makes sense based on the language of the meal period law. An employer must “employ” an employee before a meal period is due. An employer who requires an employee to clock out for a meal period upon arrival for work has yet to “employ” the employee at all for the day.

Pacers has intentionally and improperly failed to provide Villena and the Aggrieved Employees all rest breaks and/or meal periods, including, but not limited to, two 30-minute meal periods on workdays of over 10 hours. As a result, Pacers violated California Labor Code §§ 226.7, 512, and 1198.

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

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

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

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

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, section 2(K) of the Wage Order states, “Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

Under California Labor Code § 510,

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

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

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

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours

worked on the seventh (7th) consecutive day of work in a workweek;
and

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Because Pacers required Villena and the Aggrieved Employees to pay it at the beginning of each shift to allow them to work, required them to return a portion of the \$20 they collected from patrons for the dances they performed, and because Pacers did not allow Villena and the Aggrieved Employees to leave the premises during meal periods, Pacers failed to pay minimum, overtime and doubletime wages to Villena and the Aggrieved Employees for all hours worked. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

- 1. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 510 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each Aggrieved Employee per pay period in which subsequent violations of § 510 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
- 2. \$100 for each Aggrieved Employee per pay period in which initial violations of § 1194 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2)).
- 3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each Aggrieved 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 unpaid wages and liquidated damages (penalties set by California Labor Code section 1197.1); and

4. \$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 Separately Compensate for Rest and Recovery Periods
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

...

(3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

As described above, Pacers failed to separately pay Villena and the Aggrieved Employees for rest and recovery periods and for nonproductive work time. It only paid them a rate it set for dances. Accordingly, on behalf of herself and the Aggrieved Employees, Villena seeks against Pacers civil penalties as follows:

\$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.2, subdivisions (a)(1) and (a)(4) 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)

California Labor Code § 226 require employers to furnish employees with an accurate itemized statement in writing 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.

As alleged herein, Pacers failed to provide Villena and the Aggrieved Employees with itemized wage statements. Pacers failed to properly itemize in writing each employee's gross wages earned, net wages earned, and other requirements of California Labor Code § 226. As a result, Pacers has violated California Labor Code § 226. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$250 for each Aggrieved Employee for

each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

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

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

As alleged herein, Pacers failed to provide Villena and the Aggrieved Employees all wages owed, including, but not limited to, all minimum, overtime and doubletime wages at the legal rates of pay for all minimum, overtime and doubletime hours worked. As a result, Pacers failed to pay Villena and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Pacers has violated California Labor Code § 204. Accordingly, Villena seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. For all initial violations of Labor Code § 204 that are deemed to be neither willful nor intentional, \$100.00 for each Aggrieved Employee per pay period for each violation (penalties set by California Labor Code § 210);
2. For all initial violations of Labor Code § 204 that are deemed to be either willful or intentional, \$200.00 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period for each violation (penalties set by California Labor Code § 210); and

For all subsequent violations of Labor Code § 204, regardless of whether the initial violation of Labor Code § 204 is deemed to be either willful or intentional, \$200.00 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, per pay period for each violation (penalties set by California Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

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

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 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.

By failing to pay wages to Villena and other Aggrieved Employees as set forth above, Pacers is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Villena seeks civil penalties from Pacers as follows:

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

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

Tip Violations
(Lab. Code §§ 351 and 353)

Under Labor Code § 350, Pacers was an “employer” and Villena and the Aggrieved Employees were at all times “employees.” Under Labor Code § 350, Pacers was at all times “employing” Villena and the Aggrieved Employees. Labor Code § 351 prohibits an employer or agent of the employer from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Labor Code § 351 declares that every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for. Labor Code § 353 requires every employer to keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. At all relevant times, Pacers required Villena and the Aggrieved Employees to share their tips with Pacers’ management. Thus, Villena, on behalf of herself and other Aggrieved Employees who are/were employees, seeks civil penalties under Labor Code Section 2699(f)(2) in the amounts of \$100 per employee for Pacers’s initial violation of Labor Code Section 351, and \$200 per employee for each subsequent violation per pay period.

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Requiring Patronage
(Lab. Code § 450)

In relevant part, California Labor Code § 450 states:

- (A) No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value.

At all relevant times during the applicable limitations period, Pacers required Villena and other Aggrieved Employees to pay Pacers as a necessary condition of employment each work shift. As a result, Pacers required Villena and other Aggrieved Employees to patronize Villena in violation of California Labor Code § 450. Accordingly, Villena seeks civil penalties on behalf of herself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 450 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violation of § 450 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Maintain Accurate Employment Records
(Lab. Code §§ 1175 and 1198)

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the

commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

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

Section 7 of Wage Order states,

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and 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.

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

Pacers willfully failed to maintain the records required by § 1174 and the Wage Order. Pacers did not maintain payroll records of all hours worked by Villena and the Aggrieved Employees and all wages earned at the correct rates. Accordingly, Villena seeks civil penalties from Pacers on behalf of herself and the Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
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)).

Retaliation
(Lab. Code § 98.6)

A person shall not discharge an employee because the employee has filed a bona fide complaint or claim relating to his or her rights that are under the jurisdiction of the Labor Commissioner or made a written or oral complaint that he or she is owed unpaid wages. Lab. Code § 98.6(a).

Pacers terminated Villena for objecting to conduct that violated the California Labor Code. During the course of her employment, Pacers required Villena and the Aggrieved Employees to return to Pacers's management a portion of the \$20 they collected from patrons as their wages for non-private dances. Pacers also required Villena and the Aggrieved Employees to share their monetary tips with Pacers' management. Villena notified Pacers of her objection to this practice and Pacers terminated her employment in response.

Villena seeks civil penalties under California Labor Code § 98.6(b)(3) in an amount not to exceed \$10,000 for each violation by Pacers, of California Labor Code § 98.6(a), as well as attorney's fees and costs under Lab. Code § 2699(g).

Retaliation
(Lab. Code § 1102.5)

An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. Lab. Code § 1102.5(c).

Pacers terminated Villena for objecting to conduct that violated the California Labor Code. During the course of her employment, Pacers required Villena and the Aggrieved Employees to return to Pacers's management a portion of the \$20 they collected from patrons as their wages for non-private dances. Pacers also required Villena and the Aggrieved Employees to share their monetary tips with Pacers' management. Villena notified Pacers of her objection to this practice. Because of her complaints regarding Pacers' noncompliance with the California Labor Code, Pacers terminated Villena in violation of California Labor Code § 1102.5(c).

Villena seeks civil penalties under California Labor Code § 1102.5(f) in an amount not to exceed \$10,000 for each violation by Avalon of California Labor Code § 1102.5(c), as well as attorney's fees and costs under Labor Code § 2699(g).

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, Peter Balov owned and operated Midway Venture LLC and employed Villena and the Aggrieved Employees. Peter Balov was the “owner,” “managing agent,” and sole director of Midway Venture LLC. Peter Balov directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, or working conditions of Villena and the Aggrieved Employees and caused the violations to the Labor Code and Wage Order described above.

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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: Simonette Villena
Walter Haines, Esq.

Midway Venture LLC
dba Pacers Showgirls International and Pacers Showgirls Worldwide
c/o Elaine M. Grant, Agent for service of process
12792 Valley View St.
Suite 203
Garden Grove, CA 92845

Peter Balov
12792 Valley View St.
Suite 203
Garden Grove, CA 92845

EXHIBIT 5

1 JASON P. SACCUZZO (Bar No. 221837)

2 jsaccuzzo@vivolilaw.com

3 SHELLY D. SONG (Bar No. 312036)

4 (ssong@vivolilaw.com)

VIVOLI SACCUZZO, LLP

3104 Fourth Avenue

San Diego, California 92103

(619) 744-9992 (Tel)

(619) 744-9994 (Fax)

Attorneys for Defendants MIDWAY VENTURE LLC

dba PACERS SHOWGIRLS/PACERS SHOWGIRLS INTERNATIONAL,

and PETER BALOV

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL

SIMONETTE VILLENA, on behalf of herself,) CASE NO: 37-2021-00005970-CU-OE-CTL
and as an “aggrieved employee” on behalf of)
other “aggrieved employees” under the Labor) [Case Assigned for All Purposes To: Hon.
Code Private Attorneys General Act of 2004) Timothy B. Taylor, Dept. C-72]

Plaintiffs,

**DEFENDANTS’ ANSWER TO
COMPLAINT**

vs.

MIDWAY VENTURE, LLC, a California) Action Filed: February 9, 2021
limited liability company *dba* PACERS) Trial Date: Not Set
SHOWGIRLS WORLDWIDE and PACERS)
SHOWGIRLS INTERNATIONAL, PETER)
BALOV, an individual; and DOES 1-50,)
inclusive,)

Defendants.

Defendants Midway Venture, LLC *dba* Pacers Showgirls/Pacers Showgirls International,
erroneously sued as Midway Venture, LLC *dba* Pacers Showgirls Worldwide, and Peter Balov
 (“Defendants”), for themselves alone and for no other defendant, answers the Complaint (the
 “Complaint”) herein filed by Plaintiff Simonette Villena (“Plaintiff”) as follows:

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GENERAL DENIAL

Pursuant to California Civil Procedure § 431.30, these answering Defendants deny each and every, all and singular, allegations of the Complaint and also deny that Plaintiff was damaged in the sum or sums alleged or in any sum at all, and Defendants further deny Plaintiff is entitled to any relief or penalties as alleged in the Complaint. Defendants further specifically deny that any of the claims alleged by Plaintiff in the Complaint may properly be adjudicated on a collective basis or non-class representative basis.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses to all causes of action purported to be set forth against them by Plaintiff on their own behalf, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

Plaintiff’s claims as set forth in the Complaint, or some of them, fail to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

Defendants are informed and believe, and based thereon allege that Plaintiff’s claims are barred in whole or in part because Plaintiff lacks standing because Plaintiff suffered no harm and as such is not an “Aggrieved Employee” under Labor Code sections 2699, *et seq.* (“PAGA”).

THIRD AFFIRMATIVE DEFENSE

(Payment of Wages & Penalties)

Plaintiff’s claims are barred in whole or in part because Plaintiff has been paid and/or received all wages due to her, if any.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff’s claims are barred in whole or in part by the applicable statutes of limitations, including, without limitation, the limitations periods prescribed in California Business and Professions Code § 17208, California Labor Code § 203, and California Civil Procedure Code §§

1 338(a), 340, and/or 343.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 (No Employment Relationship)

4 Plaintiff's claims, and the claims of each alleged "Aggrieved Employee," or some of
5 them, are barred in whole or in part because Defendants are not the employer of Plaintiff for
6 purposes of wage and hour compliance or within the meaning of Labor Code section 558.1.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 (Laches)

9 Plaintiff's claims are barred in whole or in part by the defense of laches.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 (Unclean Hands)

12 Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 (Waiver)

15 Plaintiff's claims are barred in whole or in part by the defense of waiver.

16 **NINTH AFFIRMATIVE DEFENSE**

17 (Accord and Satisfaction, Payment)

18 Plaintiff's claims are barred in whole or in part by the principles of accord and
19 satisfaction, and payment.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 (Failure to Exhaust Administrative Remedies)

22 Plaintiff's claims are barred in whole or in part because Plaintiff failed to timely and
23 completely exhaust the requisite administrative remedies, statutory, and/or contractual remedies
24 available to them prior to commencing this action.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 (Failure to Mitigate Damages)

27 If any damages have been sustained by Plaintiff, Plaintiff failed to mitigate her alleged
28 damages.

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SEVENTH AFFIRMATIVE DEFENSE

(Uncertainty)

Plaintiff’s claims are barred in whole or in part because the Complaint is uncertain is ambiguous and conclusory.

THIRTEENTH AFFIRMATIVE DEFENSE

(Unjust, Arbitrary and Oppressive, or Confiscatory Penalties)

To the extent Plaintiff is entitled to any relief under PAGA, Plaintiff is not entitled to recover any civil penalties and/or fines pursuant to Plaintiff’s causes of action, because, under the circumstances of this case, any such recovery would be unjust, arbitrary and oppressive, or confiscatory.

FOURTEENTH AFFIRMATIVE DEFENSE

(Conduct Reasonable and in Good Faith/Not Willful)

Plaintiff’s claims are barred in whole or in part because Defendant has at all times acted in good faith, in conformity with and in reliance on written administrative regulations, orders, rulings, guidelines, approvals and/or interpretations of federal and California agencies, and on the basis of a good faith and reasonable belief that it had complied fully with California and federal wage-and-hour laws.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Harm)

To the extent Plaintiff seeks relief and/or penalties on behalf of individuals who have suffered no damages or are not aggrieved, Plaintiff’s claims, and each of them, violate Defendant’s right to due process under the California and United States Constitutions and are similarly barred by PAGA.

SIXTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff’s claims, and the claims of each putative member of the purported class as set forth in the Complaint, or some of them, are barred in whole or in part because Plaintiff and the putative class members are estopped by their own conduct from claiming any right to damages or

1 other monetary relief from Defendant, and that Plaintiff brought this action in collusion with
2 others for an improper purpose.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 (Consent)

5 Plaintiff's claims, and the claims of each putative member of the purposed class as set
6 forth in the Complaint, or some of them, are barred in whole or in part by Plaintiff's and the
7 putative class members' express or implied consent to or express or implied ratification of the
8 conduct alleged in the Complaint.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 (Arbitration)

11 Plaintiff's claims, and the claims of each alleged "Aggrieved Employee" as set forth in
12 the Complaint, or some of them, are barred because Plaintiff and putative class members
13 executed Arbitration Agreements in which they agreed to individually arbitrate any claims
14 against Defendant.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 (Manageability)

17 Plaintiff's claims cannot proceed as pled because the claims are unmanageable or
18 otherwise unsuitable for trial.

19 **TWENTIETH AFFIRMATIVE DEFENSE**

20 (Investigation and Discovery Ongoing)

21 Defendants state that they do not presently know all facts concerning the conduct of
22 Plaintiff sufficient to state all affirmative defenses at this time. Defendants will seek leave of
23 this Court to amend this Answer should it later discover facts demonstrating the existence of
24 additional affirmative defenses.

25 **WHEREFORE**, Defendants pray as follows:

- 26 1. That the Complaint and each cause of action therein be dismissed with prejudice;
27 2. That Plaintiff take nothing by way of the Complaint;
28 3. That Defendants be awarded costs of suit and attorney's fees herein as allowed by

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California law; and
4. That the Court order such other and further relief for Defendants as the Court may
deem just and proper.

Dated: May 6, 2021 VIVOLI SACCUZZO, LLP

By: /s/ Jason P. Saccuzzo
JASON P. SACCUZZO
Attorneys for Defendants,
MIDWAY VENTURE LLC
dba PACERS SHOWGIRLS/PACERS
SHOWGIRLS INTERNATIONAL, and PETER
BALOV

EXHIBIT 6

EXHIBIT 7

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
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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



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

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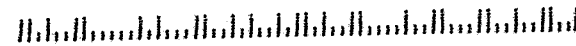


EXHIBIT 8

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
4 Suite 303
5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
8 Email david@spivaklaw.com

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

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

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
10 (UNLIMITED JURISDICTION)

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

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

FIRST AMENDED COMPLAINT FOR:

14 vs.

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

15
16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

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

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

THE
SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class, and/or Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class, Overtime Class,**
6 **Rest Periods Class, Meal Periods Class, Inaccurate Wage Statement**
7 **Class, Unauthorized Deduction Class, Former Employee Class, and/or**
8 **Indemnification Class.**

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 "Management Recognition Days," without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 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.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 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 AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTling THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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3 | DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

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REPORTER'S CERTIFICATE

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_____, CSR NO. 9659

ANGELA Z. PARADELA, OFFICIAL REPORTER

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

PLAINTIFFS,

VS.

DEFENDANTS,

CASE NO. BC430633

CERTIFIED COPY

MONDAY, APRIL 23, 2012

FOR THE PLAINTIFFS:

LOUIS BENOWITZ,
ATTORNEY AT LAW

FOR THE DEFENDANTS:

MICHAEL SABZEVAR,
ATTORNEY AT LAW

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

EXHIBIT 10

OCT 24 2017

Sherri R. Carter, Executive Officer/Clerk
By: V. Jalme, Deputy

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

Jon N. Shields, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

Security Paving Company, Inc.,

Defendant.

Case No. BC492828

Proposed Statement of Decision

Having concluded the trial, the Court now issues a Proposed Statement of Decision.

Pursuant to CCP Section 632 and Cal. Rules of Court 3.1590 (g), the parties shall have fifteen days from the issuance of this decision to object, concur or correct the Proposed Statement of Decision.

The Court shall hold a hearing on the objections on November 17, 2017 at 11:00 a.m.

1 I. BACKGROUND

2 On September 26, 2012, plaintiff filed an individual and class action against Security Paving
3 Company, Inc. ("Security Paving"), a licensed contractor that performs construction work on
4 public works projects throughout California.
5

6 The operative First Amended Complaint alleges a class action and representative action for
7 violations of the California Labor Code and Wage Order 16, breach of contract and a violation of
8 the Business and Professions Code arising from Security Paving's operations.¹
9

10 In 2016, the Court denied plaintiff's motion to certify the class. The case proceeded solely on the
11 individual claims of plaintiff Jon Shields and a representative action under PAGA brought by
12 Shields as an aggrieved employee.
13

14 In August 2017, the Court granted the defendant's motion for summary adjudication as to the
15 PAGA claim for failure to provide meal periods, but denied the motion as to the PAGA claim
16 based on the defendant's alleged failure to provide rest breaks.
17

18 In that decision, the court considered whether Labor Code §512(e), which became effective on
19 January 1, 2011, exempted Security Paving from meal period requirements. The court found that
20 Security Paving was exempted from the meal period requirements as a union-signatory
21 construction contractor. Further, the court concluded that because plaintiff's PAGA claim is
22 subject to a one-year statute of limitations and covers the period from September 26, 2011 onward
23 only,² it could not include challenges based on meal-period violations.³
24

25
26 ¹ The plaintiff abandoned his cause of action for breach of contract at closing argument.

27 ² This date is one year prior to the September 26, 2012 filing date of the original complaint.

28 ³ PAGA claims are subject to CCP §340(a)'s one-year statute of limitations period governing "actions for a penalty or forfeiture."

1 As for the PAGA claim for rest break violations, the court considered whether Wage Order 16
2 barred that claim and concluded that it did not. Under section 11(D) of that Wage Order, in cases
3 where a valid collective bargaining agreement provides a final and binding mechanism for
4 resolving disputes regarding rest breaks, the collective bargaining agreement shall prevail. But,
5 under section 11(E) of that order, the collective bargaining agreement exemption shall not apply
6 unless the collective bargaining agreement provides “equivalent protection” to Wage Order 16.
7 The Court found that the collective bargaining agreements at issue in this case did not afford the
8 same protection as the three-year statute of limitations period to recover premium pay for missed
9 rest periods. The court also found that the collective bargaining agreements did not expressly
10 provide for the one-hour premium pay for missed rest breaks. They are either silent on this issue
11 or they provide for pay “at the rate of two times the standard straight-time and overtime” rates.
12 Accordingly, the court denied summary adjudication on the rest period portion of plaintiff’s PAGA
13 claim.

14
15 The Court also denied the defendant’s motion for summary adjudication on plaintiff’s individual
16 claims for failure to provide meal periods,⁴ failure to authorize and permit rest breaks, breach of
17 contract, unfair business practices and failure to provide accurate itemized wage statements.

18
19 A court trial on these causes of action began on September 19, 2017 and concluded on October 2,
20 2017.⁵ The parties filed post-trial briefs on October 16, 2017. The defendant, thereafter, filed a
21 motion to strike the plaintiff’s pre-trial brief on October 18, 2017. The plaintiff filed an
22

23
24 ⁴ The protections afforded under Labor Code §512(e) foreclose the individual meal period claim for a small
25 period of plaintiff’s individual three-year meal break claim. It would exempt only the period of after January 1, 2011
26 (i.e., Labor Code §512(e)’s effective date). As defendant’s argument under Section 512(e) did not dispose of the
plaintiff’s individual meal period claim, it could not be resolved by way of a motion for summary adjudication. CCP
§437c(f)(1).

27 ⁵ The Court reserved ruling on the defendant’s motion for judgment, which Security Paving filed at the close of the
28 plaintiff’s case, and declined to render any judgment until all evidence was presented. *See Watt v. Kantel* (1970) 13
Cal. App. 3d 249, 253. For the reasons set forth in this decision, that motion is denied.

1 opposition to that motion on October 23, 2017. Thereafter, the Court took the matter under
2 submission and now renders a proposed statement of decision.

3 4 II. OUTLINE OF ISSUES DECIDED AT TRIAL

5
6 The Court begins by setting forth the issues to be decided in this trial:

- 7 (1) Did defendant violate the Labor Code by failing to authorize and permit rest breaks to
8 the representative plaintiff and other aggrieved employees for the period from
9 September 2011 to the present? If so, what penalties are owed under the PAGA cause
10 of action as a result of these violations?
- 11 (2) Did defendant violate Labor Code sections 226.7 and 512 by failing to provide plaintiff
12 Jon Shields meal periods for the period September 26, 2009 until December 31, 2010?
13 If so, what unpaid wages are owed to Jon Shields for missed meal periods?
- 14 (3) Did defendant violate Labor Code sections 226.7 by failing to authorize and permit rest
15 breaks to Jon Shields? If so, what unpaid rest break premiums for the period from
16 September 26, 2009 until September 26, 2012 are owed to Jon Shields?
- 17 (4) Did defendant violate Labor Code Section 226 by failing to provide Jon Shields with
18 accurate wage statements for the period from September 26, 2009 until September 26,
19 2012? If so, what penalties are owed to Jon Shields?
- 20 (5) Is Jon Shields owed "waiting time" penalties under Labor Code §§ 201-203?
- 21 (6) Is plaintiff entitled to any relief based on his claim that defendant violated Business
22 and Professions Code Section 17200 *et seq.* If so, what is an appropriate remedy?

23 24 III. PAGA REST BREAK CLAIMS

25 Jon Shields, as a representative plaintiff for himself and other aggrieved employees, alleges that
26 Security Paving violated the law by failing to afford certain of its crewmembers the rest periods
27 mandated by the applicable Wage Order. The plaintiff's PAGA rest break claim covers the period
28 September 2011 through the present.⁶

⁶ Jon Shields began working for Security Paving in late 2008. (Trial Exhibit ("Exh.") 506 at 14-16). The defendant terminated his employment in October 2011 (Exh. 506 at 17). At closing, the Court inquired of plaintiff's counsel whether an employee who did not work for the defendant during a substantial portion of the relevant period of the PAGA claim was properly characterized as an aggrieved employee. Certainly, in a class action setting, such a representative might be challenged on the basis of his adequacy to testify accurately and competently regarding the

1 A. Labor Code Provisions and Wage Order 16

2
3 Labor Code section 226.7 prohibits employers from requiring employees to work during any rest
4 period mandated by a Wage Order. It establishes a premium if an employer fails to provide
5 employees a meal or rest period required by the Wage Orders. Under the rule, employers must
6 pay employees one additional hour's pay for failure to provide one or more rest periods. The
7 employer must pay the premium in addition to the compensation owed for the worked time,
8 including time worked during a missed meal or rest period.

9
10 The applicable Wage Order in this case -- Wage Order 16 -- provides that "[e]very employer *shall*
11 *authorize and permit* all employees to take rest periods, which insofar as practicable, shall be in
12 the middle of each work period The authorized rest period shall be based on the total hours
13 worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major
14 fraction thereof." Wage Order 16-2001, § 11(A)(emphasis added).

15
16 Work Order 16 -- covering the construction industry -- contains a measure of flexibility regarding
17 rest breaks not found in other wage orders. (See Exhibit 513 at 7). Employers in the construction
18 industry may stagger rest periods to avoid interruption in the flow of work and to maintain
19 continuous operations, or may schedule rest periods to coincide with breaks in the flow of work
20 that occur in the course of a workday. Rest periods are to take place at designated areas, which
21 may include or be limited to the employees' immediate work area. Rest periods need not be
22 authorized in limited circumstances when the disruption of continuous operations would
23 jeopardize the product or process of the work. However, the employer shall make up the missed

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27 defendant's practices during much of the relevant period. PAGA, however, does not impose class action requirements
28 on its representatives. *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985. Further, the testimony of other witnesses,
including the defendant's witnesses, supported the finding that in certain settings -- most specifically in crews working
on overnight road paving projects with required lane closures -- the defendant's rest break practices were the same in
2015 as they were in 2011.

1 rest period within the same workday or compensate the employee for the missed ten minutes of
2 rest time at his regular rate of pay within the same pay period.⁷

3
4 A rest period -- whenever it is authorized and wherever it occurs -- must be "duty-free."
5 *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 237. In 2016, the Supreme
6 Court in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, clarified the rest period
7 obligations. It explained that employers must relieve employees of all duties and relinquish any
8 control over how employees spend their time during rest periods. However, the Division of Labor
9 Standards Enforcement will not find a rest period violation where an employee who is authorized
10 and permitted to take a rest period freely chooses, without any coercion or encouragement, to
11 forego or waive it. In *Augustus*, the court also explained that circumstances may occasionally
12 arise that prevent employees from taking a rest period at a scheduled time or cause an interruption
13 in a rest period. If this occurs, employers can reschedule rest periods when the need arises, or if
14 they interrupt employees during a rest period, provide them another rest period to replace the one
15 that was interrupted.

16
17 If an employer fails to provide an employee a rest period in accordance with the applicable
18 provisions of the wage order, "the employer shall pay the employee one (1) hour of pay at the
19 employee's regular rate of compensation for each work day that the rest period is not provided."
20 (Wage Order 16-2001 §11(D); Cal. Lab. Code § 226.7).

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25 ⁷ As for timing, California Wage Orders require employers to authorize and permit rest periods for non-exempt
26 employees whose total daily work time is at least 3 and a half hours. The mandatory rest periods must be, insofar as is
27 practicable, in the middle of each work period and must be at the minimum rate of ten consecutive minutes for each
28 four hours or major fraction thereof. The employer must count rest periods as working time and, accordingly, must
pay for such periods. For a shift longer than 3 and a half hours and less than six hours, a ten minute rest break is
required. For a shift over six hours and up to ten hours, twenty minutes of rest is required. For a shift of over ten up
to fourteen hours, thirty minutes of rest is mandated. The Wage Orders do not mandate when the breaks are taken,
only that they fall in the middle of work periods "insofar as practicable."

1 B. The Credible Evidence Establishes that Defendant Did Not “Authorize and Provide”
2 Duty-Free Rest Breaks During Production Downtimes to Nighttime Road Repair and
3 Replacement Crews.

4 At closing argument, plaintiff’s counsel confusingly conceded, then repudiated, then later
5 conceded after questioning by the court, that the focus of the plaintiff’s PAGA claim was not
6 directed at the defendant’s employees who worked on daylight crews in those locations where
7 there were no time-pressures associated with lane closures. Rather, the crux of the challenged
8 practice in this case was directed at defendant’s failure to afford employees working on nighttime
9 road paving and replacement crews rest breaks in which they were relieved of all duties and in
10 which management relinquished all control.⁸

11 Both plaintiff and defense witnesses testified that during these nighttime road replacement jobs –
12 which generally entail time-limited lane closures -- workers do not receive fixed rest breaks at
13 defined intervals during the shift.⁹ Instead, Security Pacific expected that rest breaks could be
14 accomplished by having their crews take breaks during downtimes in the overnight construction
15 process.¹⁰

17 ⁸ In the post-trial brief, plaintiff once again attempted to re-define its “aggrieved employees” group to extend
18 beyond the defendant’s nighttime freeway paving operations employees. Defendant objected strenuously to this
19 “about face” by the plaintiff. (See Defendant’s Motion to Strike Plaintiff’s Post Trial Brief at 3). The Court agrees
20 with the defendant. After five years of litigation and nine years of trial, and two recesses for the plaintiff’s counsel
21 to confer during their closing statement and rebuttal, the plaintiff identified a representative group upon which the
22 action was asserted. This decision cannot be revisited two weeks after the close of the case.

23 ⁹ Defendant’s witness Jeremy Strobl testified that the defendant’s rest break policies were no different on the lane-
24 closure road replacement jobs than on jobs where lane closures were not required. That testimony was flatly
25 contradicted by defendant’s witnesses Shane Hunter and Ray Guillen, both of whom supervised night crews on Cal
26 Trans road replacement policies. Unlike many defense witnesses, these supervisors testified that break times were
27 not fixed and that employees were told and were expected to take their breaks during “downtimes” in the
28 production process. This admitted practice stands in stark contrast – and contradicts – the testimony of many of the
29 defendant’s witnesses who worked almost exclusively on day shifts that they were authorized and permitted to take
30 fixed and regular rest periods.

31 ¹⁰ As for this group, the credible testimony provided by both plaintiff’s and defendant’s witnesses clearly supports
32 that roadway replacement and repair crews, who operated largely overnight and subject to Cal Trans lane closures,
33 generally did not receive fixed rest breaks but, instead, were instructed by their supervisors to use “downtime” for
34 meal and rest breaks. This evidence provides a basis upon which the plaintiff can claim a shared employment
35 practice by Security Paving – at least as to a cognizable group of employees -- upon which a representative action
36 can be based. Cf. *Bronco Wine Co. v. Frank A. Logoluso Farms* (1989) 214 Cal.App.3d 699, 720.

1 According to the defense witnesses, during these downtimes, employees were free to leave their
2 equipment, leave the location and otherwise absent themselves from the immediate vicinity in
3 order to take a legally compliant rest period during which they would not be subject to managerial
4 control.

5
6 The credible testimony at trial clearly failed to corroborate the defendant's version of how
7 downtimes were, in fact, used by nighttime construction crews. The credible testimony of a
8 number of witnesses established that a heavy equipment worker was not free to leave his vehicle
9 or that laborers performing traffic control could not abandon their positions during "downtimes" in
10 order to receive a legally compliant – management control-free – rest period. Carpenters were not
11 allowed to simply stop working on pouring forms in order to take a ten-minute break. Credible
12 and compelling testimony from a number of foremen and crewmembers supports the court's
13 finding that workers were instructed to "stay busy" during downtimes. In fact, on more than one
14 occasion, Jon Shields was "written up" for sleeping in his truck during a downtime. If, as
15 defendant argues, an employee was free of management control during this period, why would the
16 defendant have written him up for the exercise of that autonomy?

17 The credible testimony of a number of witnesses called by both plaintiff and defendant establishes
18 by a preponderance of the evidence that Security Paving did not relinquish control over these
19 employees at any time once they arrived at nighttime road paving worksites.¹¹ Throughout these
20 shifts, the various trades were performing interrelated and time-critical functions. Supervisorial
21 control over their activities – including being directed by walkie-talkie – was continuous.

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25 ¹¹ Darrel Matheson, a foreman for Security Paving for four years, credibly testified that during the "set up work" part
26 of a paving process -- which accounted for about 20 percent of his shift working on highway projects -- you could take
27 a meal or rest break, but that after the "pour" started -- usually about 80 percent of the shift time -- you could not take
28 any breaks. Work during that part of the shift continued without interruption. As he explained, when you are pouring
concrete, "it's not stopping . . . because you can't have a cold joint on your concrete slab you're pouring." To afford the
crew a break (even of ten minutes) would mean that "all your concrete is going to be hard behind you by the time you
take off again." And, while authorized or permitted breaks would have been possible had additional "relief"
crewmembers been provided, Security Paving did not typically structure its crews with relief workers.

1 Moreover, the credible testimony of a number of workers on these nighttime paving crews
2 corroborated that they were expressly told by their foremen to stay busy at all times. To quote one
3 witness who patiently tried to correct defense counsel during cross-examination: "You're not
4 understanding, sir. There's no rest breaks. It's not a matter of taking one. You don't get them.
5 They're not there." Dennis Hake, who worked as a grading foreman, was instructed by his
6 superintendent to have the crewmembers work through meal breaks.

7
8 Plaintiff's witnesses credibly testified that they were not free to use pauses in the production
9 process to rest. In fact, one witness credibly testified that the company's reputation was that if you
10 couldn't work and eat at the same time, you didn't eat. While waiting their turn to perform a task,
11 workers were instructed to stay busy – sweeping, chipping the cement trucks, cleaning the interior
12 – any number of tasks. Credible testimony established that if you didn't stay busy or if you left
13 even for the minute or two it would take to relieve yourself, you might find yourself out of a job.

14
15 Ryan Tevelde, a heavy equipment operator called by the defense, credibly testified that he never
16 believed that he could walk away from the equipment during "downtime." Shane Hunter, another
17 of the defendant's witnesses, testified that although he expected employees to use a slow period
18 for breaks, he also talked to them during their breaks and wanted them to stay busy removing
19 cement from their vehicles and standing by their trucks while waiting in the line for the cement
20 pour.¹² Hunter complained that he caught Jon Shields napping while waiting in line to pour
21 concrete – without ever ascertaining whether Shields was, in fact, taking a rest break.

22
23 John Guerra testified credibly about once trying to take a break during one such "downtime."
24 While waiting for dowel bars as part of a cement road replacement job, he bent down to take a
25

26
27 ¹² A compelling piece of testimony by Dennis Hake underscores that "downtimes" were not duty-free. When he got
28 "mad," Hake would instruct his crew that they were taking a lunch break today – and during that period of time, they
would be duty-free. When he wasn't fed up with the company, however, he followed his bosses' instruction and
instructed his crews to "work through."

1 rock out of his shoe and reached into his lunch box and took out a Gatorade and drank it. During
2 that brief moment, his Superintendent Shane Hunter, pulled up in his truck and instructed him to
3 get to work. As Guerra testified (in a version where the language had been cleaned up for court),
4 he was told by Shane that "there's something for you to do -- do it." As shown by this testimony
5 and that of other plaintiff's witnesses, even during downtimes, these crewmembers were told to
6 keep busy.

7
8 The Court finds, based on this credible testimony, that production "downtimes" were not free of
9 supervisory control. In fact, the named plaintiff and aggrieved employee, Jon Shields, testified
10 about the practical limitations on affording rest breaks (in which supervisory control was
11 surrendered) given the size of the crews and the amount of work undertaken by Security Paving
12 during any one shift. As he credibly and competently described, the process of removing and
13 replacing highway surfaces is a continuous one.¹³ The workers operate, essentially a train, of
14 complementary and interconnected tasks. Each one of which is dependent on the "just in time"
15 presence of the next step. As a member of a cement paving crew, the pour required continuous
16 and uninterrupted work. And, supervisors ensured that continuity by ongoing and constant
17 supervision and control. While it might have been possible to hire relief workers to allow these
18 breaks to occur, Security Paving did not do so. Nor did they pay these workers premiums when
19 the nature of the work occasioned missed rest breaks.¹⁴

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24 ¹³ Exacerbating the continuous nature of the construction work being performed by pavement crews was the additional
25 pressure of Cal Trans' lane closure rules. As credibly testified to by Darren Jones, the closure time of a freeway lane
is limited. The work to be done has to be completed in a short period of time. "Once we got started, we didn't stop
until we were -- the job was finished for the night."

26 ¹⁴The only evidence showing the payment of premium pay was for the period after January 2015 and shows only 19
27 premiums paid for the entire two and a half year period. Darren Jones credibly testified that in his experience if a rest
28 break could not be afforded, they were entitled to compensation for those missed breaks. He never received extra pay
from Security Paving for those missed rest breaks. Dennis Hake also credibly testified that neither he nor his crew
received premiums for missed rest breaks.

1 The company also monitored its crews to ensure that the workers kept busy all the time. Hake
2 testified that his Superintendent – who was Security Paving’s owner’s son Jason – would sit in a
3 pick-up truck across from work sites and monitor the crews to ensure that they remained busy at
4 all times. As Hake described it, he was "bird-dogged" by Jason to ensure that his crew did not
5 take breaks.

6
7 On occasion, especially at the beginning of a shift during which the project was being set up,
8 workers might be able to take a single rest break during which they were not subject to the control
9 of their supervisors. For example, on a night paving project, the volumetric truck drivers might be
10 able to take a ten-minute break on their way to the freeway location after filling up their truck.
11 Once they arrived at the work site, however, there were no periods of time in which they were free
12 to leave their vehicles, or even take a nap while in their vehicles. Second rest breaks during an
13 eight-hour shift did not occur.

14
15 A number of these witnesses credibly testified that they were either expressly told or were led to
16 believe that you would be fired if you requested or took a rest break. Darren Jones testified that
17 "we knew we weren't allowed to [take a rest break]." And, that if you tried to take a break or
18 lunch, then there was a good chance you probably weren't going to work the next night. John
19 Guerra credibly testified that when workers complained about the absence of breaks, they would
20 not be working at the job site the next day.

21
22 The absence of any written policy or any means by which the company could verify that
23 employees were receiving their required rest breaks further supports the Court’s finding that
24 legally compliant rest breaks were neither authorized nor permitted. Although there was a
25 contention by the defendant that it orally described its meal and rest break policy at every
26 “tailgate” safety meeting and obtained signed statements from employees attesting to that fact, the
27 Court believes the credible testimony that such presentations did not occur. According to the
28 credible testimony of a former foreman for Security Paving, Darrel Matheson, he never spoke with

1 management regarding any rest break policy and he irregularly attended or conducted tailgate
2 meetings. He estimated that he had maybe 15 or 20 of such meetings during his four-year tenure
3 at Security Paving. And, at those meetings, he never discussed rest breaks. Rather, as makes
4 sense, he discussed the work that they were to be performing that week and any unique safety
5 concerns posed by that work. Matheson also credibly testified to handing out multiple, blank
6 forms to his crews to sign before they could receive their paychecks.¹⁵

7
8 Nor did complaints made by these workers as to the unavailability of rest breaks to their unions
9 obtain needed redress. As credibly testified to by several of the plaintiff's witnesses, they told
10 business agents and union officials that they were not getting bargained for rest breaks. But, those
11 complaints were not acted upon.¹⁶ For a significant portion of the relevant period, the economy
12 and construction industry were in steep decline. Work was scarce. Unions were unwilling to
13 lodge complaints against contractors when "we just started to get work again." The unions were
14 unwilling to "piss off" Security Paving – a large employer -- by lodging a complaint about missed
15 rest breaks. And, employees were concerned that if they complained about missed breaks, that
16 they would be "blackballed" at the union hiring hall. As John Guerra reminded everyone, "I
17 wanted just to work, man . . . I lost everything in 2009, you know. I was just getting on my feet
18 again. I was just happy to be working." When Bret Leutzinger complained to his union, he was

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22 ¹⁵ Being handed blank forms to have their crews sign was also testified to credibly by Hake. He also recalled being
handed "stacks of sheets" by his superintendents when they were trying to catch up on their paperwork.

23 ¹⁶ The court finds entirely not credible the testimony of a number of union representatives called by the defendant as
24 witnesses. Unlike the characterization of these witnesses as disinterested, they clearly had an interest in appearing to
25 have performed their role as protecting their members. And, surprisingly, one representative in particular, testified as
26 if he currently worked for Security Paving. His testimony was remarkably similar to answers given by current
27 employees of the firm, even though he hadn't worked at the company in some time. The union reps claimed to have
28 never heard a complaint; claimed that their business agents routinely monitored working conditions at these worksites
and generally testified to policies at Security Paving for which they had no personal knowledge. Their demeanor
while testifying was hostile and defensive and they expressed no real concern about the possibility that their union
members had received unfair treatment by an employer. They appeared to be entirely captured by a large employer
who afforded their members regular and high-paying work. The court affords the testimony of these witnesses no
weight.

1 told that there were over 500 operators on the union hall hiring list and that he was lucky to have a
2 job.

3
4 Providing the plaintiff's witnesses with an extra measure of credibility is the fact that the testimony
5 that these witnesses provided at this trial is potentially adverse to their financial interests. These
6 workers work for a number of different contractors and remain busy by moving from one project
7 to the next. It is not without considerable risk to future employment that a worker comes forward
8 to report the types of violations testified about in this case. That they were willing to do so, and
9 that they did so in such a credible fashion, gives even more weight to this testimony.¹⁷

10
11 The witnesses called by Security Paving to rebut the aggrieved employee's claims fell into two
12 general groups -- union officials who had every reason to deny ever hearing or grieving a
13 complaint about missed breaks, and current employees, who also had financial and employment
14 reasons to testify as they did.¹⁸ Every single defense witness who worked for Security paving
15 testified that he had not missed a single rest or meal break (although it might have been briefly
16 postponed for less than ten minutes) or, if he had, he had been paid a premium.

17
18 These witnesses and their testimony were neither credible nor was the testimony corroborated by
19 contemporaneous employment or payroll records. Despite testimony that missed rest breaks were
20 recorded by foremen on timesheets, the defendant failed to mark or admit as a separate exhibit
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23 ¹⁷ By contrast, the defendant's current employees uniformly sponsored the wholly incredible testimony that they were
24 indifferent to losing their jobs -- all of which were incredibly high-paying positions. These defense witnesses had an
25 obvious and clear financial motive to testify in a way to assist the company. When each and every one of them
26 testified that they were indifferent to the possibility of losing their six-figure salaries, they lost a good deal of
credibility. Equally problematic to their credibility was the recurrent admission that they'd spoken with defense
counsel and had been told what questions to expect to be asked.

27 ¹⁸ The union witnesses -- all of whom uniformly testified to hearing nothing and knowing nothing -- were entirely not
28 credible. They actually testified to rest period practices at Security Paving despite their testimony that they personally
had not investigated any complaints nor had they regularly visited Security Paving work sites.

1 even one of those handwritten, amended timesheets.¹⁹ Nor did the company produce any evidence
2 of the premium payments made for most of the relevant period for these missed breaks. The
3 payroll system evidence of premium payments showed 19 missed rest periods since January 2015
4 -- a remarkably small number in light of the company's 500 or more employees and the nature of
5 the work being performed.²⁰

6
7 Many of the witnesses called by the defendant did not work on projects that involved lane closures
8 or night work. Jeremy Strobl rarely worked on freeway repair and panel replacement. Kenneth
9 Dahlke worked at the concrete plant. Charles Graham and Jose Munoz both worked day shifts as
10 carpenter journeymen and carpenter foremen. Robert Walsh worked as a laborer on day shifts.
11 Ryan Tevelde, Chris Manoukian, Abel Lemus, Raymond Reames, Eduardo Castaneda, Kamran
12 Sepanlou and Dan Jelenicki predominantly worked on day shifts at locations where there were no
13 temporary lane closures.

14
15 Of those witnesses who worked day shifts, their testimony was inconsistent and failed to establish
16 defendant's claim that it had a consistent and enforced policy of authorizing and permitting two
17 rest periods -- one in the morning and one in the afternoon. Many of these defense witnesses
18 testified to different rest break practices in key aspects. Graham's crew had fixed rest and meal
19 breaks and would be required to ask permission if they wanted to take a break at a different time.
20 Jose Munoz, also a carpenter foreman, instructed his crew when to take their breaks. Walsh took
21 his breaks at fixed times and never deviated from that schedule for "any reason." Ryan Tevelde,
22 an equipment operator, took regular breaks but would deviate from a fixed schedule if necessitated
23 by the work being performed without asking permission.

24
25
26 ¹⁹ In defendant's post-trial brief, defendant drew the court's attention to two pages of an admitted exhibit of hundreds
27 of certified payroll records -- an exhibit that was so voluminous that it was submitted in the form of a thumb drive.
(Exh. 55). The absolutely scarcity of such examples supports the conclusion that, in the vast, vast, vast majority of
occasions, missed rest break premiums were not paid by the defendant.

28 ²⁰ Until 2015, defendant did not have a time-keeping system that was capable of capturing or preserving this
information.

1 Only five of the defendant's nineteen witnesses worked on the types of shifts that are being
2 challenged by these aggrieved employees -- overnight road replacement and paving shifts
3 involving lane closures during which work assignments for lane removal and replacement had to
4 be performed within a relatively short time period. As to the small number of defense witnesses
5 who had worked on night shifts, they did not testify consistently or credibly as to whether and
6 when rest breaks were provided during those assignments. As discussed above, two defense
7 witnesses testified that they instructed their crews to use "downtimes" for meal and rest breaks.
8 Tevelde testified that he took breaks and he never believed that he could walk away from the
9 equipment during "downtime." Abel Lemus testified that he took his breaks during downtime.
10 But, Kamran Sepanlou, testified that he took breaks whenever he wanted to and he was free to
11 take a break and walk away from his equipment during a cement pour if he wanted and no
12 questions would be asked.

13
14 Other of these defense witnesses were impeached by prior testimony or appeared during their
15 testimony as evasive, defensive and not credible. Michael Rodriguez, the defendant's "PMQ" was
16 entirely not credible. His demeanor while testifying was hostile and defensive. His testimony, in
17 critical aspects, defied common sense. For example, although he testified that there was no
18 record-keeping by the defendant regarding rest breaks until 2015, he was confident that before this
19 change in 2015 employees had been paid premiums "many times" for missed rest breaks.²¹ This
20 testimony was contradicted by his deposition testimony. At his deposition, he testified that he was
21 not aware of employees being paid a one-hour penalty for rest breaks.²² He also incredibly
22 testified that meal and rest breaks were discussed at *every* tailgate meeting, even though he was
23 personally present at only maybe 20 of the more than 2000 weekly meetings held over his seven-

24
25
26 ²¹ The documents show that Security Paving has only paid 19 hours of missed rest periods since the new program was introduced in January 2015.

27 ²² Equally incredible was defendant's witnesses' claim that Wage Order 16 was prominently posted at all the
28 overnight road paving job sites. There was no fixed location based on the nature of these projects at which such a posting could have been provided. The credible testimony of plaintiff's witnesses is that they never saw any postings because they worked hours in which the main offices were closed.

1 year employment history at Security Paving. His most incredible testimony was his claim that the
2 2015 improvement in record-keeping at Security Paving had nothing to do with this lawsuit,
3 despite a complete lack of foundation as to that question because he admitted that he'd never
4 attended a meeting during which the lawsuit was discussed.

5
6 Shane Hunter, a superintendent for Security Paving, provided some of the most unbelievable
7 testimony at the trial. He acknowledged that the road replacement crews were expected to
8 complete a target of pavement removed and pavement replaced for each shift. He also testified
9 that Cal Trans lane closure requirements and stipulated time for completion in contracts are factors
10 in making work schedules. He then, however, went on to testify that these conditions have no
11 effect on the pace at which work is performed and whether breaks are authorized and permitted.
12 He admitted that even though there are liquidated damages as much as \$30,000 per hour, the
13 workers would never work through lunch or breaks for the sake of contract completion. He then,
14 amended his testimony and admitted that although he did discuss daily project completion
15 deadlines with the foremen who reported to him, he never discussed project completion targets
16 with them. How one can discuss one without discussing the other was never made apparent. His
17 inconsistent testimony severely affected the credibility of his testimony regarding whether rest
18 breaks were authorized and permitted by the defendant.

19
20 The defense witness who offered the most unbelievable testimony was Ray Guillen, the foreman
21 who worked, at least for some relevant period, with plaintiff Jon Shields. Guillen was sullen,
22 defensive and avoidant while testifying. His posture and attitude revealed an unbelievable
23 antipathy for the plaintiff. Like other defense witnesses, Guillen started answering questions
24 before defense counsel even finished asking them -- showing that he clearly had been told what
25 questions would be asked and had prepared answers with the assistance of someone else. During
26 cross-examination, Guillen was visibly angry with plaintiff's counsel.

1 Moreover, Guillen's testimony made no sense. His version of Bret Leutzinger's complaint about
2 the absence of breaks is one example. Why would an employee voluntarily retreat from a
3 complaint about receiving breaks -- as Guillen testified? The only logical explanation -- which
4 was proffered by Leutzinger himself -- would be that the employee believed that he would be
5 retaliated against if he continued to complain.

6
7 Another incredible part of Guillen's testimony is that he told his crews -- each and every week at
8 every single tailgate meeting -- about the company's meal and rest break policies. And, what
9 would he have told them? According to him, crews were to take breaks while there was
10 "downtime." The problem with that testimony is that when Jon Shields took a nap during such a
11 "downtime" break, he was written up -- twice. So, if you are disciplined for taking a nap during
12 downtime, how can you take a break during which you are free from management control? How
13 does a foreman know if the nap you are taking is your break or not? How can you be relieved of
14 all responsibility, and yet be disciplined for taking a nap during the same downtime?

15
16 That the defendant is subject to oversight by Cal Trans and other regulatory agencies does not
17 persuade the court that duty-free rest breaks during downtime were authorized and permitted. It
18 would be virtually impossible for the intermittent presence of government representatives during a
19 nighttime road replacement operation -- who would be focused on progress of the task,
20 engineering/plans or questions of safety compliance -- to detect the absence of rest breaks and/or
21 the failure to pay a premium wage for those missed breaks. Even the occasional business agent of
22 the unions failed to detect the defendant's non-compliance. As credibly testified to by a number of
23 plaintiff's witnesses, employees were too scared to complain and business agents were too
24 captured by the employer to investigate. Again and again, the absence of a complaint was
25 considered by the union to be a reason not to investigate.

26
27 Nor does the existence of a number of collective bargaining agreements -- all of which were
28 admitted as exhibits during the defendant's case -- exonerate or excuse the failure by Security

1 Paving to authorize and permit nighttime road repair and replacement crews to take legally
2 compliant rest breaks. While the defendant may have believed that it provided a complete defense
3 for the workplace practices it engaged in, it does not – as a matter of law – provide that protection.
4 And, that the company was required to pay for an eight-hour shift, even if the shift workers
5 completed their tasks before eight hours elapsed does not provide an excuse or defense to the
6 company’s failure to authorize and permit employees to take rest periods, or to pay premiums for
7 missed periods.²³

8
9 In conclusion, the plaintiff has met his burden of proving that the defendant failed to comply -- at
10 least with regard to nighttime road replacement and repair crews -- with the Labor Code's
11 requirements with regard to rest breaks.

12
13 C. The Petersen Survey and Damage Study Are Entitled to No Weight

14
15 Having established the factual existence of a violation of the labor laws based on Security
16 Paving’s failure to afford nighttime road repair and replacement crews legally compliant rest
17 breaks, the next question is how many aggrieved employees on how many shifts failed to receive a
18 legally compliant rest break?

19
20 Under Labor Code Section 2699(a), aggrieved employees can initiate actions to recover civil
21 penalties for Labor Code violations that may be recovered by the Labor and Workforce
22 Development Agency (“LWDA”) or any of its departments, divisions or employees. To prevail in
23 his representative claims, Plaintiff must prove Labor Code violations with respect to each and
24 every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA. *See*
25 *Hibbs-Rines v. Seagate Tech., LLC* (N.D. Cal. Mar. 2, 2009) 2009 WL 513496, at *4.

26
27 ²³ Although one or two witnesses testified to leaving early on those days when rest breaks were missed, the vast
28 majority of the witnesses for both sides testified to working an eight-hour shift and remaining at work until the end of
the shift.

1
2 Such actions are fundamentally law enforcement actions, with the aggrieved employee acting as a
3 private attorney general to collect penalties from employers who violate labor laws. *Esparza v. KS*
4 *Industries* (2017) 13 Cal.App.5th 1240-1241 (the employee plaintiff represents the same legal right
5 and interest as the LWDA). In a PAGA representative action, the government enforcement entity
6 is “always the real party in interest in the suit.” This is an important distinction between civil
7 penalties and statutory damages. *Id.* at 1241.

8
9 To establish the number of Security Paving employees who were not afforded and permitted a
10 legally compliant rest break during the PAGA period, plaintiff proffered a survey and report
11 prepared by Dr. Jeffrey Petersen. This survey was undertaken to measure how many aggrieved
12 employees during the PAGA period missed a legally compliant rest break and to compute their
13 unpaid wage amounts, penalties and interest.²⁴

14
15 As a preliminary matter, Dr. Petersen received from plaintiff’s counsel a list (“the July 2017 list”)
16 of individuals provided by the defendant as part of a “contact list” process. Of the 1013 names on
17 that list, 858 of these individuals had phone numbers. If an individual did not have a phone
18 number, he or she would be excluded from consideration for the survey.²⁵

19
20 Dr. Petersen then randomly ordered the remaining names from the July 2017 contact list provided
21 by the defendant and identified the first 400 persons on this list.²⁶

22
23 ²⁴ Before trial began, defendant moved to exclude Dr. Petersen’s survey as unsupported by general scientific theory
24 and having been conducted using improper scientific survey techniques. *See Sargon Enterprises, Inc. v. University of*
25 *Southern California* (2012) 55 Cal.4th 747, 772. Although the court denied that motion, it did so with the
understanding that the weight to be given to the plaintiff’s evidence would be independently evaluated after the
conclusion of all the testimony. *Cf. Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 60.

26 ²⁵ Although Dr. Petersen testified that the elimination of employees without phone numbers would have no effect on
27 the survey results because whether or not an individual has a working phone number is not likely a source of bias, his
only authority for this proposition was an article that he wrote. (Exh. 41 at 3, n.12).

28 ²⁶ Dr. Petersen testified that he believed that 400 was a sufficient size for his survey based on his “pilot study” that he
claims to have performed previously. Dr. Petersen did not perform a pilot for his 2017 survey. The survey that he

1 Dr. Petersen then contacted Susan Allman to survey these persons. Ms. Allman is a CPA and is
2 his business partner's daughter-in-law. Ms. Allman has received no formal training in survey
3 techniques; but she conducted two other surveys for Dr. Petersen. Dr. Petersen gave Ms. Allman
4 instructions on the telephone as to the "proper survey protocol."²⁷ Dr. Petersen instructed Ms.
5 Allman to keep a call log to detail her interaction with potential survey participants, including
6 whether she was able to validate that the phone numbers belonged to the people on the random
7 list.

8
9 Ms. Allman attempted to call each individual on the list of 400 four times. Out of the 400, 162
10 had valid phone numbers and 91 participated in the survey.²⁸

11
12 In the survey that Dr. Petersen prepared, he asked the participants whether they had *received* rest
13 breaks, which he defined as a ten-minute period where they were relieved of their job
14 responsibilities.²⁹ (Exh. 41 at 22 (emphasis added)).

15
16 If the participant provided an answer, such as "everyday" or "always," the survey would conclude.

17
18 submitted to the court for purposes of the 2016 motion for class certification was not a "pilot" for this survey – despite
19 his testimony to the contrary. The declaration filed by Dr. Petersen in support of the 2016 survey did not mention nor
20 did it describe the survey conducted in 2016 as a "pilot" survey. Further, the 2016 survey asked different questions
21 than those posed in the 2017 survey. Dr. Petersen's testimony where he claimed that the 2016 survey was a pilot for
22 the 2017 survey is wholly not credible and generally (adversely) affected his credibility with regards to his entire
23 testimony.

24
25 ²⁷ That protocol and the particular training received by Ms. Allman was not described in Dr. Petersen's report, other
26 than by citing to a chapter in a book written by Robert Groves. Ms. Allman was not given scripts regarding certain
27 responses to particular inquiries by the participants; she was told only to refer questions to Dr. Petersen. Ms. Allman
28 was not told to make her phone calls during identified times of the day, nor was she instructed on how to record
information provided by the participants fully and accurately. At the time that she conducted the survey, Ms. Allman
was aware of the lawsuit, the company and that the survey sought to obtain information regarding the participant's
employment.

²⁸ Listed employees who spoke Spanish were eliminated from participation in the survey because Ms. Allman did not
speak Spanish. (Exh. 41-1).

²⁹ Specifically, the survey asked each participant: "[t]hinking about your entire employment period at Security
Paving and all the different projects you worked on; if you worked a five day work week, how many of those days
would you receive a 10 minute paid rest break for every four hours worked, on average?"

1 For all other respondents, the survey asked each participant to estimate the exact number of days
2 that they had *received* a rest break. (Id.)

3
4 Then, the survey presented the participants with an open-ended question: “What was the reason,
5 or reasons, you did not receive the rest breaks?” (Id.)

6
7 If the participant reported that they did not receive a rest break, the survey then asked whether
8 they’d received a payment for their missed rest break time. (Id.)

9
10 The survey also asked the participants if the frequency regarding receiving rest breaks changed
11 depending on the project and they were asked, by year, to estimate for each year worked how
12 many rest breaks they received, on average. (Id.)

13
14 The potential survey participants knew about the litigation-related purpose of the survey in
15 advance of receiving a phone call. In a letter sent by plaintiff’s counsel to those employees on the
16 July 2017 list in advance of the survey being conducted, the plaintiff’s counsel told the potential
17 interviewees that they were “potentially” aggrieved employees. (Exh. 41 at 4, 25). In the event a
18 survey participant didn’t read or forgot about the letter, Ms. Allman reminded the participants that
19 they were potentially interested parties in a lawsuit: “[w]e have been asked by the lawyers who
20 seek to represent employees who performed work for Security Paving in a collective action
21 lawsuit to conduct a survey.” (Exh. 41 at 21).

22
23 The survey was conducted over a very brief period of time – during approximately six days in late
24 August 2017. (Exh. 41-1 (Excel spreadsheet of Allman call-log contained on disc attached to the
25 hard copy portion of Exhibit 41)).

1 For those persons who participated in the survey, their responses to the open-ended question 6
2 were recorded by Ms. Allman.³⁰ These answers were provided to Dr. Petersen who reviewed and
3 coded the information obtained in the survey. Specifically, Dr. Petersen took these answers to the
4 open-ended question 6 asking the participant to explain why a rest break had not been provided
5 and then assigned either a 1 or 0 to those responses. A 1 was used to signify that a break had been
6 provided and a 0 was used to show that a legally-compliant break had not been received. (See CD
7 attached as part of Exhibit 41 at Excel Tab Analy L2). Thus, coding was used by Dr. Petersen to
8 interpret answers to the open-ended question 6 ("What was the reason, or reasons, you did not
9 receive the rest breaks?") to determine how frequently a violation occurred.

10
11 Dr. Hildreth, defendant's expert, challenged certain of the coding decisions made by Dr. Petersen.
12 For example, he declined to agree with Dr. Petersen that an answer of "Don't know just went
13 along with the program" should be counted as a rest break violation. Another example, "pouring
14 concrete they would leave early" was also recorded as a violation, even though the employee can
15 elect to take their rest break at the end of the shift by leaving early.

16
17 When asked to explain the methodology that he used in assigning a violation to an explanation,
18 Dr. Petersen vaguely testified that these answers didn't "indicate any personal choice to me." As
19 he explained further why he coded certain answers as violations:

20
21 "Well, they were just – the situation, as I understood it, is they're just out there working
22 and they didn't get a break, so they don't know why they didn't get a break. It just didn't
23 happen."
24
25
26
27

28 ³⁰ An additional four responses were included by Dr. Petersen in his report, but they were obtained in an earlier survey conducted by him as part of plaintiff's class certification motion.

1 Based on this coding, Dr. Petersen then computed the percentage of survey participants who stated
2 that they did not receive all of their required rest breaks due to reasons other than personal choice
3 and computed PAGA penalties based upon this information.

4
5 Dr. Hildreth, who testified for the defendant, criticized a number of errors in the design and
6 implementation of this survey and further challenged the conclusions reached by Dr. Petersen.

7
8 The Court finds the testimony of Dr. Hildreth very credible and adopts, as findings, many of his
9 conclusions with regard to the unscientific nature of Dr. Petersen's survey.

10
11 First, the sample employed by Dr. Petersen was self-selected and biased. Before the survey
12 process even began, the plaintiff's law firm sent a letter out to persons on the 2017 contact list to
13 inform them of the impending survey contact and questionnaire. The letter explicitly stated the
14 plaintiff's law firm was preparing for trial and that, although none of them would be required to
15 appear or attend the trial, they were potentially aggrieved employees. In this way, the letter
16 entreated future participants in the upcoming survey by a promise of potential financial gain.³¹
17 (Exh. 41 at 25). Similarly, the interviewer in this case also knew about the lawsuit. Thus both
18 respondents and interviewer were on notice of the possibility of financial gain associated with
19 certain answers to the questions that were to be posed. This survey design is clearly contrary to
20 the "double blind" standard methods of scientific survey research.³²

21
22 The survey letter and script also allowed participants to believe that their answers would not
23 subject them to legal process, thus providing them with a degree of anonymity. These notices

24
25
26 ³¹ In the event that survey participants had not received the letter or had forgotten its contents, they were reminded as
27 part of the telephone script that "this survey is part of a collective action lawsuit." While an advance letter may have
been useful to improve respondent cooperation, Dr. Hildreth competently testified that these should be written without
mentioning the purpose or the sponsor of the survey.

28 ³² Although Dr. Petersen (again citing only to his own article) opined that double-blind surveys were impossible in
wage and hour cases, he cited no factual basis for that conclusion.

1 gave the impression that any information the survey provided would be anonymous. As Dr.
2 Petersen himself acknowledged in one of his articles, the promise of anonymity increases bias
3 because the participants will exaggerate their reported harm. Both the letter and the survey taker's
4 remarks in this case alerted and informed a specific sub-section of the sample that they were
5 aggrieved and could exaggerate their alleged harms without consequence.

6
7 Second, the sample size selected by Dr. Petersen was too small to obtain the 95 percent confidence
8 estimates sponsored by Dr. Petersen. Moreover, the reason provided by Dr. Petersen to support
9 his decision to limit the sample size to 400 (i.e., that a pilot study was performed previously and
10 supported this sample size) is found by the court to be factually untrue.

11
12 Third, even if the survey methodology were proper, the survey questions themselves failed to
13 elicit how often a violation of the relevant Labor Code rest break provisions had occurred. By
14 asking whether they received breaks, employees were incorrectly directed to report every instance
15 in which a rest break was not 'received,' not whether the employer authorized or permitted such
16 breaks – which is what the law requires.³³

17
18 Fourth, the use of an open-ended question failed to convert the improper "received" breaks
19 question into one that discovered whether employees were "authorized and permitted" but simply
20 elected not to take breaks. Dr. Petersen coded answers from respondents in a biased and
21 unscientific manner, thus rendering the survey's conclusion as to the frequency of violations
22 invalid. A number of Dr. Petersen's coding decisions demonstrate his partisan viewpoint and his
23 lack of objectivity – taking this survey well outside the bounds of proper scientific study.³⁴

24
25 ³³ An employer is obligated only to authorize and permit rest breaks; it has no obligation to ensure that employees take
26 rest breaks. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033. Employees are free to decline rest
27 breaks. *Id.* Thus, the survey (which inquires as to whether a rest break was received in four separate questions) did
28 not gather relevant information regarding the defendant's liability.

³⁴ Another example of Dr. Petersen's embroilment in this litigation is his computation of the margin of error, which he
admitted was underestimated. Performing the correct scientific calculations and accepting Dr. Petersen's 95%
confidence level, the relative margin of error using a t-distribution (due to the small sample size) was 23.7%. In other

1 Fifth, Dr. Petersen's damages analysis, based on his survey results, failed to utilize rates of pay of
2 specific employees to calculate the amounts due for allegedly unpaid premiums for missed rest
3 breaks. Instead he impermissibly used a 'blended' rate averaging the pay rates of the entire
4 Security Paving workforce. This aggregation is legally impermissible for two reasons. By
5 looking at the entire workforce, Dr. Petersen failed to use the pay rates only of those nighttime
6 shift employees who suffered the violations. Secondly, this use of a blended average is flatly
7 contrary to the requirement of Labor Code section 226.7, which requires a premium be computed
8 as "one additional hour of pay *at the employee's* regular rate of compensation for each workday
9 that the . . . rest . . . period is not provided. *See Medlock v. Taco Bell Corp.* (E.D. Cal. Dec. 11,
10 2015) 2015 WL 10791410 at *5.

11
12 In short, the court concludes that the plaintiff's survey results cannot be used to identify each and
13 every employee who did not receive a legally compliant rest break, nor does it permissibly
14 compute back wages or PAGA penalties for aggrieved employees in this case.

15
16 D. If the Petersen Survey and Damage Study Are Entitled to No Weight, What Is the Effect of that
17 Failure of Proof?

18 The only evidence adduced by the plaintiff to quantify how frequently the defendant failed to
19 provide its nighttime road replacement and repair crews with legally compliant rest breaks was the
20 Petersen survey. The only evidence adduced by the plaintiff to quantify unpaid wages and
21 penalties for the aggrieved employees was the Petersen damage study.³⁵

22
23 words, to give an estimate of the proper penalty with 95 percent confidence, Dr. Petersen's estimate would have to
24 vary by almost a quarter from the lower end to the higher end. While this is, admittedly, better than the 49 percent
25 margin of error in the *Duran* case, it is substantially worse than the 5 or 10 margins of error that Dr. Hildreth testified
26 were found in well-performed statistical studies.

27 ³⁵ Although in his post-trial brief, plaintiff's counsel attempted to reopen the trial to adduce two more evidentiary
28 bases by which to identify the number of rest breaks missed by aggrieved employees, such evidence cannot be
"deduced" from Exhibit 55. Exhibit 55 is a "thumb drive" that holds pdf copies of thousands of handwritten
signatures on the bottom of numerous Security Paving "tail gate meeting" forms and other undifferentiated payroll
reports and business records. It is incapable – without considerable review, selection, computation and handwriting
discernment – of becoming the basis by which to "deduce" the basis for any employee's claim for rest break
violations. It is not, as plaintiff contends, nothing more than "simple math." Moreover, even if it were, defendant has

1 The individual plaintiff, Jon Shields, did not testify regarding the number of rest breaks (or meal
2 breaks) that he contended were not received. None of the witnesses from these crews called by the
3 plaintiff testified regarding the number of shifts they worked during the relevant period and how
4 often, once or twice per eight-hour shift, they were not afforded and provided a legally compliant
5 rest break. Nor did any of these witnesses testify as to their hourly or regular rate of pay.

6
7 Where, as here, the plaintiff has met his burden of proof of establishing the fact of a Labor Code
8 violation but has failed to answer by competent evidence how often that violation occurred, what
9 is the effect of that failure of proof?

10
11 Defendant contends that as plaintiff has failed to adduce any competent evidence as to the
12 measurement of how often the aggrieved employees suffered this violation, it should be granted
13 judgment in this case. In support of that contention, defendant cites a number of cases holding
14 that a plaintiff's failure to establish an amount of damage is fatal to the claim. *See, e.g., City of*
15 *Oakland v. Pacific Gas & Elec. Co.* (1941) 47 Cal.App.2d 444, 450; *Saunders v. Taylor* (1996) 42
16 Cal.App.4th 1538, 1543.

17
18 The court agrees that, in general except as otherwise provided by law, a party has the burden of
19 proof as to each fact the existence or non-existence of which is essential to the claim for relief or
20 defense that he is asserting. *Amaral v. Cintas* (2008) 163 Cal. App. 4th 1157, 1188. On occasion,
21 however, courts may alter the normal allocation of the burden of proof. *Id.* In determining
22 whether the normal allocation of proof should be altered, courts consider a number of factors: the
23 knowledge of the parties concerning the particular fact, the availability of the evidence to the
24

25 been deprived of the opportunity to question a witness who has conducted that mathematical analysis. Plaintiff's
26 attempt to reopen the trial at this late date to adduce alternative evidence to the Petersen survey violates due process
27 and shall not be considered by the Court. *See People v. Bolton* (1979) 23 Cal.3d 208, 213 n.2 (axiomatic that new
28 evidence cannot be adduced in closing argument."); *Garcia v. ConMed Corp.* (2014) 204 Cal.App.4th 144, 159.
Defendant Security Paving's motion to strike Exhibit A and B of Plaintiff's Post-Trial Brief. There is no basis upon
which to reopen the proceeding and to allow plaintiff to present new evidence that could have been presented at trial.
See Town of Atherton v. California High-Speed Rail Auth. (2014) 228 Cal.App.4th 314, 325.

1 parties, the most desirable result in terms of public policy in the absence of proof of a particular
2 fact, and the probability of the existence or nonexistence of the fact. *Id.*

3
4 A long-standing application of burden-shifting occurs in the wage and hour context when an
5 employer's compensation records are so incomplete or inaccurate that an employee cannot prove
6 his or her damages.³⁶ *Id.* Even when the records at issue are not legally required to be maintained,
7 the burden may be shifted. *Id.* at 1190 ("fundamental principle of American jurisprudence that for
8 every wrong there is a remedy, and that, unless countered by public policy, an injured party should
9 be compensated for all damage proximately caused by the wrongdoer.")

10
11 The problem in this case, however, is that the aggrieved plaintiff never argued for that burden-
12 shifting to be applied and defendant adduced no evidence whatsoever from which an estimate
13 could be made of the frequency of the violations or the employees on the nighttime road repair and
14 replacement crews who suffered them. Accordingly, while the lack of this evidence may not be
15 fatal to the plaintiff's PAGA case – as the burden had shifted to the defendant to provide this
16 critical, missing information – it still presents the problem that the Court does not have any
17 competent evidence by which to award unpaid wages or penalties to the aggrieved employees.

18
19 Where, as here, the fact that the defendant has failed to comply with the Labor Code's requirement
20 of authorizing and permitting rest breaks during which employees are free from supervisory
21 control has been established, but the frequency of occurrence of this violation and the employees
22 who suffered this deprivation cannot be identified, nominal damages should be available.

23 Nominal damages are granted neither to compensate the plaintiff nor punish the defendant.

24 Nominal damages can be awarded when the defendant has invaded a cognizable legal interest of
25 the plaintiff, *i.e.*, to be afforded legally compliant rest breaks, even when the plaintiff cannot prove

26
27
28 ³⁶ Outside of the wage and hour context, when the parties have unequal access to evidence necessary to prove a
disputed issue, the party who exclusively possesses facts essential to that claim bears the burden of going forward with
the evidence on the issue, although it is not the party asserting the claim. *See Amaral*, 163 Cal.App.4th at 1189-1190.

1 compensatory damages and sues only to establish a right or to obtain a ruling regarding the
2 defendant's conduct. *See Restatement 2d of Torts* § 907. The award of nominal damages in such
3 cases avoids allowing a wrongdoer to avoid punishment and furthers the public's interest in the
4 robust enforcement of the labor laws. Nominal damages are properly awarded when, although the
5 claimant has shown significant harm, its amount is not proved with sufficient certainty to entitle
6 him to an award of compensatory damages. *Id.*

7
8 In this case, therefore, the aggrieved employees have shown significant harm, but its amount has
9 not been proved with sufficient certainty to allow the court to compute or award civil penalties.
10 Accordingly, the court awards a nominal civil penalty assessment of \$50 for an initial violation of
11 Labor Code § 558.³⁷

12 IV. SHIELDS' INDIVIDUAL CLAIMS

13
14 Jon Shields also alleged individual causes of action for lost wages due to missed meal and rest
15 breaks, waiting period penalties and an individual claim for restitution and/or injunctive under the
16 UCL based on these statutory violations.

17 A. Meal and Rest Breaks

18 California's meal period rules are set forth in Labor Code Section 512 and the Wage Orders.
19 These rules generally prohibit employers from employing an employee for a work period of more
20 than five hours without providing a meal period of at least 30 minutes. As explained and
21

22
23 ³⁷ Injunctive relief is not available under PAGA. PAGA actions can recover only statutory penalties in fixed amounts
24 per violation. *Plaisted v. Dress Barn, Inc.* (C.D. Cal. Sept. 20, 2012) 2012 WL 4356158, *2). Moreover, even if such
25 relief were available, plaintiff adduced no evidence after March 27, 2015 with regard to Security Paving's rest break
practices. Thus, there is no basis to find an ongoing violation that would occasion the need for an injunction.

26 The court declines to award a separate PAGA statutory penalty in this case. PAGA is simply a procedural statute
27 allowing aggrieved employees to recover civil penalties for Labor Code violations. PAGA's plain language confirms
28 that the statute allows only civil penalties. The civil penalty awarded in this case of \$50 must be distributed 75% to
the Labor and Workforce Development Agency and 25% to the aggrieved employees. *See* Labor Code § 2699(i).
Where, as here, Labor Code Section 558 provides a civil penalty, PAGA does not allow a separate double penalty to
be imposed. *See Wert v. U.S. Bancorp* (S.D. Cal. Jun. 23, 2014) 2014 WL 2860287, *2-3.

1 examined in *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, it is not a duty of
2 an employer to ensure that no work is performed. Rather, an employer satisfies its obligation if it
3 (1) relieves employees of all duties; (2) relinquishes control over their activities; (3) permits them
4 a reasonable opportunity to take a 30-minute break, and (4) does not discourage or impede them
5 from doing so.

6
7 Employers must also comply with the meal period timing rules when providing meal periods. In
8 the absence of a waiver, Labor Code Section 512 requires a first meal period no later than the end
9 of an employee's fifth hour of work, and a second meal period no later than the end of an
10 employee's tenth hour of work. This has been construed to mean that a meal break should be
11 afforded no later than the start of an employee's sixth hour of work and no later than what would
12 be the start of the 11th hour of work.³⁸

13
14 Shields' individual claim for missed rest breaks, as discussed *supra*, are controlled by Wage Order
15 16, which provides that "[e]very employer *shall authorize and permit* all employees to take rest
16 periods, which insofar as practicable, shall be in the middle of each work period The
17 authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
18 net rest time for every four (4) hours worked, or major fraction thereof." Wage Order 16-2001, §
19 11(A).

20
21
22 ³⁸ The plaintiff -- at a very late point in the case -- asserted that his individual meal break claim could also be proved
23 based on the absence of potable water, soap and towels with which to wash his hands before eating. *See* Wage Order
24 Section 10(c). Defendant objects, understandably, to the lateness of these allegations. The plaintiff's complaint fails
25 to mention a claim for individual meal period violations pursuant to Section 10(c). Section 10(c) requires that
26 employers provide "an adequate supply of potable water, soap, or other suitable cleansing agent, and single use towels
27 for handwashing." There is nothing that requires the potable water to be provided at any particular location or to be
28 located proximately to the soap and towels. The credible testimony adduced from the witnesses proffered by both
plaintiff and defendant established that defendant's work sites had both potable water and separate wash stations with
soap and hand towels -- albeit at different locations. There was no testimony adduced by the plaintiff suggesting that it
was a problem for soap and towels to be taken over to the potable water for use in handwashing. Thus, it is not
necessary to rule on defendant's late objection to the claim because plaintiff failed to meet his burden of proving that
defendant violated 10(c).

1 Shields testified credibly that he had not been provided legally compliant meal and rest breaks
2 during the eight months that he drove a volumetric mixer for Security Paving as part of a night
3 roadway repair and replacement crews. He did not, however, quantify that claim. He did not
4 testify how often he missed his meal and/or rest breaks, how many shifts he worked for Security
5 Paving during the eight months that he worked on overnight road crews, what his regular or hourly
6 rate was, or any other fact upon which his individual losses could be calculated with reasonable
7 certainty.

8
9 Unlike the position that the PAGA aggrieved employees found themselves in, however, Shields
10 possessed all of the information required to perfect his individual claims. He testified that he
11 verified the hours appearing on his paychecks against his personally maintained work records and,
12 on occasion, brought errors to the attention of his employer.³⁹ Unlike the representative group of
13 employees, Shields as an individual plaintiff possessed the information from which a reasonable
14 estimate of missed meal and/or rest breaks during this eight-month period could have been
15 computed and sponsored at trial.⁴⁰ And, he testified that he knew the number of occasions for
16 which he had received premium pay for missed breaks. But, for reasons not entirely clear to the
17 court, he failed to provide any evidence concerning his damages at trial.

18
19 Where, as here, there is no basis to shift the burden of demonstrating damages to the defendant,
20 the plaintiff's failure to prove the amount of his loss is fatal to his individual meal and rest break
21 claims. *See City of Oakland*, 47 Cal.App.2d at 450.

22
23
24

25 ³⁹ He further testified that he received premium payments for some missed meal periods during the time that he
26 worked on asphalt projects and could answer the question of how often by referring to his "notes." (Trial Transcript –
September 20, 2017 at 26:2-3).

27 ⁴⁰ Jon Shields kept track of every hour that he worked for Security Paving and followed up with the company if his
28 records did not match the company records. (See Exh. 508 at 2.) The company also maintained payroll records to the
same effect for his days of employment. (Id. at 17-21.) The Court, however, declines to consider the plaintiff's late
interjection of this information – which has been extracted, manipulated and computed -- in the post-trial brief as
proof of individual damages for Jon Shields. *See supra* n. 35.

1
2 B. Derivative Wage Statement Claims and Waiting Time Penalties

3
4 Not only did plaintiff Jon Shields fail to adduce competent evidence with which to establish his
5 damages from missed meal periods and rest breaks during the time that he worked with nighttime
6 road paving crews, he adduced no evidence on either his derivative wage statement claim or his
7 cause of action for waiting time penalties.

8 C. UCL Claims

9
10 Jon Shields' final individual cause of action asserts a claim for restitution and injunctive relief
11 under the UCL. There is no evidence in this record as to the amount of any unpaid wages that
12 might be claimed by the individual plaintiff as restitution. Nor is there any basis for injunctive
13 relief presented in this case. Jon Shields was fired by Security Paving many years ago. A UCL
14 representative plaintiff who is no longer employed by or otherwise affiliated in any way with a
15 defendant-employer apart from a lawsuit lacks standing to pursue an injunction against his former
16 employer as he faces no "real and immediate threat of repeated injury from such practices."
17 *Cleveland v. Groceryworks.com LLC* (N.D. Cal. 2016) 200 F. Supp.3d 924, 961-962.

18
19 CONCLUSION

20
21 Shields, as an aggrieved employee on behalf of the representative group, shall receive a nominal
22 award in the amount of \$50. Defendant has prevailed on the remaining causes of action. Plaintiff
23 shall prepare a judgment consistent with this ruling.

24
25 DATED: October 24, 2017

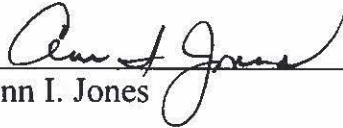
26 
Hon. Ann I. Jones

EXHIBIT 11

TSLF TIME EXHIBIT VILLENA PACERS

Attorney/Paralegal	Hours	Rate	Pre-Multiplier Lodestar
David Spivak (26th Year Attorney)	25.84	\$ 700.00	\$ 18,088.00
Christina Prejean (4th Year Attorney)	0.93	\$ 350.00	\$ 325.50
Maralle Messrelian (Formerly Employed 4th Year Attorney)	11.76	\$ 350.00	\$ 4,116.00
Breck Oyama (13th Year Paralegal)	5.59	\$ 300.00	\$ 1,677.00
Lizzett Cortez (9th Year Paralegal)	1.08	\$ 250.00	\$ 270.00
Lori Fuega (Formerly Employed 10+ Year Paralegal)	0.83	\$ 200.00	\$ 166.00
Nora Greer (15+ Year Paralegal)	41.23	\$ 200.00	\$ 8,246.00
Daniela Linares (1st Year Intake Assistant)	17.77	\$ 150.00	\$ 2,665.50
Emily Ly (1st Year Paralegal)	0.17	\$ 150.00	\$ 25.50
Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	19.72	\$ 150.00	\$ 2,958.00
Grand Total	124.92		\$ 38,537.50

Firm	Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	124.92	\$ 38,537.50
United Employees Law Group	26.30	\$ 19,067.50
Grand Total	151.22	\$ 57,605.00

Attorneys' Fees Requested	\$ 33,000.00
Lodestar Multiplier	0.57

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
11/20/2020	David Spivak (26th Year Attorney)	call with client, intake; prepare Filevine folder	0.50	\$ 700.00	\$ 350.00
11/23/2020	Breck Oyama (13th Year Paralegal)	email team re SOL	0.08	\$ 300.00	\$ 24.00
11/24/2020	Nora Greer (15+ Year Paralegal)	Open file, save docs to file	0.50	\$ 200.00	\$ 100.00
11/25/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Created Competing Cases file	0.08	\$ 150.00	\$ 12.00
12/1/2020	David Spivak (26th Year Attorney)	prepare LWDA notice	3.17	\$ 700.00	\$ 2,219.00
12/1/2020	Maralle Messrelan (Formerly Employed 4th Year Attorney)	review DGS emails re case	0.17	\$ 350.00	\$ 59.50
12/1/2020	Lizzett Cortez (9th Year Paralegal)	Call with client. filed DFEH complaint. Saved to file. Amended DFEH complaint saved to the file and calendared.	0.75	\$ 250.00	\$ 187.50
12/1/2020	David Spivak (26th Year Attorney)	prepare DFEH attachment	0.25	\$ 700.00	\$ 175.00
12/1/2020	David Spivak (26th Year Attorney)	interview client; prepare notes; research owners and dba	0.92	\$ 700.00	\$ 644.00
12/2/2020	Maralle Messrelan (Formerly Employed 4th Year Attorney)	revise LWDA letter	0.75	\$ 350.00	\$ 262.50
12/2/2020	Lizzett Cortez (9th Year Paralegal)	emailed client RTSN	0.08	\$ 250.00	\$ 20.00
12/2/2020	Maralle Messrelan (Formerly Employed 4th Year Attorney)	texts w client to schedule call; call with client	0.50	\$ 350.00	\$ 175.00
12/3/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	LWDA letter	1.50	\$ 150.00	\$ 225.00
12/3/2020	Breck Oyama (13th Year Paralegal)	mtg w/ JB re LWDA submission	0.67	\$ 300.00	\$ 201.00
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Client call re intake	1.00	\$ 150.00	\$ 150.00
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Email client a copy of LWDA	0.17	\$ 150.00	\$ 25.50
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email sent to client re social media privacy settings	0.25	\$ 150.00	\$ 37.50
12/4/2020	Nora Greer (15+ Year Paralegal)	Confer with JB re Preliminary Tasks	0.60	\$ 200.00	\$ 120.00
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Social Media Search	0.83	\$ 150.00	\$ 124.50
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	confer with NG re retainer agreement	0.17	\$ 150.00	\$ 25.50
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Draft evid. preservation lt re cell records	0.43	\$ 150.00	\$ 64.50
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Email to UELG re revising retainer	0.17	\$ 150.00	\$ 25.50
12/7/2020	Nora Greer (15+ Year Paralegal)	confer with JB re retainer agreement	0.17	\$ 200.00	\$ 34.00
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Social Media Search	0.17	\$ 150.00	\$ 25.50
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	BeenVerified	0.50	\$ 150.00	\$ 75.00

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	revised retainer re Pacers name	0.50	\$ 150.00	\$ 75.00
12/8/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Finalized/ mailed out Cell Phone preservation lt	0.50	\$ 150.00	\$ 75.00
12/8/2020	Breck Oyama (13th Year Paralegal)	review/email JB file name corrections	0.08	\$ 300.00	\$ 24.00
12/9/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	uploaded and renamed LWDA submission files and certified mail receipts	0.25	\$ 150.00	\$ 37.50
12/9/2020	David Spivak (26th Year Attorney)	Review and revise the employment records authorization form	0.42	\$ 700.00	\$ 294.00
12/9/2020	David Spivak (26th Year Attorney)	Review and revise evidence preservation letter	0.67	\$ 700.00	\$ 469.00
12/9/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Drafts re Evidence Preservation/Ee record inspection autho	0.83	\$ 150.00	\$ 124.50
12/9/2020	Breck Oyama (13th Year Paralegal)	mtg w/ JB re autho/evid pres, fwd samples	0.25	\$ 300.00	\$ 75.00
12/11/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	uploaded and renamed mail re receipts of LWDA certified mail	0.17	\$ 150.00	\$ 25.50
12/16/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	PAGA/SOS search; downloaded docs and created folders for co. found	0.75	\$ 150.00	\$ 112.50
12/18/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email UELG re contacting P to sign revised retainer	0.25	\$ 150.00	\$ 37.50
12/28/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Draft Evidence Preservation and Document Request	0.33	\$ 150.00	\$ 49.50
12/29/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	draft retainer and FAQ ltr/email to P	0.25	\$ 150.00	\$ 37.50
12/29/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email DGS re Draft Evidence Preservation and Document Request	0.08	\$ 150.00	\$ 12.00
12/30/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	uploaded to P folder and reviewed P file produced by D	0.25	\$ 150.00	\$ 37.50
12/30/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated fv w/OC info	0.08	\$ 150.00	\$ 12.00
1/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email MM/DGS re tmobile ev pres lt; uploaded to file	0.08	\$ 150.00	\$ 12.00
2/8/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review PF file/LWDA letter, call notes w client and draft PAGA complaint	3.00	\$ 350.00	\$ 1,050.00
2/9/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	finalize PAGA complaint, email to DGS for review, email to team re filing	1.00	\$ 350.00	\$ 350.00
2/9/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	texts and call w DGS re case	0.42	\$ 350.00	\$ 147.00
2/24/2021	David Spivak (26th Year Attorney)	Review Fleming v. Marco; summarize for staff	0.25	\$ 700.00	\$ 175.00
3/2/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	saved and entered onelegal expense; email BO	0.08	\$ 150.00	\$ 12.00

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
3/8/2021	Breck Oyama (13th Year Paralegal)	mtg w/ JB re SOP order	0.33	\$ 300.00	\$ 99.00
3/8/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	c/w onelegal re cancelling SOP order	0.25	\$ 150.00	\$ 37.50
3/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	drafted N&A; txt BO	0.17	\$ 150.00	\$ 25.50
3/10/2021	Breck Oyama (13th Year Paralegal)	mtg w/ JB re N&A, review docs	0.50	\$ 300.00	\$ 150.00
3/11/2021	Breck Oyama (13th Year Paralegal)	mtg w/ JB re N&A	0.25	\$ 300.00	\$ 75.00
3/17/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	drafted EDD autho lt to EDD	0.08	\$ 150.00	\$ 12.00
3/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	mailed lt to EDD with attached autho	0.08	\$ 150.00	\$ 12.00
4/1/2021	Breck Oyama (13th Year Paralegal)	check w/ JB re N&A, review POS summons	0.50	\$ 300.00	\$ 150.00
4/1/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	drafted POS Summons; email BO	0.58	\$ 150.00	\$ 87.00
4/7/2021	Breck Oyama (13th Year Paralegal)	review POS and email JB	0.17	\$ 300.00	\$ 51.00
4/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	filed POS Summons and amended POS Summons; email BO; printed for mailing/service on OC; email client copy	0.33	\$ 150.00	\$ 49.50
4/12/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	saved onelegal invoice; updated expenses; email BO	0.08	\$ 150.00	\$ 12.00
5/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	checked file; renamed Ds Answer to Ps Complaint; email CL/UELG a copy; email MM	0.17	\$ 150.00	\$ 25.50
5/19/2021	David Spivak (26th Year Attorney)	review answer and look up OC	0.33	\$ 700.00	\$ 231.00
6/1/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	created discovery/BW/PO folders to start working on discovery	0.08	\$ 150.00	\$ 12.00
7/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	research on competing case	0.58	\$ 150.00	\$ 87.00
7/9/2021	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
7/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated expenses and email DB	0.08	\$ 150.00	\$ 12.00
7/12/2021	Breck Oyama (13th Year Paralegal)	review emails, fwd charge to DB	0.08	\$ 300.00	\$ 24.00
7/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review file; prep for mtg w/DGS	0.08	\$ 150.00	\$ 12.00
8/6/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails; saved docs; review calendar and file; draft cmc statement	0.75	\$ 150.00	\$ 112.50
8/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated pos; circulated CMC statement for DGS sig via HelloSign	0.17	\$ 150.00	\$ 25.50

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
8/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated expenses and uploaded one legal inv; email BO	0.08	\$ 150.00	\$ 12.00
8/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated CMC statement; circulated for BO review	0.17	\$ 150.00	\$ 25.50
8/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	assembled finalized cmc statement with sig; updated pos; served OC via OneLegal; filed; saved confirmation; emailed CL copies	0.25	\$ 150.00	\$ 37.50
8/10/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and complete outstanding FV tasks	0.25	\$ 150.00	\$ 37.50
8/10/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	draft Ps notice of posting jury fees; circulate for review	0.42	\$ 150.00	\$ 63.00
8/10/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review email and respond to CL re CMC statement; checked docket	0.25	\$ 150.00	\$ 37.50
8/10/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	assembled final notice of posting jury fees w/sig and POS; filed and eserved via OneLegal; email CL a copy	0.25	\$ 150.00	\$ 37.50
8/10/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	revised notice of posting jury fees POS; circulated notice for sig	0.17	\$ 150.00	\$ 25.50
8/11/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	saved scanned docs and conformed copy docs; email BO/fwd FV; updated expenses and uploaded One Legal invoice	0.17	\$ 150.00	\$ 25.50
8/11/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review file; assemble form rogs emply and gen; drafted depo notices	0.83	\$ 150.00	\$ 124.50
8/19/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review case; checked docket; email GW status of the case for initial cmc hearing	0.25	\$ 150.00	\$ 37.50
8/19/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	scheduled CourtCall; updated calendar; saved invoiced; email BO	0.50	\$ 150.00	\$ 75.00
8/19/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review email/calendar; email BO and DGS re initial cmc hearing	0.08	\$ 150.00	\$ 12.00
8/20/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	checked docket for tentative ruling; email GW status	0.08	\$ 150.00	\$ 12.00
8/20/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails re mediation; follow up email to OC; email DGS status; c/w EL; saved lt to CL file	0.33	\$ 150.00	\$ 49.50
8/20/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails; saved GW hearing notes; calendared deadlines; checked docket for MO	0.58	\$ 150.00	\$ 87.00
8/24/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	checked docket re CMO; downloaded and saved in CL file; updated expenses and email DB; email CL copies	0.33	\$ 150.00	\$ 49.50
8/31/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails/calendar/and file; email BO status; saved scanned docs	0.17	\$ 150.00	\$ 25.50
9/3/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	draft and email mediators office re availability	0.17	\$ 150.00	\$ 25.50

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
9/3/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	ran mediation dates by staff and checked TSLF calendar; email to OC paralegal re Marc Feder availability; update calendar	0.25	\$ 150.00	\$ 37.50
9/7/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	mtg w JB re status of case	0.17	\$ 350.00	\$ 59.50
9/7/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	read and review emails; review calendar	0.42	\$ 350.00	\$ 147.00
9/7/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	mtg w/MM re status of case	0.17	\$ 150.00	\$ 25.50
9/7/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review P and D CMC statements, review CMO/notice of hearings	0.25	\$ 350.00	\$ 87.50
9/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails; f/u email to OC re scheduling mediation	0.08	\$ 150.00	\$ 12.00
9/13/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
9/29/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w JB and review emails re mediation scheduling	0.08	\$ 350.00	\$ 28.00
9/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	delete	0.00	\$ 150.00	\$ -
9/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	messages w/MM; follow up email to OC re availability to schedule mediation	0.08	\$ 150.00	\$ 12.00
10/8/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails w DGS re status mediation requests, review calendar, review past email exchanges re mediation, email OC re scheduling	0.25	\$ 350.00	\$ 87.50
10/12/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review AT/OC emails re ev. pres.req.	0.08	\$ 350.00	\$ 28.00
10/12/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review OC email; msgs w DGS re in person mediation, email OC re mediation	0.17	\$ 350.00	\$ 59.50
10/14/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails re mediation	0.08	\$ 150.00	\$ 12.00
10/15/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	work on mediation requests	0.50	\$ 350.00	\$ 175.00
10/21/2021	David Spivak (26th Year Attorney)	review and revise mediation discovery	0.25	\$ 700.00	\$ 175.00
10/21/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	work on mediation requests/review PF, finalize and email to DGS	0.42	\$ 350.00	\$ 147.00
10/25/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails w DGS re mediation requests; finalize and email mediation requests to OC	0.25	\$ 350.00	\$ 87.50
11/5/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	follow up email to OC re mediation	0.08	\$ 350.00	\$ 28.00
11/9/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails; set reminder to follow up with OC re scheduling mediation; created witness interview chart and saved in file	0.17	\$ 150.00	\$ 25.50
11/18/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w DGS re mediation; review FV/calendar; email OC re mediation scheduling	0.08	\$ 350.00	\$ 28.00
11/24/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to OC email re mediation	0.08	\$ 150.00	\$ 12.00
11/24/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails	0.08	\$ 350.00	\$ 28.00
11/24/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	follow up email to OC re scheduling mediation	0.08	\$ 150.00	\$ 12.00

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
11/29/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w JB re mediators, review emails re mediators/DFEH	0.17	\$ 350.00	\$ 59.50
11/29/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	research 3 OC proposed mediators	0.42	\$ 350.00	\$ 147.00
11/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails; confer with MM re proposed mediators; email OC	0.17	\$ 150.00	\$ 25.50
11/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails re DFEH	0.08	\$ 150.00	\$ 12.00
11/30/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	email DGS re mediators; review emails	0.08	\$ 350.00	\$ 28.00
12/1/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	called and spoke w John Edwards case mgr re wage/hour experience	0.08	\$ 350.00	\$ 28.00
12/3/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails; called and left vm for client; sent follow up text	0.08	\$ 350.00	\$ 28.00
12/3/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails; called and left vm for Mr. Edwards	0.08	\$ 350.00	\$ 28.00
12/6/2021	Nora Greer (15+ Year Paralegal)	Email Mediators re Availability, Review calendar	0.25	\$ 200.00	\$ 50.00
12/6/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	call w mediator John Edward; email DGS	0.17	\$ 350.00	\$ 59.50
12/6/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails w DGS re mediators; email Feder case mgr/fwd to team; email team re assisting w/ checking availability, review emails	0.25	\$ 350.00	\$ 87.50
12/7/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails re mediator availability; email OC re mediators and available dates	0.10	\$ 350.00	\$ 35.00
12/7/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	call w NG re mediation dates	0.08	\$ 350.00	\$ 28.00
12/7/2021	Nora Greer (15+ Year Paralegal)	Assist DL re Social Media prompts	0.17	\$ 200.00	\$ 34.00
12/7/2021	Nora Greer (15+ Year Paralegal)	TC with MM re Mediation dates	0.08	\$ 200.00	\$ 16.00
12/10/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emails w OC re mediator selection, msgs w NG re dates, review calendar, review emails	0.25	\$ 350.00	\$ 87.50
12/10/2021	Nora Greer (15+ Year Paralegal)	TC and Text message to CL	0.08	\$ 200.00	\$ 16.00
12/10/2021	Nora Greer (15+ Year Paralegal)	Review calendar, Emails with OC re Mediation, email to Mediator scheduler to save date, update calendar	0.25	\$ 200.00	\$ 50.00
12/13/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review Defendants' subpoena, msgs w NG, emails w BO/team	0.25	\$ 350.00	\$ 87.50
12/13/2021	Nora Greer (15+ Year Paralegal)	Mediation Confirmation email to Mediator	0.17	\$ 200.00	\$ 34.00
12/13/2021	Nora Greer (15+ Year Paralegal)	Email client Mediation email and Defendant's Subpoena	0.25	\$ 200.00	\$ 50.00
12/15/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review DGS objection subpoena; call w DGS re objection subpoena, msgs w NG re contacting client	0.33	\$ 350.00	\$ 115.50
12/15/2021	Nora Greer (15+ Year Paralegal)	Email to CL re phone call	0.08	\$ 200.00	\$ 16.00
12/15/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	review emails re mediation scheduling	0.08	\$ 350.00	\$ 28.00
12/15/2021	David Spivak (26th Year Attorney)	Prepare objection letter to subpoena; call with staff to discuss	1.42	\$ 700.00	\$ 994.00
12/16/2021	Daniela Linares (1st Year Intake Assistant)	Drafting LinkedIn message. Email. Researching potential witnesses.	0.50	\$ 150.00	\$ 75.00
12/16/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w DGS; called and left vm for client; sent f-up email	0.17	\$ 350.00	\$ 59.50
12/17/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	emailed and texted client	0.08	\$ 350.00	\$ 28.00
12/20/2021	Nora Greer (15+ Year Paralegal)	Review emails, update calendar, TC and email to CL re contact TSLF	0.17	\$ 200.00	\$ 34.00
12/20/2021	Maralle Messrelian (Formerly Employed 4th Year Attorney)	msgs w NG, send text to client, msgs w DGS, review emails	0.17	\$ 350.00	\$ 59.50

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
12/21/2021	Maralle Messrelan (Formerly Employed 4th Year Attorney)	review DGS msgs to client, msg client, msgs w NG, review emails	0.17	\$ 350.00	\$ 59.50
12/28/2021	Nora Greer (15+ Year Paralegal)	TC with CL re Subpoena, finalize lt and send to DGS for review, meet with LC, review LWDA and Complaint	0.58	\$ 200.00	\$ 116.00
12/28/2021	Nora Greer (15+ Year Paralegal)	Email to Mediator re service agreements	0.08	\$ 200.00	\$ 16.00
12/28/2021	Lori Fueva (Formerly Employed 10+ Year Paralegal)	Review Stamps.com and enter cost codes for postage	0.08	\$ 200.00	\$ 16.00
12/28/2021	Nora Greer (15+ Year Paralegal)	Finalize Lt re Objection to Subpoena, circulate same, email to LF re mailings	0.67	\$ 200.00	\$ 134.00
12/28/2021	Lizzett Cortez (9th Year Paralegal)	mtgs w/ NG re subpoena	0.25	\$ 250.00	\$ 62.50
12/28/2021	Lori Fueva (Formerly Employed 10+ Year Paralegal)	Assist NG by printing and mailing objection and intent to file motion to quash x3 and travel to the usps to mail	0.75	\$ 200.00	\$ 150.00
12/29/2021	Nora Greer (15+ Year Paralegal)	Review emails, email to DGS re Subpoena	0.17	\$ 200.00	\$ 34.00
12/30/2021	Daniela Linares (1st Year Intake Assistant)	Searching for witnesses provided by CL.	0.17	\$ 150.00	\$ 25.50
12/30/2021	Nora Greer (15+ Year Paralegal)	Save Notice of Mediation, Update calendar, emails to CL re mediation	0.25	\$ 200.00	\$ 50.00
1/3/2022	Nora Greer (15+ Year Paralegal)	Email DGS re Mx Quash	0.08	\$ 200.00	\$ 16.00
1/3/2022	Nora Greer (15+ Year Paralegal)	Save invoice to file, email DB	0.08	\$ 200.00	\$ 16.00
1/4/2022	Nora Greer (15+ Year Paralegal)	Email OC re withdraw subpoena, review mx to quash	0.25	\$ 200.00	\$ 50.00
1/4/2022	David Spivak (26th Year Attorney)	Prepare motion to quash subpoena to déjà vu	5.08	\$ 700.00	\$ 3,556.00
1/5/2022	Nora Greer (15+ Year Paralegal)	TC with LC re MX Quash	0.17	\$ 200.00	\$ 34.00
1/5/2022	Nora Greer (15+ Year Paralegal)	TC and Email to CL and ICE	0.17	\$ 200.00	\$ 34.00
1/5/2022	Nora Greer (15+ Year Paralegal)	Pull exhibits, finalize mx to quash, prepare POS, reserve court date, file, serve and circulate same, email to vendor re print job, update calendar	1.17	\$ 200.00	\$ 234.00
1/6/2022	Nora Greer (15+ Year Paralegal)	Resubmit Mx Quash Docs	0.25	\$ 200.00	\$ 50.00
1/6/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
1/7/2022	Nora Greer (15+ Year Paralegal)	Saved filed Mx to Quash to File, circulate to CL	0.30	\$ 200.00	\$ 60.00
1/7/2022	Nora Greer (15+ Year Paralegal)	Review emails, tc to CL	0.17	\$ 200.00	\$ 34.00
1/18/2022	Nora Greer (15+ Year Paralegal)	DL and OCR served docs, Circulate Def CMC Statement and Proof of Service to CL	0.17	\$ 200.00	\$ 34.00
1/25/2022	Daniela Linares (1st Year Intake Assistant)	Call Notes w CL	0.42	\$ 150.00	\$ 63.00
1/27/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/3/2022	Breck Oyama (13th Year Paralegal)	add litigation chain re subpoena	0.08	\$ 300.00	\$ 24.00
2/3/2022	Nora Greer (15+ Year Paralegal)	Review emails, save subpoenas to fiel, update calendar re mx deadlines, circulate to CL, email to OC re service of subpoenas, emails to dgs re same	0.42	\$ 200.00	\$ 84.00
2/4/2022	Nora Greer (15+ Year Paralegal)	TC to City Attorney, update calendar	0.08	\$ 200.00	\$ 16.00
2/4/2022	Nora Greer (15+ Year Paralegal)	Circulate Objection letters re 2 subpoenas via Email and US Mail (3 entities)	0.75	\$ 200.00	\$ 150.00
2/4/2022	David Spivak (26th Year Attorney)	Prepare objections to subpoenas to the San Diego treasurer and police department	0.92	\$ 700.00	\$ 644.00
2/8/2022	Nora Greer (15+ Year Paralegal)	TC with City Attorney Office	0.25	\$ 200.00	\$ 50.00
2/9/2022	Daniela Linares (1st Year Intake Assistant)	Email. Familiarized myself w license site.	0.17	\$ 150.00	\$ 25.50
2/10/2022	Nora Greer (15+ Year Paralegal)	Review emails re subpoena, messages with DGS re Mx Quash	0.17	\$ 200.00	\$ 34.00
2/10/2022	Breck Oyama (13th Year Paralegal)	review emails/msgs	0.08	\$ 300.00	\$ 24.00

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
2/14/2022	Daniela Linares (1st Year Intake Assistant)	Call to client. LVM	0.08	\$ 150.00	\$ 12.00
2/15/2022	Nora Greer (15+ Year Paralegal)	Prepare, file, serve, circulate Notice of Change of Address	0.58	\$ 200.00	\$ 116.00
2/16/2022	Nora Greer (15+ Year Paralegal)	Save filed docs to file	0.08	\$ 200.00	\$ 16.00
2/16/2022	Breck Oyama (13th Year Paralegal)	review emails/filing	0.08	\$ 300.00	\$ 24.00
2/22/2022	David Spivak (26th Year Attorney)	review meet and confer emails re subpoenas; email to client re same	0.83	\$ 700.00	\$ 581.00
2/23/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.17	\$ 200.00	\$ 34.00
2/24/2022	Nora Greer (15+ Year Paralegal)	Review emails, emails to City and SDPD re Plaintiff's W/D of objection to subpoena, email to OC	0.33	\$ 200.00	\$ 66.00
2/24/2022	Daniela Linares (1st Year Intake Assistant)	Emails. Text.	0.17	\$ 150.00	\$ 25.50
2/25/2022	Daniela Linares (1st Year Intake Assistant)	Calendar entry	0.08	\$ 150.00	\$ 12.00
2/25/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/25/2022	Nora Greer (15+ Year Paralegal)	TC with DL re case	0.08	\$ 200.00	\$ 16.00
2/25/2022	Daniela Linares (1st Year Intake Assistant)	Call w cl	0.08	\$ 150.00	\$ 12.00
3/1/2022	Daniela Linares (1st Year Intake Assistant)	Calendar entry	0.08	\$ 150.00	\$ 12.00
3/1/2022	Nora Greer (15+ Year Paralegal)	Call with Client	0.08	\$ 200.00	\$ 16.00
3/1/2022	Daniela Linares (1st Year Intake Assistant)	Call to client.	0.08	\$ 150.00	\$ 12.00
3/3/2022	Nora Greer (15+ Year Paralegal)	Review emails re discovery, review file	0.25	\$ 200.00	\$ 50.00
3/3/2022	Daniela Linares (1st Year Intake Assistant)	Call w DGS. Called CL partner. LVM. Texted cl	0.17	\$ 150.00	\$ 25.50
3/4/2022	Breck Oyama (13th Year Paralegal)	review emails/calendar, emails w/ NG	0.17	\$ 300.00	\$ 51.00
3/4/2022	Daniela Linares (1st Year Intake Assistant)	Call to client.	0.08	\$ 150.00	\$ 12.00
3/4/2022	Emily Ly (1st Year Paralegal)	Phone call with NG re form rogs.	0.17	\$ 150.00	\$ 25.50
3/4/2022	Nora Greer (15+ Year Paralegal)	Review emails, messages with DGS, Format, serve and circulate Deposition Notices, Discovery Set One, PW and BW Stips	2.08	\$ 200.00	\$ 416.00
3/4/2022	Nora Greer (15+ Year Paralegal)	Download, save, ocr, circulate Defendant's Discovery Requests, Set 1, Update calendar	0.42	\$ 200.00	\$ 84.00
3/7/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/8/2022	Breck Oyama (13th Year Paralegal)	review emails	0.17	\$ 300.00	\$ 51.00
3/8/2022	Nora Greer (15+ Year Paralegal)	Review emails, save word version of discovery requests to file, send OC word version of discovery requests	0.17	\$ 200.00	\$ 34.00
3/9/2022	Nora Greer (15+ Year Paralegal)	Leave VM and Email CL re Discovery Requests	0.17	\$ 200.00	\$ 34.00
3/9/2022	Nora Greer (15+ Year Paralegal)	TC with CL re case status, schedule call re discovery	0.08	\$ 200.00	\$ 16.00
3/10/2022	Daniela Linares (1st Year Intake Assistant)	Email	0.08	\$ 150.00	\$ 12.00
3/10/2022	Breck Oyama (13th Year Paralegal)	review emails, fwd team	0.08	\$ 300.00	\$ 24.00
3/10/2022	Nora Greer (15+ Year Paralegal)	TC with CL re Discovery Responses	1.50	\$ 200.00	\$ 300.00
3/10/2022	Nora Greer (15+ Year Paralegal)	Begin Plaintiff's Responses to Form Rogs Gen	0.42	\$ 200.00	\$ 84.00
3/11/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.17	\$ 200.00	\$ 34.00
3/11/2022	Daniela Linares (1st Year Intake Assistant)	email to CL. Saved cl docs	0.33	\$ 150.00	\$ 49.50

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
3/18/2022	Daniela Linares (1st Year Intake Assistant)	Email	0.08	\$ 150.00	\$ 12.00
3/24/2022	Nora Greer (15+ Year Paralegal)	TC, Text, Email CL re meeting	0.17	\$ 200.00	\$ 34.00
3/24/2022	Daniela Linares (1st Year Intake Assistant)	Email	0.08	\$ 150.00	\$ 12.00
3/25/2022	Nora Greer (15+ Year Paralegal)	Review emails re discovery stay, update calendar, email DGS re Depos	0.25	\$ 200.00	\$ 50.00
3/25/2022	Breck Oyama (13th Year Paralegal)	review emails, update deadline chain	0.08	\$ 300.00	\$ 24.00
3/28/2022	Breck Oyama (13th Year Paralegal)	review emails/calendar	0.08	\$ 300.00	\$ 24.00
3/29/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/31/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/31/2022	Nora Greer (15+ Year Paralegal)	Email OC re Depositions off calendar	0.08	\$ 200.00	\$ 16.00
4/4/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
4/4/2022	Nora Greer (15+ Year Paralegal)	Review emails, update calendar, email Client re all depositions off calendar	0.25	\$ 200.00	\$ 50.00
4/7/2022	Daniela Linares (1st Year Intake Assistant)	case confer w ng	0.25	\$ 150.00	\$ 37.50
4/7/2022	Daniela Linares (1st Year Intake Assistant)	calendar call w NG	0.08	\$ 150.00	\$ 12.00
4/7/2022	Nora Greer (15+ Year Paralegal)	TC with EL re PI	0.25	\$ 200.00	\$ 50.00
4/8/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
4/11/2022	Daniela Linares (1st Year Intake Assistant)	Email review	0.08	\$ 150.00	\$ 12.00
4/11/2022	Daniela Linares (1st Year Intake Assistant)	PI tasks. email	0.17	\$ 150.00	\$ 25.50
4/11/2022	Nora Greer (15+ Year Paralegal)	Review emails, forward to FV	0.08	\$ 200.00	\$ 16.00
4/12/2022	Daniela Linares (1st Year Intake Assistant)	email NG for review	0.08	\$ 150.00	\$ 12.00
4/12/2022	Nora Greer (15+ Year Paralegal)	Review PI retainer agreement, email DL	0.17	\$ 200.00	\$ 34.00
4/12/2022	Daniela Linares (1st Year Intake Assistant)	sent dgs tristar paper work for sign	0.17	\$ 150.00	\$ 25.50
4/12/2022	Breck Oyama (13th Year Paralegal)	review emails, check w/ NG re depo	0.08	\$ 300.00	\$ 24.00
4/13/2022	Daniela Linares (1st Year Intake Assistant)	save ng files. email to tristar	0.17	\$ 150.00	\$ 25.50
4/14/2022	Nora Greer (15+ Year Paralegal)	Review emails re PI	0.08	\$ 200.00	\$ 16.00
4/14/2022	Daniela Linares (1st Year Intake Assistant)	call w tristar. emails	0.25	\$ 150.00	\$ 37.50
4/22/2022	Daniela Linares (1st Year Intake Assistant)	Email review	0.08	\$ 150.00	\$ 12.00
4/22/2022	Nora Greer (15+ Year Paralegal)	Review emails, email mediator re payment, email OC re Mediation Discovery, update calendar	0.25	\$ 200.00	\$ 50.00
4/25/2022	Nora Greer (15+ Year Paralegal)	Save, ocr, circulate Defendant's Opposition to Mx Quash Subpoena, email dgs re filing	0.33	\$ 200.00	\$ 66.00
4/25/2022	Breck Oyama (13th Year Paralegal)	review emails/tasks, update team	0.08	\$ 300.00	\$ 24.00
4/26/2022	Nora Greer (15+ Year Paralegal)	Review emails, messages with DL, Format Decl and MPA re Opp	1.25	\$ 200.00	\$ 250.00
4/26/2022	Daniela Linares (1st Year Intake Assistant)	call w dgs. email to teams. prep photo exhibits for NG. calls and text to cl.	1.58	\$ 150.00	\$ 237.00
4/26/2022	David Spivak (26th Year Attorney)	Prepare reply brief in support of motion to quash subpoena to déjà vu presents showgirls	3.50	\$ 700.00	\$ 2,450.00

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
4/26/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
4/27/2022	Daniela Linares (1st Year Intake Assistant)	call w cl. chat with dgs re status. saved pdf ver of photos. call w PI. LVM	0.50	\$ 150.00	\$ 75.00
4/27/2022	Daniela Linares (1st Year Intake Assistant)	email to team	0.08	\$ 150.00	\$ 12.00
4/27/2022	Nora Greer (15+ Year Paralegal)	TC with CL re holiday party pictures	0.25	\$ 200.00	\$ 50.00
4/27/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re Mediation Discovery Requests	0.08	\$ 200.00	\$ 16.00
4/27/2022	Daniela Linares (1st Year Intake Assistant)	call w tristar confirming they receive my message	0.08	\$ 150.00	\$ 12.00
4/28/2022	Nora Greer (15+ Year Paralegal)	TC with DGS and DL re Briefing, Revise Decl and MPA, texts to CL, redact pictures	0.83	\$ 200.00	\$ 166.00
4/28/2022	Nora Greer (15+ Year Paralegal)	Prepare Proof of Service, File, serve, circulate reply to opposition, save filed docs to file,	0.33	\$ 200.00	\$ 66.00
4/28/2022	Daniela Linares (1st Year Intake Assistant)	calls w cl. text to cl. email review. chat with dgs/ng re case brief.	0.67	\$ 150.00	\$ 100.50
4/28/2022	Daniela Linares (1st Year Intake Assistant)	call w tristar	0.08	\$ 150.00	\$ 12.00
4/28/2022	Nora Greer (15+ Year Paralegal)	Review emails re witness search	0.08	\$ 200.00	\$ 16.00
5/2/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/5/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/6/2022	Breck Oyama (13th Year Paralegal)	circulate tentative w/ team, email OC to schedule call	0.42	\$ 300.00	\$ 126.00
5/9/2022	Daniela Linares (1st Year Intake Assistant)	Email from PI	0.08	\$ 150.00	\$ 12.00
5/9/2022	Daniela Linares (1st Year Intake Assistant)	Email	0.08	\$ 150.00	\$ 12.00
5/9/2022	Breck Oyama (13th Year Paralegal)	email OC to schedule call	0.08	\$ 300.00	\$ 24.00
5/9/2022	Breck Oyama (13th Year Paralegal)	calendar call w/ OC, email OC	0.08	\$ 300.00	\$ 24.00
5/10/2022	Daniela Linares (1st Year Intake Assistant)	email	0.08	\$ 150.00	\$ 12.00
5/10/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/10/2022	David Spivak (26th Year Attorney)	call with OC re mx quash tentative and mediation	0.33	\$ 700.00	\$ 231.00
5/11/2022	Nora Greer (15+ Year Paralegal)	TC to Clerk re appearance, email OC re same	0.17	\$ 200.00	\$ 34.00
5/11/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.25	\$ 200.00	\$ 50.00
5/12/2022	Daniela Linares (1st Year Intake Assistant)	call w cl. email to dgs re Peter Balov	0.17	\$ 150.00	\$ 25.50
5/12/2022	Daniela Linares (1st Year Intake Assistant)	email. holiday party photos. looked online for more info re owner	0.33	\$ 150.00	\$ 49.50
5/12/2022	Nora Greer (15+ Year Paralegal)	Review emails, messages with DL	0.17	\$ 200.00	\$ 34.00
5/12/2022	Christina Prejean (4th Year Attorney)	Review Motion to Quash, client files and Judge's tentative in prep for Separate Statement	0.77	\$ 350.00	\$ 269.50
5/12/2022	David Spivak (26th Year Attorney)	prep mediation statement	1.58	\$ 700.00	\$ 1,106.00
5/12/2022	Daniela Linares (1st Year Intake Assistant)	IG search for ees. sent social media message to approx 22 dancers. emails with team re case. called cl, text, lvm.	1.75	\$ 150.00	\$ 262.50
5/13/2022	Daniela Linares (1st Year Intake Assistant)	Call to client. Left VM.	0.08	\$ 150.00	\$ 12.00
5/13/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re Mediation Discovery	0.08	\$ 200.00	\$ 16.00
5/13/2022	Nora Greer (15+ Year Paralegal)	Conf call with DGS and DL	0.25	\$ 200.00	\$ 50.00
5/13/2022	Nora Greer (15+ Year Paralegal)	Finalize and serve Mediation Statement	1.33	\$ 200.00	\$ 266.00

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
5/13/2022	David Spivak (26th Year Attorney)	review changes to mediation statement; call with NG and DL to discuss	0.58	\$ 700.00	\$ 406.00
5/13/2022	Nora Greer (15+ Year Paralegal)	Update calendar with zoom info, send Mediator list of attendees	0.17	\$ 200.00	\$ 34.00
5/13/2022	Daniela Linares (1st Year Intake Assistant)	Call to client. Left VM.	0.08	\$ 150.00	\$ 12.00
5/16/2022	Daniela Linares (1st Year Intake Assistant)	call w PCM. notes	0.58	\$ 150.00	\$ 87.00
5/16/2022	Nora Greer (15+ Year Paralegal)	Review interview notes	0.08	\$ 200.00	\$ 16.00
5/16/2022	Daniela Linares (1st Year Intake Assistant)	email	0.08	\$ 150.00	\$ 12.00
5/17/2022	Daniela Linares (1st Year Intake Assistant)	email to DGS, IG message response	0.08	\$ 150.00	\$ 12.00
5/17/2022	Christina Prejean (4th Year Attorney)	Review interview doc of [REDACTED], dancer	0.08	\$ 350.00	\$ 28.00
5/17/2022	Nora Greer (15+ Year Paralegal)	Review emails, text message to client, update calendar	0.25	\$ 200.00	\$ 50.00
5/18/2022	Nora Greer (15+ Year Paralegal)	TC with DL re Witnesses	0.08	\$ 200.00	\$ 16.00
5/18/2022	Christina Prejean (4th Year Attorney)	Review [REDACTED] interview notes, emails	0.08	\$ 350.00	\$ 28.00
5/18/2022	Nora Greer (15+ Year Paralegal)	Review additional PCM interview notes	0.08	\$ 200.00	\$ 16.00
5/18/2022	Daniela Linares (1st Year Intake Assistant)	responding to text replies. call w ee. email to team. call with ng	1.00	\$ 150.00	\$ 150.00
5/18/2022	Nora Greer (15+ Year Paralegal)	Review additional PCM Interview notes	0.08	\$ 200.00	\$ 16.00
5/18/2022	Daniela Linares (1st Year Intake Assistant)	call w ee [REDACTED] fixed notes. sent to team	0.58	\$ 150.00	\$ 87.00
5/18/2022	Nora Greer (15+ Year Paralegal)	Review emails, texts with Client, review costs, begin Estimated Future Fees Chart	0.83	\$ 200.00	\$ 166.00
5/18/2022	Nora Greer (15+ Year Paralegal)	Review PCM Interview notes	0.08	\$ 200.00	\$ 16.00
5/18/2022	Daniela Linares (1st Year Intake Assistant)	Call letting me know I got the wrong number.	0.08	\$ 150.00	\$ 12.00
5/19/2022	Nora Greer (15+ Year Paralegal)	TC, Emails, and texts to Client	0.17	\$ 200.00	\$ 34.00
5/19/2022	Daniela Linares (1st Year Intake Assistant)	Call to cl. TC with team re CL no response. email sent	0.08	\$ 150.00	\$ 12.00
5/19/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/19/2022	Daniela Linares (1st Year Intake Assistant)	call w cl. TC w NG and DGS	0.08	\$ 150.00	\$ 12.00
5/20/2022	Daniela Linares (1st Year Intake Assistant)	ev pres prep. sent for dgs signed.	0.42	\$ 150.00	\$ 63.00
5/20/2022	Nora Greer (15+ Year Paralegal)	Mediation Day text threads, review emails, messages with DL re Ev Prez	0.25	\$ 200.00	\$ 50.00
5/20/2022	Daniela Linares (1st Year Intake Assistant)	mediation prep. mediation.	4.42	\$ 150.00	\$ 663.00
5/20/2022	Nora Greer (15+ Year Paralegal)	Attend Mediation and misc. Mediation day tasks	5.00	\$ 200.00	\$ 1,000.00
5/23/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
5/23/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re MOU	0.08	\$ 200.00	\$ 16.00
5/25/2022	Nora Greer (15+ Year Paralegal)	Review emails re MOU	0.17	\$ 200.00	\$ 34.00
5/26/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
5/27/2022	Nora Greer (15+ Year Paralegal)	Enter Expense	0.08	\$ 200.00	\$ 16.00
5/31/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
5/31/2022	David Spivak (26th Year Attorney)	Prepare for call and call with opposing counsel to discuss settlement terms; email summary to OC	0.67	\$ 700.00	\$ 469.00
6/3/2022	David Spivak (26th Year Attorney)	Review and revise settlement agreement and proposed order approving settlement	1.17	\$ 700.00	\$ 819.00
6/3/2022	Nora Greer (15+ Year Paralegal)	Review emails, save drafts of MOU to file, update calendar with discovery deadlines	0.25	\$ 200.00	\$ 50.00
6/8/2022	Nora Greer (15+ Year Paralegal)	F/U to OC re MOU	0.08	\$ 200.00	\$ 16.00
6/9/2022	Nora Greer (15+ Year Paralegal)	Review emails, save redlines to file	0.17	\$ 200.00	\$ 34.00

TSLF TIME EXHIBIT VILLENA PACERS

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
6/10/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
6/10/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
6/15/2022	Nora Greer (15+ Year Paralegal)	Review emails, save drafts of MOU to file	0.08	\$ 200.00	\$ 16.00
6/23/2022	Nora Greer (15+ Year Paralegal)	F/U with DGS re OCs revisions to settlement	0.08	\$ 200.00	\$ 16.00
7/6/2022	Nora Greer (15+ Year Paralegal)	Review emails, circulate settlement agreement for signature, email and text to client	0.33	\$ 200.00	\$ 66.00
7/7/2022	Nora Greer (15+ Year Paralegal)	Combine and Circulate Plaintiff side signed Settlement Agreement to OC	0.17	\$ 200.00	\$ 34.00
7/7/2022	Nora Greer (15+ Year Paralegal)	Texts to Client re Settlement Agreement	0.08	\$ 200.00	\$ 16.00
7/7/2022	Daniela Linares (1st Year Intake Assistant)	email review	0.17	\$ 150.00	\$ 25.50
7/8/2022	Nora Greer (15+ Year Paralegal)	Review emails, re send Plaintiff signed Settlement Agreement to OC	0.08	\$ 200.00	\$ 16.00
7/11/2022	Daniela Linares (1st Year Intake Assistant)	email review	0.17	\$ 150.00	\$ 25.50
7/12/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re Settlement Agreement	0.08	\$ 200.00	\$ 16.00
7/12/2022	Daniela Linares (1st Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
7/14/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re Settlement Agreement	0.08	\$ 200.00	\$ 16.00
7/14/2022	Nora Greer (15+ Year Paralegal)	Review emails, circulate fully executed Settlement Agreement to Client	0.25	\$ 200.00	\$ 50.00
7/15/2022	Nora Greer (15+ Year Paralegal)	Send 3 TPA bids, update fv settlement tabs	0.75	\$ 200.00	\$ 150.00
7/18/2022	Nora Greer (15+ Year Paralegal)	Save received bids to file	0.17	\$ 200.00	\$ 34.00
7/19/2022	Nora Greer (15+ Year Paralegal)	Save TPA bid to file	0.08	\$ 200.00	\$ 16.00
7/25/2022	Nora Greer (15+ Year Paralegal)	Prepare Notice of Settlement, email to dgs for approval, email same to OC	0.58	\$ 200.00	\$ 116.00
7/28/2022	Daniela Linares (1st Year Intake Assistant)	email check	0.08	\$ 150.00	\$ 12.00
8/1/2022	Nora Greer (15+ Year Paralegal)	Prepare proof of service, file, serve, circulate notice of settlement	0.42	\$ 200.00	\$ 84.00
8/12/2022	Nora Greer (15+ Year Paralegal)	Save filed docs to file	0.08	\$ 200.00	\$ 16.00
8/15/2022	Nora Greer (15+ Year Paralegal)	Save expenses to file	0.08	\$ 200.00	\$ 16.00
8/15/2022	Nora Greer (15+ Year Paralegal)	F/u Email to DGS re MX	0.08	\$ 200.00	\$ 16.00
8/17/2022	Nora Greer (15+ Year Paralegal)	Check docket for Trial dates	0.08	\$ 200.00	\$ 16.00
8/17/2022	David Spivak (26th Year Attorney)	Prepare a motion for approval of private attorney general settlement and related documents; instructions to staff	2.67	\$ 700.00	\$ 1,869.00
8/18/2022	Nora Greer (15+ Year Paralegal)	Mx Paga settlement work	0.75	\$ 200.00	\$ 150.00
8/24/2022	Daniela Linares (1st Year Intake Assistant)	call w pcm, sent notes to dgs	0.25	\$ 150.00	\$ 37.50
8/24/2022	Nora Greer (15+ Year Paralegal)	Mx Paga approval work	0.83	\$ 200.00	\$ 166.00
8/24/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
8/25/2022	Nora Greer (15+ Year Paralegal)	Mx Paga Work	0.50	\$ 200.00	\$ 100.00
8/26/2022	Nora Greer (15+ Year Paralegal)	Mx paga approval work	2.08	\$ 200.00	\$ 416.00
8/29/2022	Nora Greer (15+ Year Paralegal)	Review DGS redlines, edit mx paga approval and return to dgs	0.75	\$ 200.00	\$ 150.00
8/30/2022	Nora Greer (15+ Year Paralegal)	Finalize Mx Paga, send to OC, email UELG re fees/costs review and revise NG edits to mx for PAGA settlement approval	0.58	\$ 200.00	\$ 116.00
8/30/2022	David Spivak (26th Year Attorney)	Begin Client Time Log	0.33	\$ 700.00	\$ 231.00
8/30/2022	Nora Greer (15+ Year Paralegal)	Time and Cost Exhibit	0.50	\$ 200.00	\$ 100.00
8/31/2022	Nora Greer (15+ Year Paralegal)	Time and Cost Exhibit	0.75	\$ 200.00	\$ 150.00
		TOTAL PRE-MULTIPLIER LODESTAR AS OF 08/31/2022	124.92		\$ 38,537.50

EXHIBIT 12

TSLF COST EXHIBIT VILLENA PACERS

Date	Expense Type	Expense Description	Expense Amount
12/3/2020	LWDA Filing Fee	Case Number: LWDA-CM-814379-20	\$ 75.00
1/4/2021	Postage	Postage Dec 2020	\$ 16.50
2/10/2021	Attorney Service-Filing	One Legal REDACTED	\$ 461.36
2/17/2021	Attorney Service-Filing	OneLegal Inv REDACTED	\$ 12.00
4/1/2021	Postage	Postage Mar 2021	\$ 14.61
4/9/2021	Attorney Service-Filing	One Legal REDACTED	\$ 12.35
4/9/2021	Attorney Service-Filing	OneLegal REDACTED	\$ 12.35
5/13/2021	Postage	Postage Apr 2021	\$ 0.71
7/9/2021	Records Requests	SD Court Record Request	\$ 14.40
8/9/2021	Attorney Service-Filing	One Legal Invoice REDACTED	\$ 13.38
8/11/2021	Attorney Service-Filing	One Legal Invoice REDACTED	\$ 167.81
8/19/2021	CourtCall	Court Call REDACTED	\$ 94.00
8/24/2021	Records Requests	SD Court Record Request	\$ 6.00
12/30/2021	Mediator Fees	Judicate West Invoice Number: REDACTED	\$ 6,250.00
1/3/2022	Postage	Postage December 2021	\$ 2.49
1/3/2022	Lexis or Westlaw	Westlaw usage Dec 2021	\$ 33.19
1/6/2022	Attorney Service-Filing	One Legal REDACTED	\$ 14.41
1/6/2022	Attorney Service-Filing	One Legal REDACTED	\$ 76.18
1/10/2022	Records Requests	Excelsior Copy Service Invoice REDACTED	\$ 82.55
1/14/2022	Attorney Service-Filing	One Legal REDACTED	\$ 14.41
2/4/2022	Photocopies	24 Pages (Lt re Objection to Subpoena - SDPD Permits and Licensing	\$ 6.00
2/16/2022	Attorney Service-Filing	One Legal REDACTED	\$ 12.35
3/1/2022	Postage	Stamps usage Feb 2022	\$ 4.98
4/28/2022	Attorney Service-Filing	One Legal REDACTED	\$ 12.87
5/13/2022	Records Requests	SD Superior Court Payment REDACTED	\$ 2.00
5/16/2022	Investigation	Tristar Investigation Invoice REDACTED	\$ 2,050.00
8/11/2022	Attorney Service-Filing	One Legal REDACTED	\$ 12.87
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng motion for PAGA Approval	\$ 74.64
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng notice of entry of order and judgment	\$ 12.87
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng final accounting declaration	\$ 12.87
		TSLF CURRENT COSTS THROUGH 9/14/2022	\$ 9,474.77
		UELG CURRENT COSTS THROUGH 9/14/2022	\$ 15.50
		TSLF ESTIMATED FUTURE COSTS	\$ 100.38
		TOTAL APPROX COSTS THROUGH FINAL ACCOUNTING	\$ 9,590.65

EXHIBIT 13

EXHIBIT 14

CASE NAME: VILLENA v SHOWGIRLS INTERNATIONAL

Date: July 15, 2022

Requesting Paralegal: Nora Greer

Plaintiff or Defense: Plaintiff

Firm Name: The Spivak Law Firm

Telephone: (818) 582-3073

Email: nora@spivaklaw.com

PAGA Disbursement Only

Aggrieved Employees: 50

Postage Total: \$50.70

Grand Total: \$8,313.85

DISCOUNTED FLAT FEE: \$5,500.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Employment Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Aggrieved Employees will be Assigned a Unique Mailing ID which will be Used Throughout the Duration of Administration. CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours (Monday-Friday 9:00 AM - 5:30 PM, PST).

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Project Manager: Notice Format	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Live Call Center Support Reps.*	\$3.00	10	\$30.00
Static Website	\$500.00	1	\$500.00
TOTAL			\$870.00

* Up to 120 days after disbursement

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	2	\$190.00
IRS SSN Verification	\$0.20	50	\$10.00
TOTAL			\$350.00

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail a 8.5"x11" MICR Check to Valid Aggrieved Employee's. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$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
National Change of Address Search (NCOA)	\$100.00	1	\$100.00
Print & Mail Notice, Checks & 1099	\$3.00	50	\$150.00
First-Class Postage (up to 1 oz.)*	\$0.60	50	\$30.00
TOTAL			\$2,270.00

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

CPT Estimates 8% of the Checks will be Returned Undeliverable and Skip Traced to Locate a Current Address and Retailed Accordingly. CPT will Process all Requests for Check Re-Issues on a Continuous Basis. CPT Prepares Annual Tax Reporting on Behalf of the QSF. Throughout the Duration of Administration, CPT will Provide the Parties with Bi-Weekly Status Reports. Upon the Conclusion of the Disbursement, CPT will Issue a Due Process Declaration.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Re-Issue Checks as Required	\$5.00	1	\$5.00
Project Supervisor: Account Reconciliation	\$150.00	6	\$900.00
Skip Trace for Best Address	\$1.00	4	\$4.00
Remail Undeliverable Checks	\$3.00	4	\$12.00
First-Class Postage (up to 1 oz.)	\$0.60	5	\$3.00
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	1	\$150.00
Project Manager: Account Files Sent to Atty	\$95.00	1	\$95.00
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
TOTAL			\$2,719.00

*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.

SCO ESCHEATMENT 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	11	\$1.65
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	1	\$5.50
First-Class Postage (up to 1 oz.)	\$0.58	1	\$0.64
Project Manager: June Remittance	\$95.00	2	\$190.00
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,104.85

GRAND TOTAL \$8,313.85

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

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, and objections, 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 products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

15. **Miscellaneous Provisions.**

- a) **Governing Law; Jurisdiction.** This Agreement will be governed by

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.

11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

13. **Liability.**

- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from

and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 15



July 19, 2022

CASE ASSUMPTIONS

Class Members	50
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	50
Subtotal Admin Only	\$4,931.67

Not-to-Exceed Total \$4,000.00

For 50 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Case: Villena v. Pacers Showgirls International, PAGA Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: Nora Greer
 Firm: The Spivak Law Firm
 Contact Number: (818) 582-3073
 Email: nora@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 50 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	1		\$100.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	8		\$20.00
NCOA (USPS)	\$25.00	1		\$25.00
Total				\$345.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Data Merge & Duplication Scrub	\$0.09	50		\$4.50
Notice and Check Packet	\$0.85	50		\$42.50
Estimated Postage (up to 1 oz.)*	\$0.61	50		\$30.50
Total				\$177.50

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	13		\$9.38
Remail Notice Packets	\$0.50	10		\$4.75
Estimated Postage	\$0.61	10		\$5.80
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$234.92

Database Programming

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	4		\$220.00
Case Manager	\$85.00	3		\$255.00
			Total	\$625.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
			Total	\$1,040.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Undeliverable Checks (Postage Included)	\$1.50	10		\$14.25
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	4		\$460.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$400.00	1		\$400.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated 9 Total Class Members	\$300.00	1		\$300.00
Total				\$2,509.25

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$4,931.67



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.