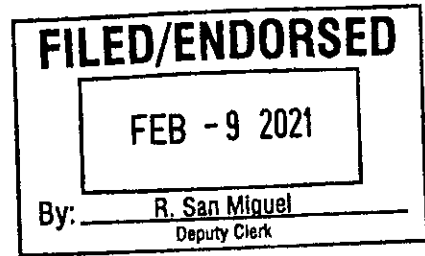


COPY



DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Ste 203
Encino, CA 91436
Telephone: (818) 582-3086
Facsimile: (818) 582-2561

Attorneys for Plaintiff,
LAURA SANDERS, and all others similarly situated
(Additional Attorney listed on next page)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO COUNTY
(UNLIMITED JURISDICTION)**

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

Plaintiff(s),

vs.

FRONTIER MANAGEMENT LLC, an Oregon
limited liability company; THE COURTE AT
CITRUS HEIGHTS, an entity of unknown
form; THE COURTE AT SUNRISE OAK, an
entity of unknown form, and DOES 1-50,
inclusive,

Defendant(s).

Case No.: 34-2020-00289591

CLASS ACTION

FIRST AMENDED COMPLAINT FOR

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201-203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED

BY FAX



SPIVAK LAW

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

ADDITIONAL ATTORNEY FOR PLAINTIFF

LOUIS BENOWITZ (SBN 262300)
Louis@SmithBenowitz.com
SMITH & BENOWITZ
4515 Van Nuys Boulevard, Suite 302
Sherman Oaks, CA 91403
Telephone: (818) 839-7800
Facsimile: (818) 839-9700



SPIVAK LAW

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

1 Plaintiff LAURA SANDERS (hereafter “Plaintiff”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendants FRONTIER
7 MANAGEMENT LLC, THE COURTE AT CITRUS HEIGHTS, THE COURTE AT SUNRISE
8 OAK, and DOES 1 through 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants’ alleged failures to (1) provide all rest
12 and meal periods, (2) pay all wages for all hours worked, (3), fairly compete, (4) timely pay final
13 wages upon termination of employment, and (5) provide accurate written wage statements.
14 Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this class
15 action.

16 **PARTIES**

17 3. Plaintiff is an individual and a resident of city of Placerville, State of California.

18 4. On or about August 12, 2019, Defendants first employed Plaintiff to work in
19 California as a caregiver at Defendants’ residential care facility located in Citrus Heights,
20 California. Defendants continuously employed Plaintiff from her hire date until December 31,
21 2019.

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

25 6. Defendant FRONTIER MANAGEMENT LLC is a limited liability company
26 organized under the laws of Oregon and also a citizen of California based on Plaintiff’s
27 information and belief.

28 7. Defendant THE COURTE AT CITRUS HEIGHTS is an entity of unknown form
and also a citizen of California based on Plaintiff’s information and belief.

8. Defendant THE COURTE AT SUNRISE OAK is an entity of unknown form and
also a citizen of California based on Plaintiff’s information and belief.



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

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

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

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

21 **CLASS ACTION ALLEGATIONS**

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

27 14. **Class Definition:** The class is defined as follows: All persons Defendants
28 employed in California as non-exempt, hourly employees, including but not limited to caregivers
and persons in other similar positions (“Class Members”), at any time during the period beginning
four years prior to the filing of this action and ending on the date that final judgment is entered
in this action.



SPIVAK LAW

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

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

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

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

11 A. Whether Defendants failed to provide the Class Members with all rest
12 periods as required by section 12 of the Wage Order;

13 B. Whether Defendants failed to provide the Class Members with all meal
14 periods as required by section 11 of the Wage Order;

15 C. Whether Defendants failed to compensate the Class Members at one
16 hour's pay on days when Defendants failed to provide them with one or more meal periods in a
17 workday;

18 D. Whether Defendants failed to pay all wages earned to Class Members for
19 all hours worked at the correct rates of pay;

20 E. Whether Defendants knowingly and intentionally failed to provide the
21 Class Members with accurate wage statements;

22 F. Whether Defendants willfully failed to provide the Class Members with
23 timely final wages; and

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

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

 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent



SPIVAK LAW

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

Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

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

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

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class Members against all Defendants)

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

23. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 1198, and the Wage Order.

24. 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.”

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



SPIVAK LAW

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

Rest Periods:

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

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

26. In addition, Labor Code Section 226.7 states

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

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

27. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break. (*Ibid.*)” *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

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

29. Due to their workload, Defendants failed to provide Plaintiff and Class Members with all of the required rest breaks in accordance with the Wage Order. Plaintiff is informed and



believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all rest breaks required by California law. Defendants often understaffed Plaintiff and Class Members' job sites and as a result, Plaintiff and Class Members had no choice but to take late rest periods or miss them all together to meet Defendants' expectations. Additionally, Defendants required Plaintiff and Class Members to monitor the walkie-talkies Defendants assigned to them at all times and to respond to their supervisors or coworkers' communications even during their rest breaks.

30. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and thereon alleges 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 class with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

31. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all rest breaks not provided to them.

32. By reason of the above, Plaintiff and the members of the class are entitled to premium wages for workdays in which one or more rest breaks were not provided to them pursuant to California Labor Code § 226.7.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class Members against all Defendants)

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

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

35. 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.”

36. In relevant part, Labor Code Section 512 states:

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

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

Meal Periods:

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

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

...

(D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke



SPIVAK LAW

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

the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

38. 9 C.F.R. § 785.7 states:

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

39. 29 C.F.R. § 785.18 states:

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

40. 29 C.F.R. § 785.19 states:

Healthcare employees who were required to wear pagers and respond to patient emergencies during meal breaks were held entitled to payment from their employer for meal breaks because their employer had not fully relieved them of their responsibilities during those times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims



SPIVAK LAW

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

LEXIS 192 (Mar. 14, 2016) (employees required to work during half hour meal break given that they had to stay at the facility and be available to respond to requests to return or check out weapons and equipment); *Wahl v. Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police officers stated a claim under the Fair Labor Standards Act where they alleged that they were not paid for meal periods but were required to remain within a certain area, respond to emergencies and citizen requests, and remain accessible).

41. Wage Order 5, § 11(D) states:

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

42. In addition, Labor Code Section 226.7 states

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

(e) 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.

43. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours and before they worked more than five hours in a workday.

44. Due to their workload, Defendants often did not provide Plaintiff and Class Members with all their duty-free and timely meal periods. Plaintiff is informed and believes and



SPIVAK LAW

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

thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all meal periods required by California law. Defendants often understaffed Plaintiff and Class Members' job sites and as a result, Plaintiff and Class Members had no choice but to take late meal periods or miss them all together to meet Defendants' expectations. Additionally, Defendants required Plaintiff and Class Members to monitor the walkie-talkies Defendants assigned to them at all times and to respond to their supervisors or coworkers' communications even during their off-the-clock meal periods.

45. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all meal periods not provided to her. Plaintiff is informed and believes and thereon alleges 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 class with additional wages for all meal periods not provided to them as required by California Labor Code § 226.7.

46. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

47. By reason of the above, Plaintiff and the members of the class are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED

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

(By Plaintiff and the Class Members against all Defendants)

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

49. At all relevant times, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the California Labor Code sections 510, 1194, 1197, and 1198 and the Wage Order.

50. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18



SPIVAK LAW

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

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

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

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

19 51. Labor Code section 510 states:

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

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

...As a general rule the term "hours worked" will include: (a) All time
during which an employee is required to be on duty or to be on the



SPIVAK LAW

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

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

11 53. 29 C.F.R. § 778.223 states:

12 The United States Supreme Court originally stated that employees subject
13 to the act must be paid for all time spent in "physical or mental exertion
14 (whether burdensome or not) controlled or required by the employer and
15 pursued necessarily and primarily for the benefit of the employer and his
16 business." (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No.*
17 *123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need
18 be no exertion at all and that all hours are hours worked which the
19 employee is required to give his employer, that "an employer, if he
20 chooses, may hire a man to do nothing, or to do nothing but wait for
21 something to happen. Refraining from other activity often is a factor of
22 instant readiness to serve, and idleness plays a part in all employments in
23 a stand-by capacity. Readiness to serve may be hired, quite as much as
24 service itself, and time spent lying in wait for threats to the safety of the
25 employer's property may be treated by the parties as a benefit to the
26 employer." *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v.*
27 *Swift* (1944) 323 U.S. 134. The workweek ordinarily includes "all the time
28 during which an employee is necessarily required to be on the employer's
premises, on duty or at a prescribed work place." *Anderson v. Mt. Clemens*
Pottery Co. (1946) 328 U.S. 680. The Portal-to-Portal Act did not change
the rule except to provide an exception for preliminary and postliminary
activities. See Section 785.34.

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

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

35 56. Labor Code section 1198 makes it unlawful for an employer to employ an



SPIVAK LAW

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

employee under conditions that violate the Wage Order.

57. Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

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

59. Defendants compensated Plaintiff and the Class Members with an hourly rate of pay on a semi-monthly basis.

60. Defendants failed to compensate Plaintiff and Class Members for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Defendants required Plaintiff and Class Members to work off-the-clock without compensation. In addition to the work they performed during their off-the-clock meal periods as described above, Defendants required Plaintiff and Class Members to prepare for their shifts by taking the trash out and refilling and organizing the supplies such as gloves and silverware before clocking in for their shifts. Defendants’ management prohibited Plaintiff and Class Members from clocking in earlier and before the start of their shifts. As such, Plaintiffs and Class Members had no choice but to complete these tasks without pay. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’ failure to compensate the Class Members for all hours worked as required by California law, including, but not limited to overtime wages for all overtime hours they worked.

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

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

63. Additionally, with respect to this cause of action, on behalf of herself and the Class



Members, Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class Members against all Defendants)

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

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

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

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

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

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

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



SPIVAK LAW

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

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

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

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

10 70. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
11 all wages owed, including but not limited to, premium, minimum and overtime. As a result,
12 Defendants have failed to properly and accurately itemize each employee's gross wages earned,
13 net wages earned, the total hours worked, the corresponding number of hours worked by
14 employees and other requirements of California Labor Code § 226. As a result, Defendants have
15 violated California Labor Code § 226.

16 71. Defendants' failure to provide Plaintiff and the Class Members with accurate wage
17 statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the
18 Class Members with accurate wage statements but intentionally provided wage statements that
19 Defendants knew were not accurate.

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

73. Pursuant to California Labor Code § 226(e), Plaintiff and the Class Members are
entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial



SPIVAK LAW

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

1 pay period in which a violation of California Labor Code § 226(a) occurred and one hundred
2 dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to
3 exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also
4 entitled to an award of costs and reasonable attorneys' fees.

5 **FIFTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 **(Lab. Code §§ 201-203)**

8 **(By Plaintiff and the Class Member against all Defendants)**

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

10 75. At all relevant times during the applicable limitations period, Plaintiff and the
11 class have been non-exempt employees of Defendants and entitled to the benefits and
12 protections of California Labor Code sections 201-203, and the Wage Order.

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

15 77. Labor Code section 202 provides that all earned and unpaid wages of an
16 employee who quits after providing at least 72-hours notice before quitting are due and payable
17 at the time of quitting and that all earned and unpaid wages of an employee who quits without
18 providing at least 72-hours notice before quitting are due and payable within 72 hours.

19 78. By failing to pay all earned regular, overtime, and premium wages to Plaintiff
20 and the class as described above, Defendants failed to timely pay them all earned and unpaid
21 wages in violation of Labor Code section 201 or 202.

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

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

81. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on
behalf of herself and the Class, in amounts subject to proof not to exceed 30 days of waiting



SPIVAK LAW

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

1 time penalties for each Class Member.

2 **SIXTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

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

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

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

7 83. At all relevant times during the applicable limitations period, Plaintiff and the
8 Class Members have been employees of Defendants and entitled to the benefits and protections
9 of the Business and Professions Code §§ 17200, *et seq.*

10 84. The unlawful conduct of Defendants alleged herein amount to and constitutes
11 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
12 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
13 gained a competitive advantage over other comparable companies doing business in California
14 that comply with their legal obligations to compensate employees for all earned wages.

15 85. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
16 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
17 Members were deprived of wages for all hours worked and for all rest and meal periods not
18 provided to them and for unpaid wages.

19 86. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
20 Class Members are entitled to restitution of all monies rightfully belonging to them that
21 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
22 practices.

23 87. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
24 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
25 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

26 **SEVENTH CAUSE OF ACTION**

27 **CIVIL PENALTIES**

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

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

89. The "Aggrieved Employees" are all members of the Class defined above who
Defendants employed during the period beginning December 1, 2019 and ending on the date



SPIVAK LAW

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

1 that final judgment is entered in this action.

2 90. Labor Code § 204 states

3 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
4 or 204.2, earned by any person in any employment are due and payable twice
5 during each calendar month, on days designated in advance by the employer as
6 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
7 of any calendar month shall be paid for between the 16th and the 26th day of the
8 month during which the labor was performed, and labor performed between the
9 16th and the last day, inclusive, of any calendar month, shall be paid for between
10 the 1st and 10th day of the following month. ...

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

14 (2) An employer is in compliance with the requirements of subdivision (a) of
15 Section 226 relating to total hours worked by the employee, if hours worked in
16 excess of the normal work period during the current pay period are itemized as
17 corrections on the paystub for the next regular pay period. Any corrections set
18 out in a subsequently issued paystub shall state the inclusive dates of the pay
19 period for which the employer is correcting its initial report of hours worked.

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

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

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

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

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

94. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are



SPIVAK LAW

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

entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

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

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

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

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

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

95. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated December 1, 2020, Plaintiff filed written notice online with the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated December 1, 2020 is attached as Exhibit A.



SPIVAK LAW

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

1 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
2 failed to take action in response within 65 calendar days of the date of Plaintiff's notice, but
3 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it
4 does not intend to investigate these allegations.

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

8 **PRAYER FOR RELIEF**

9 97. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
10 relief and judgment against Defendants as follows:

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

13 B. An order that Plaintiff be appointed class representative;

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

15 D. Unpaid wages, including overtime and double-time wages;

16 E. Premium wages;

17 F. Statutory penalties;

18 G. Civil penalties;

19 H. Declaratory relief;

20 I. Actual damages;

21 J. Restitution;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24 M. Reasonable attorneys' fees; and

25 N. Such other relief as the Court deems just and proper.

26 ///

27 ///

28 ///



SPIVAK LAW

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

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 8, 2021

By



DAVID SPIVAK

CAROLINE TAHMASSIAN

Attorneys for Plaintiff, LAURA SANDERS and
all others similarly situated



SPIVAK LAW

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

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

December 1, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
[Attn: PAGA Administrator
http://dir.tflaforms.net](http://dir.tflaforms.net)
Via Electronic Submission

RE: *Laura Sanders/Frontier, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Laura Sanders (hereafter “Sanders”) provides notice on behalf of herself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to caregivers and persons in similar positions (hereafter referred to as “Aggrieved Employees”), by Frontier Management, LLC, an Oregon limited liability company, The Courte At Citrus Heights, a business entity of unknown form, and The Courte At Sunrise Oak, a business entity of unknown form (collectively referred to as “Frontier”), for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198.

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

Statement of Facts

On or about August 12, 2019, Frontier first employed Sanders to work in California as a caregiver at its residential care facility located in Citrus Heights, California. Frontier continuously employed Sanders from her hire date until December 31, 2019.

At all relevant times, Frontier compensated Sanders and the other Aggrieved Employees with an hourly rate of pay and issued her wages on a semi-monthly basis.

At all relevant times, Frontier failed to provide Sanders and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. Frontier often understaffed Sanders and the Aggrieved Employees' job sites and as a result, Sanders and the Aggrieved Employees had no choice but to take late meal and/or rest periods or miss them all together to meet Frontier's expectations. Additionally, Frontier required Sanders and the other Aggrieved Employees to monitor the walkie-talkies Frontier assigned to them at all times and to respond to their supervisors or coworkers' communications even during their off-the-clock meal periods or rest breaks. Frontier failed to pay premium wages for days on which it failed to provide Sanders and the Aggrieved Employees with rest and/or meal periods as provided by California Law.

Frontier also failed to compensate Sanders and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Frontier required Sanders and the Aggrieved Employees to work off-the-clock without compensation. In addition to the work they performed during their off-the-clock meal periods as described above, Frontier required Sanders and other Aggrieved Employees to prepare for their shifts by taking the trash out and refilling and organizing the supplies such as gloves and silverware before clocking in for their shifts. Frontier management prohibited Sanders and the Aggrieved Employees from clocking in earlier and before the start of their shifts. As such, Sanders and the Aggrieved Employees had no choice but to complete these tasks without pay.

At all relevant times, Frontier knowingly and intentionally failed to provide Sanders and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226. Due to its failure to state on the itemized wage statements of Sanders and the Aggrieved Employees the premium wages and overtime and minimum wages they earned for unpaid work during clocked-out periods, Frontier failed to provide Sanders and the Aggrieved Employees with accurate wage statements.

For the reasons stated herein, Sanders alleges the following violations of the California Labor Code and the Wage Order 5 on behalf of herself and the Aggrieved Employees:

- a) Frontier failed to provide Sanders and the Aggrieved Employees with all rest breaks and meal periods;
- b) Frontier failed to pay Sanders and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) Frontier failed to pay Sanders and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Frontier failed to pay Sanders and the Aggrieved Employees minimum wages for all hours worked;
- e) Frontier failed to pay Sanders and the Aggrieved Employees overtime wages for all overtime hours worked;
- f) Frontier failed to provide Sanders and the Aggrieved Employees with accurate wage statements;

- g) Frontier failed to timely pay Sanders and the Aggrieved Employees all earned and unpaid wages during their employment with Frontier;
- h) Frontier failed to timely pay Sanders and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with Frontier; and
- i) Frontier willfully failed to maintain accurate employment records regarding Sanders and the Aggrieved Employees.

Accordingly, Sanders now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Frontier's alleged violations of the California Labor Code and Wage Order 5.

Wage Order 5

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

"(2) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;..." § 2(P) (4)

Also see §2 (J) which defines "Healthcare Industry" to include: "... residential care facilities,..."

At all relevant times during the applicable limitations period, Frontier employed Sanders as a caregiver at its residential care facilities. Accordingly, Sanders and the Aggrieved Employees are entitled to the protections provided under Wage Order 5.

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:

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

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

In relevant part, Section 11 of Wage Order 5 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- ...
- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

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

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

29 C.F.R. § 778.223

The United States Supreme Court originally stated that employees subject to the act must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that “an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much

as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily includes "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change the rule except to provide an exception for preliminary and postliminary activities. See Section 785.34.

29 C.F.R. § 785.7.

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

29 C.F.R. § 785.18.

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. *Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d

981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

29 C.F.R. § 785.19

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

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

written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

Wage Order 5, § 11(D).

In relevant part, Section 12 of Wage Order 5 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states in relevant part:

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

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

Frontier intentionally and improperly failed to provide all timely and duty-free rest breaks and/or meal periods to Sanders and other Aggrieved Employees as required by law. In failing to do so, Frontier violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

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

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

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

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

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 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, California Labor Code § 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.

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

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

(A) Daily Overtime - General Provisions

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

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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

At all relevant times during the applicable limitations period, Frontier failed to

compensate Sanders and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

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

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2));
3. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,

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

At all relevant times during the applicable limitations period, Frontier violated California Labor Code § 226 in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. Frontier failed to state in the wage statements it issued to Sanders and other Aggrieved Employees all the hours worked and wages earned, including premium, minimum and overtime wages, as described above.

Accordingly, Sanders seeks civil penalties on behalf of herself and 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).

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

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

Because of Frontier’s failure to pay Sanders and the Aggrieved Employees wages for off-the-clock work, including, but not limited to, off-the-clock meal periods and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Frontier failed to timely pay all wages due during employment. Accordingly, Sanders seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure 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. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code § 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. Due to the violations described above, Frontier failed to pay final wages in a timely manner to Sanders and the Aggrieved Employees.

By willfully failing to pay wages to Sanders and other Aggrieved Employees as set forth above, at the time of termination of employment, Frontier is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Sanders seeks civil penalties from Frontier 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)).

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: Laura Sanders
Louis Benowitz, Esq.

Frontier Management LLC
c/o Rene Gamboa, Esq.
Lewis Brisbois Bisgaard & Smith LLP
333 Bush Street, Suite 1100
San Francisco, CA 94104
Rene.Gamboa@lewisbrisbois.com

The Courte At Citrus Heights
c/o Rene Gamboa, Esq.
Lewis Brisbois Bisgaard & Smith LLP
333 Bush Street, Suite 1100
San Francisco, CA 94104
Rene.Gamboa@lewisbrisbois.com

LWDA / Frontier

12/1/20

Page 19 of 26

The Courte At Sunrise Oak
c/o Rene Gamboa, Esq.
Lewis Brisbois Bisgaard & Smith LLP
333 Bush Street, Suite 1100
San Francisco, CA 94104
Rene.Gamboa@lewisbrisbois.com

State of California,
County of Los Angeles

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.

Eric K. Iwasaki, Esq.
Lewis Brisbois Bisgaard & Smith LLP
333 Bush Street, Suite 1100
San Francisco, CA 94104
Eric.Iwasaki@lewisbrisbois.com

EXECUTED on Monday, February 08, 2021, at Los Angeles, California.

____ (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.

BRECK OYAMA