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8 Attorneys for Plaintiff(s),
9 CHARLES MIKICH, JONATHON GORDON, and all others similarly situated
10 (Additional attorneys for Plaintiff(s) on following page)

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

12 **FOR THE COUNTY OF SAN FRANCISCO**

13 **(UNLIMITED JURISDICTION)**

14 CHARLES MIKICH, on behalf of himself and
15 all others similarly situated, and as an “aggrieved
16 employee” on behalf of other “aggrieved
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.
19

20 SAYEH PETROLEUM, INC., a California
21 corporation; HEDIA PETROLEUM, INC., a
22 California corporation; HADAD ENTERPRISE,
23 INC., a California corporation; HADAD
24 PETROLEUM, INC., a California corporation;
BAY AREA AUTO CARE, INC., a California
25 corporation; HOUTAN PETROLEUM, INC. a
26 California corporation; GREEN PLANET GAS,
27 INC., a California corporation; ALI
BOZORGHADAD (also known as ED
BOZORGHADAD, also known as ED
HADAD), an individual; and DOES 8-50,
28 inclusive,

Case No. CGC-20-582385 to be
consolidated with CGC-21-594289

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFFS
CHARLES MIKICH AND JONATHON
GORDON’S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: October 27, 2022
Hearing Time: 9:30 a.m.
Hearing Dept.: 302

Action filed: January 22, 2020
Trial Date: Not Set



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Defendant(s).

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

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California corporation; HEDIA PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation; GREEN PLANET GAS, INC., a California corporation; ALI BOZORGHADAD (also known as ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 1-50, inclusive,

Defendant(s).

Case No.: CGC-21-594289

Action Filed: 08/04/2021
Dept: 610, Hon. Garrett L. Wong



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8 CHARLES MIKICH, and all others similarly situated



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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 **1.** I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiffs Charles Mikich, Jonathon Gordon, and all others similarly
6 situated (collectively “Plaintiffs”) in this lawsuit against Defendants Sayeh Petroleum, Inc.,
7 Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc.,
8 Houtan Petroleum, Inc., Ali Bozorghadad, and Green Planet Gas, Inc. (collectively
“Defendants”). Plaintiffs and Defendants are collectively referred to as the “Parties.”

9 **2.** Except as otherwise indicated, I have personal knowledge of all matters set forth
10 herein and, if called as a witness, could and would competently testify thereto under oath.

11 **3.** The Joint Stipulation of Class Action Settlement and Release of Claims (the
“Settlement”) is attached hereto as **Exhibit 1**.

12 ***Factual and Procedural Background***

13 **4.** Defendants collectively operate more than twenty gas stations, some of which
14 have associated convenience stores. Defendants employed Plaintiffs as gas station attendants,
15 clerks, cashiers, and food preparers. Defendants employed Plaintiff Mikich as a gas station clerk
16 from about January 5, 2018 until March 15, 2019.

17 **5.** On January 16, 2020, Plaintiff Mikich notified Defendants and the California
18 Labor and Workforce Development Agency (“LWDA”), pursuant to the California Private
19 Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of
20 alleged Labor Code violations committed by Defendants. A true and correct copy of the letter to
the LWDA dated January 16, 2020 is attached hereto as **Exhibit 2**.

21 **6.** On January 22, 2020, Plaintiff Mikich filed a Class Action Complaint in the San
22 Francisco County Superior Court, Case No. CGC-20-582385, against Defendants on behalf of
23 himself and others similarly situated, alleging causes of action on a class-wide basis for: (1)
24 Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and
1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide
25 Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198
26 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time
27 Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et
28



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1 seq.). On May 11, 2020, Plaintiff filed his First Amended Complaint adding a claim under the
2 Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). On
3 November 4, 2021, Defendants filed an answer to Plaintiffs’ First Amended Complaint.
4 Defendants deny all of Plaintiffs’ allegations and strongly contend that their wage and hour
5 policies, practices and procedures are fully compliant with all applicable laws. A true and correct
6 copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff
7 Mikich’s First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of
8 Defendants’ Answer is attached hereto as **Exhibit 5**.

9 7. On February 11, 2021, Plaintiff Gordon notified Defendants and the LWDA,
10 pursuant to PAGA, of alleged Labor Code violations committed by Defendants. A true and
11 correct copy of Plaintiff Gordon’s letter to the LWDA dated February 11, 2021 is attached hereto
12 as **Exhibit 6**.

13 8. On August 4, 2021, Plaintiff Gordon filed a Class and Representative Action in
14 the San Francisco County Superior Court, Case No. CGC-21-594289, against Defendants on
15 behalf of himself and others similarly situated, alleging causes of action on a class-wide basis
16 for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197,
17 and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to
18 Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code
19 §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting
20 Time Penalties (Lab. Code §§ 201-203); (7) Unfair Competition (Bus. & Prof. Code §§ 17200,
21 et seq.); and (8) Civil Penalties under PAGA. A true and correct copy of Plaintiff Gordon’s
22 Complaint is attached hereto as **Exhibit 7**.

23 9. The Parties thereafter engaged in an informal, voluntary exchange of information
24 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
25 produced each Plaintiff’s entire personnel file (including policies and agreements he signed and
26 acknowledged), copies of their relevant company written policies, time-keeping records, email
27 messages, and paycheck data and records for the putative class, and more detailed time and
28 payroll data for a random sample of putative class members specifically selected by Plaintiffs’
counsel.

10. On January 31, 2022, the parties engaged Michael Loeb, Esq., an experienced
class action mediator, to mediate the dispute. While the Parties mediated with Mr. Loeb’s



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1 assistance for a full day, they were unable to reach a settlement. *Id.* The Parties agreed to engage
2 a third-party expert to analyze Defendants' time and payroll records and provide figures (such as
3 average work day length and the number of workdays for which Defendants' records reflected a
4 facially-compliant meal period) on which the Parties could build damages models. *Id.* The Parties
5 agreed to continue their mediation with Mr. Loeb on a second day. *Id.*

6 **11.** The Parties engaged EmployStats to conduct this analysis. The Parties asked
7 EmployStats to derive 98 categories of data from Defendants' records. *Id.* These categories
8 included the total number of workdays, average hours worked per day, average workweek length,
9 number of workdays of sufficient length to require a meal period, and number of workdays for
10 which a facially-compliant meal period was recorded, among many others. *Id.* EmployStats
11 provided its analysis to the Parties on April 19, 2022. *Id.*

12 **12.** On May 6, 2022, the Parties participated in a second day of mediation session Mr.
13 Loeb. During this second day of mediation, the Parties had a full day of productive negotiations
14 and reached agreement on a class-wide settlement. During the mediation sessions, each side,
15 represented by his/their respective counsel, recognized the risk of an adverse result in the Action
16 and agreed to settle the Action and all other matters covered by this Agreement pursuant to the
17 terms and conditions of this Agreement.

18 **13.** On May 6, 2021, Plaintiff Mikich through a fictitious name amendment, after
19 having discovered the true names of the Doe Defendants, added the remaining Defendants to his
20 lawsuit in place of the first seven Doe Defendants (HEDIA PETROLEUM, INC., HADAD
21 ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC.,
22 HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI BOZORGHADAD).
23 Whereas both the Mikich and Gordon matters are assigned to the same judge (Honorable Judge
24 Ganet L. Wong in Department 610 of the above-entitled Court) and allege the same violations
25 against the same Defendants, the parties requested for the Court to consolidate the matters for
26 settlement purposes. On July 28, 2022, the Court ordered the consolidation of the Mikich and
27 Gordon matters for settlement purposes. A true and correct copy of the Court's consolidation
28 order is attached as **Exhibit 8**.

Ascertainable and Numerous Class

26 **14.** A class is ascertainable when it may be readily identified without unreasonable
27 expense or time by reference to official records. Here, each Plaintiff maintains that the above-

1 defined Class is ascertainable because its members may be identified by reference to Defendants’
2 records and Defendants have agreed to share the relevant information from their records to
3 facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

4 **15.** The Settlement Class has sufficiently numerous members to render joinder
5 impractical. No set number is required as a matter of law to maintain a class action. The California
6 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
7 approximately 1,002 Class Members. Each Plaintiff maintains that it would be impractical and
8 economically inefficient to require each Settlement Class Member to separately maintain an
9 individual action or be joined as a named plaintiff in this action. In light of these considerations,
10 the Settlement Class’ membership is sufficiently numerous.

11 ***Predominant Common Questions***

12 **16.** A question of law or fact is common to the members of a class if it may be resolved
13 through common proof. In this case, there are many predominant common questions. Plaintiffs
14 assert all class members were subject to the same or similar operations and employment policies,
15 practices, and procedures. The claims arise from Defendants’ alleged policy-driven failure to pay
16 wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to
17 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
18 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
19 and related labor law violations, all of which Plaintiffs claim constitute unfair business practices
20 and give rise to PAGA penalties. Plaintiffs assert that common questions include, but are not
21 limited to: (1) Whether Defendants failed to pay all wages earned to class members for all hours
22 worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all
23 meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay
24 the class one additional hour of pay on workdays they failed to provide the class with one or
25 more meal or rest periods in compliance with California law; (4) Whether Defendants failed to
26 indemnify the class for all necessary business expenditures incurred during the discharge of their
27 duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with
28 accurate wage statements; (6) Whether Defendants willfully failed to provide the class with
timely final wages; and (7) Whether Defendants engaged in unfair competition within the
meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class.

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1 **Typicality**

2 **17.** Plaintiffs contend that their claims are typical for the purposes of certifying the
3 Settlement Class. Plaintiffs assert that they, like absent Class Members was subject to the same
4 relevant policies and procedures governing their compensation, expenses, hours of work, and
5 meal and rest periods. Because Plaintiffs contend that they were subject to the same general
6 course of conduct as absent Class Members, resolving the common questions as they apply to
7 Plaintiffs will determine Defendants' *prima facie* liability to all Class Members. Moreover,
8 Plaintiffs' claims could potentially be subject to the same primary affirmative defenses as those
of absent Class Members. Accordingly, Plaintiffs' claims are typical of the Class.

9 **Adequacy**

10 **18.** The adequacy requirement is met where the plaintiff is represented by counsel
11 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
12 the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
13 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
ability to represent the class.

14 **19.** To the best of my knowledge, neither Plaintiffs nor I have any conflicts of interest
15 with the absent Settlement Class Members. Each of the Plaintiffs contends that he is an adequate
16 class representative. Plaintiffs and the Class Members have strong and co-extensive interests in
17 this litigation because they all worked for Defendants during the relevant time period, allegedly
18 suffered the same alleged injuries from the same alleged course of conduct, and there is no
19 evidence of any conflict of interest between Plaintiffs and the Class Members. Moreover, each
20 Plaintiff has demonstrated his commitment to the Settlement Class by, among other things,
21 retaining experienced counsel, providing counsel with documents and extensively speaking with
22 them to assist in identifying the claims asserted in this case, assisting them in identifying
23 witnesses, as well as exposing himself to the risk of attorneys' fees and costs awards against him
24 if this lawsuit had been unsuccessful. Thus, each Plaintiff is adequate to serve as settlement class
representative.

25 **Background of Class Counsel**

26 **20.** In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
27 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
28 Southwestern University School of Law.



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1 **21.** In December of 1995, the Supreme Court for the State of California admitted me
2 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
3 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
4 2013, I became admitted to the New York State Bar.

5 **22.** My law practice has always focused on representation of private and public
6 employees with claims of unpaid wages, wrongful termination, harassment, family and medical
7 leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites,
8 FightWrongfulTermination.com, provides a further description of my practice.

9 **23.** I have tried many cases before California and federal courts, government agencies
10 and neutral arbitrators. I am a member of the California Employment Lawyers Association
11 (CELA).

12 **24.** 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 Bias
21 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 is
28 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
1999.

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

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 His
3 Job" by Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to
4 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 and
18 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 unpaid
26 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
27 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
28 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

29 **25.** Since 2007, I have prosecuted several traditional wage & hour class actions as the
30 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*
31 *v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*



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1 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
2 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
3 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
4 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
an hourly rate of \$525.00 for my services.

5 26. In my representation of employees, I have prosecuted several lawsuits on behalf
6 of employees with claims of rest and meal period and overtime violations or other wage claims.

7 27. I have been involved in the prosecution of numerous wage and hour class actions
8 at various stages of litigation. A small sampling of the wage and hour class action cases in which
9 I have recently been counsel of records is as follows:

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

12 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
13 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
14 court on behalf of nonexempt employees).

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

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

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

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

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1 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
2 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
3 action settlement on behalf of medical devices employees).

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

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

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

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

16 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
17 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
18 on behalf of dairy and agricultural laborers).

19 m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
20 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
21 settlement on behalf of call concert rigging employees). *Nardone v. Sequoia Beverage Company,*
22 *LP*, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted
23 final approval of class action settlement by the court on behalf of hourly employees).

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

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



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

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

r. *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).

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

t. *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).

u. *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).

v. *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).

w. *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).

Class Action Treatment Is Superior

28. A class action is also superior to other means adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical*

1 alternatives that proposed class members could potentially utilize—representative PAGA action
2 (where there is less relief available), individual civil lawsuits or wage claims through the Division
3 of Labor Standards Enforcement (where there would be relatively little money at stake, but the
4 claims would be time-consuming to litigate)—a class action is plainly superior to all of them.
5 Thus, this consideration supports conditional class action treatment for purposes of this
6 Settlement only.

The Settlement is Presumptively Fair

7 **29.** The class settlement here satisfies all of the *Kullar* factors. The Settlement
8 resulted from thorough, arms’ length, negotiations between experienced counsel with the
9 assistance of a respected mediator after sufficient discovery was exchanged to assess the relative
10 strengths and weaknesses of their respective cases and Defendants’ estimated exposure.
11 Moreover, the Parties engaged a neutral third-party expert, EmployStats, to analyze Defendants’
12 time and payroll records relating to the Settlement Class, to derive figures relevant to damages
13 calculation from the underlying records. *Id.* Both defense counsel and I are particularly
14 experienced in employment law and wage and hour class actions. We are experienced and
15 qualified to evaluate the class claims, the viability of the defenses, and the risks and benefits of
16 settlement versus trial on a fully informed basis. I have negotiated many wage and hour class
17 settlements, including many involving the same issues presented here. Counsel on both sides
18 share the view that the Settlement is a fair and reasonable settlement in light of the complexities
19 of the case and uncertainties of class certification and litigation, and a fair result for the Class
20 Members.

21 **30.** Plaintiffs prepared “damages” estimates in advance of the mediation. A true and
22 correct copy of Plaintiff’s damages estimates prepared on May 4, 2022, is attached as **Exhibit 9**.
23 In advance of the mediation, Plaintiffs determined Defendants’ maximum exposure for
24 restitution and penalties to be approximately \$10,731,169.55 (consisting of \$146,975.94 in
25 unpaid wages, \$910,175.92 in missed meal period premium wages, \$1,475,394.34 in missed rest
26 break premium wages, \$722,000.00 for wage statement penalties, \$2,615,796.86 for waiting time
27 penalties, and \$4,026,000.00 for civil penalties). Plaintiffs calculated the damages based on the
28 number of workweeks and pay periods provided by Defendants, Plaintiffs’ reports, the sample
data, and EmployStats’ analysis. *Id.* Plaintiffs also considered the possibility that Defendants
could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class



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Members. Plaintiffs' Counsel applied discounts to the maximum exposure to account for all other risks discussed below. The Gross Settlement Amount, \$1.6 million, is approximately 15% of Plaintiffs' calculation of Defendants' maximum potential exposure. A settlement for approximately 15.00% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.¹

Exposure & Risk Analysis

31. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for \$1,600,000.00 is fair and reasonable.

32. Risks Associated with Unpaid Wages Claim. There is a risk that Plaintiffs' recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. See *Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Lastly,

¹ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").



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1 Defendants rounded hours worked by Class members to the nearest quarter-hour. EmployStats’
2 analysis showed that Defendants’ rounding policy added nearly one hundred more hours worked
3 to Class members’ time records than it deducted. Accordingly, a large award of penalties seems
4 unlikely with respect to this claim.

5 **33.** The difficulty inherent in proving that off-the-clock work occurred poses a
6 significant hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove
7 this claim. Generally, a court will not certify a class unless it can determine an appropriate
8 classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
9 Plaintiffs may rely heavily on anecdotal evidence to prove the off-the-clock work claim,
10 especially given the lack of records indicating when such off-the-clock work may have taken
11 place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to
12 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 classwide methodology.

13 **34. Risks Associated with the Meal Period Claims.** There are risks to Plaintiffs’
14 meal period claim. According to Defendants, Plaintiffs’ description of Defendants’ scheduling
15 practices accurately describes only a tiny fraction of Putative Class members: those who worked
16 for stations that were staffed by a single employee (“Single- Employee Stations”) during morning
17 and afternoon shifts. Further, every employee who worked these shifts, including both named
18 Plaintiffs, signed enforceable on-duty meal period agreements. Defendants presented evidence
19 that other Putative Class Members either worked in a station with coworkers (“Multi-Employee
20 Stations”), where employees were permitted and encouraged to take their meal breaks, or worked
21 at a Single-Employee Station during the graveyard shift, when the policy requiring the station to
22 remain open did not apply. Time records show Defendants instructed Putative Class Members to
23 take meal and rest breaks and provided them the opportunity to do so. In other words, other than
24 limited potential damages associated with unpaid premiums for rest breaks not taken by Putative
25 Class Members working at Single-Employee Stations during the afternoon and graveyard shifts,
26 Defendants contend they face no liability whatsoever with regard to Plaintiffs’ first cause of
27 action. Defendants argue that even for this group, however, there is no evidence that employees,
28 whose job responsibilities were limited in light of the automation implemented at gas stations,
were unable to take off-duty rest breaks. While it is true that Defendants required Putative Class



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Members to remain on premises throughout operating hours, this fact does not necessarily result in liability for Defendants. See, e.g. *Schmidtberger v. W. Refining Retail, LLC*, 2021 WL 5024714, at *19 (C.D. Cal. Sept. 28, 2021) (“The Court . . . rejects Plaintiff’s contention that a policy of requiring employees stay on the premises is invalid facially”) (citing *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016)).

35. Defendants further argue that the law governing Plaintiffs’ first cause of action is well-settled, and the dispute regarding the provision of meal periods and rest breaks is not likely to turn on questions of law, except with regard to the enforceability of the on-duty meal period agreements. All Putative Class Members, including both named Plaintiffs, executed on-duty meal period agreements at the outset of their employment with Defendants. Defendants contend that these agreements foreclose Plaintiffs’ theory of liability regarding unpaid meal period premiums.

36. Defendants point out that on-duty meal period agreements are enforceable when the “nature of the work prevents an employee from being relieved of all duty” during their meal period. Industrial Welfare Commission Wage Order No. 7, 11(c). Like most gas stations, Defendants’ stations are franchises of larger entities, such as Chevron, AMPM, Arco, 76, and Valero. Franchisors exert significant control over the operations of franchisee stations: they dictate branding practices (including employee uniforms), hours of operation, the types of services offered by the stations, and other matters. In general, these requirements are set forth in the franchise agreement, though they are sometimes set forth in branding agreements that mimic franchise agreements. For each of the Single-Employee Stations, the relevant agreement requires Defendants to keep the station open during daytime operating hours (i.e., whenever the station is open, other than during the “graveyard” shift). Since it would not make financial sense to staff these stations with multiple employees during these times, Defendants require employees to sign on-duty meal period agreements to account for the fact that they must eat their lunches while working.

37. Defendants argue that the nature of the work performed by Putative Class Members working daytime shifts at Single-Employee Stations meets the criteria for enforceability of on-duty meal period agreements. While there does not appear to be any precedent directly addressing employees working alone as gas stations, Defendants argue that two DLSE opinion letters, the Wage Order’s plain language, the Ninth Circuit’s opinion in *Abdullah v. U.S. Sec. Associates, Inc.*, and the Department of Industrial Relations’ informational



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1 publications regarding meal periods all support the enforceability of Defendants’ on-duty meal
2 period agreements. In the first opinion letter, issued in 1994, the DLSE opined that on-duty meal
3 period agreements are enforceable “where the employee is the only person employed in the
4 establishment and closing the business would work an undue hardship on the employer.” DLSE
5 Opinion Letter 1994.09.28, at 2. Defendants contend that this language clearly applies to the
6 Putative Class Members working in Single-Employee Stations during daytime shifts, when
7 allowing employees to close the station to take an off-duty meal period would have violated
8 Defendants’ franchise agreements, leading to potentially disastrous consequences for
9 Defendants.

10 **38.** Similarly, Defendants contend, the DLSE opined in 2003 that on-duty meal period
11 agreements are enforceable with regard to employees working at isolated gas stations in which
12 only a single employee is present. DLSE Opinion Letter, 2003.11.03, at 3. The 9th Circuit cited
13 this opinion letter approvingly in 2013 in *Abdullah v. U.S. Sec. Associates, Inc.*, 731 F.3d 952,
14 960 (9th Cir. 2013) (“DLSE has . . . found that the ‘nature of the work’ exception would apply
15 to an ‘isolated’ gas station ‘in which only a single employee is present’”). In *Abdullah*, the Ninth
16 Circuit explained that “we can characterize the instances in which DLSE has found that the
17 ‘nature of the work’ exception applies into two categories: (1) where the work has some
18 particular, external force that requires the employee to be on duty at all times, and (2) where the
19 employee is the sole employee of a particular employer.” *Id.* at 959. Rather than focusing solely
20 on whether a station is “isolated,” then, the standard for determining enforceability of on-duty
21 meal period agreements takes into consideration all the circumstances relating to the employee’s
22 working environment. Further, as the Ninth Circuit itself noted, “the DLSE opinion letters do not
23 provide a definite metric for deciding in what circumstances a lone employee may be permitted
24 to take an on- duty meal break – for example, it is not clear if an employee must be (1) the sole
25 employee on duty at a particular time, (2) the sole employee staffed at a particular location, or
26 (3) the sole employee working for the employer in order to qualify for the ‘nature of the work
27 exception.’” *Id.* at 964, n. 18. However, as the DIR’s FAQs regarding the exception imply, it
28 appears that the DLSE interprets the exception to apply in all three of *Abdullah*’s scenarios, as
evidenced by the FAQs’ offering the following examples of when the exception does apply: “a
sole worker in a coffee kiosk, a sole worker in an all-night convenience store, and a security



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guard stationed alone at a remote site.” See Dep’t of Indus. Relations, Meal Periods FAQs, https://www.dir.ca.gov/dlse/faq_mealperiods.htm (last accessed January 25, 2022).

39. Defendants argue that Putative Class Members working daytime shifts at Single-Employee Stations clearly meet this standard because the need to keep those stations open throughout daytime operating hours is a contractual requirement imposed on the Entity Defendants by their franchise and branding partners (who have considerably greater bargaining power than Defendants). Further, as the DIR’s FAQs make clear, economic realities requiring employers to single-staff convenience stores and other service sector operations create conditions under which the nature of the work exception applies, rendering the on-duty meal period agreements enforceable.

40. By contrast, Defendants argue, the DLSE also found that these agreements are not enforceable with regard to a night-shift manager at a fast-food restaurant because other employees are on duty and could cover for the manager. DLSE Opinion Letter 2002.09.04, at 2-3. The negative implication of this finding is that the absence of other employees would render the agreements enforceable. Taken together, these authorities could establish the enforceability of the on-duty meal period agreements signed by all Putative Class Members who worked at Single-Employee Stations.

41. Defendants contend that, as evidenced by named Plaintiffs’ own time records, while Defendants’ Single-Employee Stations were generally staffed by three employees working three successive eight-hour shifts, exceptions to this rule were relatively commonplace. While it is true that the rule requiring the station to remain open throughout daytime operating hours was imposed by franchise and branding agreements governing each Entity Defendant as a whole and that stations’ budgets were set at the Entity Defendant level, the staffing decisions necessary to effectuate these broad principles were made at the station manager level. In other words, Defendants’ policies and practices relevant to the nature of the work determination mirror those of the *Schmidtberger* defendant. Accordingly, as in *Schmidtberger*, Defendants argue the enforceability of the on-duty meal period agreements signed by Putative Class Members in this matter is not capable of class-wide resolution. Accordingly, Defendants assert that the only potential liability Defendants face in connection with Plaintiffs’ first cause of action is for rest breaks missed by dayshift employees working at Single-Employee Stations. However, as noted above, this claim is likely incapable of class-wide resolution. As such, while Defendants did not



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1 pay rest break premiums to these employees, Defendants believe that the settlement value of
2 these unpaid premiums is significantly lower than the potential maximum exposure.

3 **42.** Defendants contend that, to establish a violation for missed meal periods, a
4 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
5 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
6 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
7 performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
8 or prohibited the employee from taking a proper break, or otherwise failed to release the
9 employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
10 reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*
11 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

12 **43.** Defendants contend they did not impede or discourage Plaintiffs, or any other
13 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
14 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
15 of their meal breaks each day on their time records. The time records that comprise the random
16 sample Defendants produced to Plaintiffs for purposes of mediation show that meal periods were
17 taken the vast majority of the time. Of the time records that show a late, short or no lunch,
18 individualized evidence may be necessary to determine whether they occurred due to conduct of
19 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
20 the value of Plaintiffs’ meal period claim would be substantially reduced at trial.

21 **44. Risks Associated with the Rest Break Claims.** There are risks to Plaintiffs’ rest
22 period claim. Plaintiffs face many of the same risks to their rest period claim that they do to their
23 meal period claims. Defendants produced evidence that many of the shifts are staffed with at
24 least two employees so one can cover for the other to take a ten-minute duty-free rest period. The
25 time records may show that Defendants instructed Putative Class Members to take rest breaks
26 and provided them the opportunity to do so. Defendants also provide evidence that the shifts the
27 employees worked are largely duty free with employees sitting and waiting for customers most
28 of the time. Employers are not required to record rest periods and such periods are paid.
Defendants contend they provided non-exempt employees the opportunity to take rest periods in
accordance with California law. Further, Defendants’ written policies on meal and rest periods
are consistent with the Wage Order. Thus, unlike meal periods, where there are often records



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1 showing whether an employee clocked out or not, there is no such evidence to prove a missed
2 rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims
3 at trial has become exceedingly difficult. Plaintiffs will depend on sample witness testimony and
4 surveys to prove the claims. While a victory with such evidence is certainly possible, relevant
5 caselaw makes such claims risky from a trial management and due process perspective. See
6 *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common
7 questions exist to support class certification, it may be possible to manage individual issues
8 through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015)
136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

9 **45. Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
10 Court may consider Plaintiffs’ claims as to Defendants’ alleged failure to indemnify for business
11 expenses to be individual in nature and thus decline to certify the class. In their third cause of
12 action, Plaintiffs allege that Defendants failed to reimburse two business-related expenses they
13 allege Putative Class Members incurred in connection with their work for Defendants: deductions
14 from employee pay made by Defendants as deposits for the return of uniforms and cell phone-
related expenses incurred by Putative Class Members.

15 **46.** With regard to deductions taken as deposits for the return of Defendant-provided
16 uniforms, Defendants argue Plaintiffs cannot recover any damages on this theory. Payroll records
17 show uniform deposit returns upon termination. They also show that some employees did not
18 have uniform deductions in the first place.

19 **47.** Regarding the cell phone reimbursement claim, Defendants argue neither the
20 nature of their work nor the nature of Defendants’ operations appears to have involved any use
21 of their cell phones. As such, Defendants do not believe they face any liability on Plaintiffs’ third
22 cause of action. Plaintiffs allege that Defendants required Plaintiffs and the Class Members to
23 use their personal items including cellular phones, computers and other electronic devices,
24 vehicles, and tools, and failed to indemnify them for these business expenses. Defendants
25 presented evidence that they have supplied their employees with tools, equipment, and other
26 supplies. As such, there is a risk that the Court may consider Plaintiffs’ claims to be individual
27 in nature and unfit for class wide resolution.

28 ///



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1 **48. Risks Associated with the Statutory “Wage Statement” Penalty Claims.**

2 Plaintiffs also assert claims for wage statement violations, untimely wage violations, and PAGA
3 penalties. Plaintiffs’ fourth cause of action alleges that, as a result of Defendants’ other alleged
4 Labor Code violations (i.e., the unpaid meal and break premiums, unpaid wages, and
unreimbursed expenses), Defendants issued Putative Class Members deficient wage statements.
5 Plaintiffs do not allege that the wage statements Defendants issued were deficient because they
6 failed to include one of the enumerated categories of information required by the California Labor
7 Code, only that the information included was rendered inaccurate because of the alleged
8 underlying violations. This claim fails for multiple reasons.

9 **49.** First Defendants argue, derivative wage statement claims such as Plaintiffs are
10 legally deficient as “California Labor Code § 226 requires employers to show employees what
they were in fact paid, not what employee allege they should have been (but were not) paid.”
11 *Madeira v. Converse, Inc.*, 2022 WL 109365, at *11 (C.D. Cal. Jan. 11, 2022) (citing *Maldonado*
12 *v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1337 (2018)); see also *Sagastume v. Psychemedic*
13 *Corp.*, 2020 WL 8175597, at *5 (C.D. Cal. Nov. 30, 2020), *Hines v. Constellis Integrated Risk*
14 *Mgmt. Servs.*, 2020 WL 5764400, at *6 (C.D. Cal. Sept. 25, 2020) (dismissing wage statement
15 claims because ‘Plaintiff appears to allege only that the amount he was paid was incorrect, not
that the wage statements inaccurately reflected the wages he was paid’), and *Sherman v.*
16 *Schneider Nat’l Carriers, Inc.*, 2019 WL 32200585, at *5 (C.D. Cal. Mar. 6, 2019) (same). This
17 principle could impair Plaintiffs’ recovery on their wage statement cause of action.

18 **50.** Next Defendants argue, even if Plaintiffs’ theory of wage statement liability were
19 legally sound, whether the wage statements issued by Defendants to Putative Class Members
20 working daylight shifts at Single-Employee Stations were rendered deficient by Defendants’
21 failure to pay premiums for miss rest breaks cannot be resolved on a class-wide basis. It is well
22 established that “inaccurate wage statements alone do not justify penalties; the plaintiffs must
23 establish injury flowing from the inaccuracy.” *Maldonado*, 22 Cal. App. 5th at 1334. However,
24 “[u]nder *Maldonado*, any failure of wage statements to reflect premium pay that should have
25 been paid, but was not paid, implicates only the requirements to show wages earned, which do
26 not support a statutory presumption of injury.” *Kazi v. PNC Bank, N.A.*, 2021 WL 965372, at
27 *21 (N.D. Cal. Mar. 15, 2021). Because these injuries are not subject to the presumption of injury,
they may be inappropriate for resolution on a class basis because resolving the claim “would



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1 require individualized showings of actual harm to each [Putative Class Member], in a manner
2 unsuitable for class resolution.” *Id.*

3 **51.** Additionally, Defendants argue, they did not fail to pay Putative Class Members
4 for all hours worked and, thus, the wage statements they issued were entirely accurate with regard
5 to the number of hours worked. They also paid overtime as appropriate and accurately
6 represented these overtime payments on the wage statements issued to Putative Class Members.
7 To the degree any Putative Class Members worked off-the-clock, they did so without Defendants’
8 knowledge, precluding any recovery premised on the theory that the wage statements Defendants
9 issued failed to account for this time. See *Arroyo v. Int’l Paper Co.*, 2020 WL 887771, at *10-12
10 (N.D. Cal. Feb. 24, 2020) (“[l]iability arises under § 226(e) only where an employee suffers
11 ‘injury as a result of a knowing and intentional failure by an employer to comply with subdivision
(a)’ . . . an employer’s good faith belief that it is in compliance with § 226 precludes liability
under the statute”) (emphasis in original) (citing Cal. Lab. Code § 226(e)(1)).

12 **52.** Defendants do not believe they face any liability in connection with Plaintiffs’
13 claim for inaccurate wage statements. Under Labor Code section 226, wage statements must
14 include various information, including the applicable rates of pay, corresponding hours worked,
15 and gross pay. Here, Plaintiffs’ wage statement claim has the same underlying risks as the above
16 claims, as it is derivative of them. On their face, the wage statements issued by Defendants
comply with the requirements of Labor Code section 226.

17 **53. Risks Associated with The Waiting Time Penalties Claim.** Plaintiffs’ claim for
18 untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor
19 Code sec. 226, Plaintiffs must establish that the late payments were willful. The evidence of good
20 faith Defendants put forth may defeat this claim. Like their wage statement cause of action,
21 Plaintiffs’ claim for waiting time penalties is derivative of Plaintiffs’ other allegations of Labor
22 Code violations and it, too, is meritless. While Defendants admit Plaintiff Mikich’s final
23 paycheck was untimely, this was the result of an administrative issue related to his sudden,
24 unexpected termination for disciplinary issues. Plaintiffs do not identify any policy or practice
25 that caused Defendants’ alleged failure to timely pay final wages, except by virtue of alleging
26 that the other alleged Labor Code violations automatically give rise to waiting time penalties.
27 Thus, Defendants’ potential maximum exposure on the waiting time penalties claim must be
28 heavily discounted for settlement purposes.



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1 **54. Risks Associated with the PAGA Claim.** Defendants believe that the value of
2 Plaintiffs’ PAGA claim is less than \$173,600. PAGA explicitly gives courts have nearly
3 unlimited discretion to limit PAGA penalties, or even eliminate them entirely. Cal. Lab. Code §
4 2699(e)(2) (providing that “a court may award a lesser amount than the maximum civil penalty .
5 . . if, based on the facts and circumstances of the particular case, to do otherwise would result in
6 an award that is unjust, arbitrary and oppressive, or confiscatory”). This is especially relevant
7 here, as both the United States Department of Labor and the California Department of Labor
8 Standards Enforcement (“DLSE”) initiated investigations into Defendants’ operations and, after
9 collecting various documents and communicating with management, both dropped their
10 investigations without reaching findings. Further, Defendants have never previously been the
11 subject of either an agency finding or a successful class, or even individual, wage & hour action.
12 Finally, given that 75% of any PAGA recovery must be provided to the DLSE, Defendants argue
13 it would be illogical to award that agency the maximum penalties allowed under the statute when
14 that very agency investigated the same claims at issue in the Action and decided against pursuing
15 them. Regarding PAGA, a court has discretion to award a lesser amount than the maximum
16 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
17 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
18 valid defenses to the Labor Code claims underlying Plaintiffs’ PAGA allegations. Thus, the
19 PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider
20 the maximum civil penalty available to be confiscatory. Moreover, the current COVID-19
21 pandemic could motivate the Court to further reduce the penalty award to avoid what it may
22 consider a confiscatory taking.

23 **55.** This uncertainty increases Plaintiffs’ risk of pursuing the PAGA claims and
24 required a significant discount for settlement purposes. For mediation purposes, Plaintiffs’
25 counsel estimated a maximum exposure of approximately \$4,026,000.00 in civil penalties. This
26 estimate did not take into account any of the risks discussed above and assumed a violation for
27 every single pay period. *Id.* Plaintiffs’ counsel also assessed multiple penalties for the same pay
28 period for the same alleged violations of different Labor Code provisions and derivative
violations. Although two federal district court decisions held that “stacking” PAGA penalties in
this fashion may be appropriate to determine the amount in controversy for purposes of removal
jurisdiction, Plaintiffs’ counsel is not aware of any California state courts awarding plaintiffs

multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking.

56. I am aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.² PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.³

57. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar result could occur here. Notably, Defendants have

² In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein* suffered a particularly sizeable injury – the court found that the defendant's policies caused damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in *Bernstein*, who the court noted had received "millions of dollars from the state of California" to train their flight attendants, engaged in glaring violations of the labor code, such as failing to compensate its flight attendants for work performed outside of "block time" (time during which the aircraft is moving), including time spent participating in pre-flight briefings, boarding passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049, 1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253.

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately \$102 million in damages, primarily based on the defendants' failures to comply with the requirements of California Labor Code section 226.

³ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the complaint is attached as **Exhibit 10**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the statement of decision is attached as **Exhibit 11**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



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1 not previously been found to have violated the California Labor Code and there is significant
2 evidence of Defendants' good faith efforts to comply with their obligations under the Labor
3 Code, both of which may result in the court's exercising its discretion to limit penalties in this
4 case well below their maximum potential value.

5 **58. Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the
6 right to settle a putative class member's disputed wage claims individually, without the consent
7 or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796
8 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue
9 individual release agreements from the Class Members, thereby potentially narrowing the size of
10 the Settlement. This could lead to a significant reduction of claim value in settlement
11 negotiations.

12 **59.** While the evidence gathered through Plaintiffs' discovery supports the merits of
13 the claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation
14 presents significant risks that support a downward departure from Defendants' estimated liability
15 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
16 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
17 taking into account the likelihood of prevailing and other attendant risks. It also represents a fair,
18 adequate, and reasonable compromise amount for these claims and warrants preliminary
19 approval. *Id.*, *Torrison v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
20 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v.*
21 *J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning
22 defendant's financial stability "strongly supports the reasonableness of the settlement"); See
23 *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049,
24 * 3.

Allocation of the PAGA Payment

25 **60.** The settlement of PAGA penalties in the sum of \$50,000.00, of which 75%
26 (\$37,500.00) will be paid to the LWDA and 25% (\$12,500.00) will be distributed to the Class, is
27 reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount
28 for PAGA penalties to be paid to the LWDA and to the Class. The portion to be paid to the
LWDA was not the result of self-interest at the expense of other Class Members.

///



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Attorneys' Fees and Costs

61. I intend to request Class Counsel Attorneys' Fees of \$533,333.00 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$35,000.00 and will be no more than \$35,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No.



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CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

62. The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained information from putative class members, met and conferred with Defendants' counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendants and obtained through other sources, researched applicable law, and estimates of "damages" for purposes of settlement discussions, among other tasks.

63. Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

Class Representative Payment

64. The Settlement provides that each Plaintiff may seek a Class Representative Payment of \$25,000.00. This amount is entirely reasonable given each Plaintiff's efforts in this Action and the risks they undertook on behalf of Class Members. Here, each Plaintiff has devoted

1 many hours advancing the interests of the Settlement Class. Each Plaintiff has done this by,
2 among other things, retaining experienced counsel, providing them with information about his
3 work history with Defendants and Defendants' policies and practices with respect to the wage
4 and hour claims at issue, assisting counsel in identifying witnesses, traveling to and participating
5 in mediation, and being actively involved in the settlement process to ensure a fair result for the
6 Settlement Class as a whole. In doing this, Each Plaintiff has been exposed to significant risks,
7 including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been
8 unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that each Plaintiff undertook
9 on behalf of the Settlement Class shows that the proposed Class Representative Payment is fair,
adequate, and reasonable, and thus warrant preliminary approval.

Settlement Shares

10 **65.** The Settlement Shares will be paid to each Class Member based on his or her
11 eligible Work Weeks compared to the total Work Weeks. Settlement § III.B. Because this method
12 compensates Class Members based on the extent of their potential injuries, in that Class Members
13 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
14 adequate, and reasonable.

Notice By First Class U.S. Mail Only (No Email)

15 **66.** The Settlement requires distribution of the Notice by First Class U.S. mail only.
16 Settlement, § IV.B.2. Although there are current employee Class Members, it is uncertain
17 whether Defendants' records of their contact information include email addresses and Class
18 Members, who perform all of their work away from a desk, are not in a position to check their
19 emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet
20 (attached as Exhibits A, B, and C to the Settlement) provides Class Members with all pertinent
21 information that they need to fully evaluate their options and exercise their rights under the
22 Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the
23 Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid;
24 (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to
25 the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members
26 will be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual
27 Settlement Payment for each Class Member. Additionally, the Notice will include the number of
28 Eligible Workweeks a Class Member had during the Class Period. Accordingly, the Notice



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1 should be approved because it describes the Settlement with sufficient clarity and specificity to
2 explain to Class Members what this action is about, their rights under the Settlement, and how to
3 exercise those rights. As such, the parties' proposed Notice fully complies with California Rules
4 of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the
5 proposed settlement.

Settlement Administration Duties

6 **67.** The duties of the Settlement Administrator are spelled out in section III(C) of the
7 Settlement and in the bid provided by CPT Group, Inc. a true and correct copy of which is
8 attached hereto as **Exhibit 12**.

Settlement Administration Costs

9 **68.** With regard to the settlement administration costs provision (Settlement §III.F),
10 it is reasonable. Before agreeing to CPT Group, Inc. the Parties sought and reviewed bids from
11 other reputable third-party administrators: (A) ILYM Group, Inc. = \$26,990.00; (B) CPT Group,
12 Inc. = \$16,000.00; and C) Phoenix = \$15,000.00. A true and correct copy of the bid from ILYM
13 Group, Inc. is attached hereto as **Exhibit 13**. A true and correct copy of the bid from Phoenix is
14 attached hereto as **Exhibit 14**. The bid provided by CPT Group, Inc. was comparable. Thus,
15 settlement administration costs provision should be given preliminary approval.

Notice of Settlement to the LWDA

16 **69.** Pursuant to Labor Code § 2699(1)(2), each Plaintiff submitted a copy of the
17 Settlement with the Labor and Workforce Development Agency ("LWDA") at the same time
18 Plaintiffs' Motion is being filed with the Court. A true and correct copy of Plaintiffs' submission
19 with the LWDA and a confirmation email is attached hereto as **Exhibit 15**.

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 Friday, September 30, 2022 at Los Angeles, California.



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DAVID SPIVAK,
Declarant



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EXHIBIT 1

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7 Telephone: (213) 725-9094
Facsimile: (213) 634-2485

8 Attorneys for Plaintiff(s),
9 CHARLES MIKICH, JONATHON GORDON, and all others similarly situated
10 (Additional attorneys for parties on following page)

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

14 CHARLES MIKICH, JONATHON GORDON,
15 and on behalf of themselves and all others
16 similarly situated, and as “aggrieved
17 employees” on behalf of other “aggrieved
Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 SAYEH PETROLEUM, INC., a California
21 corporation; HEDIA PETROLEUM, INC., a
22 California corporation; HADAD ENTERPRISE,
23 INC., a California corporation; HADAD
24 PETROLEUM, INC., a California corporation;
25 BAY AREA AUTO CARE, INC., a California
26 corporation; HOUTAN PETROLEUM, INC., a
27 California corporation; GREEN PLANET GAS,
INC., a California corporation; ALI
BOZORGHADAD (also known as ED
BOZORGHADAD also known as ED
HADAD), an individual; and DOES 8-50,

Case No. CGC-20-582385

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

Action filed: January 22, 2020
Dept: 610, The Honorable Garrett
L. Wong

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1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiffs Charles
3 Mikich and Jonathon Gordon (collectively “Plaintiffs” or “Class Representatives”),
4 individually and on behalf of all putative class members, on the one hand, and Defendants
5 Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc.,
6 Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali
7 Bozorghadad (also known as Ed Bozorghadad, Ed Ali Bozorghadad, and Ed Hadad)
8 (collectively “Defendants”). Plaintiffs and Defendants are collectively referred to herein as the
9 “Parties.”
10

11 **I. DEFINITIONS.**

12 The following definitions are applicable to this Settlement Agreement, in addition to
13 other terms defined elsewhere in the Agreement:
14

15 **A. “Action”** shall mean collectively (A) The first lawsuit, originally filed on
16 January 22, 2020 and entitled Charles Mikich v. Sayeh Petroleum, Inc., San Francisco County
17 Superior Court No. CGC-20-582385 and amended on May 11, 2020 to include claims pursuant
18 to the Private Attorneys General Act (“PAGA”) and (2) the second lawsuit, originally filed on
19 August 4, 2021 and entitled Jonathon Gordon v. Sayeh Petroleum, Inc., San Francisco County
20 Superior Court No. CGC-21-594289.
21

22 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons
23 Defendants employed in California as hourly, non-exempt employees during the Class Period.
24 Defendants estimate that, as of preliminary Court approval of this Settlement, or September 3,
25 2022, whichever is earlier, there were approximately 1,200 members.
26

27 **C. “Class Counsel”** shall mean the attorneys representing Plaintiffs in the Action:
28

1 David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law
2 Group.

3 **D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
4 **Payment”** shall mean the amounts awarded to Class Counsel by the Court to compensate them
5 for, respectively, their fees and expenses in connection with the Action, including their pre-
6 filing investigation, their filing of the Action and all related litigation activities, this Settlement,
7 and all post-Settlement compliance procedures.

9 **E. “Class Notice”** shall mean the Notice of Proposed Settlement attached as
10 **Exhibit A** and incorporated by reference into this Agreement.

11 **F. “Class Period”** shall mean the period of time from January 22, 2016 through
12 preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier.

13 **G. “Class Representative Payment”** shall mean the special payment made to each
14 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
15 performing work in support of the Action, and undertaking the risk of liability for attorneys’
16 fees and expenses in the event he was unsuccessful in the prosecution of the Action.

17 **H. “Court”** shall mean the Superior Court for the County of San Francisco, Civic
18 Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680.

19 **I. “Defense Counsel”** shall mean the attorneys representing Defendants in the
20 Action: Scott G. Lawson, Lisa G. Lawson, and Ian W. Forgie of Lawson & Lawson, LLP.

21 **J. “Effective Date”** is defined as follows: If no objection to this Settlement or to
22 any of the terms and or conditions of the Settlement are filed by any of the Plaintiffs, another
23 member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall
24 occur on the day that the Court enters an order of final approval of this Settlement; however, if
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1 any objection to this Settlement or to any of the terms and or conditions of the Stipulation is
2 filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date
3 shall occur upon the expiration of the time for the filing any appeal of the order of final
4 approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date
5 shall occur after the appeal has been dismissed or the writ dissolved and when there is no
6 further time to appeal the dismissal of the appeal or the dissolution of the writ.
7

8 **K. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court
9 to determine whether to approve finally and implement the terms of this Agreement.

10 **L. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of One
11 Million Six Hundred Thousand Dollars and Zero Cents (\$1,600,000.00) payable by Defendants
12 as provided by this Agreement. The Gross Settlement Amount is non-reversionary; no portion
13 of the Gross Settlement Amount will return to Defendants. Defendants’ employer-side payroll
14 taxes arising from the payments made under this Settlement will be paid by Defendants
15 separate from and in addition to the Gross Settlement Amount. The Gross Settlement Amount
16 is inclusive of all amounts to be paid to Class Members, attorney fees, costs, enhancement
17 awards to the named Plaintiffs, PAGA penalties to both the California Labor and Workforce
18 Development Agency (“LWDA”) and allegedly aggrieved employees, and Settlement
19 Administration expenses. With the exception of the operation of the Escalator Clause below,
20 under no circumstances will Defendants’ settlement payment exceed the Gross Settlement
21 Amount.
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24 **M. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
25 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
26 this Action.
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1 **N. “Net Settlement Amount”** shall mean \$1,600,000.00 payable by Defendants
2 pursuant to this Settlement, less:

- 3 **1.** the Class Representative Payments approved by the Court;
- 4 **2.** the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
5 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
6 \$35,000.00) approved by the Court;
- 7 **3.** the Settlement Administrator’s reasonable fees and expenses approved
8 by the Court (not to exceed \$32,000.00);
- 9 **4.** the amount of \$50,000.00 as PAGA Penalties for the PAGA claim, of
10 which \$12,500.00 will be paid to the PAGA Members and \$37,500.00 will be paid to the
11 LWDA; and
- 12 **5.** any other fees or expenses (other than attorneys’ fees and expenses)
13 incurred by Plaintiffs in implementing the terms and conditions of this Agreement as approved
14 by the Court.

15 **O. “PAGA”** means the California Labor Code Private Attorneys General Act of
16 2004 (Lab. Code §§ 2698, *et seq.*).

17 **P. “PAGA Members”** means all individuals Defendants employed in California as
18 hourly, non-exempt employees during the PAGA Period.

19 **Q. “PAGA Penalties”** means the portion of the Gross Settlement Amount that the
20 Parties have agreed to allocate as civil penalties in order to settle claims arising under PAGA.
21 The Parties have agreed to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00), of
22 which, payment from the Gross Settlement Amount to the LWDA will be made in the amount
23 of Thirty Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), which is 75% of
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1 the PAGA Penalties. Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00),
2 25% of the PAGA Penalties, will remain in the Net Settlement Amount for distribution pro rate
3 to PAGA Members as described in this agreement. PAGA Members will receive payment from
4 the employee portion of the PAGA Penalties regardless of whether they submit a request for
5 exclusion if the PAGA Penalties are approved by the Court.
6

7 **R. “PAGA Period”** shall mean January 16, 2019 through preliminary Court
8 approval of this Settlement, or September 3, 2022, whichever is earlier.

9 **S. “Participating Class” or “Participating Class Members”** shall mean all
10 Settlement Class members who do not submit a valid and timely letter requesting to be
11 excluded from the Settlement, consistent with the terms set forth in this Settlement Agreement.
12

13 **T. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
14 approval of the Settlement without material change.

15 **U. “Released Claims”** shall mean all claims, rights, demands, liabilities and causes
16 of action that are alleged, or reasonably could have been alleged based on the facts and claims
17 during the period of January 16, 2016 through preliminary Court approval of this Settlement, or
18 September 3, 2022, whichever is earlier asserted in the Operative Complaint and/or in the
19 letter(s) sent by any Plaintiff to the LWDA concerning Defendants and the other Released
20 Parties, whether sounding in law or equity, tort, contract, statute, or other applicable federal,
21 state or local law or regulation, including but not limited to the following claims: failure to pay
22 wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to
23 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
24 proper wage statements, failure to timely pay wages, failure to maintain required payroll
25 records, unfair business practices that could have been premised on the claims, causes of action
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1 or legal theories of relief described above or any of the claims, causes of action or legal theories
2 of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have
3 been premised on the claims, causes of action or legal theories described above or any of the
4 claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to
5 the LWDA, including but not limited to the California Code of Regulations and to Labor Code
6 sections 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 558.1,
7 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2699, and any and all damages,
8 restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or
9 costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation
10 benefits, unemployment insurance benefits, or any other claim or right that as a matter of law
11 cannot be waived or released. The Parties acknowledge that Released Claims includes any
12 claims for penalties by a PAGA Member resulting from any LWDA investigation. The Parties
13 will meet and confer in good faith if the Court requires changes to the scope of the Released
14 Claims.
15
16

17 **V. "Released Parties"** shall mean Defendants, and any of their former and present
18 agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
19 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
20 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
21 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated
22 organizations, and all persons acting under, by, through or in concert with any of them, and
23 each of them.
24

25 **W. "Response Deadline"** shall mean the date 60 days after the Settlement
26 Administrator mails the Class Notice to Class Members, which is the last date on which Class
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1 Members may submit Exclusion Requests, written objections to the Settlement, or Workweek
2 disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline
3 will be extended to the next day on which the U.S. Postal Service is open. The Response
4 Deadline for Exclusion Requests or Objections will be extended fifteen (15) calendar days for
5 any Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless
6 the 15th day falls on a Sunday or federal holiday, in which case the Response Deadline will be
7 extended to the next day on which the U.S. Postal Service is open.
8

9 **X. “Settlement”** shall mean the disposition of the Action and all related claims
10 effectuated by this Agreement.

11 **Y. “Settlement Account”** shall mean a fund within the meaning of Treasury
12 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
13 Administrator for the benefit of Participating Class Members and PAGA Members.
14

15 **Z. “Settlement Administrator”** shall mean CPT Group, Inc. or another
16 administrator proposed by the Parties and appointed by the Court to administer the Settlement.
17 The Parties represent that they do not have any financial interest in the Settlement
18 Administrator or otherwise have a relationship with the Settlement Administrator that could
19 create a conflict of interest.
20

21 **AA. “Settlement Share”** shall mean each Settlement Class Member’s allocated share
22 of the Net Settlement Amount as provided by this Agreement and any payment a PAGA
23 Member is eligible to receive from the PAGA Penalties per Section III.C.4.

24 **II. RECITALS**

25 **A.** On or about January 16, 2020, Plaintiff Charles Mikich, through his attorneys,
26 sent a letter to the Labor Workforce Development Agency (“LWDA”) alleging the following
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1 against Defendant: failure to pay wages, unauthorized and unlawful wage deductions, failure to
2 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
3 business expenses, failure to issue proper wage statements, failure to timely pay wages, failure
4 to maintain required payroll records, and related allegations (the “PAGA letter”). Plaintiff
5 Charles Mikich asserted these representative claims on behalf of all Class Members who are or
6 were employed during the applicable statutory period.
7

8 **B.** On January 22, 2020, Plaintiff Charles Mikich filed a class action complaint in
9 the San Francisco Superior Court, alleging the same wage and hour claims as set forth in the
10 earlier PAGA letter and adding a cause of action for unfair competition. On May 11, 2020,
11 Plaintiff Charles Mikich filed a first amended class action complaint in the San Francisco
12 County Superior Court, adding a cause of action under the Labor Code Private Attorneys
13 General Act of 2004 (“PAGA”). The first amended complaint is the “Operative Complaint.”
14

15 **C.** On June 23, 2022, the parties stipulated to consolidation of the Action for
16 settlement purposes.

17 **D.** On November 04, 2021, Defendants answered Plaintiffs’ First Amended
18 Complaint and denied, and continue to deny, all of Plaintiffs’ material allegations. Specifically,
19 Defendants deny the failure to pay wages, unauthorized and unlawful wage deductions, failure
20 to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
21 business expenses, failure to issue proper wage statements, failure to timely pay wages, failure
22 to maintain required payroll records, and related allegations in the Action. Defendants contend
23 that they have complied with the Labor Code, the Business & Professions Code, and the
24 applicable Wage Order at all times. Defendants further allege that the Plaintiffs’ claims are not
25 amenable to class treatment because common issues do not predominate.
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1 **E.** The Parties thereafter engaged in an informal, voluntary exchange of
2 information in the context of privileged settlement discussions to facilitate an early mediation.
3 The Parties exchanged discovery requests, documents, information, and data including but not
4 limited to pre-suit evidence request and preservation letters, Form Interrogatories - General,
5 Form Interrogatories - Employment Law, Special Interrogatories, Requests for Production of
6 Documents and Tangible, pre-mediation data and document exchanges, analysis of time and
7 payroll records by a neutral third party analyst, EmployStats, and related activities.

9 **F.** On January 31, 2022, following much of the foregoing informal discovery and
10 exchange of information, the Parties participated in a mediation session presided over by
11 Mediator Michael J. Loeb, an experienced class action mediator. During the mediation, the
12 Parties had a full day of productive negotiations and reached agreement on a class-wide
13 settlement during the second mediation session held May 6, 2022. During the mediation
14 sessions, each side, represented by their respective counsel, recognized the risk of an adverse
15 result in the Action and agreed to settle the Action and all other matters covered by this
16 Agreement pursuant to the terms and conditions of this Agreement.

18 **G.** Based on their own thorough, independent investigation and evaluation of this
19 case, Class Counsel are of the opinion that the settlement with Defendants for the consideration
20 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best
21 interest of the Settlement Class in light of all known facts and circumstances, including the risk
22 of significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
23 Defendants, the risks of adverse determinations on the merits, and numerous potential appellate
24 issues. Although Defendants contend they have no liability in this case, Defendants' counsel
25 shares Class Counsel's belief that the Agreement represents a fair and adequate settlement
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1 given the respective risks associated with the case.

2 **H.** This Agreement represents a compromise and settlement of highly disputed
3 claims. Nothing in this Agreement is intended or will be construed as an admission by
4 Defendants that Plaintiff's claims in the Action have merit or that it has any liability to
5 Plaintiffs or the Class on those claims or to the State, or as an admission by Plaintiffs that
6 Defendants' defenses raised in the Action have merit. This Agreement is intended to fully,
7 finally, and forever compromise, release, resolve, discharge, and settle the released claims
8 subject to the terms and conditions set forth in this Agreement.
9

10 Based on the foregoing Recitals, the Parties agree as follows:

11 **III. SETTLEMENT TERMS AND CONDITIONS**

12 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
13 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
14 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is
15 not preliminarily and finally approved, the conditional certification of the Settlement Class will
16 be of no force or effect, does not constitute an admission by Defendants that class certification
17 is proper, and will not be deemed admissible in this or any other proceeding, and that the
18 Parties will litigate the issue of class certification.
19

20 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
21 Agreement, the Gross Settlement Amount of One Million Six Hundred Thousand Dollars and
22 Zero Cents (\$1,600,000.00), plus Defendants' employer share of employer-side payroll taxes, is
23 the maximum amount payable by Defendants, subject to the provisions of this Paragraph III.B.
24 Defendants estimated for purposes of mediation that there are 27,498 workweeks worked by the
25 Class Members for the period of January 22, 2016 through May 6, 2022. For the avoidance of
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doubt, the term “workweeks” shall mean weeks during which Class Members actually performed work for or on behalf of Defendants. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiffs’ counsel of Defendants’ report of the total number of workweeks worked. The Settlement Administrator shall determine the total number of workweeks worked by Class Members by counting the number of paychecks issued by Defendants during the Class Period, as evidenced by Defendants’ payroll records, a sampling of which was provided to EmployStats in connection with the Parties’ mediation efforts, and multiplying that figure by two. If the workweeks worked as of the date the Court approves the settlement exceed 28,960 workweeks worked by more than 10.00%, the Gross Settlement Amount will increase proportionally according to the number of additional workweeks worked. For example, if the number of workweeks as of the date the Court approves the settlement exceeds 28,960 by 11%, the Gross Settlement Amount shall increase by 1%. If the workweeks worked as of the date the Court approves the settlement exceeds 28,960 workweeks by more than 20.00%, Defendants shall have the option to (a) vacate the Parties’ settlement and this Memorandum of Understanding shall be null and void or (b) to cap the Class Period as of the date that the number of workweeks reaches but does not exceed 31,856.

C. Payments to Plaintiffs and Class Counsel and Others. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. To Plaintiffs.

(a) Class Representative Payments. In addition to their Settlement

1 Shares, each Plaintiff will apply to the Court for an award of not more than Twenty-Five
2 Thousand Dollars and Zero Cents (\$25,000.00) as a Class Representative Payment. Defendants
3 will not oppose a Class Representative Payment of not more than \$25,000.00. The Plaintiffs
4 will receive no other payment other than their Settlement Share and Class Representative
5 Payment, and acknowledge that they are aware of no other facts or circumstances related to
6 their employment with Defendants that could give rise to any additional entitlement to any
7 further payments. The Settlement Administrator will pay the Class Representative Payment
8 approved by the Court out of the Gross Settlement Amount. Payroll taxes, withholdings, and
9 deductions will not be taken from the Class Representative Payment, and instead a Form 1099
10 will be issued to Plaintiffs with respect to that payment. Each Plaintiff agrees to assume all
11 responsibility and liability for the payment of taxes due on the Class Representative Payment.
12 The Class Representative Payment is in exchange for the release of Released Claims against the
13 Released Parties, the general Release of Claims by Plaintiffs, and for the Plaintiffs' time, effort
14 and risk in bringing and prosecuting the Action. Any adjustments made by the Court to the
15 requested Class Representative Payment shall not be deemed a material modification of this
16 Settlement Agreement. In the event that the Court reduces or does not approve the requested
17 Class Representative Payment, the Settlement Agreement remains in full force and effect, shall
18 not have the right to revoke the Settlement for that reason, it shall remain binding, and any
19 portion of the Class Representative Payment not awarded to Plaintiffs will not revert to
20 Defendants, but instead shall be returned to the Net Settlement Amount.

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24 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
25 not more than Five Hundred Thirty-Three Thousand Three Hundred Thirty Three Dollars and
26 Zero Cents (\$533,333.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their
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1 Class Counsel Fees Payment and an amount not more than Thirty Five Thousand Dollars and
2 Zero Cents (\$35,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants
3 will not oppose this request. The Settlement Administrator will pay the amount approved by the
4 Court (but not more than Five Hundred Thirty Three Thousand Three Hundred Thirty Three
5 Dollars and Zero Cents (\$533,333.00) in fees and not more than Thirty Five Thousand Dollars
6 and Zero Cents (\$35,000.00) in expenses) out of the Gross Settlement Amount. Withholding
7 and deductions will not be taken from the Class Counsel Fees and Litigation Expenses Payment
8 and one or more Forms 1099 will be issued to Class Counsel with respect to those payments.
9

10 **3. To the Settlement Administrator.** The Settlement Administrator will
11 be paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
12 Court in an amount currently estimated to not exceed Thirty Two Thousand Dollars and Zero
13 Cents (\$32,000.00).
14

15 **4. To the LWDA.** The Parties will jointly apply to the Court for approval
16 of a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor
17 Code section 2698, *et seq.*, for Fifty Thousand Dollars and Zero Cents (\$50,000.00), of which,
18 payment from the Gross Settlement Amount to the LWDA will be made in the amount of
19 Thirty Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), which is 75% of
20 the PAGA settlement. Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00),
21 25% of the PAGA settlement, will remain in the Net Settlement Amount for distribution and
22 will be distributed to PAGA Members on a *pro rata* basis based on the total number of
23 Individual Work Weeks (full or partial) worked by each PAGA Member during the PAGA
24 Period. Partial Work Weeks shall be rounded up to the nearest whole integer. PAGA Members
25 shall receive their portion of the PAGA Penalties regardless of their decision to submit a
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request for exclusion to opt out of the Settlement.

D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.

Subject to the terms and conditions of this Agreement, the Settlement Administrator will distribute a payment from the Net Settlement Amount to each Participating Class Member. The Settlement Share for each Participating Class Member will be calculated as follows, understanding that the formulas below do not constitute an admission by either party, and are intended only to provide a practical means to simplify and administer the claims process:

(a) Participating Class Members' Settlement Shares. The settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted and W-2s issued) and 66.66% to penalties and interest (for which 1099s will be issued).

(b) Class Portion of Settlement Ratio Calculation. The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the aggregate total of all Class Members' Individual Work Weeks as the denominator. The Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

(c) PAGA Portion of Settlement Ratio Calculation. The Settlement Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number comprised of (a) that PAGA Member's Individual Work Weeks during the PAGA Period as the numerator, and (b) the aggregate total of all PAGA Members' Individual Work Weeks during the PAGA Period as the denominator. The Settlement Administrator shall assign to each PAGA Member the "Settlement Share" which shall be

1 calculated by multiplying that PAGA Member's Settlement Ratio by amount allocated to
2 PAGA Members from the Net Settlement Amount.

3 **2. Settlement Share Worksheet.** Upon calculation of the Class Members'
4 and PAGA Members' Settlement Share, the Settlement Administrator shall furnish to Class
5 Counsel and Defense Counsel a worksheet containing a list of unique identifying numbers for
6 each of the Class Members with their corresponding Individual Work Weeks and Settlement
7 Shares.
8

9 **E. Taxes and Withholdings.** Each Settlement Share is intended, in part, to settle
10 the Class Members' claims for Defendants' failure to pay wages, unauthorized and unlawful
11 wage deductions, failure to provide meal periods, failure to authorize and permit rest periods,
12 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
13 timely pay wages, failure to maintain required payroll records, and related violations of PAGA
14 and the unfair competition law. Each Class Member shall be individually responsible for the
15 employee's share of applicable payroll tax withholdings and deductions. Accordingly, each
16 Settlement Share allocated to wages will be reduced by applicable employee-side payroll tax
17 withholdings and deductions, and the Settlement Administrator will issue a Form W-2 to each
18 Participating Class Member. The remaining non-wage payments will be reported on an IRS
19 Form-1099 by the Settlement Administrator. For PAGA Members who submit a timely and
20 valid request for exclusion to opt out of the class portion of the Settlement, 100% of the
21 individual Settlement Share to that individual shall be allocated as penalties, and not wages, for
22 which the Settlement Administrator will issue to the PAGA Member an IRS Form-1099.
23 Defendants will be responsible for the normal employer's share of any payroll tax attributable
24 to the wage portion of the Settlement Share payments. Defendants' payment of the normal
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1 employer's share of payroll taxes attributable to the wage portion of the Settlement Share
2 payments will be in addition to the Gross Settlement Amount or Net Settlement Amount.

3 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
4 appoint CPT Group, Inc., a qualified administrator, to serve as the Settlement Administrator,
5 which, as a condition of appointment, will agree to be bound by this Agreement with respect to
6 the performance of its duties and its compensation. The Settlement Administrator's duties will
7 include preparing, printing, and mailing the Class Notice to all Class Members; and using
8 reasonable measures to contact all Class Members, including conducting a National Change of
9 Address search on all Class Members before mailing the Class Notice to each Class Member's
10 address. The Settlement Administrator's duties will also include re-mailing the Class Notice to
11 the Class Member's new address for those Class Members whose address has changed;
12 providing the Parties with weekly status reports about the delivery of Class Notice; calculating
13 Settlement Shares; issuing and distributing checks to effectuate the payments due under the
14 Settlement; reporting to the Court as required; and otherwise administering the Settlement
15 pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses,
16 including the cost of printing and mailing the Class Notice, will be paid out of the Gross
17 Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of the
18 Settlement Administrator's fees and expenses that are not used or which are not awarded by the
19 Court will not revert to Defendants, but instead will be part of the Net Settlement Amount for
20 distribution to Participating Class Members. If the Settlement Administrator's fees and
21 expenses exceed Thirty Two Thousand Dollars and Zero Cents (\$32,000.00), such cost will be
22 deducted from the Net Settlement Amount.
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1 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

2 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
3 will move the Court for an order granting Preliminary Approval of the Settlement (the “Motion
4 for Preliminary Approval”), setting a date for the Final Approval Hearing, and approving the
5 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached
6 as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to
7 this Agreement). Any disagreement among the Parties concerning the Class Notice or other
8 documents necessary to implement the Settlement will be referred to the Court.
9

10 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
11 anticipate that they will appear and support the granting of the motion, and that Class Counsel
12 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to
13 Class and Setting Hearing for Final Approval of Settlement.
14

15 **2.** Should the Court decline to approve the Settlement, the Settlement will
16 be null and void and the Parties will have no further obligations under it.

17 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
18 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

19 **1. List of Class Members.** Within fourteen (14) days after the Court grants
20 Preliminary Approval of the Settlement, Defendants shall provide to the Settlement
21 Administrator:
22

23 **(a)** An electronic database of all Class Members, last known mailing
24 address, Social Security number (if available), and Defendants’ employee identification number
25 (“Class Members’ Data”).

26 **(b)** Corresponding to each Class Member’s name, Defendants shall
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1 provide a figure indicating the total number of Work Weeks during the Class Period in which
2 that Class Member was employed by Defendants as a Class Member and during which they
3 actually performed work for Defendants. That number of Work Weeks shall be referred to as
4 that Class Member's "Individual Work Weeks."

5 (c) If any of the Class Members' Data are unavailable to Defendants,
6 Defendants will so inform Class Counsel and the Parties will make their best efforts to
7 reconstruct or otherwise agree upon the Class Members' Data prior to when it must be
8 submitted to the Settlement Administrator. Class Members' Data will otherwise remain
9 confidential and will not be disclosed to anyone, except as necessary to applicable taxing
10 authorities, or pursuant to Defendants' express written authorization or by order of the Court.

11
12 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
13 Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will
14 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
15 address information provided by Defendants, unless modified by any updated address
16 information that the Settlement Administrator obtains in the course of administration of the
17 Settlement.

18
19 **3. Returned Class Notice.** If a Class Notice is returned because of an
20 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
21 from receipt of the returned Class Notice, search for a more current address for the Class
22 Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will
23 use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel
24 to find a more current address. The Settlement Administrator will be responsible for taking
25 reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace
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1 the mailing address of any Class Member for whom a Class Notice is returned as undeliverable
2 by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered
3 mail; performing address searches for all mail returned without a forwarding address; and
4 promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice
5 is re-mailed, the Settlement Administrator will note for its own records and notify Class
6 Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a
7 weekly status report provided to the Parties.
8

9 **4. Declaration of Settlement Administrator.** Not later than twenty-one
10 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
11 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
12 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
13 Administrator will supplement its declaration of due diligence if any material changes occur
14 from the date of the filing of its prior declaration.
15

16 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes
17 his/her estimated Settlement Share, the Class Member may produce evidence to the Settlement
18 Administrator for the Class Period. In order for the dispute to be considered, he/she must
19 follow the directions on the Class Notice. To be valid and timely, all disputes and supporting
20 documents must be postmarked by the Response Deadline. A Class Member may use the Work
21 Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to
22 do so to dispute information in the Class Notice. Absent evidence rebutting Defendants'
23 records, Defendants' records will be presumed determinative. However, if a Class Member
24 produces evidence contrary to Defendants' records by the Response Deadline, the Settlement
25 Administrator shall notify Class Counsel and Defense Counsel to discuss and resolve the
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1 dispute, including providing all available relevant information to all counsel. The Parties will
2 resolve all disputes jointly, and such resolution shall be final and binding on any Class Member
3 disputes, and shall thereafter instruct the Settlement Administrator how to proceed in
4 processing the dispute. If the Parties cannot reach an agreement, the dispute shall be submitted
5 to the Court for final determination. All such disputes are to be resolved or submitted to the
6 Court not later than fourteen (14) calendar days after the Response Deadline.

7
8 **D. Requests for Exclusion from Settlement; and Objections to Settlement.**

9 Class Members may submit requests to be excluded from the effect of the Settlement, or
10 objections to the Settlement, pursuant to the following procedures:

11 **1. Request for Exclusion from Settlement.** A Class Member may request
12 to be excluded from the effect of this Agreement, and any payment of amounts under this
13 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
14 Member wants to be excluded from this Action. This letter must include the Class Member's
15 name, address, telephone number, signature, and a clear statement requesting to be excluded
16 from the settlement of the class claims, as set forth on the Request for Exclusion form or
17 similar to the following: "I wish to exclude myself from the class settlement reached in the
18 matter of *Mikich v. Sayeh Petroleum, Inc.*. I understand that by excluding myself, I will not
19 receive money from the settlement of my individual claims." To be valid and timely, the
20 request to be excluded must be postmarked by the Response Deadline and received by the
21 Settlement Administrator. A Class Member may use the Exclusion Request form (**Exhibit B** to
22 this Settlement), though a Class Member is not obligated to do so to request exclusion from the
23 Settlement. A Class Member who properly submits a valid and timely request to be excluded
24 from the Action shall not receive any payment of any kind in connection with this Agreement
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1 or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have
2 no standing to object to the Settlement, except that the request for exclusion shall not be
3 effective as to the release of claims arising under PAGA and shall not preclude the Class
4 Member from receiving their share of the PAGA Penalties. A request for exclusion must be
5 mailed to the Settlement Administrator at the address provided on the Class Notice. The
6 Settlement Administrator shall transmit the request for exclusion to counsel for the Parties as
7 follows:
8

9
10 *To Class Counsel:*

11 David G. Spivak, Esq.
12 The Spivak Law Firm
13 8605 Santa Monica Bl
14 PMB 42554
15 West Hollywood, CA 90069

To Defense Counsel:

Scott G. Lawson, Esq.
Lisa G. Lawson, Esq.
Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

16 **2. Objections to Settlement.** The Class Notice will provide that any Class
17 Member who does not request exclusion from the Action and who wishes to object to the
18 Settlement should submit an objection in writing to the Settlement Administrator. To be valid,
19 an objection must be postmarked by the Response Deadline and received by the Settlement
20 Administrator. The written objection to the Settlement should set forth the grounds for the
21 objection and the other information required by this paragraph. The objection should be mailed
22 to the Settlement Administrator at the address provided on the Class Notice. The Settlement
23 Administrator shall transmit the objections to counsel for the Parties as follows:
24

25 *To Class Counsel:*

26 David G. Spivak, Esq.
27 The Spivak Law Firm

To Defense Counsel:

Scott G. Lawson, Esq.
Lisa G. Lawson, Esq.

1 8605 Santa Monica Bl
2 PMB 42554
3 West Hollywood, CA 90069
4

Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

5 Counsel will promptly file such objection with the Court.

6 The written objection should state the objecting Class Member's full name, address, and
7 the approximate dates of his or her employment with Defendants. The written objection should
8 state the basis for each specific objection and any legal support in clear and concise terms. The
9 written objection also should state whether the Class Member intends to formally intervene and
10 become a party of record in the action, and upon formally intervening, appear and argue at the
11 Final Approval Hearing.
12

13 Regardless of whether an objecting Class Member complies with the objection
14 procedure encouraged above, the Court will provide a Class Member with the opportunity to
15 speak at the final approval hearing regardless of whether he or she has filed an appearance or
16 submitted a written opposition beforehand. If the objecting Class Member does not formally
17 intervene in the action and/or the Court rejects the Class Member's objection, the Class
18 Member will still be bound by the terms of this Agreement.
19

20 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
21 requests for exclusion, the Settlement Administrator will provide the Parties with a complete
22 and accurate list of all Class Members who sent timely requests to be excluded from the Action
23 and all Class Members who objected to the settlement.

24 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
25 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
26 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
27
28

1 Defendants have the right in their sole and exclusive discretion to terminate and withdraw from
2 the Settlement at any time prior to date the Court enters final approval of this Settlement if
3 5.00% or more than of Class Members timely and validly opt out of the Settlement or if the
4 Court fails to approve material terms of the settlement, including the scope of the release.
5 Defendants must make such election within 10 business days of being notified by the
6 Settlement Administrator 5.00% or greater opt-out rate or the Court's denial of the settlement
7 with prejudice.
8

9 **G. Additional Briefing and Final Approval.** Plaintiffs will file with the Court a
10 motion for final approval of the Settlement and payment of the Settlement Administrator's
11 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiffs and
12 Class Counsel will serve on Defendants and file with the Court a motion for awards of the
13 Class Representative Payment, the Class Counsel Fees Payment, and the Class Counsel
14 Litigation Expenses Payment pursuant to this Settlement, and memoranda in support of their
15 motions.
16

17 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
18 response to any Class Member's objection to the Settlement and/or reply in support of their
19 motion for final approval of the Settlement, and payment of the Settlement Administrator's
20 reasonable fees and expenses to the extent that any opposition to the motion is filed; and
21 Plaintiffs and Class Counsel may file replies in support of their motions for the Class
22 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
23 Expenses Payment.
24

25 If the Court ultimately does not grant final approval of the Settlement or grants final
26 approval conditioned on any material change to the Settlement, then either Party will have the
27
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1 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no
2 further obligations under the Settlement, including any obligation by Defendants to pay the
3 Gross Settlement Amount or any amounts that otherwise would have been payable under this
4 Agreement, except that Defendants and Plaintiffs will jointly and equally pay the Settlement
5 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
6 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
7 amount than that sought by Plaintiffs and Class Counsel for the Class Representative Payment,
8 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
9 constitute a material modification to the Settlement within the meaning of this Paragraph and
10 shall not render the Settlement voidable. Plaintiffs and Class Counsel shall retain the right to
11 appeal awards of attorneys' fees and costs less than requested.
12

13 Upon final approval of the Settlement by the Court at or after the Final Approval
14 Hearing, the Parties will present for the Court's approval and entry a Proposed Final Order and
15 Judgment. The Final Order and Judgment shall permanently bar all Participating Class
16 Members from prosecuting against Defendants any claims within the scope of the Releases
17 contained in this Agreement.
18

19 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
20 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing
21 settlement administration matters, and (iii) addressing such post-Judgment matters as may be
22 appropriate under court rules or applicable law.
23

24 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
25 terms and conditions of this Agreement, and that no Class Member timely objects to the
26 Settlement and formally intervenes into the action as required under the California Supreme
27
28

1 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
2 (2018) or files a motion pursuant to Civil Procedure Code section 663, the Parties, and their
3 counsel hereby waive, except as provided for in this Agreement or prohibited by law, any and
4 all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
5 and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, any
6 extraordinary writ, and any appeal, and the Judgment therefore will become non-appealable at
7 the time it is entered. The waiver of appeal does not include any waiver of the right to oppose
8 any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the
9 Judgment, the time for consummation of the Settlement (including making any payments under
10 the Settlement) will be suspended until the appeal is fully and finally resolved and the
11 Judgment, consistent with the terms of this Agreement, becomes Final.

12
13 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
14 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any
15 other motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or
16 modifies the Judgment such that there is a material modification to the Settlement, and that
17 court's decision is not completely reversed and the Judgment is not fully affirmed on review by
18 a higher court, then either Plaintiffs or Defendants will have the unilateral right to void the
19 Settlement, which the Party must do by giving written notice to the other Parties, the reviewing
20 court, and the Court, not later than fourteen (14) days after the reviewing court's decision
21 vacating, reversing, or materially modifying the Judgment becomes final. The Party exercising
22 his/its right to unilaterally void the Settlement pursuant to this provision agrees to pay any fees
23 owing to the Settlement Administrator for services rendered. An order vacating, reversing or
24 modifying the Court's award of the Class Representative Payment, or the Class Counsel Fees
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1 Payment and/or Class Counsel Litigation Expenses Payment will not constitute a vacation,
2 reversal, or material modification of the Judgment within the meaning of this paragraph, and
3 shall not render the Settlement voidable.

4 **J. Establishment of Settlement Account and Installment Payments.** Defendants
5 will pay the Gross Settlement Amount to the Settlement Administrator for the PAGA
6 settlement and for Class Members who do not opt-out. Any amount attributed to the share of
7 class members who opt-out shall be redistributed to participating class members on a pro-rata
8 basis, and the Settlement Administrator will then be responsible for making appropriate
9 deductions, reporting obligations, and issuing the individual settlement awards. Defendants
10 shall deposit one half of the Gross Settlement Amount with the Settlement Administrator within
11 30 days of the Court's granting preliminary approval of the Settlement. Defendants shall
12 deposit the remaining half of the Gross Settlement Amount with the Settlement Administrator
13 within 365 days of their having deposited the first half of the Gross Settlement Amount.

14 **K. Payment of Settlement Shares.** There will be two distributions of the Gross
15 Settlement Amount as follows:

16 **1. First Distribution.** Within fourteen (14) calendar days of the Effective
17 Date, or within ten (10) calendar days of the deadline for the Defendants' first installment
18 payment (whichever is later), the Settlement Administrator shall distribute, *pro rata*, the
19 portion of the Gross Settlement Amount Defendants paid by that date, including *pro rata*
20 portions of the PAGA payment, Class Representative Payment, the Class Counsel Fees
21 Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administrator's
22 payment.

23 **2. Second Distribution.** Within ten (10) calendar days of the Defendants'
24
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1 second Installment Payment, the Settlement Administrator shall distribute, *pro rata*, the portion
2 of the Gross Settlement Amount Defendants paid since the first distribution, including *pro rata*
3 portions of the PAGA payment, Class Representative Payment, the Class Counsel Fees
4 Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administrator's
5 payment.

6
7 **L. Default on Payment.** In the event Defendants fail to pay any portion of the
8 Gross Settlement Amount, it shall be considered a default. In the event Defendants fail to make
9 any payment on the date it is due, the Settlement Administrator will provide notice to Class
10 Counsel and Defense Counsel within five (5) business days of the missed payment. Thereafter,
11 Defendants will have fifteen (15) days to cure the default and tender payment to the Settlement
12 Administrator. In the event Defendants fail to cure the default within the times set forth herein,
13 Plaintiffs may, among other remedies, elect to enter judgment against Defendants, on an ex
14 parte basis, for the balance of the unpaid Gross Settlement Amount to date.

15
16 **M. Uncashed Settlement Share Checks.** Any check issued by the Settlement
17 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
18 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
19 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
20 (collectively, "Voided Settlement Checks"), plus any interest that has accrued on those funds,
21 will be paid to the California Unclaimed Property Fund.

22
23 **N.** The Settlement Administrator will mail or wire all required payments no later
24 than fourteen (14) calendar days after receipt of the funds representing the Gross Settlement
25 Amount from Defendants. Proof of payment will be filed with the Court.

26 **O. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
27
28

1 days after final disbursement of all funds from the Settlement Account, the Settlement
2 Administrator will serve on the Parties for filing with the Court a declaration providing a final
3 summary report on the disbursements of all funds from the Settlement Account.

4 **V. RELEASE OF CLAIMS**

5 **A. Plaintiffs and Class Members.** The Parties agree that it is their intent that the
6 resolution set forth in this Settlement will release and discharge the Released Claims by way of
7 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other
8 action of any kind by each and all of the Settlement Class Members (including participation to
9 any extent in any representative or collective action) against the Released Parties. This release
10 will not take effect until Defendants have paid the Gross Settlement Amount in full per this
11 Settlement Agreement. All PAGA Members, regardless of whether they submit timely and
12 valid requests for exclusion from the Settlement, will release all Released Claims under PAGA
13 against the Released Parties. The State of California will also release all Released Claims under
14 PAGA against the Released Parties.
15
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17 **B. Release of Claims by Plaintiffs.** Upon the Effective Date, and only after
18 Defendants pay the entirety of the Gross Settlement Amount, each Plaintiff will be deemed to
19 have released the Released Parties of and from all of the Released Claims during the Class
20 Period. These claims include all claims alleged or could have been alleged based on the facts,
21 circumstances, and/or primary rights at issue in the Complaint and any amendments thereto.
22 They include without limitation: (1) all claims for failure to pay wages earned, including
23 minimum wages, and overtime wages; (2) all claims for failure to provide rest periods and
24 claims for rest period premium pay; (3) all claims for failure to provide meal periods and
25 claims for meal period premium pay; (4) all claims for failure to provide accurate wage
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1 statements and related penalties; (5) all claims for failure to timely pay wages during
2 employment and at termination; (6) all claims for violation of California Business and
3 Professions Code §§ 17200, et seq., to the extent such claims are predicated on the other claims
4 released herein; and (7) all claims for violation of PAGA and all related claims for penalties, to
5 the extent such claims are predicated on the other claims released herein. Each Plaintiff's
6 release set forth herein shall include a waiver of all rights under California Civil Code §1542,
7 which includes a release of all known and unknown claims against the Released Parties during
8 the Class Period. Civil Code section 1542 provides:

10 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
11 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
12 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
13 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
14 **SETTLEMENT WITH THE DEBTOR.**

15 Upon the Effective Date, each Plaintiff will be deemed to have waived his rights under Civil
16 Code §1542 during the Class Period, as set forth above. Each Plaintiff's release excludes any
17 claim for worker's compensation. It also includes his claims, if any, for harassment,
18 discrimination, wrongful termination, negligent infliction of emotional distress and intentional
19 infliction of emotional distress and related prayers for compensatory and punitive damages,
20 interest, attorney fees and costs.

21 **C. Class Counsel.** As of the date the Judgment becomes Final, and except as
22 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
23 Counsel (The Spivak Law Firm and United Employees Law Group), including without
24 limitation David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and
25 attorneys' fees and expenses against Defendants or the Released Parties arising from or related
26 to the Action, except those incurred to enforce this Agreement and collect the Judgment,
27 including but not limited to claims based on the California Labor Code, the California Civil
28

1 Code, the California Code of Civil Procedure, the Fair Labor and Standards Act, or any other
2 statute or law (the “Class Counsel Released Claims”).

3 **D. Tax Liability.** Defendants make no representation as to the tax treatment or
4 legal effect of the payments called for in this Agreement, and Plaintiffs, Settlement Class
5 Members, and PAGA Members are not relying on any statement, representation, or calculation
6 by Defendants or by the Settlement Administrator in this regard. Plaintiffs, Settlement Class
7 Members, and PAGA Members understand and agree that except for Defendants’ payment of
8 the employer’s portion of any payroll taxes, they will be solely responsible for the payment of
9 any taxes and penalties assessed on the payments described herein.

11 **E. Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR
12 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
13 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
14 PARTY”) ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS
15 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
16 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
17 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
18 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
19 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
20 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
21 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND
22 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
23 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
24 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
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1 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
2 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
3 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
4 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
5 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
6 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
7 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
8 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF
9 ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
10 AGREEMENT.
11

12 **VI. NON-PUBLICITY PROVISION**

13 The Parties and their counsel agree that they will not issue any press releases, initiate
14 any contact with the press, respond to any press inquiry, or have any communication with the
15 press about the fact, amount, or terms of the Settlement. In addition, the Parties and their
16 counsel agree that they will not engage in any advertising or distribute any marketing materials
17 relating to the Settlement of this case in any manner that identifies the Defendants, including
18 but not limited to any postings on any websites maintained by Class Counsel. Neither Plaintiffs
19 nor Class Counsel will discuss the terms or the fact of the Settlement with third parties other
20 than (1) their immediate family members, (2) their respective accountants or lawyers as
21 necessary for tax purposes; or (3) other Class Members. Plaintiffs and Class Counsel agree not
22 to publish any of the terms or conditions of this Settlement in any manner that identifies the
23 Defendants. However, Class Counsel may identify this Settlement in other matters to
24 demonstrate their adequacy as counsel in such other matters.
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1 **VII. MISCELLANEOUS TERMS**

2 **A. No Effect on Other Benefits.** The Settlement Shares will not result in any
3 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus)
4 and shall not have any effect on the eligibility for, or calculation of, any employee benefit.
5 Plaintiffs and Class Members will be deemed to have waived all such claims, whether known
6 or unknown by them, as part of their release of claims under this Agreement.
7

8 **B. No Admission of Liability.** Defendants deny that they have engaged in any
9 unlawful activity, have failed to comply with the law in any respect, or have any liability to
10 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
11 purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will
12 be construed as an admission of liability or wrongdoing by Defendants, or an admission by any
13 Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was
14 meritorious. This Settlement and the fact that Plaintiffs and Defendants were willing to settle
15 the Action will have no bearing on, and will not be admissible in connection with, any litigation
16 (other than solely in connection with the Settlement).
17

18 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
19 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
20 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
21 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
22 Defendants or any other Released Parties, including, but not limited to, evidence of a
23 presumption, concession, indication or admission by any of the Released Parties of any
24 liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or
25 offered in evidence against any of the Released Parties, in any further proceeding in the Action,
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1 or any other civil, criminal or administrative action or proceeding except for purposes of
2 effectuating the Settlement pursuant to this Agreement.

3 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
4 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
5 between the Parties relating to the Settlement, and it will then be deemed that no oral
6 representations, warranties, covenants, or inducements have been made to any Party concerning
7 this Agreement or its exhibits other than the representations, warranties, covenants, and
8 inducements expressly stated in this Agreement and its exhibits.

10 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
11 represent that they are authorized by Plaintiffs and Defendants, respectively, to take all
12 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
13 to effectuate its terms, and to execute any other documents required to effectuate the terms of
14 this Agreement. The Parties and their counsel will cooperate with each other and use their best
15 efforts to effect the implementation of the Settlement. In the event the Parties are unable to
16 reach agreement on the form or content of any document needed to implement the Agreement,
17 or on any supplemental provisions that may become necessary to effectuate the terms of this
18 Agreement, the Parties will seek the assistance of the Court, and in all cases, all such
19 documents, supplemental provisions and assistance of the court will be consistent with this
20 Agreement.
21

22 **F. Use and Return of Documents and Data.** Upon written request from
23 Defendants, Class Counsel will return or destroy all originals, copies, and summaries of
24 documents and data provided to Class Counsel by Defendants in connection with the settlement
25 negotiations in this matter. Class Counsel will confirm in writing to Defendants the destruction
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1 of all such documents and data within fourteen (14) days of such request.

2 **G. Modification of Agreement.** This Agreement, and all parts of it, may be
3 amended, modified, changed, or waived only by an express written instrument signed by all
4 Parties or their successors-in-interest.

5 **H. Agreement Binding on Successors.** This Agreement will be binding upon, and
6 inure to the benefit of, the successors of each of the Parties.

7
8 **I. Applicable Law.** All terms and conditions of this Agreement and its exhibits
9 will be governed by and interpreted according to the laws of the State of California, without
10 giving effect to any conflict of law principles or choice of law principles.

11 **J. Cooperation in Drafting.** The Parties have cooperated in the drafting and
12 preparation of this Agreement. This Agreement will not be construed against any Party on the
13 basis that the Party was the drafter or participated in the drafting.

14
15 **K. Fair Settlement.** The Parties and their respective counsel believe and warrant
16 that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have
17 arrived at this Agreement through arms-length negotiations, considering all relevant factors,
18 current and potential.

19 **L. Headings.** The descriptive heading of any section or paragraph of this
20 Agreement is inserted for convenience of reference only and does not constitute a part of this
21 Agreement.

22
23 **M. Notice.** All notices, demands or other communications given under this
24 Agreement will be in writing and deemed to have been duly given as of the third calendar day
25 after mailing by United States mail, addressed as follows:

26 *To Class Counsel:*
27 David G. Spivak, Esq.

26 *To Defense Counsel:*
27 Scott G. Lawson, Esq.

1 The Spivak Law Firm
2 8605 Santa Monica Bl
3 PMB 42554
4 West Hollywood, CA 90069

Lisa G. Lawson, Esq.
Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

5
6 **Execution in Counterpart.** This Agreement may be executed in one or more
7 counterparts. All executed counterparts and each of them will be deemed to be one and the same
8 instrument provided that counsel for the Parties will exchange between themselves original
9 signed counterparts. Facsimile signatures will be presumptive evidence of execution of the
10 original, which shall be produced on reasonable request. Any executed counterpart will be
11 admissible to prove the existence and contents of this Agreement.
12

13
14 08 / 04 / 2022

15 Dated: July____, 2022

By:



CHARLES MIKICH

16 Dated: July____, 2022

By:

JONATHON GORDON

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19
20 Dated: July_____, 2022

By:

ALI BOZORGHADAD

CEO

For himself and for Sayeh Petroleum,
Inc., Hedia Petroleum, Inc., Hadad
Enterprise, Inc., Hadad Petroleum,
Inc., Bay Area Auto Care, Inc., Houtan
Petroleum, Inc., and Green Planet Gas,
Inc.

1 The Spivak Law Firm
2 8605 Santa Monica Bl
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4 West Hollywood, CA 90069

Lisa G. Lawson, Esq.
Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
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10 original, which shall be produced on reasonable request. Any executed counterpart will be
11 admissible to prove the existence and contents of this Agreement.
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15 Dated: July____, 2022

By: _____

CHARLES MIKICH

16 07 / 19 / 2022

17 Dated: July____, 2022

By: _____

JONATHON GORDON

18
19
20
21 Dated: July_____, 2022

By: _____

ALI BOZORGHADAD

CEO

For himself and for Sayeh Petroleum,
Inc., Hedia Petroleum, Inc., Hadad
Enterprise, Inc., Hadad Petroleum,
Inc., Bay Area Auto Care, Inc., Houtan
Petroleum, Inc., and Green Planet Gas,
Inc.

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THE SPIVAK LAW FIRM

07 / 19 / 2022

Dated: July ____, 2022

By: 

DAVID G. SPIVAK, Attorneys for
Plaintiff, CHARLES MIKICH,
JONATHON GORDON, and all others
similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: July ____, 2022

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, CHARLES MIKICH,
JONATHON GORDON, and all others
similarly situated

LAWSON & LAWSON, LLP

Dated: July ____, 2022

By: _____
LISA G. LAWSON, Attorneys for
Defendants, SAYEH PETROLEUM,
INC., HEDIA PETROLEUM, INC.,
HADAD ENTERPRISE, INC.,
HADAD PETROLEUM, INC., BAY
AREA AUTO CARE, INC., HOUTAN
PETROLEUM, INC., GREEN
PLANET GAS, INC., and ALI
BOZORGHADAD (also known as ED
BOZORGHADAD also known as ED
HADAD)

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THE SPIVAK LAW FIRM

Dated: July ___, 2022

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, CHARLES MIKICH,
JONATHON GORDON, and all others
similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: July 19, 2022

By:  _____
WALTER L. HAINES, Attorneys for
Plaintiff, CHARLES MIKICH,
JONATHON GORDON, and all others
similarly situated

LAWSON & LAWSON, LLP

Dated: July ___, 2022

By: _____
LISA G. LAWSON, Attorneys for
Defendants, SAYEH PETROLEUM,
INC., HEDIA PETROLEUM, INC.,
HADAD ENTERPRISE, INC.,
HADAD PETROLEUM, INC., BAY
AREA AUTO CARE, INC., HOUTAN
PETROLEUM, INC., GREEN
PLANET GAS, INC., and ALI
BOZORGHADAD (also known as ED
BOZORGHADAD also known as ED
HADAD)

1 The Spivak Law Firm
2 8605 Santa Monica Bl
3 PMB 42554
4 West Hollywood, CA 90069

Lisa G. Lawson, Esq.
Ian W. Forgie, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

5
6 **Execution in Counterpart.** This Agreement may be executed in one or more
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8 instrument provided that counsel for the Parties will exchange between themselves original
9 signed counterparts. Facsimile signatures will be presumptive evidence of execution of the
10 original, which shall be produced on reasonable request. Any executed counterpart will be
11 admissible to prove the existence and contents of this Agreement.
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15 Dated: July____, 2022

By: _____
CHARLES MIKICH

16
17 Dated: July____, 2022

By: _____
JONATHON GORDON

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19
20 Dated: July 29, 2022

By:  _____
ALI BOZORGHADAD
CEO
For himself and for Sayeh Petroleum,
Inc., Hedia Petroleum, Inc., Hadad
Enterprise, Inc., Hadad Petroleum,
Inc., Bay Area Auto Care, Inc., Houtan
Petroleum, Inc., and Green Planet Gas,
Inc.

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THE SPIVAK LAW FIRM

Dated: July____, 2022

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, CHARLES MIKICH,
JONATHON GORDON, and all others
similarly situated

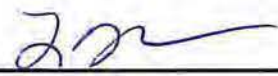
UNITED EMPLOYEES LAW GROUP

Dated: July____, 2022

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, CHARLES MIKICH,
JONATHON GORDON, and all others
similarly situated

LAWSON & LAWSON, LLP

Dated: July 21, 2022

By:  _____
LISA G. LAWSON, Attorneys for
Defendants, SAYEH PETROLEUM,
INC., HEDIA PETROLEUM, INC.,
HADAD ENTERPRISE, INC.,
HADAD PETROLEUM, INC., BAY
AREA AUTO CARE, INC., HOUTAN
PETROLEUM, INC., GREEN
PLANET GAS, INC., and ALI
BOZORGHADAD (also known as ED
BOZORGHADAD also known as ED
HADAD)

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EXHIBIT A

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR COURT APPROVAL**

3 *Charles Mikich, et al. v. Sayeh Petroleum, Inc., et al., Case No. CGC-20-582385*

4 **As a current or former hourly, non-exempt employee of Sayeh Petroleum, Inc., Hedia**
5 **Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care,**
6 **Inc., Houtan Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghadad, in California,**

7 CPT ID: <<CPT ID>>

8 Please provide current address (if different) here:

9 <<Name>>

10 <<Address1>>

11 <<Address2>>

12 <<City>>, <<State>> <<Zip Code>>

13 **you may be entitled to receive money from a class action settlement.**

14 *The San Francisco County Superior Court has authorized this Class Notice.*
15 *This is not a solicitation from a lawyer.*

16 YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION
17 SETTLEMENT IF YOU ARE A CURRENT OR FORMER HOURLY, NON-EXEMPT
18 EMPLOYEE OF SAYEH PETROLEUM, INC., HEDIA PETROLEUM, INC., HADAD
19 ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO CARE, INC.,
20 HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., AND ALI BOZORGHADAD
21 (ALSO KNOWN AS ED BOZORGHADAD ALSO KNOWN AS ED HADAD) IN THE
22 STATE OF CALIFORNIA BETWEEN JANUARY 16, 2016 AND PRELIMINARY COURT
23 APPROVAL OF THIS SETTLEMENT, OR SEPTEMBER 3, 2022, WHICHEVER IS
24 EARLIER.

25 A proposed settlement of \$1,600,000.00 (the “Gross Settlement Amount”) will be used to pay
26 claims to: All persons Sayeh Petroleum, Inc., Hedia Petroleum, Inc., Hadad Enterprise, Inc.,
27 Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan Petroleum, Inc., Green Planet Gas,
28 Inc., and Ali Bozorghadad (also known as Ed Bozorghadad also known as Ed Hadad) employed
in California as hourly, non-exempt employees during the “Class Period” of January 16, 2016 to
preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier (the
“Class Members”). The Gross Settlement Amount includes (a) expenses and fees of the
Settlement Administrator up to \$32,000.00; (b) an Class Representative Payment of \$25,000.00
to the Plaintiffs CHARLES MIKICH AND JONATHON GORDON (collectively “Plaintiffs” or
“Class Representatives”) as the class representative; (c) attorneys’ fees of up to \$533,333.00
and litigation expenses of up to \$35,000.00 to Class Counsel; and (d) \$50,000.00 allocated to
settle claims brought pursuant to the Private Attorneys General Act, California Labor Code
Section 2698, *et seq.* (“PAGA”) (75% of which will go to the California Labor & Workforce
Development Agency (“LWDA”) and 25% of which will go to Class Members). The Court
must approve these payments at the Final Approval Hearing.

- 1 • Defendants estimated for purposes of mediation that there are 27,498 workweeks worked by
2 the Class Members for the period of January 22, 2016 through May 6, 2022. For the
3 avoidance of doubt, the term “workweeks” shall mean weeks during which Class Members
4 actually performed work for or on behalf of Defendants. These numbers would be expected
5 to increase proportionately for the passage of time between that date and the time of court
6 approval. Before the Parties seek or a Party seeks court approval of the Settlement, the
7 Settlement Administrator will advise Plaintiffs’ counsel of Defendants’ report of the total
8 number of workweeks worked. The Settlement Administrator shall determine the total
9 number of workweeks worked by Class Members by counting the number of paychecks
10 issued by Defendants during the Class Period, as evidenced by Defendants’ payroll records,
11 a sampling of which was provided to EmployStats in connection with the Parties’ mediation
12 efforts, and multiplying that figure by two. If the workweeks worked as of the date the
13 Court approves the settlement exceed 28,960 workweeks worked by more than 10.00%, the
14 Gross Settlement Amount, including the attorneys fees to Class Counsel. will increase
15 proportionally according to the number of additional workweeks worked. For example, if
16 the number of workweeks as of the date the Court approves the settlement exceeds 28,960 by
17 11%, the Gross Settlement Amount, including the attorney fees to Class Counsel, shall
18 increase by 1%. If the workweeks worked as of the date the Court approves the settlement
19 exceeds 28,960 workweeks by more than 20.00%, Defendants shall have the option to (a)
20 vacate the Parties’ settlement and this Memorandum of Understanding shall be null and
21 void or (b) to cap the Class Period as of the date that the number of workweeks reaches but
22 does not exceed 31,856. This provision is the “Escalation Clause.”
- 23 • The settlement resolves a lawsuit entitled *Charles Mikich, et al. v. Sayeh Petroleum, Inc., et*
24 *al.*, Case No. CGC-20-582385 (the “Action”) for Defendants’ alleged failure to pay wages,
25 unauthorized and unlawful wage deductions, failure to provide meal periods, failure to
26 authorize and permit rest periods, failure to indemnify for business expenses, failure to
27 issue proper wage statements, failure to timely pay wages, failure to maintain required
28 payroll records, and other legal consequences that would follow from these failures,
including claims under California’s Business & Professions Code and PAGA. This
settlement avoids the costs and risks from continuing the Action, pays money to persons
like you, and releases Defendants from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action.
Defendants deny any and all liability arising from any of the claims and contend that they
are not responsible for a failure to pay wages, unauthorized and unlawful wage deductions,
failure to provide meal periods, failure to authorize and permit rest periods, failure to
indemnify for business expenses, failure to issue proper wage statements, failure to timely
pay wages, failure to maintain required payroll records, or related wrongs, and fully
complied with all applicable laws.
- Class Members will receive a payment based on the number of Work Weeks, rounded up to
the nearest full Work Week, during the Class Period.

**PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

HOW MUCH WILL I GET?

You have a total number of <<number of Work Weeks>> Work Weeks during the Class Period.

It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
OPT OUT	Receive no payment and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Action. However, you may not opt out of the PAGA Released Claims.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, CPT Group, Inc., about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
DISPUTE THE WORK WEEKS CALCULATION	If you feel that you worked a different amount of Work Weeks as an hourly, non-exempt employee than identified above, you may dispute that calculation by writing to the Settlement Administrator.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, CPT Group, Inc., providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Action and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Action, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the San Francisco County Superior Court. The persons who sued are called "Plaintiffs" and the organizations they sued are called "Defendants."

2. What is the Action about?

In the Action, Plaintiffs Charles Mikich and Jonathon Gordon alleged multiple violations of the California Labor Code, the California Business & Professions Code, and PAGA, including causes of action for: failure to pay wages, unauthorized and unlawful wage deductions, failure

1 to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
2 business expenses, failure to issue proper wage statements, failure to timely pay wages, failure
3 to maintain required payroll records, unfair competition under California's Business &
Professions Code, and claims for civil penalties for violations of the PAGA.

4 3. Why is there a settlement?

5 The parties disagree on the probable outcome of the case with respect to liability, damages, and
6 how much money could be recovered if the Plaintiffs won at trial. Defendants believe the
7 Plaintiffs would not prevail if this case went to trial. The Court has not decided in favor of the
8 Plaintiffs or Defendants. There has been no trial in this case. Instead, both sides recognize the
9 risks, expenses, and disruption associated with continued litigation and they have therefore
10 chosen to resolve their differences by entering into a settlement. By doing so, the parties can
11 avoid the cost of a trial, yet Class Members are still entitled to receive payments if they comply
with the instructions in this Class Notice. The parties entered into this settlement after arms-
length negotiations while using the services of an experienced and neutral mediator. The
Plaintiffs and Class Counsel believe that the proposed settlement is fair and reasonable and is
in the best interest of the Class Members.

12 4. What is a class action settlement?

13 The Court must approve the terms of the proposed settlement as fair and reasonable. Once
14 approved, the settlement will affect all Class Members, except those who have properly opted
15 out. This Class Notice explains your legal rights, the terms of the settlement, what you must do
16 to participate, and the amount of money you may receive. Please read this entire Class Notice
carefully.

17 5. What should I do?

18 You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful,
19 however, that if this Class Notice reaches you and the address where you now live is different,
20 you need to contact the Settlement Administrator and provide updated information so that any
future correspondence or the settlement check itself reaches you and is not returned as an
address unknown.

21 6. How much will my payment be?

22 After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which
23 is available for review), the remainder will be used to pay Class Members a pro-rata payment
24 based on the number of Work Weeks each Class Member worked during the Class Period and
25 PAGA Members a pro-rata payment based on the number of Work Weeks each PAGA
Member worked during the PAGA Period ("Pro-Rata Share").

26 The Settlement Administrator shall determine by how many Work Weeks each such Class
27 Member has.
28

1 Your estimated payment is listed above, on page 4 of this document. If you do not dispute your
2 Work Weeks calculation, and do not opt out of the settlement, you will be bound by the
3 settlement and receive a settlement payment. **In other words, you do not need to take any
4 action to receive a settlement payment.**

5 If you wish to dispute the number of Work Weeks credited to you or anything else about your
6 employment status, you must write to the Settlement Administrator indicating what you believe
7 is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail
8 with proof of the submission date (such as a postmark or delivery service date stamp). You
9 may use the enclosed Work Weeks Dispute Form for this purpose. If the Settlement
10 Administrator re-mailed your Class Notice to a new address, you will have additional 15 days
11 from the date of the re-mailed Class Notice to write to the Settlement Administrator to dispute
12 your Work Weeks information. You must also send any documents or other information that
13 you contend supports your belief that the information set forth above is incorrect. The
14 Settlement Administrator will resolve any dispute based upon Defendants' records and any
15 information you provide. Please be advised that the information on this Notice is presumed to
16 be correct unless the documents you submit are company records from Defendants.

17 7. When would I get my payment?

18 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
19 time>> .m to decide whether to approve the proposed settlement. If the Court approves the
20 settlement and anyone objects, there may be appeals. It is always uncertain when these
21 objections and appeals can be resolved, and resolving them can take time. To check on the
22 progress of the settlement, call the Settlement Administrator at <<settlement administrator
23 phone number>>, or contact Class Counsel (see below for Class Counsel's contact
24 information.). Please be patient.

25 Defendants will pay the Gross Settlement Amount in two annual \$800,000.00 installments.
26 There will be two annual distributions of the Gross Settlement Amount. The parties do not
27 expect the final distribution to take place until December of 2023, so please be patient and, if
28 you change your address, advise the Settlement Administrator immediately.

29 You will have 180 days to cash your settlement check. If a mailed individual settlement
30 payment is not cashed by <<check cashing deadline>> (within 180 days of the date printed on
31 the check), all uncashed funds will be paid to the California State Controller's Office
32 Unclaimed Property Fund with the identity of the Class Member to whom the funds belong, to
33 be held for the Class Member.

34 8. What am I releasing?

35 If you do not exclude yourself from the settlement (according to the procedures explained
36 below), you will release certain claims as follows:

37 The Parties agree that it is their intent that the resolution set forth in this Settlement will
38 release and discharge the Released Claims by way of any further attempt, by lawsuit,

1 administrative claim or action, arbitration, demand, or other action of any kind by each
2 and all of the Settlement Class Members (including participation to any extent in any
3 representative or collective action) against the Released Parties. This release will not
4 take effect until Defendants have paid the Gross Settlement Amount in full per this
5 Settlement Agreement. All PAGA Members, regardless of whether they submit timely
and valid requests for exclusion from the Settlement, will release all Released Claims
under PAGA against the Released Parties. The State of California will also release all
Released Claims under PAGA against the Released Parties.

6 **“Released Claims”** shall mean all claims, rights, demands, liabilities and causes of
7 action that are alleged, or reasonably could have been alleged based on the facts and
8 claims during the period of January 16, 2016 through preliminary Court approval of this
9 Settlement, or September 3, 2022, whichever is earlier asserted in the Operative
10 Complaint and/or in the letter(s) sent by Plaintiffs to the LWDA concerning Defendants
11 and the other Released Parties, whether sounding in law or equity, tort, contract, statute,
12 or other applicable federal, state or local law or regulation, including but not limited to
13 the following claims: failure to pay wages, unauthorized and unlawful wage deductions,
14 failure to provide meal periods, failure to authorize and permit rest periods, failure to
15 indemnify for business expenses, failure to issue proper wage statements, failure to
16 timely pay wages, failure to maintain required payroll records, unfair business practices
17 that could have been premised on the claims, causes of action or legal theories of relief
18 described above or any of the claims, causes of action or legal theories of relief pleaded
19 in the Action, all claims under PAGA or for civil penalties that could have been
20 premised on the claims, causes of action or legal theories described above or any of the
21 claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff’s
22 letter(s) to the LWDA, including but not limited to the California Code of Regulations
23 and to Labor Code sections 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510,
24 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2699;
25 and any and all damages, restitution, disgorgement, civil penalties, statutory penalties,
taxes, interest or attorneys’ fees or costs resulting therefrom. Released Claims shall not
apply to claims for workers’ compensation benefits, unemployment insurance benefits,
or any other claim or right that as a matter of law cannot be waived or released. The
Parties acknowledge that Released Claims includes any claims for penalties by a PAGA
Member resulting from any LWDA investigation. The Parties will meet and confer in
good faith if the Court requires changes to the scope of the Released Claims.

26 **“Released Parties”** shall mean Defendants, and any of their former and present agents,
27 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
28 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
thereof, affiliated organizations, and all persons acting under, by, through or in concert
with any of them, and each of them.

The release provisions of this Settlement will not take effect until Defendants have paid the
Gross Settlement Amount in full per this Settlement Agreement.

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2 **9. How can I opt out of this settlement?**

3 You can opt out of this settlement and retain your rights. To do so, you must send a letter by
4 mail to the Settlement Administrator with the following sentence, or something similar, stating:
5 “I request to be excluded from the class action proceedings in the matter of *Charles Mikich, et*
6 *al. v. Sayeh Petroleum, Inc.*, Case No. CGC-20-582385.” You may use the enclosed “Election
7 not to Participate in Settlement Form” for this purpose. You will have 60 **days** from the date of
8 mailing of this Class Notice to do so. Your Opt-Out request must be in writing and mailed to
9 the Settlement Administrator, CPT Group, Inc., <<settlement administrator mailing address>>
10 and be postmarked no later than <<response deadline>>, or it will not be considered and you
11 will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to
a new address, you will have additional 15 days from the date of the re-mailed Class Notice to
opt out. You must include your full name (and former names, if any) and address in your
request and you must sign the written request. However, you cannot opt-out of the PAGA
Released Claims and will receive your pro rate share of the PAGA Penalties whether or not
you opt out of the settlement.

12 **10. Do I have a lawyer in this case?**

13 The Court has appointed David G. Spivak of The Spivak Law Firm, 8605 Santa Monica Bl,
14 PMB 42554, West Hollywood, CA 90069, Telephone: (213) 725-9094, david@spivaklaw.com,
15 and Walter L. Haines of United Employees Law Group, 4276 Katella Ave, Suite 301, Los
16 Alamitos, CA 90720, Telephone: (562) 256-1047, walter@uelglaw.com to represent you and
17 other Class Members in the Action. These lawyers are called Class Counsel. They will be
compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want
to be represented by your own lawyer, you may hire one at your own expense.

18 **11. How will the lawyers be paid?**

19 Subject to the Escalation Clause above, Class Counsel will ask the Court to award them fees of
20 approximately 33 and 1/3% (one-third) of the Gross Settlement Amount. Class Counsel will
21 also ask the Court to award them costs of not more than \$35,000.00 incurred in connection
with the Action. The Court may choose to award less than the amount requested by Class
Counsel.

22 **12. How do I tell the Court that I do not like the settlement?**

23 You can ask the Court to deny approval by objecting. You cannot ask the Court to order a
24 larger settlement; the Court can only approve or deny the settlement. If the Court denies the
25 settlement, no settlement payments will be sent out and the Action will continue. If that is what
you want to happen, you must object.

26 You may object to the proposed settlement in writing or in person. You may also appear at the
27 Final Approval Hearing, either in person or through your own attorney. If you appear through
28

1 your own attorney, you are responsible for paying that attorney. All written objections and
2 supporting papers should (a) clearly identify the case name and number (*Charles Mikich, et al.*
3 *v. Sayeh Petroleum, Inc.*, Case No. CGC-20-582385), (b) be submitted to the Settlement
4 Administrator by mailing them to the Settlement Administrator, CPT Group, Inc., <<settlement
5 administrator mailing address>>, and (c) be filed or postmarked on or before <<response
6 deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new address, you
will have additional 15 days from the date of the re-mailed Class Notice to object. Class
Members may appear at the final approval hearing to be heard on their objections, even if they
have not previously served a written objection.

7 **13. When and where will the Court decide whether to approve the settlement?**

8 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
9 hearing time>> .m in Department 610 at the San Francisco County Superior Court, Civic
10 Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680, (The Honorable
11 Garrett L. Wong presiding). At this hearing, the Court will consider whether the settlement is
12 fair, reasonable, and adequate. If there are objections that were properly made, the Court will
13 consider them. The Court will listen to people who have asked to speak at the hearing. The
Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court
will decide whether to approve the settlement. We do not know how long this decision will
take.

14 **14. Do I have to come to the hearing?**

15 No. Class Counsel will answer any questions that the Court may have. But, you are welcome to
16 come at your own expense. If you sent an objection, you do not have to come to Court to talk
17 about it. As long as you timely mailed your written objection, the Court will consider it. You
may also pay your own lawyer to attend, but it is not required.

18 **15. May I speak at the hearing?**

19 Regardless of whether you properly objected to the settlement, you may speak at the fairness
20 hearing.

21 **16. What happens if I do nothing at all?**

22 You will participate in the settlement and receive payment. You will be bound by the release as
23 set forth herein.

24 **GETTING MORE INFORMATION**

25 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
26 or the Settlement Administrator if you would like more information about the case. You may
27 call <<settlement administrator phone number>> or write the Settlement Administrator, CPT
28 Group, Inc., located at <<settlement administrator mailing address>>.

1 You can also access the San Francisco County Superior Court's Online Services at
2 https://www.____, or by visiting the Clerk's Office at the San Francisco
3 County Superior Court, Civic Center Courthouse, 400 McAlister Street, San Francisco, CA
4 94102-3680), between __:0 a.m. and __:0 p.m., Monday through Friday, excluding Court
5 holidays.

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**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

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EXHIBIT B

3 **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

4 **IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
5 DO NOT FILL OUT THIS FORM.**

6 **IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER
THAN <<RESPONSE DEADLINE>>:**

7 *Mikich, et al. v. Sayeh Petroleum, Inc., et al. Class Action Settlement Administrator*
8 c/o _____
9 _____

10 I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be
bound by the Settlement and also will not share in the settlement proceeds.

11
12 _____
13 (Typed or Printed Name)

14 _____
15 (Address)

16 _____
17 (City, State, Zip Code)

18 _____
19 (Telephone Number, Including Area Code)

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21 (Identification Number)

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct and was executed on _____.

23 Dated: _____
24 _____
25 (Signature)

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EXHIBIT C

1 **WORK WEEK DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of San Francisco
4 *Charles Mikich, et al. v. Sayeh Petroleum, Inc., et al.*, Case No. CGC-20-582385

5 Indicate Name/Address Changes, if any:

6 <<Name>> _____

7 <<Address>> _____

8 <<City>>, <<State>> <<Zip Code>> _____

9 XX - XX - _ _ _ _

10 TO ALL PERSONS DEFENDANTS EMPLOYED AS HOURLY, NON-EXEMPT EMPLOYEE IN THE STATE
11 OF CALIFORNIA AT ANY TIME BETWEEN JANUARY 16, 2016 AND PRELIMINARY COURT
12 APPROVAL OF THIS SETTLEMENT, OR SEPTEMBER 3, 2022, WHICHEVER IS EARLIER.

13 The amount of your estimated Settlement Award is based upon the number of Eligible Work Weeks you worked
14 between January 16, 2016 and preliminary Court approval of this Settlement, or September 3, 2022, whichever is
15 earlier and Eligible Work Weeks you worked between January 16, 2019 and preliminary Court approval of this
16 Settlement, or September 3, 2022, whichever is earlier. "Individual Class Work Weeks" are defined as any Work
17 Week in which you worked at least one (1) day as an hourly, non-exempt employee of Sayeh Petroleum, Inc.,
18 Hedia Petroleum, Inc., Hadad Enterprise, Inc., Hadad Petroleum, Inc., Bay Area Auto Care, Inc., Houtan
19 Petroleum, Inc., Green Planet Gas, Inc., and Ali Bozorghdad, (also known as Ed Bozorghdad, Ed Ali
20 Bozorghdad, and Ed Hadad) (collectively "Defendants") in California during the calendar week. "Individual
21 PAGA Work Weeks" are defined as any Work Week in which you worked at least one (1) day as an hourly, non-
22 exempt employee of Defendants in California during the calendar week during the period of January 16, 2019
23 through preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier. The number of
24 Class and PAGA Work Weeks applicable to your claim are set forth below.

25 **YOUR ELIGIBLE WORK WEEKS**

26 Defendants' records indicate that you worked <<number of Work Weeks>> Work Weeks between January 16,
27 2016 and preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier and <<number
28 of Work Weeks>> Work Weeks between January 16, 2019 through preliminary Court approval of this Settlement,
or September 3, 2022, whichever is earlier.

29 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

30 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the
31 approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable payroll and tax
32 deductions, after the Court approves the Settlement and it goes into effect. This process may take six months or
more. You will receive a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice
is only an estimate. The exact amount of the payment could vary, up or down.

33 If you wish to dispute the number of January 16, 2016 credited to you, or anything else about your employment
34 status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below
35 and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof
36 of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or
37 other information that you contend supports your belief that the information set forth above is incorrect. The
38 Settlement Administrator will resolve any dispute based upon Defendants' records and any information you
provide. Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless
the documents you submit are company records from Defendants.

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UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK WEEKS, RECEIPT
OF A SETTLEMENT AWARD, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE
ANY ACTION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

CHARLES MIKICH, JONATHON GORDON,
on behalf of themselves and all others similarly
situated, and as “aggrieved employees” on
behalf of other “aggrieved employees” under the
Labor Code Private Attorneys General Act of
2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
California corporation; HADAD ENTERPRISE
INC., a California corporation; HADAD
PETROLEUM, INC., a California corporation;
BAY AREA AUTO CARE, INC., a California
corporation; HOUTAN PETROLEUM, INC., a
California corporation; GREEN PLANET GAS
INC., and ALI BOZORGHADAD, (also known
as ED BOZORGHADAD also known as
ED HADAD), an individual; and DOES 8–50
inclusive,

Defendant(s).

Case No. CGC-20-582385

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: January 22, 2020
Dept: 610, The Honorable Garrett
L. Wong

1 The Motion of Plaintiffs CHARLES MIKICH AND JONATHON GORDON
2 (collectively “Plaintiffs” or “Class Representatives”) for Preliminary Approval of a Class
3 Action Settlement (the “Motion”) was considered by the Court, The Honorable Garrett L.
4 Wong presiding. The Court having considered the Motion, the Joint Stipulation of Class
5 Action Settlement and Release of Claims (“Settlement” or “Settlement Agreement”), and
6 supporting papers, HEREBY ORDERS THE FOLLOWING:
7

8 1. The Court grants preliminary approval of the Settlement and the Settlement
9 Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for
10 Preliminary Approval. All terms herein shall have the same meaning as defined in the
11 Settlement. The Court has determined there is sufficient evidence to preliminarily determine
12 that (a) the terms of the Settlement appear to be fair, adequate, and reasonable to the
13 Settlement Class and (b) the Settlement falls within the range of reasonableness and appears to
14 be presumptively valid, subject only to any objections that may be raised at the final hearing
15 and final approval by this Court. The Court will make a determination at the hearing on the
16 motion for final approval of class action settlement (the “Final Approval Hearing”) as to
17 whether the Settlement is fair, adequate and reasonable to the Settlement Class.
18

19 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
20 all persons Defendants employed as hourly, non-exempt employees in California (collectively
21 “Class Members”), who worked anytime during the Class Period. The “Class Period” shall
22 mean the period of time from January 16, 2016, through preliminary Court approval of this
23 Settlement, or September 3, 2022, whichever is earlier. Defendants estimated for purposes of
24 mediation that there are 27,498 workweeks worked by the Class Members for the period of
25 January 22, 2016 through May 6, 2022. For the avoidance of doubt, the term “workweeks”
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1 shall mean weeks during which Class Members actually performed work for or on behalf of
2 Defendants. These numbers would be expected to increase proportionately for the passage of
3 time between that date and the time of court approval. Before the Parties seek or a Party seeks
4 court approval of the Settlement, the Settlement Administrator will advise Plaintiffs' counsel
5 of Defendants' report of the total number of workweeks worked. The Settlement
6 Administrator shall determine the total number of workweeks worked by Class Members by
7 counting the number of paychecks issued by Defendants during the Class Period, as evidenced
8 by Defendants' payroll records, a sampling of which was provided to EmployStats in
9 connection with the Parties' mediation efforts, and multiplying that figure by two. If the
10 workweeks worked as of the date the Court approves the settlement exceed 28,960 workweeks
11 worked by more than 10.00%, the Gross Settlement Amount will increase proportionally
12 according to the number of additional workweeks worked. For example, if the number of
13 workweeks as of the date the Court approves the settlement exceeds 28,960 by 11%, the Gross
14 Settlement Amount shall increase by 1%. If the workweeks worked as of the date the Court
15 approves the settlement exceeds 28,960 workweeks by more than 20.00%, Defendants shall
16 have the option to (a) vacate the Parties' settlement and this Memorandum of Understanding
17 shall be null and void or (b) to cap the Class Period as of the date that the number of
18 workweeks reaches but does not exceed 31,856.

19
20
21 3. The "Effective Date" means as follows: If no objection to this Settlement or to
22 any of the terms and or conditions of the Settlement are filed by any of the Plaintiffs, another
23 member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall
24 occur on the day that the Court enters an order of final approval of this Settlement; however, if
25 any objection to this Settlement or to any of the terms and or conditions of the Stipulation is
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1 filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date
2 shall occur upon the expiration of the time for the filing any appeal of the order of final
3 approval of this Settlement. If an appeal is filed or any writ granted, then the Effective Date
4 shall occur after the appeal has been dismissed or the writ dissolved and when there is no
5 further time to appeal the dismissal of the appeal or the dissolution of the writ. The occurrence
6 of the Effective Date is a prerequisite to any obligation of Defendants to pay any funds into the
7 Settlement Account.
8

9 4. This action is provisionally certified pursuant to section 382 of the California
10 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class
11 action for purposes of settlement only with respect to the proposed Settlement Class.
12

13 5. The Court hereby preliminarily finds that the Settlement was the product of
14 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In
15 making this preliminary finding, the Court considered the nature of the claims set forth in the
16 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement,
17 the allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
18 represents a compromise of the Parties' respective positions. The Court further preliminarily
19 finds that the terms of the Settlement have no obvious deficiencies and do not improperly
20 grant preferential treatment to any individual Class Member. Accordingly, the Court
21 preliminarily finds that the Settlement was entered into in good faith.
22

23 6. The Court finds that the dates set forth in the Settlement for mailing and
24 distribution of the Class Notice meet the requirements of due process and provide the best
25 notice practicable under the circumstances, and constitute due and sufficient notice to all
26 persons entitled thereto, and directs the mailing of the Class Notice by first class mail to the
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1 Settlement Class as set forth in the Settlement. Accordingly, the Court orders the following
2 implementation schedule for further proceedings:

3 a. By _____, Defendants shall provide
4 _____, the appointed Settlement Administrator,
5 with: (a) An electronic database of all Class Members, last known mailing
6 address, Social Security number and Defendants' employee identification
7 number ("Class Members' Data"); and (b) Corresponding to each Class
8 Member's name, Defendants shall provide a figure indicating the total
9 number of Work Weeks during the Class Period and the PAGA Period in
10 which Defendants employed the Class Member. That number of Work
11 Weeks shall be referred to as that Class Member's "Individual Work
12 Weeks;" (c) If any of the Class Members' Data are unavailable to
13 Defendants, Defendants will so inform Class Counsel and the Parties will
14 make their best efforts to reconstruct or otherwise agree upon the Class
15 Members' Data prior to when it must be submitted to the Settlement
16 Administrator. Class Members' Data will otherwise remain confidential and
17 will not be disclosed to anyone, except as necessary to applicable taxing
18 authorities, or pursuant to Defendants' express written authorization or by
19 order of the Court.
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23 b. **Mailing of Class Notice.** By _____, approximately
24 fourteen (14) days after receiving the Class Members' Data, or as soon
25 thereafter as it can do so, the Settlement Administrator will mail the Class
26 Notice to all identified Class Members via first-class U.S. mail using the
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1 mailing address information provided by Defendants, unless modified by
2 any updated address information that the Settlement Administrator obtains
3 in the course of administration of the Settlement.

4
5 c. **Returned Class Notice.** If a Class Notice is returned because of an
6 incorrect address, the Settlement Administrator will promptly, and not later
7 than ten (10) days from receipt of the returned Class Notice, search for a
8 more current address for the Class Member and re-mail the Class Notice to
9 the Class Member. The Settlement Administrator will use the Class
10 Members' Data and otherwise work with Defendants' Counsel and Class
11 Counsel to find a more current address. The Settlement Administrator will
12 be responsible for taking reasonable steps, consistent with its agreed-upon
13 job parameters, court orders, and fee, to trace the mailing address of any
14 Class Member for whom a Class Notice is returned as undeliverable by the
15 U.S. Postal Service. These reasonable steps shall include the tracking of all
16 undelivered mail; performing address searches for all mail returned without
17 a forwarding address; and promptly re-mailing to Class Members for whom
18 new addresses are found. If the Class Notice is re-mailed, the Settlement
19 Administrator will note for its own records and notify Class Counsel and
20 Defendants' Counsel of the date and address of each such re-mailing as part
21 of a weekly status report provided to the Parties.
22

23
24 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
25 court days prior to the Final Approval Hearing, the Settlement
26 Administrator will provide the Parties for filing with the Court a declaration
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1 of due diligence setting forth its compliance with its obligations under this
2 Agreement. Prior to the Final Approval Hearing, the Settlement
3 Administrator will supplement its declaration of due diligence if any
4 material changes occur from the date of the filing of its prior declaration.
5

6 **e. Requests for Exclusion from Settlement; and Objections to Settlement.**

7 Class Members may submit requests to be excluded from the effect of the
8 Settlement, or objections to the Settlement, pursuant to the following
9 procedures:

- 10 i. **Request for Exclusion from Settlement.** A Class Member may
11 request to be excluded from the effect of this Agreement, though not
12 the PAGA Released Claims, and any payment of amounts under this
13 Agreement, though not the PAGA Payment, by timely mailing a
14 letter to the Settlement Administrator stating that the Class Member
15 wants to be excluded from this Action. This letter must include the
16 Class Member's name, address, telephone number, and signature.
17 To be valid and timely, the request to be excluded must be
18 postmarked by the date specified in the Class Notice
19 (_____, or 60 days from the initial mailing of the Class
20 Notice by the Settlement Administrator). A Class Member who
21 properly submits a valid and timely request to be excluded from the
22 Action shall not receive any payment of any kind in connection with
23 this Agreement or this Action, shall not be bound by or receive any
24 benefit of this Agreement, and shall have no standing to object to
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1 the Settlement. A request for exclusion must be mailed to the
2 Settlement Administrator at the address provided on the Class
3 Notice. The Settlement Administrator shall transmit the request for
4 exclusion to counsel for the Parties as follows:

5
6
7 *To Class Counsel:*

8 David G. Spivak, Esq.
9 The Spivak Law Firm
10 8605 Santa Monica Bl
11 PMB 42554
12 West Hollywood, CA 90069

To Defense Counsel:

Scott G. Lawson, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

- 13 ii. **Objections to Settlement.** The Class Notice will provide that any
14 Class Member who does not request exclusion from the Action and
15 who wishes to object to the Settlement should submit an objection
16 in writing to the Settlement Administrator by _____, or
17 60 days after the Settlement Administrator mails the Class Notice, a
18 written objection to the Settlement which sets forth the grounds for
19 the objection and the other information required by this paragraph.
20 The objection should be mailed to the Settlement Administrator at
21 the address provided on the Class Notice. The Settlement
22 Administrator shall transmit the objections to counsel for the Parties
23 as follows:
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To Defense Counsel:

Scott G. Lawson, Esq.
Lawson & Lawson, LLP
One Sansome Street
35th Floor
San Francisco, CA 94104

If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member may still be bound by the terms of this Agreement.

f. **Report.** Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

1 7. The Court approves, as to form and content, the Class Notice in substantially
2 the form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially
3 the form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in
4 substantially the form attached as Exhibit C to the Settlement.

5 8. The Court approves, for settlement purposes only, David G. Spivak of The
6 Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

7 9. The Court approves, for settlement purposes only, Plaintiffs Charles Mikich
8 and Jonathon Gordon as the Class Representatives.

9 10. The Court approves CPT Group, Inc. as the Settlement Administrator.

10 11. The Court preliminarily approves Class Counsel's request for attorneys' fees
11 and costs subject to final review by the Court.

12 12. The Court preliminarily approves the estimated Settlement Administrator costs
13 payable to the Settlement Administrator subject to final review by the Court.

14 13. The Court preliminarily approves Plaintiff's Class Representative Payment
15 subject to final review by the Court.

16 14. A Final Approval Hearing shall be held on _____ at _____.m. in
17 Department 610 of the Superior Court for the State of California, County of San Francisco,
18 located at the Civic Center Courthouse, 400 McAlister Street, San Francisco, CA 94102-3680
19 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily
20 approved by this Preliminary Approval Order, and to consider the application of Class
21 Counsel for attorneys' fees and costs and the Class Representative Payment to the Class
22 Representative. The notice of motion and all briefs and materials in support of the motion for
23 final approval of class action settlement and motion for attorneys' fees and litigation costs
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1 shall be served and filed with this Court on or before _____.

2 15. If for any reason the Court does not execute and file a final approval order and
3 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
4 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
5 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties
6 to the litigation, as more specifically set forth in the Settlement.
7

8 16. The Court expressly reserves the right to adjourn or continue the Final
9 Approval Hearing from time to time without further notice to members of the Class. The
10 Plaintiffs shall give prompt notice of any continuance to Settlement Class Members who
11 object to the Settlement.

12 **IT IS SO ORDERED.**

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15 _____
DATE

**THE HONORABLE GARRETT L.
WONG
SUPERIOR COURT JUDGE**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

CHARLES MIKICH, JONATHON GORDON,
on behalf of themselves and all others similarly
situated, and as “aggrieved employees” on
behalf of other “aggrieved employees” under the
Labor Code Private Attorneys General Act of
2004,

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
California corporation; HADAD ENTERPRISE,
INC., a California corporation; HADAD
PETROLEUM, INC., a California corporation;
BAY AREA AUTO CARE, INC., a California
corporation; HOUTAN PETROLEUM, INC., a
California corporation; GREEN PLANET GAS,
INC., and ALI BOZORGHADAD, also known
as ED BOZORGHADAD, also known as ED
HADAD, an individual; and DOES 8–50,
inclusive,

Defendant(s).

Case No. CGC-20-582385

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: January 22, 2020
Dept: 610, The Honorable Garrett
L. Wong

1 This matter came on for hearing on _____ at _____.m. in
2 Department 610 of the above-captioned court on the Motion of Plaintiffs Charles Mikich and
3 Jonathon Gordon (collectively “Plaintiffs” or “Class Representatives”) for Final Approval of a
4 Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the
5 Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed
6 herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$1,600,000.00 in
7 compromise of all disputed claims on behalf of all persons hourly, non-exempt employees in
8 California at any time during the period of January 16, 2016 to preliminary Court approval of
9 this Settlement, or September 3, 2022, whichever is earlier (“Settlement Class Period”). All
10 capitalized terms used herein shall have the same meaning as defined in the Settlement.
11

12 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
13 Action Settlement, Class Members have been given notice of the terms of the Settlement and
14 the opportunity to submit a claim, request exclusion, comment upon or object to it or to any of
15 its terms. Having received and considered the Settlement, the supporting papers filed by the
16 Parties, and the evidence and argument received by the Court in conjunction with the motions
17 for preliminary and final approval of the Settlement, the Court grants final approval of the
18 Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE
19 FOLLOWING DETERMINATIONS¹:
20

21 1. The Court has jurisdiction over the subject matter of the Action and over all
22 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
23 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
24 _____
25

26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class
27 Action Settlement entered on _____ is attached hereto as **Exhibit A** and
28 incorporated by reference. A true and correct copy of the Court’s Minute Order dated
_____ is attached hereto as **Exhibit B** and incorporated by reference.

1 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
2 the terms of the Settlement, their right to receive their proportional share of the Settlement,
3 their right to request exclusion, their right to comment upon or object to the Settlement, and
4 their right to appear in person or by counsel at the final approval hearing and be heard
5 regarding final approval of the Settlement. Adequate periods of time were provided by each of
6 these procedures. No member of the Settlement Class presented written objections to the
7 proposed Settlement as part of this notice process, stated an intention to appear, or actually
8 appeared at the final approval hearing.
9

10 2. For purposes of this Final Order and Judgment, the Class Members are all
11 persons Defendants employed as hourly, non-exempt employees in California during the Class
12 Period. at any time during the period of January 16, 2016 to preliminary Court approval of this
13 Settlement, or September 3, 2022, whichever is earlier (“Settlement Class Period”).
14

15 3. The Court finds and determines that the notice procedure afforded adequate
16 protections to Class Members and provides the basis for the Court to make an informed
17 decision regarding final approval of the Settlement based on the responses of Class Members.
18 The Court finds and determines that the notice provided in this case was the best notice
19 practicable, which satisfied the requirements of law and due process as to all persons entitled to
20 such notice.
21

22 **Release by Plaintiffs and Class Members.** The Parties agree that it is their intent that
23 the resolution set forth in this Settlement will release and discharge the Released Claims by
24 way of any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or
25 other action of any kind by each and all of the Settlement Class Members (including
26 participation to any extent in any representative or collective action) against the Released
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1 Parties. This release will not take effect until Defendants have paid the Gross Settlement
2 Amount in full per this Settlement Agreement. All PAGA Members, regardless of whether they
3 submit timely and valid requests for exclusion from the Settlement, will release all Released
4 Claims under PAGA against the Released Parties. The State of California will also release all
5 Released Claims under PAGA against the Released Parties. “**Released Claims**” shall mean all
6 claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could
7 have been alleged based on the facts and claims during the period of January 16, 2016 through
8 preliminary Court approval of this Settlement, or September 3, 2022, whichever is earlier
9 asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiffs to the LWDA
10 concerning Defendants and the other Released Parties, whether sounding in law or equity, tort,
11 contract, statute, or other applicable federal, state or local law or regulation, including but not
12 limited to the following claims: failure to pay wages, unauthorized and unlawful wage
13 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure
14 to indemnify for business expenses, failure to issue proper wage statements, failure to timely
15 pay wages, failure to maintain required payroll records, unfair business practices that could
16 have been premised on the claims, causes of action or legal theories of relief described above or
17 any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims
18 under PAGA or for civil penalties that could have been premised on the claims, causes of
19 action or legal theories described above or any of the claims, causes of action or legal theories
20 of relief pleaded in the Action or Plaintiff’s letter(s) to the LWDA, including but not limited to
21 the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 221,
22 225.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802,
23 and 2699; and any and all damages, restitution, disgorgement, civil penalties, statutory
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1 penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall
2 not apply to claims for workers' compensation benefits, unemployment insurance benefits, or
3 any other claim or right that as a matter of law cannot be waived or released. The Parties
4 acknowledge that Released Claims includes any claims for penalties by a PAGA Member
5 resulting from any LWDA investigation. The Parties will meet and confer in good faith if the
6 Court requires changes to the scope of the Released Claims. **"Released Parties"** shall mean
7 Defendants, and any of their former and present agents, employees, servants, officers, directors,
8 partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries,
9 equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors,
10 successors, service providers, insurers, consultants, subcontractors, joint employers, employee
11 benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by,
12 through or in concert with any of them, and each of them.
13

14
15 2. The Court further finds and determines that the terms of the Settlement are fair,
16 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
17 provisions of the Settlement, including the release of claims contained therein, should be and
18 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
19 according to its terms. As of the Effective Date of Settlement, and for the duration of the
20 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
21 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
22 against the Released Parties as fully set forth in the Settlement. No objections were received by
23 the Parties or the Court through the date of this Final Order and Judgment. The Court finds
24 _____ Class Member(s)———submitted a request for exclusion from the
25 Settlement as determined by the Settlement Administrator and therefore is/are not in the
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1 Settlement Class.

2 3. The Court finds and determines that (a) the Settlement Shares to be paid to
3 Participating Class Members and (b) the LWDA payment as civil penalties under the California
4 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code
5 sections 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court
6 hereby grants final approval to, and orders the payment of, those amounts be made to the
7 Participating Class Members and to the California Labor & Workforce Development Agency
8 (“LWDA”), in accordance with the terms of the Settlement.
9

10 4. The Court further grants final approval to and orders that the following
11 payments be made in accordance with the terms of the Settlement:

12 a. Class Counsel fees & costs of \$533,333.00 in attorneys’ fees and
13 \$35,000.00 in litigation costs to Class Counsel;
14

15 b. \$25,000.00 as a Class Representative Payment award payable to each
16 Plaintiff for his service as a Class Representative;

17 c. \$32,000.00 in costs of the Settlement Administrator payable to CPT
18 Group, Inc. for its services as the Settlement Administrator; and

19 d. Payment of \$37,500.00 (75% of the (\$50,000.00 PAGA penalty) to the
20 LWDA.
21

22 7. The settlement shall proceed as directed in the Settlement, and no payments
23 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement.
24 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
25 jurisdiction of all matters relating to the interpretation, administration, implementation,
26 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
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1 California Rule of Court 3.769(h).

2 8. Within ten (10) calendar days of the Effective Date of Settlement and pursuant
3 to the Settlement's installment payment plan, Defendants shall begin to deposit the Settlement
4 proceeds in an account designated by the Settlement Administrator: (i) the total amount of all
5 Settlement Shares to Participating Class Members, (ii) the Court approved Class Counsel fees
6 & costs, (iii) the Court-approved Class Representative Payment, (iv) the Court-approved costs
7 of the Settlement Administrator, and (v) the payment to the LWDA.
8

9 9. Defendants' payment of such sums shall be the sole financial obligation of
10 Defendants under the Settlement, and shall be in full satisfaction of all claims released herein,
11 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
12 expenses.
13

14 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall
15 have one hundred and eighty (180) days from the date of the check's issuance to cash their
16 Settlement Share check. After the expiration of the 180-day period, on Defendants' behalf, the
17 Settlement Administrator shall remit any amounts from Voided Settlement Checks and
18 otherwise unclaimed (the "Residue"), plus interest on the Residue at the legal rate of interest
19 from the date of entry of the initial judgement to the California Unclaimed Property Fund.
20

21 11. The Parties shall file a final accounting report by _____. A non-
22 appearance case review re submission of a final report is scheduled for _____ at
23 _____. **m. in Department 610.** The Parties shall also prepare and file a stipulation and
24 proposed order and proposed Amended Final Order and Judgment by _____ which
25 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
26 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
27
28

1 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
2 If there are objections by any party or non-party, class counsel shall immediately notify the
3 Court and the matter will be set for further hearing. A non-appearance hearing for the lodging
4 of the stipulation and proposed order and separate amended judgment is scheduled for
5 _____ at _____.m. in Department 610.

6
7 12. Nothing in this Final Order and Judgment shall preclude any action to enforce
8 the Parties' obligations under the Settlement or hereunder, including the requirement that
9 Defendants deposit funds for distribution by the Settlement Administrator to Participating Class
10 Members in accordance with the Settlement.

11 13. The Court hereby enters final judgment in this case in accordance with the terms
12 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
13 Final Order and Judgment.

14
15 14. The Parties are hereby ordered to comply with the terms of the Settlement.

16 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
17 provided by the Settlement and this Final Order and Judgment.

18 16. The Settlement is not an admission by Defendants nor is this Final Order and
19 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
20 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be
21 used as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final
22 Order and Judgment, the Settlement, any document referred to herein, any exhibit to any
23 document referred to herein, any action taken to carry out the Settlement, nor any negotiations
24 or proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or
25 an admission or concession with regard to, the denials or defenses of Defendants, and shall not
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1 be offered in evidence in any proceeding against the Parties hereto in any Court, administrative
2 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
3 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
4 and any other papers and records on file in the Action may be filed in this Court or in any other
5 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
6 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
7 the Released Claims.
8

9 17. This document shall constitute a Judgment for purposes of California Rule of
10 Court 3.769(h).

11 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
12
13

14 _____
DATE

**THE HONORABLE GARRETT L.
WONG
SUPERIOR COURT JUDGE**

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 16, 2020

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

RE: *Charles Mikich / Sayeh Petroleum, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Charles Mikich (hereafter “Mikich”) provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to gas station clerks and workers employed in comparable positions (hereafter “Aggrieved Employees”) by Sayeh Petroleum, Inc., a California corporation and gas station operator (hereafter “Sayeh”), of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Sayeh has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Mikich and the Aggrieved Employees are “employees” within the meaning of Wage Order 7-2001 (hereafter “the Wage Order”) § 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

Sayeh employed Mikich as a gas station clerk from approximately January 5, 2018 to approximately March 15, 2019 at its gas station located at 1200 La Playa Street in San Francisco, California. At all relevant times, Mikich resided in California.

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

At all relevant times, Sayeh employed Mikich and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Sayeh classified Mikich and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Sayeh failed to provide Mikich and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Sayeh typically scheduled Mikich and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Sayeh prohibited Mikich and the Aggrieved Employees from taking off-duty meal periods. Neither Mikich nor the Aggrieved Employees entered into on duty meal period agreements with Sayeh.

At all relevant times, Sayeh failed to authorize and permit Mikich and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. As a result of its inadequate staffing (discussed above), Sayeh failed to provide duty-free rest periods to Mikich and the Aggrieved Employees. At the start of his employment, Mikich asked his manager, Nasser (last name unknown), what time he would get his breaks. Nasser simply laughed in response. Sayeh has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement.

Sayeh failed to pay premium wages for days on which it failed to provide Mikich and the Aggrieved Employees with all timely meal and rest periods.

Sayeh further required Mikich and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Sayeh.

At all relevant times, Sayeh failed to compensate Mikich and the Aggrieved Employees for all hours worked by requiring Mikich and the Aggrieved Employees to engage in work after clocking out at the end of their scheduled shifts. Sayeh instructed Mikich and the Aggrieved Employees to clock out after

exactly eight hours of work. Sayeh directed them to perform additional tasks after they were clocked out, including cleaning the store, reviewing inventory, and locking up. These tasks would take approximately 20 to 30 minutes to complete.

Sayeh required Mikich and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Sayeh failed to pay one and one half times ($1 \frac{1}{2} \times$) the hourly rates of pay of Mikich and the Aggrieved Employees by failing to pay for off-the-clock work performed by Mikich and the Aggrieved Employees after clocking out at the end of their shifts.

Further, Sayeh failed to pay Mikich and the Aggrieved Employees for all hours worked by rounding down their work times. In the instances in which Mikich and the Aggrieved Employees recorded more than eight hours in a given workday, Sayeh edited their time records to state that they had only worked eight or fewer hours. As a result, Sayeh failed to compensate Mikich and the Aggrieved Employees for the additional time that Sayeh shaved from their time records. Because Mikich worked eight-hour shifts, Sayeh was required to pay him overtime pay for these times.

As set forth below, Mikich alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Sayeh failed to provide Mikich and the Aggrieved Employees with all meal periods as required by law;
- b) Sayeh failed to provide Mikich and the Aggrieved Employees with all rest periods as required by law;
- c) Sayeh failed to compensate Mikich and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more meal periods in a workday;

- d) Sayeh failed to compensate Mikich and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more rest periods in a workday;
- e) Sayeh failed to pay Mikich and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;
- f) Sayeh failed to indemnify Mikich and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- g) Sayeh failed to timely pay Mikich and the Aggrieved Employees all earned and unpaid wages during employment; and
- h) Sayeh failed to timely pay Mikich and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Mikich now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Sayeh's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include:

"any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities as wholesale or retail; or for the purpose of renting goods or commodities."

§ 2(H).

At all relevant times during the applicable limitations period, Sayeh operated gas stations for the purpose of retailing gasoline. Accordingly, Mikich and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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, Section 12 of the Wage Order states:

Rest Periods:

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

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 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.

...

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each workday that the meal period is not provided.

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 workday that the meal or rest period is not provided.

By not providing adequate staff to relieve its hourly employees of their duties, Sayeh has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Mikich and the Aggrieved Employees as required by law. In failing to do so, Sayeh violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Mikich seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

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

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

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

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

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

In relevant part, section 2(G) 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 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

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.
- (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.

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.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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.

At all relevant times during the applicable limitations period, Sayeh knowingly failed to pay Mikich and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed after clocking out at the end of their shifts.

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each

subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and

3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 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, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

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

At all relevant times during the applicable limitations period, Sayeh required Mikich and the Aggrieved Employees to use personal mobile telephones to communicate with Sayeh as a necessary condition of employment. Sayeh failed to indemnify Mikich and the Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Mikich seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

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

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

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;
- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 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 relevant times during the applicable limitations period, Sayeh violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,

the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Sayeh failed to state in the wage statements it issued to Sayeh and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed after clocking out at the ends of their shifts as described above.

Accordingly, Mikich now seeks civil penalties for the Labor Code violations that Sayeh has committed against him and the other 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
(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 Sayeh's failure to pay Mikich and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Sayeh failed to timely pay all wages due during employment. Accordingly, Mikich seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and

- (2) \$200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California 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 California Labor Code § 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 seventy-two (72) hours thereafter, unless the employee has given seventy-two (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 seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 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 at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As explained above, Sayeh failed to pay Mikich and the other Aggrieved Employees all wages owed for hours worked off-the-clock or recorded hours that Sayeh shaved from the time records. As a result, Sayeh failed to pay Mikich and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock at the end of their shifts.

Additionally, Sayeh failed to timely pay Mikich his final paycheck. Sayeh terminated Mikich on approximately March 15, 2019. However, Sayeh failed to issue Mikich his final paycheck until approximately March 18, 2019.

As a result, Sayeh failed to pay Mikich and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Sayeh has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Mikich seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (a) 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 the Wage Order states:

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

Sayeh failed to maintain for Mikich and the Aggrieved Employees accurate records of time worked and all wages earned, including off the clock work, worked deleted from time records, and unpaid meal and rest period premium wages as described above. As a result, Sayeh has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Mikich and the Aggrieved Employees. Accordingly, Mikich seeks civil penalties from Sayeh on behalf of himself and other 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)).

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 § 2699,

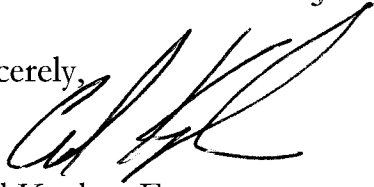
LWDA / Sayeh Petroleum

1/16/20

Page 18 of 18

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 §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in black ink, appearing to be 'Carl Kaplan', written over a horizontal line.

Carl Kaplan, Esq.

carl@spivaklaw.com

cc: Charles Mikich
Walter Haines, Esq.

Sayeh Petroleum, Inc.
c/o Agent for Service of Process
Ed Bozorghadad
700 S Bernardo Avenue, Suite 103
Sunnyvale, CA 94087

EXHIBIT 3

ENDORSED
FILED
San Francisco County Superior Court

JAN 22 2020

CLERK OF THE COURT
BY: ANGELICA SUNGA
Deputy Clerk

1 DAVID G. SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 CARL J. KAPLAN (SBN 323019)

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9 Facsimile (818) 582-2561

10 Attorneys for Plaintiff,

11 CHARLES MIKICH, and all others similarly situated

12 (Additional Attorney for Plaintiff on Following Page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN FRANCISCO**

15 **(UNLIMITED JURISDICTION)**

16 CHARLES MIKICH, on behalf of himself and
17 all others similarly situated,

18 *Plaintiff(s),*

19 vs.

20 SAYEH PETROLEUM, INC., a California
21 corporation; and DOES 1-50, inclusive,

22 *Defendant(s).*

Case No.:

CGC-20-582305

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*).

JURY TRIAL DEMANDED

BY FAX



SPIVAK LAW

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff CHARLES MIKICH (hereafter "Plaintiff"), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order") and the
6 Business and Professions Code against defendants SAYEH PETROLEUM, INC., a California
7 corporation; and DOES 1 through 50, inclusive (collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him and other similarly situated current and former employees who worked in California as non-
10 exempt employees, including, but not limited to gas station workers and persons in similar
11 positions, at any time during the period beginning four years prior to the filing of this action to
12 the present, for unpaid wages and other related relief. These claims are based on Defendants'
13 alleged failures to (1) provide all rest and meal periods, (2) compensate Plaintiff and the below-
14 described Class for all hours worked at the correct rates of pay; (3) indemnify Plaintiff and the
15 below-described Class for reasonable expenses incurred performing their duties, (4) provide
16 accurate written wage statements, (5) timely pay wages upon termination of employment, and (6)
17 fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief
18 through this class action.

19 **JURISDICTION AND VENUE**

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

22 4. There is no basis for federal question subject matter jurisdiction in this case.
23 Specifically, Plaintiff asserts claims on behalf of himself and the Class Members that solely arise
24 under California law, rather than federal law.

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

26 6. Venue is proper in San Francisco County pursuant to California Code of Civil
27 Procedure § 395(a) and § 395.5 in that liability arose in San Francisco County because at least
28 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.

///



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PARTIES

7. Plaintiff CHARLES MIKICH is a resident of California.

8. Defendant SAYEH PETROLEUM, INC. is a corporation organized and existing under the laws of California based on Plaintiff's information and belief.

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

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

11. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the Class in accordance with applicable California labor laws as alleged herein.

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

CLASS ALLEGATIONS

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

14. **Class Definition:** The Class is defined as follows: all persons Defendants



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1 employed in California as non-exempt employees, including but not limited to gas station clerks
2 and persons in comparable positions, at any time during the period beginning four years prior to
3 the filing of this action and ending on the date that final judgment is rendered in this action.

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

7 16. **Numerosity:** The Class is so numerous that the joinder of each individual class
8 member is impractical. While Plaintiff does not currently know the exact number of the Class,
9 Plaintiff is informed and believes that the actual number exceeds the minimum required for
10 numerosity under California law.

11 17. **Commonality and Predominance:** Common questions of law and fact exist as
12 to all class members and predominate over any questions which affect only individual class
13 members. These questions include, but are not limited to:

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

16 B. Whether Defendants failed to provide the Class with all off-duty meal
17 periods as required by section 12 of the Wage Order;

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

21 D. Whether Defendants failed to compensate the Class Members at one
22 hour's pay on days when Defendants failed to provide them with one or more off-duty meal
23 periods in a workday;

24 E. Whether Defendants failed to pay all wages earned to Class Members for
25 all hours worked at the correct rates of pay;

26 F. Whether Defendants failed to indemnify the Class Members for the
27 reasonable expenses they incurred during the course of performing their duties;

28 G. Whether Defendants knowingly and intentionally failed to provide the
Class Members with accurate and complete wage statements;

H. Whether Defendants knew or should have known that Class Members
regularly worked over 40 hours per week and/or eight hours per day;



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1 I. Whether Defendants failed to pay Class Members overtime wages for
2 time worked in excess of 40 hours per week and/or eight hours per day;

3 J. Whether Defendants failed to timely pay final wages upon termination of
4 the Class Members' employment;

5 K. Whether Defendants engaged in unfair competition within the meaning of
6 Business and Professions Code §§ 17200, *et seq.*, with respect to the Class;

7 L. Whether the Class Members are entitled to restitution of money or
8 property that Defendants may have acquired from them through alleged Labor Code violations;

9 M. Whether the Class Members are entitled to prejudgment interest; and

10 N. Are the Class Members entitled to attorneys' fees?

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

15 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
16 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
17 class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff
18 will fairly and adequately represent and protect the interests of the Class.

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

23 21. **Superiority:** A class action is vastly superior to other available means for fair and
24 efficient adjudication of class' claims and would be beneficial to the parties and the Court. Class
25 action treatment will allow a number of similarly situated persons to simultaneously and
26 efficiently prosecute their common claims in a single forum without the unnecessary duplication
27 of effort and expense that numerous individual actions would entail. In addition, the monetary
28 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



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1 potential for inconsistent or contradictory judgments inherent in individual litigation.

2 **STATEMENT OF FACTS**

3 22. On approximately January 5, 2018, Defendants first employed Plaintiff to work
4 in California as a gas station clerk at their gas station located at 1200 La Playa Street in San
5 Francisco, California. Defendants continuously employed Plaintiff from that time until
6 approximately March 15, 2019, when his employment ended. At all relevant times, the position
7 of gas station clerk was an hourly, nonexempt position.

8 23. Plaintiff and the Class Members earned their wages at an hourly rate and
9 Defendants provided them with paychecks on a bi-weekly basis. At relevant times, Plaintiff and
10 the Class Members worked shifts in excess of eight hours, worked between five and seven days
11 in a workweek, and also worked over 40 hours in a workweek.

12 24. At all relevant times, as a result of their staffing choices, Defendants failed to
13 provide Plaintiff and the Class with an off-duty, 30-minute meal period before the end of the fifth
14 hour worked. Defendants typically scheduled Plaintiff and the Class to work shifts during which
15 only one individual was on duty. As a result of this understaffing, Defendants prohibited Plaintiff
16 and the Class from taking off-duty meal periods. On information and belief, neither Plaintiff nor
17 the Class entered into on-duty meal period agreements with Defendants.

18 25. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
19 Class to take a ten-minute, paid, duty-free rest break every four hours or major fraction thereof.
20 As a result of its inadequate staffing (discussed above), Defendants failed to provide duty-free
21 rest periods to Plaintiff and the Class. At the start of his employment, Plaintiff asked his manager,
22 Nasser (last name unknown), what time he would get his breaks. Nasser simply laughed in
23 response. Defendants have not requested an exemption from California's rest period law from
24 the Division of Labor Standards Enforcement.

25 26. Defendants failed to pay premium wages for days on which they failed to provide
26 Plaintiff and the Class with all timely meal and rest periods.

27 27. Defendants further required Plaintiff and the Class to incur certain business
28 expenses in the course of performing their duties, including the use of a personal mobile
telephone to communicate with Defendants.

29 28. At all relevant times, Defendants failed to compensate Plaintiff and the Class
Members for all hours worked by requiring them to engage in work after clocking out at the end



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1 of their scheduled shifts. Defendants instructed Plaintiff and the Class to clock out after exactly
2 eight hours of work. Defendants directed Plaintiff and the Class to perform additional tasks after
3 they were clocked out, including cleaning the store, reviewing inventory, and locking up. These
4 tasks would take approximately 20 to 30 minutes to complete.

5 29. Defendants required Plaintiff and the Class to work in excess of eight hours in one
6 workday and forty hours in one workweek without compensating them for such time worked at
7 the overtime rates required by California law. Defendants failed to pay one and one half times (1
8 $\frac{1}{2} \times$) the hourly rates of pay of Plaintiff and the Class by failing to pay for off-the-clock
work performed by Plaintiff and the Class after clocking out at the end of their shifts.

9 30. Further, Defendants failed to pay Plaintiff and the Class for all hours worked by
10 rounding down their work times. In the instances in which Plaintiff and the Class recorded more
11 than eight hours in a given workday, Defendants edited their time records to state that they had
12 only worked eight or fewer hours. As a result, Defendants failed to compensate Plaintiff and the
13 Class for the additional time that Defendants removed from their time records. Because Plaintiff
14 worked eight-hour shifts, Defendants were required to pay him overtime pay for these times.

15 31. Defendants failed to maintain accurate written employee records pertaining to
16 Plaintiff and the Class, including accurate wage statements itemizing each Class Member's gross
17 wages earned, net wages earned, total hours worked, corresponding number of hours worked at
each rate by the Class Member, and other requirements of California Labor Code § 226.

18 32. At all relevant times, upon resignation or termination, Defendants failed to pay
19 final wages in a timely manner as a result of their failure to pay employees for all work performed
20 off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages,
21 including, but not limited to, regular time and overtime wages for off the clock work performed
22 before the beginning of their shifts, during meal periods, and after clocking out at the end of their
23 shifts. Further, Defendants failed to timely pay Plaintiff upon terminating his employment.
24 Defendants terminated Plaintiff's employment on approximately March 15, 2019. However,
25 Defendants failed to issue Plaintiff his final paycheck until approximately March 18, 2019.

26 ///

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28 ///

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FIRST CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS
(Lab. Code §§ 226.7, 512, and 1198)
(By Plaintiff and the Class 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 non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

35. 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.

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

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

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

Rest Periods

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



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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.”

38. 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 employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

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

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

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

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



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

40. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

41. Pursuant to the Wage Order, Plaintiff and the Class Members 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.

42. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all 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 off-duty meal periods and rest breaks required by California law.

43. As a result of Defendants' unlawful conduct, Plaintiff and the 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.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

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

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

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

47. Section 2 of the Wage Order defines "hours worked" as "the time during which



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1 an employee is subject to the control of an employer, and includes all the time the employee is
2 suffered or permitted to work, whether or not required to do so.”

3 48. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

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

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

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

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

49. 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.

50. Labor Code section 510 states:

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



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1 pay for an employee. Any work in excess of 12 hours in one day
2 shall be compensated at the rate of no less than twice the regular
3 rate of pay for an employee. In addition, any work in excess of
4 eight hours on any seventh day of a workweek shall be
5 compensated at the rate of no less than twice the regular rate of pay
6 of an employee. Nothing in this section requires an employer to
7 combine more than one rate of overtime compensation in order to
8 calculate the amount to be paid to an employee for any hour of
9 overtime work.

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

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

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

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

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

26 56. At all relevant times, Defendants paid Plaintiff and the Class Members at an
27 hourly rate of pay on a bi-weekly basis.

28 57. At all relevant times, Defendants failed to pay Plaintiff and the Class Members
for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime
wages for all regular and overtime hours they worked while clocked out, as well as all wages for
work they performed and recorded in excess of eight hours in a workday, that Defendants
subsequently removed from their time records.

58. Plaintiff is informed and believes and thereon alleges that, at all relevant times,



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1 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
2 failure to compensate the Class for all hours worked at the correct rate of pay as required by
3 California law.

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

8 60. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of himself and
9 Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the
10 amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees,
11 including interest thereon, as permitted by law, all in amounts subject to proof.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO INDEMNIFY**

14 **(Lab. Code §§ 1198 & 2802)**

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

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

19 63. In pertinent part, California Labor Code § 2802(a) states:

20 "An employer shall indemnify his or her employee[s] for all
21 necessary expenditures incurred by the employee in direct
22 consequence of the discharge of his or her duties."

23 64. Section 9(B) of the Wage Order states:

24 When tools or equipment are required by the employer or are
25 necessary to the performance of a job, such tools and equipment
26 shall be provided and maintained by the employer, except that an
27 employee whose wages are at least two (2) times the minimum
28 wage provided herein may be required to provide and maintain
hand tools and equipment customarily required by the trade or
craft.

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

66. At relevant times during the applicable limitations period, Defendants required



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1 Plaintiff and the Class Members to incur certain business expenses in the course of performing
2 their duties. Defendants required Plaintiff and the Class Members to use personal cell phones to
3 communicate with Defendants as a necessary condition of employment. Defendants, however,
4 failed to reimburse Plaintiff and the Class Members for these expenses.

5 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
7 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
8 during the course of performing their duties.

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

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

16 **FOURTH CAUSE OF ACTION**

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

18 **(Lab. Code § 226)**

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

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

21 71. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
22 entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized
23 statement showing, among other items, 1) gross wages earned; 2) total hours worked, except for
24 any employee whose compensation is solely based on a salary and who is exempt from payment
25 of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
26 Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee.

28 72. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
injury if the employer fails to provide a wage statement. Additionally, 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



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1 the wage statement alone one or more of the following:

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

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

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

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

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

16 74. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
17 all wages owed, including but not limited to, all regular and overtime wages owed at the correct
18 rates for work performed off-the-clock. As a result, Defendants have failed to properly and
19 accurately itemize each employee’s gross wages earned, net wages earned, the total hours
20 worked, the corresponding number of hours worked by employees, and other requirements of
21 California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

22 75. Defendants’ failure to provide Plaintiff and the Class Members with accurate
23 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
24 the Class with accurate wage statements but intentionally provided wage statements that
25 Defendants knew were not accurate.

26 76. As a result of being provided with inaccurate wage statements by Defendants,
27 Plaintiff and the Class have suffered injury. Their legal rights to receive accurate wage statements
28 were violated and they were misled about the amount of wages they had actually earned and were
owed. In addition, the absence of accurate information on their 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



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1 expense in attempting to reconstruct time and pay records and/or has led to the submission of
2 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
3 and the Class Members were not able to ascertain from the wage statements whether Defendants
4 complied with their obligations under California Labor Code § 226(a).

5 77. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to
6 recover the greater of actual damages, or penalties of fifty dollars (\$50.00) for the initial pay
7 period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars
8 (\$100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not
9 to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per Class Member, and are
also entitled to an award of costs and reasonable attorneys' fees.

10 **FIFTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(Lab. Code §§ 201-203)**

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

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

15 79. At all relevant times during the applicable limitations period, Plaintiff and the
16 Class Members have been non-exempt employees of Defendants and entitled to the benefits and
17 protections of California Labor Code §§ 201-203 and the Wage Order.

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

19 81. California Labor Code § 202 provides that all earned and unpaid wages of an
20 employee who quits after providing at least 72-hours notice before quitting are due and payable
21 at the time of quitting and that all earned and unpaid wages of an employee who quits without
22 providing at least 72-hours notice before quitting are due and payable within 72 hours.

23 82. By failing to pay earned regular and overtime wages to Plaintiff and the Class
24 Members at the correct rates, Defendants failed to timely pay them all earned and unpaid wages
25 in violation of California Labor Code § 201 or § 202.

26 83. Moreover, Defendants failed to timely issue Plaintiff his final paycheck.
27 Defendants terminated Plaintiff on approximately March 15, 2019. However, Defendants failed
28 to issue Plaintiff his final paycheck until approximately March 18, 2019.

84. Plaintiff is informed and believes that Defendants' failures to timely pay all final



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1 wages to him and the Class Members have been willful in that Defendants have the ability to pay
2 final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally
3 adopted and maintained policies or practices that are incompatible with those requirements.

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

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

10 **SIXTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

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

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

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

15 88. At all relevant times, Plaintiff and the Class Members have been non-exempt
16 employees of Defendants and entitled to the benefits and protections of the Business and
17 Professions Code §§ 17200, *et seq.*

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

26 90. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
27 Class Members have suffered injuries in fact and have lost money or property. Defendants
28 deprived Plaintiff and the Class Members of minimum wages, overtime wages, premium wages
for all workdays one or more meal periods was not provided, premium wages for all workdays a
rest period was not provided, and reimbursement for expenses that Plaintiff and the other Class
Members incurred during the course of performing their duties.



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

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

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

PRAYER FOR RELIEF

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

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages;
- E. Actual damages;
- F. Statutory damages;
- G. Liquidated damages;
- H. Restitution;
- I. Declaratory relief;
- J. Equitable relief;
- K. Statutory penalties;
- L. Pre-judgment and post-judgment interest;
- M. Costs of suit;
- N. Interest;
- O. Reasonable attorneys' fees; and
- P. Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: January 21, 2020

By:

DAVID SPIVAK

CARL KAPLAN

Attorneys for Plaintiff, CHARLES MIKICH
and all others similarly situated



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EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)

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3 THE SPIVAK LAW FIRM

4 16530 Ventura Blvd., Suite 203

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7 Attorneys for Plaintiff,

CHARLES MIKICH, and all others similarly situated

8 (Additional Attorney for Plaintiff on Following Page)

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

11 **FOR THE COUNTY OF SAN FRANCISCO**

12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18 vs.

19 SAYEH PETROLEUM, INC., a California
20 corporation; and DOES 1-50, inclusive,

21 *Defendant(s).*

Case No.: CGC-20-582385

CLASS ACTION

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR:**

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Waiting Time Penalties (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



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendants SAYEH
7 PETROLEUM, INC., a California corporation; and DOES 1 through 50, inclusive (collectively
8 “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former employees who worked in California as non-
11 exempt employees, including, but not limited to gas station workers and persons in similar
12 positions, at any time during the period beginning four years prior to the filing of this action to
13 the present, for unpaid wages and other related relief. These claims are based on Defendants’
14 alleged failures to (1) provide all rest and meal periods, (2) compensate Plaintiff and the below-
15 described Class for all hours worked at the correct rates of pay; (3) indemnify Plaintiff and the
16 below-described Class for reasonable expenses incurred performing their duties, (4) provide
17 accurate written wage statements, (5) timely pay wages upon termination of employment, and (6)
18 fairly compete. Additionally, Plaintiff seeks civil penalties under the California Labor Code
19 Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”). Accordingly, Plaintiff
20 now seeks to recover civil penalties, unpaid wages and related relief through this class action.

21 JURISDICTION AND VENUE

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

24 4. There is no basis for federal question subject matter jurisdiction in this case.
25 Specifically, Plaintiff asserts claims on behalf of himself and the Class Members that solely arise
26 under California law, rather than federal law.

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

28 6. Venue is proper in San Francisco County pursuant to California Code of Civil
Procedure § 395(a) and § 395.5 in that liability arose in San Francisco County because at least
some of the transactions that are the subject matter of this Complaint occurred therein and/or



1 because each defendant is found, maintains offices, transacts business, and/or has an agent
2 therein.

3 **PARTIES**

4 7. Plaintiff CHARLES MIKICH is a resident of California. At all relevant times,
5 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section
6 11160 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

7 8. Defendant SAYEH PETROLEUM, INC. is a corporation organized and existing
8 under the laws of California based on Plaintiff’s information and belief.

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

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

20 11. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
22 of a practice which resulted in Defendants not paying Plaintiff and the Class in accordance with
23 applicable California labor laws as alleged herein.

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

29 **CLASS ALLEGATIONS**

30 13. This action has been brought and may be maintained as a class action pursuant to
31 California Code of Civil Procedure § 382 because there is a well-defined community of interest



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among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

14. **Class Definition:** The Class is defined as follows: all persons Defendants employed in California as non-exempt employees, including but not limited to gas station clerks and persons in comparable positions, 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 rendered in this action.

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

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

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

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

B. Whether Defendants failed to provide the Class with all off-duty meal periods as required by section 12 of the Wage Order;

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

D. Whether Defendants failed to compensate the Class Members at one hour's pay on days when Defendants failed to provide them with one or more off-duty meal periods in a workday;

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

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



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1 G. Whether Defendants knowingly and intentionally failed to provide the
2 Class Members with accurate and complete wage statements;

3 H. Whether Defendants knew or should have known that Class Members
4 regularly worked over 40 hours per week and/or eight hours per day;

5 I. Whether Defendants failed to pay Class Members overtime wages for
6 time worked in excess of 40 hours per week and/or eight hours per day;

7 J. Whether Defendants failed to timely pay final wages upon termination of
8 the Class Members' employment;

9 K. Whether Defendants engaged in unfair competition within the meaning of
10 Business and Professions Code §§ 17200, *et seq.*, with respect to the Class;

11 L. Whether the Class Members are entitled to restitution of money or
12 property that Defendants may have acquired from them through alleged Labor Code violations;

13 M. Whether the Class Members are entitled to prejudgment interest; and

14 N. Are the Class Members entitled to attorneys' fees?

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

19 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
20 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
21 class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff
22 will fairly and adequately represent and protect the interests of the Class.

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

27 21. **Superiority:** A class action is vastly superior to other available means for fair and
28 efficient adjudication of class' 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



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1 amounts due to many individual class members are likely to be relatively small and would thus
2 make it difficult, if not impossible, for individual class members to both seek and obtain relief.
3 Moreover, a class action will serve an important public interest by permitting class members to
4 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
5 potential for inconsistent or contradictory judgments inherent in individual litigation.

6 **STATEMENT OF FACTS**

7 22. On approximately January 5, 2018, Defendants first employed Plaintiff to work
8 in California as a gas station clerk at their gas station located at 1200 La Playa Street in San
9 Francisco, California. Defendants continuously employed Plaintiff from that time until
10 approximately March 15, 2019, when his employment ended. At all relevant times, the position
11 of gas station clerk was an hourly, nonexempt position.

12 23. Plaintiff and the Class Members earned their wages at an hourly rate and
13 Defendants provided them with paychecks on a bi-weekly basis. At relevant times, Plaintiff and
14 the Class Members worked shifts in excess of eight hours, worked between five and seven days
15 in a workweek, and also worked over 40 hours in a workweek.

16 24. At all relevant times, as a result of their staffing choices, Defendants failed to
17 provide Plaintiff and the Class with an off-duty, 30-minute meal period before the end of the fifth
18 hour worked. Defendants typically scheduled Plaintiff and the Class to work shifts during which
19 only one individual was on duty. As a result of this understaffing, Defendants prohibited Plaintiff
20 and the Class from taking off-duty meal periods. On information and belief, neither Plaintiff nor
21 the Class entered into on-duty meal period agreements with Defendants.

22 25. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
23 Class to take a ten-minute, paid, duty-free rest break every four hours or major fraction thereof.
24 As a result of its inadequate staffing (discussed above), Defendants failed to provide duty-free
25 rest periods to Plaintiff and the Class. At the start of his employment, Plaintiff asked his manager,
26 Nasser (last name unknown), what time he would get his breaks. Nasser simply laughed in
27 response. Defendants have not requested an exemption from California's rest period law from
28 the Division of Labor Standards Enforcement.

26 26. Defendants failed to pay premium wages for days on which they failed to provide
27 Plaintiff and the Class with all timely meal and rest periods.

28 27. Defendants further required Plaintiff and the Class to incur certain business



1 expenses in the course of performing their duties, including the use of a personal mobile
2 telephone to communicate with Defendants.

3 28. At all relevant times, Defendants failed to compensate Plaintiff and the Class
4 Members for all hours worked by requiring them to engage in work after clocking out at the end
5 of their scheduled shifts. Defendants instructed Plaintiff and the Class to clock out after exactly
6 eight hours of work. Defendants directed Plaintiff and the Class to perform additional tasks after
7 they were clocked out, including cleaning the store, reviewing inventory, and locking up. These
8 tasks would take approximately 20 to 30 minutes to complete.

9 29. Defendants required Plaintiff and the Class to work in excess of eight hours in one
10 workday and forty hours in one workweek without compensating them for such time worked at
11 the overtime rates required by California law. Defendants failed to pay one and one half times (1
12 $\frac{1}{2} \times$) the hourly rates of pay of Plaintiff and the Class by failing to pay for off-the-clock
13 work performed by Plaintiff and the Class after clocking out at the end of their shifts.

14 30. Further, Defendants failed to pay Plaintiff and the Class for all hours worked by
15 rounding down their work times. In the instances in which Plaintiff and the Class recorded more
16 than eight hours in a given workday, Defendants edited their time records to state that they had
17 only worked eight or fewer hours. As a result, Defendants failed to compensate Plaintiff and the
18 Class for the additional time that Defendants removed from their time records. Because Plaintiff
19 worked eight-hour shifts, Defendants were required to pay him overtime pay for these times.

20 31. Defendants failed to maintain accurate written employee records pertaining to
21 Plaintiff and the Class, including accurate wage statements itemizing each Class Member's gross
22 wages earned, net wages earned, total hours worked, corresponding number of hours worked at
23 each rate by the Class Member, and other requirements of California Labor Code § 226.

24 32. At all relevant times, upon resignation or termination, Defendants failed to pay
25 final wages in a timely manner as a result of their failure to pay employees for all work performed
26 off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages,
27 including, but not limited to, regular time and overtime wages for off the clock work performed
28 before the beginning of their shifts, during meal periods, and after clocking out at the end of their
shifts. Further, Defendants failed to timely pay Plaintiff upon terminating his employment.
Defendants terminated Plaintiff's employment on approximately March 15, 2019. However,
Defendants failed to issue Plaintiff his final paycheck until approximately March 18, 2019.



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FIRST CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS
(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class 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 non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

35. 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.

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

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

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

Rest Periods

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



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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.”

38. 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 employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

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

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

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

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



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

40. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

41. Pursuant to the Wage Order, Plaintiff and the Class Members 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.

42. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all 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 off-duty meal periods and rest breaks required by California law.

43. As a result of Defendants' unlawful conduct, Plaintiff and the 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.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

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

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

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



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1 47. Section 2 of the Wage Order defines “hours worked” as “the time during which
2 an employee is subject to the control of an employer, and includes all the time the employee is
3 suffered or permitted to work, whether or not required to do so.”

4 48. Section 3 of the Wage Order states:

5 (A) Daily Overtime - General Provisions

6 (1) The following overtime provisions are applicable to employees
7 18 years of age or over and to employees 16 or 17 years of age who
8 are not required by law to attend school and are not otherwise
9 prohibited by law from engaging in the subject work. Such
10 employees shall not be employed more than eight (8) hours in any
11 workday or more than 40 hours in any workweek unless the
12 employee receives one and one-half (1 ½) times such employee’s
13 regular rate of pay for all hours worked over 40 hours in the
14 workweek. Eight (8) hours of labor constitutes a day’s work.
15 Employment beyond eight (8) hours in any workday or more than
16 six (6) days in any workweek is permissible provided the employee
17 is compensated for such overtime at not less than:

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

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

27 (c) The overtime rate of compensation required to be paid to a
28 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.

49. 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.

50. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess
of eight hours in one workday and any work in excess of 40 hours
in any one workweek and the first eight hours worked on the



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seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this 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.

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

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

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

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

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

56. At all relevant times, Defendants paid Plaintiff and the Class Members at an hourly rate of pay on a bi-weekly basis.

57. At all relevant times, Defendants failed to pay Plaintiff and the Class Members for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime wages for all regular and overtime hours they worked while clocked out, as well as all wages for work they performed and recorded in excess of eight hours in a workday, that Defendants subsequently removed from their time records.



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1 58. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
3 failure to compensate the Class for all hours worked at the correct rate of pay as required by
4 California law.

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

9 60. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of himself and
10 Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the
11 amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees,
12 including interest thereon, as permitted by law, all in amounts subject to proof.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO INDEMNIFY**

15 **(Lab. Code §§ 1198 & 2802)**

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

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

20 63. In pertinent part, California Labor Code § 2802(a) states:

21 “An employer shall indemnify his or her employee[s] for all
22 necessary expenditures incurred by the employee in direct
23 consequence of the discharge of his or her duties.”

24 64. Section 9(B) of the Wage Order states:

25 When tools or equipment are required by the employer or are
26 necessary to the performance of a job, such tools and equipment
27 shall be provided and maintained by the employer, except that an
28 employee whose wages are at least two (2) times the minimum
wage provided herein may be required to provide and maintain
hand tools and equipment customarily required by the trade or
craft.

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



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66. At relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the Class Members to use personal cell phones to communicate with Defendants as a necessary condition of employment. Defendants, however, failed to reimburse Plaintiff and the Class Members for these expenses.

67. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

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

71. 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, among other items, 1) gross wages earned; 2) total hours worked, 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) net wages earned; and 4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

72. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by



1 California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from
2 the wage statement alone one or more of the following:

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

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

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

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

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

17 74. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
18 all wages owed, including but not limited to, all regular and overtime wages owed at the correct
19 rates for work performed off-the-clock. As a result, Defendants have failed to properly and
20 accurately itemize each employee’s gross wages earned, net wages earned, the total hours
21 worked, the corresponding number of hours worked by employees, and other requirements of
22 California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

23 75. Defendants’ failure to provide Plaintiff and the Class Members with accurate
24 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
25 the Class with accurate wage statements but intentionally provided wage statements that
26 Defendants knew were not accurate.

27 76. As a result of being provided with inaccurate wage statements by Defendants,
28 Plaintiff and the Class 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 accurate information on their wage statements prevented
immediate challenges to Defendants’ unlawful pay practices, has required discovery and



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1 mathematical computations to determine the amounts of wages owed, has caused difficulty and
2 expense in attempting to reconstruct time and pay records and/or has led to the submission of
3 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
4 and the Class Members were not able to ascertain from the wage statements whether Defendants
5 complied with their obligations under California Labor Code § 226(a).

6 77. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to
7 recover the greater of actual damages, or penalties of fifty dollars (\$50.00) for the initial pay
8 period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars
9 (\$100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not
10 to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per Class Member, and are
11 also entitled to an award of costs and reasonable attorneys' fees.

12 **FIFTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(Lab. Code §§ 201-203)**

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

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

17 79. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class Members have been non-exempt employees of Defendants and entitled to the benefits and
19 protections of California Labor Code §§ 201-203 and the Wage Order.

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

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

26 82. By failing to pay earned regular and overtime wages to Plaintiff and the Class
27 Members at the correct rates, Defendants failed to timely pay them all earned and unpaid wages
28 in violation of California Labor Code § 201 or § 202.

83. Moreover, Defendants failed to timely issue Plaintiff his final paycheck.
Defendants terminated Plaintiff on approximately March 15, 2019. However, Defendants failed
to issue Plaintiff his final paycheck until approximately March 18, 2019.



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84. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally adopted and maintained policies or practices that are incompatible with those requirements.

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

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(By Plaintiff and the Class against all Defendants)

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

88. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

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

90. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and have lost money or property. Defendants deprived Plaintiff and the Class Members of minimum wages, overtime wages, premium wages for all workdays one or more meal periods was not provided, premium wages for all workdays a rest period was not provided, and reimbursement for expenses that Plaintiff and the other Class



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Members incurred during the course of performing their duties.

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

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

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

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

95. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and last day, inclusive, of any calendar month, shall be paid between the 1st and 10th day of the following month. . . .

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

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

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



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1 apply to the covered employees.

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

5 96. Defendants paid wages to employees on bi-weekly intervals. Defendants failed to
6 pay Plaintiff on such intervals for all wages earned and all hours worked, including, but not
7 limited to, regular and overtime wages for all regular and overtime hours they worked while
8 clocked out, as well as all wages for work they performed and recorded in excess of eight hours
9 in a workday, that Defendants subsequently removed from their time records. On information
10 and belief, Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such
11 intervals for all wages earned and all hours worked.

12 97. During the applicable time period, Defendants violated California Labor Code §§
13 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

17 99. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
18 entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§
19 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable
20 limitations period in the following amounts:

21 A. For violations of California Labor Code § 204, one hundred dollars
22 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
23 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
24 (penalty amounts established by California Labor Code § 210).

25 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
26 (\$250.00) for each aggrieved employee for initial violations and one thousand dollars (\$1,000.00)
27 for each aggrieved employee for each subsequent violation (penalty amounts established by
28 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 violations and one hundred dollars (\$100.00)
for each aggrieved employee for each subsequent violation, per pay period (penalty amounts



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established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each aggrieved employee for each violation (penalty amounts established by California Labor Code § 1174.5).

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

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 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)).

100. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated January 16, 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 in support of the alleged violations. Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. A true and correct copy of Plaintiff’s letter to the LWDA dated January 16, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

101. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved employees are entitled to an award of civil penalties, reasonable attorneys’ fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

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

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;



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- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages;
- E. Actual damages;
- F. Statutory damages;
- G. Liquidated damages;
- H. Restitution;
- I. Declaratory relief;
- J. Equitable relief;
- K. Statutory penalties;
- L. Civil Penalties;
- M. Pre-judgment and post-judgment interest;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 11, 2020

By: 
DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, CHARLES MIKICH
and all others similarly situated

EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 16, 2020

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

RE: *Charles Mikich / Sayeh Petroleum, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Charles Mikich (hereafter “Mikich”) provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to gas station clerks and workers employed in comparable positions (hereafter “Aggrieved Employees”) by Sayeh Petroleum, Inc., a California corporation and gas station operator (hereafter “Sayeh”), of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Sayeh has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Mikich and the Aggrieved Employees are “employees” within the meaning of Wage Order 7-2001 (hereafter “the Wage Order”) § 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

Sayeh employed Mikich as a gas station clerk from approximately January 5, 2018 to approximately March 15, 2019 at its gas station located at 1200 La Playa Street in San Francisco, California. At all relevant times, Mikich resided in California.

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At all relevant times, Sayeh employed Mikich and the other Aggrieved Employees at an hourly rate of pay on a bi-weekly basis. At all relevant times, Sayeh classified Mikich and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Sayeh failed to provide Mikich and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Sayeh typically scheduled Mikich and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Sayeh prohibited Mikich and the Aggrieved Employees from taking off-duty meal periods. Neither Mikich nor the Aggrieved Employees entered into on duty meal period agreements with Sayeh.

At all relevant times, Sayeh failed to authorize and permit Mikich and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. As a result of its inadequate staffing (discussed above), Sayeh failed to provide duty-free rest periods to Mikich and the Aggrieved Employees. At the start of his employment, Mikich asked his manager, Nasser (last name unknown), what time he would get his breaks. Nasser simply laughed in response. Sayeh has not requested an exemption from California's rest period law from the Division of Labor Standards Enforcement.

Sayeh failed to pay premium wages for days on which it failed to provide Mikich and the Aggrieved Employees with all timely meal and rest periods.

Sayeh further required Mikich and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Sayeh.

At all relevant times, Sayeh failed to compensate Mikich and the Aggrieved Employees for all hours worked by requiring Mikich and the Aggrieved Employees to engage in work after clocking out at the end of their scheduled shifts. Sayeh instructed Mikich and the Aggrieved Employees to clock out after

exactly eight hours of work. Sayeh directed them to perform additional tasks after they were clocked out, including cleaning the store, reviewing inventory, and locking up. These tasks would take approximately 20 to 30 minutes to complete.

Sayeh required Mikich and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Sayeh failed to pay one and one half times ($1 \frac{1}{2} \times$) the hourly rates of pay of Mikich and the Aggrieved Employees by failing to pay for off-the-clock work performed by Mikich and the Aggrieved Employees after clocking out at the end of their shifts.

Further, Sayeh failed to pay Mikich and the Aggrieved Employees for all hours worked by rounding down their work times. In the instances in which Mikich and the Aggrieved Employees recorded more than eight hours in a given workday, Sayeh edited their time records to state that they had only worked eight or fewer hours. As a result, Sayeh failed to compensate Mikich and the Aggrieved Employees for the additional time that Sayeh shaved from their time records. Because Mikich worked eight-hour shifts, Sayeh was required to pay him overtime pay for these times.

As set forth below, Mikich alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Sayeh failed to provide Mikich and the Aggrieved Employees with all meal periods as required by law;
- b) Sayeh failed to provide Mikich and the Aggrieved Employees with all rest periods as required by law;
- c) Sayeh failed to compensate Mikich and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more meal periods in a workday;

- d) Sayeh failed to compensate Mikich and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more rest periods in a workday;
- e) Sayeh failed to pay Mikich and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;
- f) Sayeh failed to indemnify Mikich and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- g) Sayeh failed to timely pay Mikich and the Aggrieved Employees all earned and unpaid wages during employment; and
- h) Sayeh failed to timely pay Mikich and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Mikich now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Sayeh's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include:

"any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities as wholesale or retail; or for the purpose of renting goods or commodities."

§ 2(H).

At all relevant times during the applicable limitations period, Sayeh operated gas stations for the purpose of retailing gasoline. Accordingly, Mikich and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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, Section 12 of the Wage Order states:

Rest Periods:

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

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 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.

...

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each workday that the meal period is not provided.

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 workday that the meal or rest period is not provided.

By not providing adequate staff to relieve its hourly employees of their duties, Sayeh has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Mikich and the Aggrieved Employees as required by law. In failing to do so, Sayeh violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Mikich seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

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

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

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

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

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

In relevant part, section 2(G) 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 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

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.
- (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.

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.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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.

At all relevant times during the applicable limitations period, Sayeh knowingly failed to pay Mikich and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed after clocking out at the end of their shifts.

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each

subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and

3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 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, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

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

At all relevant times during the applicable limitations period, Sayeh required Mikich and the Aggrieved Employees to use personal mobile telephones to communicate with Sayeh as a necessary condition of employment. Sayeh failed to indemnify Mikich and the Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Mikich seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

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

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

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;
- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 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 relevant times during the applicable limitations period, Sayeh violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,

the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Sayeh failed to state in the wage statements it issued to Sayeh and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed after clocking out at the ends of their shifts as described above.

Accordingly, Mikich now seeks civil penalties for the Labor Code violations that Sayeh has committed against him and the other 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
(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 Sayeh's failure to pay Mikich and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Sayeh failed to timely pay all wages due during employment. Accordingly, Mikich seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and

- (2) \$200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California 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 California Labor Code § 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 seventy-two (72) hours thereafter, unless the employee has given seventy-two (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 seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 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 at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As explained above, Sayeh failed to pay Mikich and the other Aggrieved Employees all wages owed for hours worked off-the-clock or recorded hours that Sayeh shaved from the time records. As a result, Sayeh failed to pay Mikich and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock at the end of their shifts.

Additionally, Sayeh failed to timely pay Mikich his final paycheck. Sayeh terminated Mikich on approximately March 15, 2019. However, Sayeh failed to issue Mikich his final paycheck until approximately March 18, 2019.

As a result, Sayeh failed to pay Mikich and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Sayeh has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Mikich seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (a) 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 the Wage Order states:

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

Sayeh failed to maintain for Mikich and the Aggrieved Employees accurate records of time worked and all wages earned, including off the clock work, worked deleted from time records, and unpaid meal and rest period premium wages as described above. As a result, Sayeh has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Mikich and the Aggrieved Employees. Accordingly, Mikich seeks civil penalties from Sayeh on behalf of himself and other Aggrieved Employees as follows:

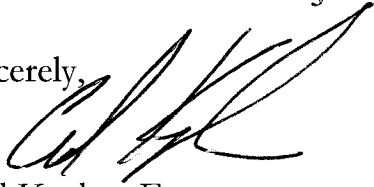
1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per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

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 § 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 §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in black ink, appearing to be 'Carl Kaplan', written over a horizontal line.

Carl Kaplan, Esq.

carl@spivaklaw.com

cc: Charles Mikich
Walter Haines, Esq.

Sayeh Petroleum, Inc.
c/o Agent for Service of Process
Ed Bozorghadad
700 S Bernardo Avenue, Suite 103
Sunnyvale, CA 94087

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 16530 Ventura Blvd., Suite 203, Encino, California 91436.

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 Monday, May 11, 2020, On Monday, May 11, 2020, I caused to have electronically served the following document described as **CLASS ACTION [PROPOSED] FIRST AMENDED COMPLAINT FOR: 1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512, and 1198); 2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198); 3. Failure to Indemnify (Lab. Code §§ 1198 and 2802); 4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226); 5. Waiting Time Penalties (Lab. Code §§ 201-203); 6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and 7. Civil Penalties (Lab. Code §§ 2698, et seq.).** with the email listed below:

Stephen W. Cusick, Esq.
Nielsen Haley & Abbott LLP
100 Smith Ranch Rd, Suite 350
San Rafael, CA 94903
steve@cusick.law
scusick@nielsenhaley.com

____ (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, 16530 Ventura Blvd., Suite 203, Encino, California 91436.

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

EXECUTED on Monday, May 11, 2020, at Encino, California.

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



SILVIA KIRIOLLOS

EXHIBIT 5

1 Stephen W. Cusick, Attorney (SBN 111353)
2 100 Smith Ranch Road, Suite 350
3 Telephone: (415) 248-0166
4 Facsimile: (415) 693-9674

5 steve@cusick@law

6 Attorneys for defendant Sayeh Petroleum Inc.

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

03/13/2020

Clerk of the Court

BY: MADONNA CARANTO

Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 CHARLES MIKICH, on behalf of
11 himself and all others similarly
12 situated,

Plaintiffs,

13 vs.

14 SAYEH PETROLEUM INC., a
15 California corporation, and Does 1
through 50, inclusive,

16 Defendants.

Case No.: **CGC-20-582385**

**SAYEH PETROLEUM INC.'s
ANSWER TO COMPLAINT**

No trial date set.

17
18 Defendant SAYEH PETROLEUM INC. answers the complaint in this
19 matter as follows:

20 **GENERAL DENIAL**

21 1. Defendant denies each and every allegation in the complaint and
22 denies that plaintiff or the alleged plaintiff class, or any of them, have been
23 damaged in any sum, or at all.

24
25 **AFFIRMATIVE DEFENSES**

26 2. As a first affirmative defense to the complaint, and each cause of
27 action alleged therein, defendant alleges that the complaint fails to state a
28 cause of action.

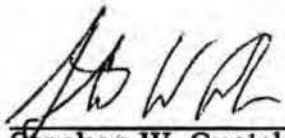
1 3. As a second affirmative defense to the complaint, and each cause of
2 action alleged therein, defendant alleges that the complaint and claims made
3 therein are barred in whole or in part by the applicable statutes of limitations
4 for alleged violations of statutes or relief under applicable statutes, including
5 but not limited to Cal. Bus. & Prof. Code § 17200 et seq.

6 4. As a third affirmative defense to the complaint, and each cause of
7 action alleged therein, defendant alleges that the complaint is barred by the
8 doctrine of laches.

9 Wherefore, defendant requests judgment in its favor, costs of suit, and all
10 other appropriate relief.

11
12 DATED: February 28, 2020

STEPHEN W. CUSICK, ATTORNEY

13
14
15 By 

16 Stephen W. Cusick
17 Attorneys for defendant Sayeh Petroleum
18 Inc.
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PROOF OF SERVICE

I declare that:

I am a citizen of the United States, employed in the County of Marin. I am over the age of eighteen years, and not a party to the within cause. My business address is 100 Smith Ranch Road, Suite 350, San Rafael, California 94903. On the date set forth below, I served true and correct copies of the following document(s) described as follows:

ANSWER BY DEFENDANT SAYEH PETROLEUM INC. TO COMPLAINT

☐ (BY CM/ECF NOTICE OF ELECTRONIC FILING) I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Rafael, California.

☒ (By ELECTRONIC SERVICE) by transmitting via email the document(s) listed above to the email address(es) set forth below on this date.

Attorneys for plaintiffs CHARLES MIKICH and all others similarly situated:

THE SPIVAK LAW FIRM

DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

CARL J. KAPLAN (SBN 323019)

carl@SPIVAK law.com

16530 Ventura Blvd., Suite 203

Encino, CA 91436

Telephone (818) 582-3086

Facsimile (818) 582-2561

UNITED EMPLOYEES LAW GROUP

WALTER HAINES (SBN 71075)

whaines@uelglaw.com

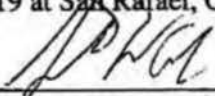
5500 Bolsa Ave., Suite 201

Huntington Beach, CA 92649

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

1 I declare under penalty of perjury that the foregoing is true and correct and that this
2 declaration was executed on February 28, 2019 at San Rafael, California.

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4 _____
5 STEPHEN W. CUSICK
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1 Scott G. Lawson (Bar No. 174671)
scottlawson@lawson2.com
2 Lisa G. Lawson (Bar No. 169503)
lisalawson@lawson2.com
3 Ian W. Forgie (Bar No. 307721)
ianforgie@lawson2.com
4 LAWSON & LAWSON LLP
One Sansome Street, 35th Floor
San Francisco, California 94104
5 Telephone: (415) 484-4345
Facsimile: (415) 480-6706
6

7 Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
8 Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
and Green Planet Gas, Inc.
9

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 CHARLES MIKICH, an individual,
13

14 Plaintiff,

15 vs.

16 SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
California corporation; HADAD
17 ENTERPRISE, INC., a California
corporation; HADAD PETROLEUM, INC., a
California corporation; BAY AREA AUTO
18 CARE, INC., a California corporation;
HOUTAN PETROLEUM, INC., a California
19 corporation; GREEN PLANET GAS, INC., a
California corporation; and DOES 7-50,
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21 Defendants.
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Case No. CGC-20-582385

ANSWER – GREEN PLANET GAS, INC.

Comp. Filed: January 22, 2020

Trial Date: Not Set

1 Defendant Green Planet Gas, Inc. (“Defendant”) hereby answers the Complaint filed by
2 Charles Mikich (“Plaintiff”) as follows:

3 **GENERAL DENIAL**

4 In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies
5 both generally and specifically each and every allegation contained in the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 Defendant asserts the following affirmative defenses. Defendant currently has insufficient
8 information available upon which to form a belief as to whether it has additional, as yet unstated,
9 affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses
10 in the event discovery indicates such additional defendants would be appropriate.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(FAILURE TO STATE A CLAIM)**

13 The Complaint, and every cause of action therein, fails to state facts sufficient to constitute
14 any claim or cause of action against Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(STATUTE OF LIMITATIONS)**

17 Some or all of Plaintiff’s causes of action are barred by the applicable statutes of limitations,
18 including California Code of Civil Procedure section 338.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(WAIVER, ESTOPPEL, AND CONSENT)**

21 The Complaint, and every cause of action therein, is barred by the doctrines of waiver,
22 estoppel, and/or consent. Plaintiff’s causes of action relating to the provision of meal and rest
23 periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their
24 off-duty meal periods, including for workdays in which they worked six hours or less, and for
25 workdays in which they worked more than ten and no more than twelve hours. To the extent
26 Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or
27 their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of
28 the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

1 *inter alia*, Plaintiff and/or the putative class members, through his and their actions and
2 representations, led Defendant to believe that he and they were properly paid and received all wages
3 to which he and they were legally entitled.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(GOOD FAITH)**

6 The Complaint, and every cause of action therein, is barred because Defendant's alleged acts
7 or omissions, if any, were made in good faith and were not willful or intentional. Defendant had
8 reasonable grounds for believing that the alleged acts or omissions did not violate any California
9 Labor Code provision, any orders issued by the Industrial Welfare Commission, or California
10 Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because
11 any failure by Defendant to pay wages upon termination was based on a good faith dispute as to
12 whether any claimed pay was owed.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(ON-DUTY MEAL PERIOD AGREEMENTS)**

15 To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide
16 meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff
17 and other putative class members prevented Plaintiff and other putative class members from taking
18 any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and
19 putative class members worked pursuant to on-duty meal period agreements.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 **(PRIOR CLAIMS)**

22 The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff
23 or any putative class member pursued any claims before the California Labor Commissioner,
24 Division of Labor Standards Enforcement, or the United States Department of Labor. The
25 Complaint, and each cause of action alleged therein, is barred by the doctrines of *res judicata*,
26 collateral estoppel, or the doctrine barring duplicative litigation.

27 ///

28 ///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(RELEASE)**

3 The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff
4 and/or putative class members have released such claims by prior agreement with Defendant and/or
5 associated entities.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(DE MINIMIS TIME)**

8 Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has
9 requested payment (and/or penalties) and for which Plaintiff was not compensated was too
10 insubstantial or insignificant to be precisely recorded for payroll purposes.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(LABOR CODE 2856)**

13 Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially
14 comply with directions regarding their work when they failed to promptly report any missed meal or
15 rest periods or payroll errors.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(AVOIDABLE CONSEQUENCES)**

18 Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's
19 losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or
20 policies and promptly reported any missed meal or rest periods and/or payroll errors.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 **(EXCESSIVE FINE)**

23 An award of penalties against Defendant under the circumstances of this case would
24 constitute an excessive fine and otherwise would be in violation of Defendant's due process and
25 other rights under the United States and California Constitutions.

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 **(OFFSET)**

3 If any damages have been sustained by Plaintiff and/or the putative class members,
4 Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra
5 payments or overpayments against any judgment that may be entered against it.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 **(UNNECESSARY BUSINESS EXPENSES)**

8 Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in
9 whole or in part because any alleged expenditures or losses were not necessary and/or were not the
10 direct consequence of the discharge of Plaintiff's and/or the putative class members' employment
11 duties to Defendant or because Plaintiff and/or the putative class members failed to submit to
12 Defendant any proof or documents showing that any alleged expenditures or losses were necessary
13 and were made in the direct consequence of the discharge of their employment duties to Defendant.

14
15 Dated: September 16, 2021

Respectfully submitted,

16 LAWSON & LAWSON LLP

17 By: /s/ Lisa G. Lawson
18 Lisa G. Lawson

Attorneys for Defendants

19 Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
20 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
21 Bay Area Auto Care, Inc.; Houtan Petroleum,
22 Inc.; and Green Planet Gas, Inc.
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1 Scott G. Lawson (Bar No. 174671)
scottlawson@lawson2.com
2 Lisa G. Lawson (Bar No. 169503)
lisalawson@lawson2.com
3 Ian W. Forgie (Bar No. 307721)
ianforgie@lawson2.com
4 LAWSON & LAWSON LLP
One Sansome Street, 35th Floor
5 San Francisco, California 94104
Telephone: (415) 484-4345
6 Facsimile: (415) 480-6706

7 Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
8 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
9 and Green Planet Gas, Inc.

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12

13 CHARLES MIKICH, an individual,
14 Plaintiff,
15 vs.

Case No. CGC-20-582385

**ANSWER – HOUTAN PETROLEUM,
INC.**

16 SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
17 California corporation; HADAD
ENTERPRISE, INC., a California
18 corporation; HADAD PETROLEUM, INC., a
California corporation; BAY AREA AUTO
19 CARE, INC., a California corporation;
HOUTAN PETROLEUM, INC., a California
20 corporation; GREEN PLANET GAS, INC., a
California corporation; and DOES 7-50,
21 Defendants.
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Comp. Filed: January 22, 2020
Trial Date: Not Set

1 Defendant Houtan Petroleum, Inc. (“Defendant”) hereby answers the Complaint filed by
2 Charles Mikich (“Plaintiff”) as follows:

3 **GENERAL DENIAL**

4 In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies
5 both generally and specifically each and every allegation contained in the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 Defendant asserts the following affirmative defenses. Defendant currently has insufficient
8 information available upon which to form a belief as to whether it has additional, as yet unstated,
9 affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses
10 in the event discovery indicates such additional defendants would be appropriate.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(FAILURE TO STATE A CLAIM)**

13 The Complaint, and every cause of action therein, fails to state facts sufficient to constitute
14 any claim or cause of action against Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(STATUTE OF LIMITATIONS)**

17 Some or all of Plaintiff’s causes of action are barred by the applicable statutes of limitations,
18 including California Code of Civil Procedure section 338.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(WAIVER, ESTOPPEL, AND CONSENT)**

21 The Complaint, and every cause of action therein, is barred by the doctrines of waiver,
22 estoppel, and/or consent. Plaintiff’s causes of action relating to the provision of meal and rest
23 periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their
24 off-duty meal periods, including for workdays in which they worked six hours or less, and for
25 workdays in which they worked more than ten and no more than twelve hours. To the extent
26 Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or
27 their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of
28 the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

1 *inter alia*, Plaintiff and/or the putative class members, through his and their actions and
2 representations, led Defendant to believe that he and they were properly paid and received all wages
3 to which he and they were legally entitled.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(GOOD FAITH)**

6 The Complaint, and every cause of action therein, is barred because Defendant's alleged acts
7 or omissions, if any, were made in good faith and were not willful or intentional. Defendant had
8 reasonable grounds for believing that the alleged acts or omissions did not violate any California
9 Labor Code provision, any orders issued by the Industrial Welfare Commission, or California
10 Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because
11 any failure by Defendant to pay wages upon termination was based on a good faith dispute as to
12 whether any claimed pay was owed.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(ON-DUTY MEAL PERIOD AGREEMENTS)**

15 To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide
16 meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff
17 and other putative class members prevented Plaintiff and other putative class members from taking
18 any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and
19 putative class members worked pursuant to on-duty meal period agreements.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 **(PRIOR CLAIMS)**

22 The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff
23 or any putative class member pursued any claims before the California Labor Commissioner,
24 Division of Labor Standards Enforcement, or the United States Department of Labor. The
25 Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata,
26 collateral estoppel, or the doctrine barring duplicative litigation.

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1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(RELEASE)**

3 The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff
4 and/or putative class members have released such claims by prior agreement with Defendant and/or
5 associated entities.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(DE MINIMIS TIME)**

8 Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has
9 requested payment (and/or penalties) and for which Plaintiff was not compensated was too
10 insubstantial or insignificant to be precisely recorded for payroll purposes.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(LABOR CODE 2856)**

13 Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially
14 comply with directions regarding their work when they failed to promptly report any missed meal or
15 rest periods or payroll errors.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(AVOIDABLE CONSEQUENCES)**

18 Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's
19 losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or
20 policies and promptly reported any missed meal or rest periods and/or payroll errors.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 **(EXCESSIVE FINE)**

23 An award of penalties against Defendant under the circumstances of this case would
24 constitute an excessive fine and otherwise would be in violation of Defendant's due process and
25 other rights under the United States and California Constitutions.

26 ///

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 **(OFFSET)**

3 If any damages have been sustained by Plaintiff and/or the putative class members,
4 Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra
5 payments or overpayments against any judgment that may be entered against it.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 **(UNNECESSARY BUSINESS EXPENSES)**

8 Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in
9 whole or in part because any alleged expenditures or losses were not necessary and/or were not the
10 direct consequence of the discharge of Plaintiff's and/or the putative class members' employment
11 duties to Defendant or because Plaintiff and/or the putative class members failed to submit to
12 Defendant any proof or documents showing that any alleged expenditures or losses were necessary
13 and were made in the direct consequence of the discharge of their employment duties to Defendant.

14
15 Dated: September 16, 2021

Respectfully submitted,

16 LAWSON & LAWSON LLP

17 By: /s/ Lisa G. Lawson
18 Lisa G. Lawson

Attorneys for Defendants

19 Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
20 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
21 Bay Area Auto Care, Inc.; Houtan Petroleum,
22 Inc.; and Green Planet Gas, Inc.
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7 Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
8 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
9 and Green Planet Gas, Inc.

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12

13 CHARLES MIKICH, an individual,
14 Plaintiff,
15 vs.

16 SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
17 California corporation; HADAD
ENTERPRISE, INC., a California
18 corporation; HADAD PETROLEUM, INC., a
California corporation; BAY AREA AUTO
19 CARE, INC., a California corporation;
HOUTAN PETROLEUM, INC., a California
20 corporation; GREEN PLANET GAS, INC., a
California corporation; and DOES 7-50,
21 Defendants.
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Case No. CGC-20-582385

ANSWER – HADAD PETROLEUM, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

1 Defendant Hadad Petroleum, Inc. (“Defendant”) hereby answers the Complaint filed by
2 Charles Mikich (“Plaintiff”) as follows:

3 **GENERAL DENIAL**

4 In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies
5 both generally and specifically each and every allegation contained in the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 Defendant asserts the following affirmative defenses. Defendant currently has insufficient
8 information available upon which to form a belief as to whether it has additional, as yet unstated,
9 affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses
10 in the event discovery indicates such additional defendants would be appropriate.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(FAILURE TO STATE A CLAIM)**

13 The Complaint, and every cause of action therein, fails to state facts sufficient to constitute
14 any claim or cause of action against Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(STATUTE OF LIMITATIONS)**

17 Some or all of Plaintiff’s causes of action are barred by the applicable statutes of limitations,
18 including California Code of Civil Procedure section 338.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(WAIVER, ESTOPPEL, AND CONSENT)**

21 The Complaint, and every cause of action therein, is barred by the doctrines of waiver,
22 estoppel, and/or consent. Plaintiff’s causes of action relating to the provision of meal and rest
23 periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their
24 off-duty meal periods, including for workdays in which they worked six hours or less, and for
25 workdays in which they worked more than ten and no more than twelve hours. To the extent
26 Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or
27 their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of
28 the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

1 *inter alia*, Plaintiff and/or the putative class members, through his and their actions and
2 representations, led Defendant to believe that he and they were properly paid and received all wages
3 to which he and they were legally entitled.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(GOOD FAITH)**

6 The Complaint, and every cause of action therein, is barred because Defendant's alleged acts
7 or omissions, if any, were made in good faith and were not willful or intentional. Defendant had
8 reasonable grounds for believing that the alleged acts or omissions did not violate any California
9 Labor Code provision, any orders issued by the Industrial Welfare Commission, or California
10 Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because
11 any failure by Defendant to pay wages upon termination was based on a good faith dispute as to
12 whether any claimed pay was owed.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(ON-DUTY MEAL PERIOD AGREEMENTS)**

15 To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide
16 meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff
17 and other putative class members prevented Plaintiff and other putative class members from taking
18 any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and
19 putative class members worked pursuant to on-duty meal period agreements.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 **(PRIOR CLAIMS)**

22 The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff
23 or any putative class member pursued any claims before the California Labor Commissioner,
24 Division of Labor Standards Enforcement, or the United States Department of Labor. The
25 Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata,
26 collateral estoppel, or the doctrine barring duplicative litigation.

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28 ///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(RELEASE)**

3 The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff
4 and/or putative class members have released such claims by prior agreement with Defendant and/or
5 associated entities.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(DE MINIMIS TIME)**

8 Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has
9 requested payment (and/or penalties) and for which Plaintiff was not compensated was too
10 insubstantial or insignificant to be precisely recorded for payroll purposes.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(LABOR CODE 2856)**

13 Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially
14 comply with directions regarding their work when they failed to promptly report any missed meal or
15 rest periods or payroll errors.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(AVOIDABLE CONSEQUENCES)**

18 Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's
19 losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or
20 policies and promptly reported any missed meal or rest periods and/or payroll errors.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 **(EXCESSIVE FINE)**

23 An award of penalties against Defendant under the circumstances of this case would
24 constitute an excessive fine and otherwise would be in violation of Defendant's due process and
25 other rights under the United States and California Constitutions.

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 **(OFFSET)**

3 If any damages have been sustained by Plaintiff and/or the putative class members,
4 Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra
5 payments or overpayments against any judgment that may be entered against it.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 **(UNNECESSARY BUSINESS EXPENSES)**

8 Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in
9 whole or in part because any alleged expenditures or losses were not necessary and/or were not the
10 direct consequence of the discharge of Plaintiff's and/or the putative class members' employment
11 duties to Defendant or because Plaintiff and/or the putative class members failed to submit to
12 Defendant any proof or documents showing that any alleged expenditures or losses were necessary
13 and were made in the direct consequence of the discharge of their employment duties to Defendant.

14
15 Dated: September 16, 2021

Respectfully submitted,

16 LAWSON & LAWSON LLP

17 By: /s/ Lisa G. Lawson
18 Lisa G. Lawson

Attorneys for Defendants

19 Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
20 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
21 Bay Area Auto Care, Inc.; Houtan Petroleum,
22 Inc.; and Green Planet Gas, Inc.
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6 Facsimile: (415) 480-6706

7 Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
8 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
9 and Green Planet Gas, Inc.

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12

13 CHARLES MIKICH, an individual,
14 Plaintiff,
15 vs.

Case No. CGC-20-582385

**ANSWER – BAY AREA AUTO CARE,
INC.**

16 SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
17 California corporation; HADAD
ENTERPRISE, INC., a California
18 corporation; HADAD PETROLEUM, INC., a
California corporation; BAY AREA AUTO
19 CARE, INC., a California corporation;
HOUTAN PETROLEUM, INC., a California
20 corporation; GREEN PLANET GAS, INC., a
California corporation; and DOES 7-50,
21 Defendants.
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Comp. Filed: January 22, 2020
Trial Date: Not Set

1 Defendant Bay Area Auto Care, Inc. ("Defendant") hereby answers the Complaint filed by
2 Charles Mikich ("Plaintiff") as follows:

3 **GENERAL DENIAL**

4 In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies
5 both generally and specifically each and every allegation contained in the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 Defendant asserts the following affirmative defenses. Defendant currently has insufficient
8 information available upon which to form a belief as to whether it has additional, as yet unstated,
9 affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses
10 in the event discovery indicates such additional defendants would be appropriate.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(FAILURE TO STATE A CLAIM)**

13 The Complaint, and every cause of action therein, fails to state facts sufficient to constitute
14 any claim or cause of action against Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(STATUTE OF LIMITATIONS)**

17 Some or all of Plaintiff's causes of action are barred by the applicable statutes of limitations,
18 including California Code of Civil Procedure section 338.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(WAIVER, ESTOPPEL, AND CONSENT)**

21 The Complaint, and every cause of action therein, is barred by the doctrines of waiver,
22 estoppel, and/or consent. Plaintiff's causes of action relating to the provision of meal and rest
23 periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their
24 off-duty meal periods, including for workdays in which they worked six hours or less, and for
25 workdays in which they worked more than ten and no more than twelve hours. To the extent
26 Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or
27 their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of
28 the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

1 *inter alia*, Plaintiff and/or the putative class members, through his and their actions and
2 representations, led Defendant to believe that he and they were properly paid and received all wages
3 to which he and they were legally entitled.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(GOOD FAITH)**

6 The Complaint, and every cause of action therein, is barred because Defendant's alleged acts
7 or omissions, if any, were made in good faith and were not willful or intentional. Defendant had
8 reasonable grounds for believing that the alleged acts or omissions did not violate any California
9 Labor Code provision, any orders issued by the Industrial Welfare Commission, or California
10 Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because
11 any failure by Defendant to pay wages upon termination was based on a good faith dispute as to
12 whether any claimed pay was owed.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(ON-DUTY MEAL PERIOD AGREEMENTS)**

15 To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide
16 meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff
17 and other putative class members prevented Plaintiff and other putative class members from taking
18 any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and
19 putative class members worked pursuant to on-duty meal period agreements.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 **(PRIOR CLAIMS)**

22 The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff
23 or any putative class member pursued any claims before the California Labor Commissioner,
24 Division of Labor Standards Enforcement, or the United States Department of Labor. The
25 Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata,
26 collateral estoppel, or the doctrine barring duplicative litigation.

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28 ///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(RELEASE)**

3 The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff
4 and/or putative class members have released such claims by prior agreement with Defendant and/or
5 associated entities.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(DE MINIMIS TIME)**

8 Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has
9 requested payment (and/or penalties) and for which Plaintiff was not compensated was too
10 insubstantial or insignificant to be precisely recorded for payroll purposes.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(LABOR CODE 2856)**

13 Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially
14 comply with directions regarding their work when they failed to promptly report any missed meal or
15 rest periods or payroll errors.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(AVOIDABLE CONSEQUENCES)**

18 Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's
19 losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or
20 policies and promptly reported any missed meal or rest periods and/or payroll errors.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 **(EXCESSIVE FINE)**

23 An award of penalties against Defendant under the circumstances of this case would
24 constitute an excessive fine and otherwise would be in violation of Defendant's due process and
25 other rights under the United States and California Constitutions.

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 **(OFFSET)**

3 If any damages have been sustained by Plaintiff and/or the putative class members,
4 Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra
5 payments or overpayments against any judgment that may be entered against it.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 **(UNNECESSARY BUSINESS EXPENSES)**

8 Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in
9 whole or in part because any alleged expenditures or losses were not necessary and/or were not the
10 direct consequence of the discharge of Plaintiff's and/or the putative class members' employment
11 duties to Defendant or because Plaintiff and/or the putative class members failed to submit to
12 Defendant any proof or documents showing that any alleged expenditures or losses were necessary
13 and were made in the direct consequence of the discharge of their employment duties to Defendant.

14
15 Dated: September 16, 2021

Respectfully submitted,

16 LAWSON & LAWSON LLP

17 By: /s/ Lisa G. Lawson
18 Lisa G. Lawson

Attorneys for Defendants

19 Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
20 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
21 Bay Area Auto Care, Inc.; Houtan Petroleum,
22 Inc.; and Green Planet Gas, Inc.
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Telephone: (415) 484-4345
6 Facsimile: (415) 480-6706

7 Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
8 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
9 and Green Planet Gas, Inc.

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12

13 CHARLES MIKICH, an individual,
14 Plaintiff,
15 vs.

16 SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
17 California corporation; HADAD
ENTERPRISE, INC., a California
18 corporation; HADAD PETROLEUM, INC., a
California corporation; BAY AREA AUTO
19 CARE, INC., a California corporation;
HOUTAN PETROLEUM, INC., a California
20 corporation; GREEN PLANET GAS, INC., a
California corporation; and DOES 7-50,
21 Defendants.
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Case No. CGC-20-582385

ANSWER – HADAD ENTERPRISE, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

1 Defendant Hadad Enterprise, Inc. (“Defendant”) hereby answers the Complaint filed by
2 Charles Mikich (“Plaintiff”) as follows:

3 **GENERAL DENIAL**

4 In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies
5 both generally and specifically each and every allegation contained in the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 Defendant asserts the following affirmative defenses. Defendant currently has insufficient
8 information available upon which to form a belief as to whether it has additional, as yet unstated,
9 affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses
10 in the event discovery indicates such additional defendants would be appropriate.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(FAILURE TO STATE A CLAIM)**

13 The Complaint, and every cause of action therein, fails to state facts sufficient to constitute
14 any claim or cause of action against Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(STATUTE OF LIMITATIONS)**

17 Some or all of Plaintiff’s causes of action are barred by the applicable statutes of limitations,
18 including California Code of Civil Procedure section 338.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(WAIVER, ESTOPPEL, AND CONSENT)**

21 The Complaint, and every cause of action therein, is barred by the doctrines of waiver,
22 estoppel, and/or consent. Plaintiff’s causes of action relating to the provision of meal and rest
23 periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their
24 off-duty meal periods, including for workdays in which they worked six hours or less, and for
25 workdays in which they worked more than ten and no more than twelve hours. To the extent
26 Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or
27 their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of
28 the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

1 *inter alia*, Plaintiff and/or the putative class members, through his and their actions and
2 representations, led Defendant to believe that he and they were properly paid and received all wages
3 to which he and they were legally entitled.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(GOOD FAITH)**

6 The Complaint, and every cause of action therein, is barred because Defendant's alleged acts
7 or omissions, if any, were made in good faith and were not willful or intentional. Defendant had
8 reasonable grounds for believing that the alleged acts or omissions did not violate any California
9 Labor Code provision, any orders issued by the Industrial Welfare Commission, or California
10 Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because
11 any failure by Defendant to pay wages upon termination was based on a good faith dispute as to
12 whether any claimed pay was owed.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(ON-DUTY MEAL PERIOD AGREEMENTS)**

15 To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide
16 meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff
17 and other putative class members prevented Plaintiff and other putative class members from taking
18 any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and
19 putative class members worked pursuant to on-duty meal period agreements.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 **(PRIOR CLAIMS)**

22 The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff
23 or any putative class member pursued any claims before the California Labor Commissioner,
24 Division of Labor Standards Enforcement, or the United States Department of Labor. The
25 Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata,
26 collateral estoppel, or the doctrine barring duplicative litigation.

27 ///

28 ///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(RELEASE)**

3 The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff
4 and/or putative class members have released such claims by prior agreement with Defendant and/or
5 associated entities.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(DE MINIMIS TIME)**

8 Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has
9 requested payment (and/or penalties) and for which Plaintiff was not compensated was too
10 insubstantial or insignificant to be precisely recorded for payroll purposes.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(LABOR CODE 2856)**

13 Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially
14 comply with directions regarding their work when they failed to promptly report any missed meal or
15 rest periods or payroll errors.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(AVOIDABLE CONSEQUENCES)**

18 Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's
19 losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or
20 policies and promptly reported any missed meal or rest periods and/or payroll errors.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 **(EXCESSIVE FINE)**

23 An award of penalties against Defendant under the circumstances of this case would
24 constitute an excessive fine and otherwise would be in violation of Defendant's due process and
25 other rights under the United States and California Constitutions.

26 ///

27 ///

28 ///

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 **(OFFSET)**

3 If any damages have been sustained by Plaintiff and/or the putative class members,
4 Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra
5 payments or overpayments against any judgment that may be entered against it.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 **(UNNECESSARY BUSINESS EXPENSES)**

8 Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in
9 whole or in part because any alleged expenditures or losses were not necessary and/or were not the
10 direct consequence of the discharge of Plaintiff's and/or the putative class members' employment
11 duties to Defendant or because Plaintiff and/or the putative class members failed to submit to
12 Defendant any proof or documents showing that any alleged expenditures or losses were necessary
13 and were made in the direct consequence of the discharge of their employment duties to Defendant.

14
15 Dated: September 16, 2021

Respectfully submitted,

16 LAWSON & LAWSON LLP

17 By: /s/ Lisa G. Lawson
18 Lisa G. Lawson

Attorneys for Defendants

19 Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
20 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
21 Bay Area Auto Care, Inc.; Houtan Petroleum,
22 Inc.; and Green Planet Gas, Inc.
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One Sansome Street, 35th Floor
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7 Attorneys for Defendants
Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
8 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
Bay Area Auto Care, Inc.; Houtan Petroleum, Inc.;
9 and Green Planet Gas, Inc.

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12

13 CHARLES MIKICH, an individual,
14 Plaintiff,
15 vs.

16 SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
17 California corporation; HADAD
ENTERPRISE, INC., a California
18 corporation; HADAD PETROLEUM, INC., a
California corporation; BAY AREA AUTO
19 CARE, INC., a California corporation;
HOUTAN PETROLEUM, INC., a California
20 corporation; GREEN PLANET GAS, INC., a
California corporation; and DOES 7-50,
21 Defendants.
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Case No. CGC-20-582385

ANSWER – HEDIA PETROLEUM, INC.

Comp. Filed: January 22, 2020
Trial Date: Not Set

1 Defendant Hedia Petroleum, Inc. (“Defendant”) hereby answers the Complaint filed by
2 Charles Mikich (“Plaintiff”) as follows:

3 **GENERAL DENIAL**

4 In accordance with the provisions of Code of Civil Procedure section 431.30, Defendant denies
5 both generally and specifically each and every allegation contained in the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 Defendant asserts the following affirmative defenses. Defendant currently has insufficient
8 information available upon which to form a belief as to whether it has additional, as yet unstated,
9 affirmative defenses available. Defendant reserves the right to assert additional affirmative defenses
10 in the event discovery indicates such additional defendants would be appropriate.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(FAILURE TO STATE A CLAIM)**

13 The Complaint, and every cause of action therein, fails to state facts sufficient to constitute
14 any claim or cause of action against Defendant.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(STATUTE OF LIMITATIONS)**

17 Some or all of Plaintiff’s causes of action are barred by the applicable statutes of limitations,
18 including California Code of Civil Procedure section 338.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(WAIVER, ESTOPPEL, AND CONSENT)**

21 The Complaint, and every cause of action therein, is barred by the doctrines of waiver,
22 estoppel, and/or consent. Plaintiff’s causes of action relating to the provision of meal and rest
23 periods are barred to the extent that Plaintiffs and putative class members voluntarily waived their
24 off-duty meal periods, including for workdays in which they worked six hours or less, and for
25 workdays in which they worked more than ten and no more than twelve hours. To the extent
26 Plaintiff and/or the putative class members he seeks to represent failed to accurately report his or
27 their hours worked, their causes of action are barred by the doctrine of equitable estoppel. Each of
28 the purported causes of action is also barred, in whole or in part, by the doctrine of estoppel in that,

1 *inter alia*, Plaintiff and/or the putative class members, through his and their actions and
2 representations, led Defendant to believe that he and they were properly paid and received all wages
3 to which he and they were legally entitled.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(GOOD FAITH)**

6 The Complaint, and every cause of action therein, is barred because Defendant's alleged acts
7 or omissions, if any, were made in good faith and were not willful or intentional. Defendant had
8 reasonable grounds for believing that the alleged acts or omissions did not violate any California
9 Labor Code provision, any orders issued by the Industrial Welfare Commission, or California
10 Business & Professions Code §§ 17200 *et seq.* Plaintiff's Fifth Cause of Action is barred because
11 any failure by Defendant to pay wages upon termination was based on a good faith dispute as to
12 whether any claimed pay was owed.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(ON-DUTY MEAL PERIOD AGREEMENTS)**

15 To the extent Plaintiff's causes of action are based on Defendant's alleged failure to provide
16 meal periods, those claims are barred to the extent that the nature of the work performed by Plaintiff
17 and other putative class members prevented Plaintiff and other putative class members from taking
18 any off-duty meal periods during the relevant time periods and to the extent that Plaintiffs and
19 putative class members worked pursuant to on-duty meal period agreements.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 **(PRIOR CLAIMS)**

22 The Complaint, and each cause of action alleged therein, is barred to the extent that Plaintiff
23 or any putative class member pursued any claims before the California Labor Commissioner,
24 Division of Labor Standards Enforcement, or the United States Department of Labor. The
25 Complaint, and each cause of action alleged therein, is barred by the doctrines of res judicata,
26 collateral estoppel, or the doctrine barring duplicative litigation.

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28 ///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(RELEASE)**

3 The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff
4 and/or putative class members have released such claims by prior agreement with Defendant and/or
5 associated entities.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(DE MINIMIS TIME)**

8 Plaintiff is not entitled to the recovery requested because any time for which Plaintiff has
9 requested payment (and/or penalties) and for which Plaintiff was not compensated was too
10 insubstantial or insignificant to be precisely recorded for payroll purposes.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(LABOR CODE 2856)**

13 Plaintiff is barred from recovery, in part or in whole, because Plaintiff failed to substantially
14 comply with directions regarding their work when they failed to promptly report any missed meal or
15 rest periods or payroll errors.

16 **TENTH AFFIRMATIVE DEFENSE**

17 **(AVOIDABLE CONSEQUENCES)**

18 Plaintiff's damages must be limited, or entirely eliminated, because some or all of Plaintiff's
19 losses could have been avoided if Plaintiff had complied with Defendant's procedures and/or
20 policies and promptly reported any missed meal or rest periods and/or payroll errors.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 **(EXCESSIVE FINE)**

23 An award of penalties against Defendant under the circumstances of this case would
24 constitute an excessive fine and otherwise would be in violation of Defendant's due process and
25 other rights under the United States and California Constitutions.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 **(OFFSET)**

3 If any damages have been sustained by Plaintiff and/or the putative class members,
4 Defendant is entitled, under the equitable doctrine of setoff and recoupment, to offset all extra
5 payments or overpayments against any judgment that may be entered against it.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 **(UNNECESSARY BUSINESS EXPENSES)**

8 Plaintiff's causes of action alleging violation of California Labor Code § 2802 are barred in
9 whole or in part because any alleged expenditures or losses were not necessary and/or were not the
10 direct consequence of the discharge of Plaintiff's and/or the putative class members' employment
11 duties to Defendant or because Plaintiff and/or the putative class members failed to submit to
12 Defendant any proof or documents showing that any alleged expenditures or losses were necessary
13 and were made in the direct consequence of the discharge of their employment duties to Defendant.

14
15 Dated: September 16, 2021

Respectfully submitted,

16 LAWSON & LAWSON LLP

17 By: /s/ Lisa G. Lawson
18 Lisa G. Lawson

Attorneys for Defendants

19 Sayeh Petroleum, Inc.; Hedia Petroleum, Inc.;
20 Hadad Enterprise, Inc.; Hadad Petroleum, Inc.;
21 Bay Area Auto Care, Inc.; Houtan Petroleum,
22 Inc.; and Green Planet Gas, Inc.
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EXHIBIT 6



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

February 11, 2021

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

RE: *Jonathon Gordon / Sayeh*

To Whom It May Concern:

This notice concerns the following employers:

1. Sayeh Petroleum, Inc., a California corporation;
2. Green Planet Gas, Inc., a California corporation;
3. Hedia Petroleum, Inc., a California corporation;
4. Hadad Enterprise, Inc., a California corporation;
5. Hadad Petroluem, Inc., a California corporation;
6. Bay Area Auto Care, Inc., a California corporation;
7. Houtan Petroleum, Inc., a California corporation; and
8. Ali Bozorghadad, also known as Ed Hadad, an individual.

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

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Jonathan Gordon (hereafter "Gordon") provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to cashiers, gas station clerks and workers employed in comparable positions (hereafter "Aggrieved Employees") by Sayeh of violations of Labor Code §§ 201, 202,

204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Sayeh has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Gordon and the Aggrieved Employees are “employees” within the meaning of Wage Order 7-2001 (hereafter “the Wage Order”) § 2, subdivision (E) and “aggrieved employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

On approximately July 3, 2020, Sayeh first employed Gordon as a cashier at its gas station located at 1400 19th Avenue, San Francisco California. Sayeh continuously employed Gordon from July 3, 2020 at this location, and at times at its gas station located at 1200 La Playa Street in San Francisco, California. Gordon remains an employee of Sayeh.

At all relevant times, Sayeh employed Gordon and the other Aggrieved Employees at an hourly rate of pay and issued their wages to them on a bi-weekly basis. At all relevant times, Sayeh classified Gordon and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Sayeh failed to provide Gordon and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Sayeh typically scheduled Gordon and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Sayeh prohibited Gordon and the Aggrieved Employees from taking off-duty meal periods.

At all relevant times, Sayeh failed to authorize and permit Gordon and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. As a result of its inadequate staffing levels, Sayeh failed to provide duty-free rest periods to Gordon and the Aggrieved Employees. Sayeh has not requested an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Sayeh did not enter into valid on-duty meal period agreements with Gordon or the Aggrieved employees. Sayeh could not enter into valid on-duty meal period agreements with him or the Aggrieved Employees because the nature of their work did not prevent Sayeh from relieving them of all duties to take a duty-free meal period. Sayeh further failed to pay premium wages for days on which it failed to provide Gordon and the Aggrieved Employees with all timely meal and rest periods.

Sayeh further required Gordon and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Sayeh.

At all relevant times, Sayeh failed to compensate Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay. Sayeh regularly required Gordon and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Sayeh issued Gordon and the Aggrieved Employees separate wage statements for each gas station it operated, dividing the hours worked in the same pay period between the gas stations as if they were separate employers. By not aggregating the hours Gordon and the Aggrieved Employees worked in the same pay period, Sayeh treated hours that would qualify for overtime and doubletime premium wages as regular hours not entitled to such premium pay rates. For example, Sayeh scheduled Gordon to work two consecutive eight-hour shifts, one at each of Gordon's two assigned gas stations. However, Sayeh failed to pay Gordon overtime and double time wages for work performed in excess of eight hours in a workday. In order to avoid paying Gordon overtime and double time wages for work performed during his second consecutive eight-hour shift, Sayeh issued Gordon different wage statements for each gas station, treating them as separate employers. For work Gordon performed at the 19th Avenue gas station, Sayeh issued Gordon paychecks bearing the employer name Green Planet Gas Inc. For work Gordon performed at the La Playa Street gas station, Sayeh issued Gordon paychecks bearing the employer name Sayeh Petroleum Inc.

As set forth below, Gordon alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Sayeh failed to provide Gordon and the Aggrieved Employees with all meal periods as required by law;
- b) Sayeh failed to authorize and permit Gordon and the Aggrieved Employees with all rest periods as required by law;
- c) Sayeh failed to compensate Gordon and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more meal periods in a workday;
- d) Sayeh failed to compensate Gordon and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more rest periods in a workday;
- e) Sayeh failed to pay Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum, regular, overtime, and double time pay due to Sayeh's practice of compensating Gordon and the Aggrieved Employees at straight time rates for work performed at a second Sayeh gas station during a subsequent eight-hour shift in the same workday;
- f) Sayeh failed to indemnify Gordon and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- g) Sayeh failed to timely pay Gordon and the Aggrieved Employees all earned and unpaid wages during employment;
- h) Sayeh failed to provide Gordon and the Aggrieved Employees with accurate and complete wage statements; and

- i) Sayeh failed to timely pay the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Gordon now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Sayeh's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include:

"any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities as wholesale or retail; or for the purpose of renting goods or commodities."

§ 2(H).

At all relevant times during the applicable limitations period, Sayeh operated gas stations for the purpose of retailing gasoline. Accordingly, Gordon and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512, 558.1, 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, Section 12 of the Wage Order states:

Rest Periods:

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

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 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.

...

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

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 workday that the meal or rest period is not provided.

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,” “managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

By not providing adequate staff to relieve its hourly employees of their duties, Sayeh has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Gordon and the Aggrieved Employees as required by law. In failing to do so, Sayeh violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Gordon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

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

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

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

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 558.1, 1194, 1197, and 1198)

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

In relevant part, section 2(G) 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 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

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.
 - (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.

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.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,”

“managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

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.

At all relevant times during the applicable limitations period, Sayeh knowingly failed to pay Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all minimum or regular wages for the work they performed while clocked out for meal periods, and all overtime and double time wages for work performed during second eight-hour shifts in the same workday, for which Sayeh paid them on a straight time basis.

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of

whether the initial violations were intentionally committed)(penalties set by California Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code §§ 558.1 & 2802)

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

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,” “managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

At all relevant times during the applicable limitations period, Sayeh required Gordon and the Aggrieved Employees to use personal mobile telephones to communicate with Sayeh as a necessary condition of employment. Sayeh failed to indemnify Gordon and the Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Gordon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Accurate Written Wage Statements
(Lab. Code §§ 226 & 558.1)

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

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

- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 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.

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,” “managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

At relevant times during the applicable limitations period, Sayeh violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Sayeh failed to state in the wage statements it issued to Sayeh and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed after clocking out at the ends of their shifts as described above.

Accordingly, Gordon now seeks civil penalties for the Labor Code violations that Sayeh has committed against him and the other 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
(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 Sayeh's failure to pay Gordon and the Aggrieved Employees wages for off-the-clock work, overtime and double time wages at the correct rates, and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Sayeh failed to timely pay all wages due during employment. Accordingly, Gordon seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202, 203 and 558.1)

Under California 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 California Labor Code § 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 seventy-two (72) hours thereafter, unless the employee has given seventy-two (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 seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 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 at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,” “managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

As explained above, Sayeh failed to pay Gordon and the other Aggrieved Employees all wages owed for hours worked off-the-clock. Sayeh further failed to pay Gordon and the Aggrieved Employees at overtime and double time rates for work performed after the eight hour and twelfth hour in a workday, respectively. As a result, Sayeh failed to pay the Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock during meal periods and overtime and double time wages at the correct rates of pay.

As a result, Sayeh failed to pay the Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Sayeh has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Gordon seeks civil penalties on behalf of the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (a) 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 the Wage Order states:

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

Sayeh failed to maintain for Gordon and the Aggrieved Employees accurate records of time worked and all wages earned, including overtime and double time wages paid at the incorrect rates, unpaid wages for work performed off the clock during meal periods, and unpaid meal and rest period premium wages as described above. As a result, Sayeh has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Gordon and the Aggrieved Employees. Accordingly, Gordon seeks civil penalties from Sayeh on behalf of himself and other 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)).

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 § 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 §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Jonathon Gordon
Walter Haines, Esq.

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EXHIBIT 7

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Attorneys for Plaintiff,
JONATHON GORDON, and all others similarly situated
(Additional Attorney for Plaintiff on Following Page)

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
08/04/2021
Clerk of the Court
BY: ANGELICA SUNGA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

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

Plaintiff(s),

vs.

SAYEH PETROLEUM, INC., a California
corporation; HEDIA PETROLEUM, INC., a
California corporation; HADAD
ENTERPRISE, INC., a California corporation;
HADAD PETROLEUM, INC., a California
corporation; BAY AREA AUTO CARE, INC.,
a California corporation; HOUTAN
PETROLEUM, INC. a California corporation;
GREEN PLANET GAS, INC., a California
corporation; ALI BOZORGHADAD (also
known as ED BOZORGHADAD also known as
ED HADAD), an individual; and DOES 1-50,
inclusive,

Defendant(s).

Case No.:

CGC-21-594289

CLASS ACTION

COMPLAINT FOR

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

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff JONATHON GORDON (hereafter “Plaintiff”), hereby submits his complaint
2 against defendants SAYEH PETROLEUM, INC., a California corporation; HEDIA
3 PETROLEUM, INC., a California corporation; HADAD ENTERPRISE, INC., a California
4 corporation; HADAD PETROLEUM, INC., a California corporation; BAY AREA AUTO
5 CARE, INC., a California corporation; HOUTAN PETROLEUM, INC. a California corporation;
6 GREEN PLANET GAS, INC., a California Corporation; ALI BOZORGHADAD (also known as
7 ED BOZORGHADAD also known as ED HADAD), an individual; and DOES 1 through 50,
8 inclusive (collectively “Defendants”) on behalf of himself and all others similarly situated and/or
9 aggrieved current and former employees of Defendants for penalties and/or damages for
10 violations of the California Labor Code as follows:.

11 **INTRODUCTION**

12 1. Plaintiff brings this class and representative action based on alleged violations of
13 the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the
14 Wage Order”) and the Business and Professions Code.

15 2. Plaintiff brings this action on behalf of all individuals currently and formerly
16 employed as non-exempt hourly gas station cashier employees and employees in similar
17 positions, at any time during the period beginning four years prior to the filing of this action and
18 ending on the date that final judgment is entered in this action (hereinafter referred to as “similarly
19 situated employees”).

20 3. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
21 him and other similarly situated current and former employees who worked in California for
22 unpaid wages, civil penalties, and other related relief. These claims are based on Defendants’
23 alleged failures to (1) provide all rest and meal periods, (2) compensate for all hours worked at
24 the correct rates of pay; (3) indemnify for reasonable expenses incurred performing their duties,
25 (4) provide accurate written wage statements, (5) timely pay wages upon termination of
26 employment, and (6) fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages,
27 civil penalties, and related relief through this representative and class action.

28 **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

5. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for unpaid
overtime wages under Labor Code §§ 201, 202, 203, 226, 226.7, 510, 1194, 1197, and 1198.



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6. This Court has jurisdiction over Plaintiff's and Class Members' claims for restitution arising from Defendants' unlawful business practices under Business & Professions Code §§ 17203 and 17204.

7. Plaintiff has exhausted his administrative remedies, and this Court has jurisdiction over Plaintiff's and Class Members' claims for civil penalties for Defendants' Labor Code violations under Labor Code §§ 2699 and 2699.3.

PARTIES

8. Plaintiff JONATHON GORDON is an individual and a resident of California. On approximately July 6, 2020, Defendants first employed Plaintiff to work as a gas station cashier at two of Defendants' stations located at 1200 La Playa Street in San Francisco, California and 1400 19th Avenue, San Francisco, California until approximately April 18, 2021 when he was effectively terminated. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations Section 11040 and an "aggrieved employee" within the meaning of Labor Code Section 2699(c).

9. Defendant SAYEH PETROLEUM, INC., is a California corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times Defendant was and is doing business in San Francisco, California.

10. Defendant HEDIA PETROLEUM, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times, Defendant was and is doing business in San Francisco, California.

11. Defendant HADAD ENTERPRISE, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times Defendant was and is doing business in San Francisco, California.

12. Defendant HADAD PETROLEUM, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times Defendant was and is doing business in San Francisco, California.

13. Defendant BAY AREA AUTO CARE, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times Defendant was and is doing business in San Francisco, California.

14. Defendant HOUTAN PETROLEUM, INC., is a corporation organized and existing under the laws of California based on Plaintiff's information and belief. At all relevant times, Defendant was and is doing business in San Francisco, California.



1 15. Defendant GREEN PLANET GAS, INC., is a corporation organized and
2 existing under the laws of California based on Plaintiff's information and belief. At all relevant
3 times, Defendant was and is doing business in San Francisco, California.

4 16. Defendant ALI BOZORGHADAD (also known as ED BOZORGHADAD also
5 known as ED HADAD) is a natural person and resident of California. At all relevant times,
6 Defendant was and is doing business in San Francisco, California.

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

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

18 19. At all relevant times, in perpetrating the acts and omissions alleged herein,
19 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
20 of a practice which resulted in Defendants not paying Plaintiff and the Class in accordance with
21 applicable California labor laws as alleged herein.

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

CLASS ACTION ALLEGATIONS

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



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22. **Class Definition:** The Class is defined as follows: all persons Defendants employed in California as non-exempt, hourly employees, including but not limited to gas station cashiers, clerks, and persons in comparable positions, 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 rendered in this action.

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

24. **Numerosity:** The Class is so numerous that the joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of the Class, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

25. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These questions include, but are not limited to:

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

B. Whether Defendants failed to provide the Class with all off-duty meal periods as required by section 12 of the Wage Order;

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

D. Whether Defendants failed to compensate the Class Members at one hour's pay on days when Defendants failed to provide them with one or more off-duty meal periods in a workday;

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

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

G. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate and complete wage statements;

H. Whether Defendants knew or should have known that Class Members



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regularly worked over 40 hours per week and/or eight hours per day;

I. Whether Defendants failed to pay Class Members overtime wages for time worked in excess of 40 hours per week and/or eight hours per day;

J. Whether Defendants failed to timely pay final wages upon termination of the Class Members' employment;

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

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

M. Whether the Class Members are entitled to prejudgment interest; and

N. Are the Class Members entitled to attorneys' fees?

26. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or 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.

27. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class.

28. **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 class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and the absent Class.

29. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of class' 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



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1 potential for inconsistent or contradictory judgments inherent in individual litigation.

2 30. On approximately July 6, 2020, Defendants first employed Plaintiff and the Class
3 Members to work in California as a gas station cashier at two of Defendants' stations located at
4 1200 La Playa Street in San Francisco, California and 1400 19th Avenue, San Francisco, CA.
5 Plaintiff worked three days in each location for the first three months of his employment with
6 Defendants. Between both locations, Plaintiff worked for Defendants approximately 52 hours
7 per week. Thereafter, Plaintiff was working at Defendants' gas stations as a cashier only at the
8 1400 19th Avenue, San Francisco, CA location. Defendant did not schedule Plaintiff to work after
9 April 18, 2021 and April 18, 2021 was the final date he performed work for Defendants. At all
10 relevant times, the position of gas station cashier was an hourly, nonexempt position. Defendants
11 did not issue Plaintiff his final wages via direct deposit until April 23, 2021.

12 31. Pursuant to Defendants policies at all relevant times, Monday at midnight was the
13 beginning of the work week for Plaintiff and the Class Members and Sunday at 11:59 p.m. was
14 the end. Defendants never paid Plaintiff overtime or double time for any of these hours. Plaintiff
15 and the Class Members earned their wages at an hourly rate and provided them with paychecks
16 on a bi-weekly basis. At relevant times, Plaintiff and the Class Members worked shifts in excess
17 of eight hours, worked between five and seven days in a workweek, and also worked over 40
18 hours in a workweek. Plaintiff also worked more than 12 hours in a day. Plaintiff also worked
19 more than eight hours a day on the seventh workday in the same work week on several occasions.
20 Plaintiff is informed and believes that the Class Members were also denied overtime and double
21 time wage payments. At all relevant times, as a result of their staffing choices, Defendants failed
22 to provide Plaintiff and the Class with an off-duty, 30-minute meal period before the end of the
23 fifth hour worked. Defendants typically scheduled Plaintiff and the Class members to work shifts
24 alone. Perhaps as a result of this understaffing, Defendants as a matter of policy and practice
25 prohibited Plaintiff and the Class from taking off-duty meal periods. On information and belief,
26 neither Plaintiff nor the Class entered into valid written on-duty meal period agreements with
27 Defendants.

28 32. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
Class to take a ten-minute, paid, duty-free rest break every four hours worked or major fraction
thereof. As a result of their inadequate staffing (discussed above), Defendants failed to provide
duty-free rest periods to Plaintiff and the Class. Defendants prohibited Plaintiff and the Class
Members from leaving their worksite for rest breaks. Defendants have not requested an



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1 exemption from California's rest period law from the Division of Labor Standards Enforcement.
2 Defendants prohibited Plaintiff and the class members from leaving the Defendants' worksites
3 for rest breaks. Therefore, Plaintiff and the Class never got any rest breaks.

4 33. Defendants failed to pay premium wages for days on which they failed to provide
5 Plaintiff and the Class with all timely meal and rest periods. Defendants further required Plaintiff
6 and the Class to incur certain business expenses in the course of performing their duties, including
7 the use of a personal mobile telephone to communicate with Defendants.

8 34. At all relevant times, Defendants failed to compensate Plaintiff and the
9 ClasMembers for all hours worked by requiring them to continue working after clocking out at
10 the end of their scheduled shifts. Defendants instructed Plaintiff and the Class to clock out after
11 exactly eight hours of work. Defendants directed Plaintiff and the Class to thereafter perform
12 additional tasks while clocked out, including cleaning the store, reviewing inventory, and locking
13 up. These tasks would take approximately 20 to 30 minutes to complete.

14 35. Defendants required Plaintiff and the Class to work in excess of eight hours in one
15 workday and forty hours in one workweek without compensating them for such time worked at
16 the overtime rates required by California law. Defendants failed to pay one and one half times (1
17 ½ x) the hourly rates of pay of Plaintiff and the Class by failing to pay for the off-the-clock work
18 Plaintiff and the Class performed.

19 36. Further, Defendants failed to pay Plaintiff and the Class for all hours worked by
20 rounding down their work times. In the instances in which Plaintiff and the Class recorded more
21 than eight hours in a given workday, Defendants edited their time records to state that Plaintiff
22 and the Class had only worked eight or fewer hours. As a result, Defendants failed to compensate
23 Plaintiff and the Class for the additional time that Defendants removed from their time records.
24 Because Plaintiff and the Class Members worked in excess of the periods of eight hours or less
25 that Defendants limited their recorded work hours to, Defendants failed to pay them overtime
26 premium pay for all of the work Plaintiff and the Class recorded.

27 37. Defendants knowingly and intentionally failed to maintain accurate written
28 employee records pertaining to Plaintiff and the Class, including accurate wage statements
itemizing each Class Member's gross wages earned, net wages earned, total hours worked,
corresponding number of hours worked at each rate by the Class Member, and other requirements
of California Labor Code § 226. Defendants knowingly and intentionally failed to state the earned
but unpaid wages discussed above on the wage statements Defendants issued to Plaintiff and the



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Class Members.

38. At all relevant times, upon resignation or termination, Defendants failed to pay final wages in a timely manner as a result of their failure to pay employees for all work performed off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for off the clock work performed before the beginning of their shifts, during meal periods, and after clocking out at the end of their shifts. Further, Defendants failed to timely pay Plaintiff upon terminating his employment. Defendants terminated Plaintiff's employment on April 18, 2021. However, Defendants failed to issue Plaintiff his final paycheck via direct deposit until approximately on April 23, 2021.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

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

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

41. 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.

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

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



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

2 **Rest Periods**

3 (c) “Every employer shall authorize
4 and permit all employees to take
5 rest periods, which insofar as
6 practicable shall be in the middle
7 of each work period. The
8 authorized rest period time shall
9 be based on the total hours
10 worked daily at the rate of ten
11 (10) minutes net rest time per
12 four (4) hours or major fraction
13 thereof. However, a rest period
14 need not be authorized for
15 employees whose total daily
16 work time is less than three and
17 one-half (3 ½) hours. Authorized
18 rest period time shall be counted
19 as hours worked for which there
20 shall be no deduction from
21 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
26 the rest period is not provided.”

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

28 **Meal Periods**

 (d) “No employer shall employ any
 person for a work period of more
 than five (5) hours without a meal
 period of not less than 30
 minutes, except that when a work
 period of not more than six (6)
 hours will complete the day’s
 work the meal period may be
 waived by mutual consent of the
 employee and the employee.
 Unless the employee is relieved
 of all duty during a 30 minute
 meal period, the meal period
 shall be considered an ‘on duty’



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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.”

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

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

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

46. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked over five hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

47. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.



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1 48. Defendants intentionally failed to provide Plaintiff and the Class Members with
2 all required 30-minute duty-free meal periods and 10-minute duty-free rest periods in accordance
3 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant
4 times within the applicable limitations period, Defendants had a policy, practice, or a lack of a
5 policy which resulted in Defendants not providing the Class with all off-duty meal periods and
6 rest breaks required by California law. Defendants scheduled Plaintiff and the other Class
Members to work their shifts alone and prohibited them from leaving the worksites.

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

10 50. By reason of the above, pursuant to California Labor Code section 226.7, Plaintiff
11 and the Class Members are entitled to premium wages for workdays in which one or more off-
12 duty meal periods were not provided to them, and for workdays in which one or more off-duty
13 rest breaks were not provided to them.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

16 **(Lab. Code §§ 221, 510, 1194, 1197, and 1198)**

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

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

20 53. Section 2 of the Wage Order defines "hours worked" as "the time during which
21 an employee is subject to the control of an employer, and includes all the time the employee is
22 suffered or permitted to work, whether or not required to do so."

23 54. Section 3 of the Wage Order states:

24 **(A) Daily Overtime - General Provisions**

25 (1) The following overtime provisions are applicable to employees
26 18 years of age or over and to employees 16 or 17 years of age who
27 are not required by law to attend school and are not otherwise
28 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



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workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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

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

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

55. 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.

56. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this 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.

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

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

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

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

11 61. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
12 receive from an employee any part of wages theretofore paid by said employer to said employee.”
13 Defendants deducted wages from Plaintiff’s wages and from the wages of all of the other
14 aggrieved employees for hours spent working or in on-duty meal periods and the purchase and
15 maintenance of their uniform polo shirts and name tags, in violation of Labor Code §
16 221. Accordingly, Plaintiff seeks civil penalties on behalf of himself and all of the other
17 aggrieved employees as follows: \$100 for each aggrieved employee for each initial violation of
18 Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any
19 willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld
20 from each aggrieved employee (penalties set by Labor Code § 225.5).

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

24 63. At all relevant times, Defendants paid Plaintiff and the Class Members at an
25 hourly rate of pay and issued their wages on a bi-weekly basis.

26 64. At all relevant times, Defendants failed to pay Plaintiff and the Class Members
27 for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime
28 wages for all regular and overtime hours they worked while clocked out, as well as all wages for
work they performed and recorded in excess of eight hours in a workday, that Defendants
subsequently deducted from their time records.

 65. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’



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1 failure to compensate the Class for all hours worked at the correct rate of pay as required by
2 California law. Plaintiff worked more than 12 hours a day.

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

7 67. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of himself and
8 Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the
9 amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees,
10 including interest thereon, as permitted by law, all in amounts subject to proof.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO INDEMNIFY**

13 **(Lab. Code §§ 1198 & 2802)**

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

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

18 70. In pertinent part, California Labor Code § 2802(a) states:

19 "An employer shall indemnify his or her employee[s] for all
20 necessary expenditures incurred by the employee in direct
21 consequence of the discharge of his or her duties."

22 71. Section 9(B) of the Wage Order states:

23 When tools or equipment are required by the employer or are
24 necessary to the performance of a job, such tools and equipment
25 shall be provided and maintained by the employer, except that an
26 employee whose wages are at least two (2) times the minimum
27 wage provided herein may be required to provide and maintain
28 hand tools and equipment customarily required by the trade or
craft.

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

73. At relevant times during the applicable limitations period, Defendants required
Plaintiff and the Class Members to incur certain business expenses in the course of performing
their duties. Defendants required Plaintiff and the Class Members to use personal cell phones to



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1 communicate with Defendants as a necessary condition of employment. At the time of Plaintiff
2 and the Class Members' employment with Defendants, they were required to purchase two
3 uniform polo shirts and one name tag in order to perform their job. Said costs were deducted
4 from Plaintiff and the Class Members' paycheck. Defendants never reimbursed them for the costs
5 of these shirts and the name tag. The cost of the shirts and the name tag was approximately
6 \$30.00. Defendants, however, failed to reimburse Plaintiff and the Class Members for these
expenses.

7 74. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
9 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
10 during the course of performing their duties.

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

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

18 **FOURTH CAUSE OF ACTION**

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

20 **(Lab. Code § 226)**

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

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

23 78. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
24 entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized
25 statement showing, among other items, 1) gross wages earned; 2) total hours worked, except for
26 any employee whose compensation is solely based on a salary and who is exempt from payment
27 of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each hourly rate by the employee.

79. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to



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1 suffer injury if the employer fails to provide accurate and complete information as required by
2 California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from
3 the wage statement alone one or more of the following:

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

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

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

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

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

18 81. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
19 all wages earned and owed discussed above, including but not limited to, all regular and overtime
20 wages owed at the correct rates for work performed off-the-clock. Additionally with regard to
21 the unpaid hours worked and unpaid wages earned discussed above, Defendants failed to properly
22 and accurately itemize each employee’s gross wages earned, net wages earned, the total hours
23 worked, the corresponding number of hours worked by employees, and other requirements of
24 California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

25 82. Defendants’ failure to provide Plaintiff and the Class Members with accurate
26 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
27 the Class with accurate wage statements but intentionally provided wage statements that
28 Defendants knew were not accurate.

83. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the Class have suffered an 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 accurate information on their wage statements



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1 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
2 and mathematical computations to determine the amounts of wages owed, has caused difficulty
3 and expense in attempting to reconstruct time and pay records and/or has led to the submission
4 of inaccurate information about wages to state and federal government agencies. Further,
5 Plaintiff and the Class Members were not able to ascertain from the wage statements whether
6 Defendants complied with their obligations under California Labor Code § 226(a).

7 84. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to
8 recover the greater of actual damages, or penalties of fifty dollars (\$50.00) for the initial pay
9 period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars
10 (\$100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not
11 to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per Class Member, and are
12 also entitled to an award of costs and reasonable attorneys' fees.

13 **FIFTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(Lab. Code §§ 201-203)**

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

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

18 86. At all relevant times during the applicable limitations period, Plaintiff and the
19 Class Members have been non-exempt employees of Defendants and entitled to the benefits and
20 protections of California Labor Code §§ 201-203 and the Wage Order.

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

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

27 89. Defendants failed to pay Plaintiff and the Class for all hours worked and all wages
28 earned as explained above during employment or at the time Plaintiff and the formerly employed
Class Members ended their employment or were terminated. By failing to pay earned minimum,
regular, meal and rest premium, overtime and double time wages to Plaintiff and the Class
Members at the correct rates by the end of the employment relationship, Defendants failed to
timely pay them all earned and unpaid wages in violation of California Labor Code § 201 or



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§ 202.

90. Moreover, Defendants failed to timely issue Plaintiff and the Class Members their final paychecks by the final date of employment. With regard to Plaintiff, Defendants terminated him on April 18, 2021. However, Defendants failed to issue Plaintiff his final paycheck through direct deposit until April 23, 2021.

91. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally adopted and maintained policies or practices that are incompatible with those requirements.

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

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(By Plaintiff and the Class against all Defendants)

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

95. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

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



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97. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and have lost money or property. Defendants deprived Plaintiff and the Class Members of minimum wages, overtime wages, premium wages for all workdays one or more meal periods was not provided, premium wages for all workdays a rest period was not provided, and reimbursement for expenses that Plaintiff and the other Class Members incurred during the course of performing their duties. At the time of Plaintiff and the Class Members' employment with Defendants, they were required to purchase two uniform polo shirts and one name tag in order to perform their job. Said costs were deducted from Plaintiff and the Class Members' paycheck. Defendants never reimbursed them for the costs of these shirts and the name tag. The cost of the shirts and the name tag was approximately \$30.00.

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

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

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

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(Labor Code §§ 2698, et seq.)

(By Plaintiff, on behalf of himself, the other Aggrieved Employees, and the state of California against all Defendants and Doe Defendants)

101. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §2699(c), and is a proper representative to bring a civil action on behalf of herself and other current and former employees of Defendants pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff is or was employed by Defendants and the alleged violations of the California Labor Code were and continue to be committed by Defendants.

///



102. Labor Code § 204 states:

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

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

104. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.



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

4 A. For violations of California Labor Code § 204, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
6 (\$200.00) for each Aggrieved Employee plus twenty-five percent (25%) of the amount unlawfully
7 withheld from each Aggrieved Employee for each subsequent, willful or intentional violation
8 (penalty amounts established by California Labor Code § 210).

9 B. For violations of California Labor Code § 221, one hundred dollars
10 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
11 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
12 (penalty amounts established by California Labor Code § 225.5).

13 C. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00)
14 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and
15 one thousand dollars (\$1,000) for each Aggrieved Employee for each subsequent violation
16 (penalties set by California Labor Code § 226.3).

17 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
18 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
19 each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount
20 sufficient to recover underpaid wages (penalty amounts established by California Labor Code §
21 558).

22 E. For violations of California Labor Code § 1174, five hundred dollars
23 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
24 California Labor Code § 1174.5).

25 F. For violations of California Labor Code § 1197, one hundred dollars
26 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
27 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
28 (regardless of whether the initial violations were intentionally committed), in addition to an
amount sufficient to recover unpaid wages (penalty amounts established by California Labor
Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for



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1 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
2 period for each subsequent violation (penalty amounts established by California Labor Code §
3 2699(f)(2)).

4 106. Plaintiff has complied with the procedures for bringing suit specified in California
5 Labor Code § 2699.3. By letter dated February 11, 2021, Plaintiff gave written notice by certified
6 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the
7 specific provisions of the California Labor Code alleged to have been violated, including the
8 facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to
9 the LWDA dated February 11, 2021 is attached hereto as Exhibit A. The LWDA has not
10 responded to Plaintiff’s letter. Therefore, Plaintiff has complied with all of the requirements set
11 forth in California Labor Code § 2699.3 to pursue a representative action under PAGA.

12
13 **PRAYER FOR RELIEF**

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

- 16 A. An order that the action be certified as a class action;
- 17 B. An order that Plaintiff be appointed class representative;
- 18 C. An order that counsel for Plaintiff be appointed class counsel;
- 19 D. Unpaid wages;
- 20 E. Actual damages;
- 21 F. Statutory damages;
- 22 G. Liquidated damages;
- 23 H. Restitution;
- 24 I. Civil penalties;
- 25 J. Declaratory relief;
- 26 K. Equitable relief;
- 27 L. Statutory penalties;
- 28 M. Pre-judgment and post-judgment interest;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys’ fees; and



SPIVAK LAW

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(213) 634-2485 Fax
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Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 30, 2021

By: 

DAVID SPIVAK
MICHELLE GRIMBERG
Attorneys for Plaintiff, JONATHON
GORDON and all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

February 11, 2021

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

RE: *Jonathon Gordon / Sayeh*

To Whom It May Concern:

This notice concerns the following employers:

1. Sayeh Petroleum, Inc., a California corporation;
2. Green Planet Gas, Inc., a California corporation;
3. Hedia Petroleum, Inc., a California corporation;
4. Hadad Enterprise, Inc., a California corporation;
5. Hadad Petroluem, Inc., a California corporation;
6. Bay Area Auto Care, Inc., a California corporation;
7. Houtan Petroleum, Inc., a California corporation; and
8. Ali Bozorghadad, also known as Ed Hadad, an individual.

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

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Jonathan Gordon (hereafter "Gordon") provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt employees, including but not limited to cashiers, gas station clerks and workers employed in comparable positions (hereafter "Aggrieved Employees") by Sayeh of violations of Labor Code §§ 201, 202,

204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Sayeh has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Gordon and the Aggrieved Employees are “employees” within the meaning of Wage Order 7-2001 (hereafter “the Wage Order”) § 2, subdivision (E) and “aggrieved employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

On approximately July 3, 2020, Sayeh first employed Gordon as a cashier at its gas station located at 1400 19th Avenue, San Francisco California. Sayeh continuously employed Gordon from July 3, 2020 at this location, and at times at its gas station located at 1200 La Playa Street in San Francisco, California. Gordon remains an employee of Sayeh.

At all relevant times, Sayeh employed Gordon and the other Aggrieved Employees at an hourly rate of pay and issued their wages to them on a bi-weekly basis. At all relevant times, Sayeh classified Gordon and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, as a result of its staffing choices, Sayeh failed to provide Gordon and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Sayeh typically scheduled Gordon and the Aggrieved Employees to work shifts during which only one of them was on duty. As a result of this understaffing, Sayeh prohibited Gordon and the Aggrieved Employees from taking off-duty meal periods.

At all relevant times, Sayeh failed to authorize and permit Gordon and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. As a result of its inadequate staffing levels, Sayeh failed to provide duty-free rest periods to Gordon and the Aggrieved Employees. Sayeh has not requested an exemption from California’s rest period law from the Division of Labor Standards Enforcement.

Sayeh did not enter into valid on-duty meal period agreements with Gordon or the Aggrieved employees. Sayeh could not enter into valid on-duty meal period agreements with him or the Aggrieved Employees because the nature of their work did not prevent Sayeh from relieving them of all duties to take a duty-free meal period. Sayeh further failed to pay premium wages for days on which it failed to provide Gordon and the Aggrieved Employees with all timely meal and rest periods.

Sayeh further required Gordon and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of a personal mobile telephone to communicate with Sayeh.

At all relevant times, Sayeh failed to compensate Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay. Sayeh regularly required Gordon and the Aggrieved Employees to work in excess of eight hours in one workday and forty hours in one workweek without compensating them for such time worked at the overtime rates required by California law. Sayeh issued Gordon and the Aggrieved Employees separate wage statements for each gas station it operated, dividing the hours worked in the same pay period between the gas stations as if they were separate employers. By not aggregating the hours Gordon and the Aggrieved Employees worked in the same pay period, Sayeh treated hours that would qualify for overtime and doubletime premium wages as regular hours not entitled to such premium pay rates. For example, Sayeh scheduled Gordon to work two consecutive eight-hour shifts, one at each of Gordon's two assigned gas stations. However, Sayeh failed to pay Gordon overtime and double time wages for work performed in excess of eight hours in a workday. In order to avoid paying Gordon overtime and double time wages for work performed during his second consecutive eight-hour shift, Sayeh issued Gordon different wage statements for each gas station, treating them as separate employers. For work Gordon performed at the 19th Avenue gas station, Sayeh issued Gordon paychecks bearing the employer name Green Planet Gas Inc. For work Gordon performed at the La Playa Street gas station, Sayeh issued Gordon paychecks bearing the employer name Sayeh Petroleum Inc.

As set forth below, Gordon alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Sayeh failed to provide Gordon and the Aggrieved Employees with all meal periods as required by law;
- b) Sayeh failed to authorize and permit Gordon and the Aggrieved Employees with all rest periods as required by law;
- c) Sayeh failed to compensate Gordon and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more meal periods in a workday;
- d) Sayeh failed to compensate Gordon and the Aggrieved Employees at one hour's pay on days when Sayeh failed to provide them with one or more rest periods in a workday;
- e) Sayeh failed to pay Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum, regular, overtime, and double time pay due to Sayeh's practice of compensating Gordon and the Aggrieved Employees at straight time rates for work performed at a second Sayeh gas station during a subsequent eight-hour shift in the same workday;
- f) Sayeh failed to indemnify Gordon and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- g) Sayeh failed to timely pay Gordon and the Aggrieved Employees all earned and unpaid wages during employment;
- h) Sayeh failed to provide Gordon and the Aggrieved Employees with accurate and complete wage statements; and

- i) Sayeh failed to timely pay the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment.

Accordingly, Gordon now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Sayeh's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include:

"any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities as wholesale or retail; or for the purpose of renting goods or commodities."

§ 2(H).

At all relevant times during the applicable limitations period, Sayeh operated gas stations for the purpose of retailing gasoline. Accordingly, Gordon and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512, 558.1, 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, Section 12 of the Wage Order states:

Rest Periods:

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

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 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.

...

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

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 workday that the meal or rest period is not provided.

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,” “managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

By not providing adequate staff to relieve its hourly employees of their duties, Sayeh has intentionally and improperly failed to provide all rest breaks and/or meal periods free from any work or duties to Gordon and the Aggrieved Employees as required by law. In failing to do so, Sayeh violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Gordon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

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

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

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

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 558.1, 1194, 1197, and 1198)

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

In relevant part, section 2(G) 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 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

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.
 - (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.

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.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

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

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,”

“managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

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.

At all relevant times during the applicable limitations period, Sayeh knowingly failed to pay Gordon and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all minimum or regular wages for the work they performed while clocked out for meal periods, and all overtime and double time wages for work performed during second eight-hour shifts in the same workday, for which Sayeh paid them on a straight time basis.

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of

whether the initial violations were intentionally committed)(penalties set by California Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code §§ 558.1 & 2802)

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

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,” “managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

At all relevant times during the applicable limitations period, Sayeh required Gordon and the Aggrieved Employees to use personal mobile telephones to communicate with Sayeh as a necessary condition of employment. Sayeh failed to indemnify Gordon and the Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Gordon seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Accurate Written Wage Statements
(Lab. Code §§ 226 & 558.1)

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

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

- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 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.

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,” “managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

At relevant times during the applicable limitations period, Sayeh violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Sayeh failed to state in the wage statements it issued to Sayeh and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed after clocking out at the ends of their shifts as described above.

Accordingly, Gordon now seeks civil penalties for the Labor Code violations that Sayeh has committed against him and the other 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
(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 Sayeh's failure to pay Gordon and the Aggrieved Employees wages for off-the-clock work, overtime and double time wages at the correct rates, and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Sayeh failed to timely pay all wages due during employment. Accordingly, Gordon seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202, 203 and 558.1)

Under California 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 California Labor Code § 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 seventy-two (72) hours thereafter, unless the employee has given seventy-two (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 seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 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 at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

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, 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.

At all relevant times herein, Ali Bozorghadad, also known as Ed Hadad, owned and operated Sayeh Petroleum, Inc. and Green Planet Gas, Inc., and employed Gordon and the Aggrieved Employees. Ali Bozorghadad was the “owner,” “managing agent,” Chief Executive Officer, Director, and Chief Financial Officer, of the Corporate Defendants. Ali Bozorghadad directly or indirectly, or through an agent or any other person, employed and exercised control over the wages, hours, and/or working conditions of Gordon and the Aggrieved Employees and caused the violations of the Labor Code and Wage Order described above.

As explained above, Sayeh failed to pay Gordon and the other Aggrieved Employees all wages owed for hours worked off-the-clock. Sayeh further failed to pay Gordon and the Aggrieved Employees at overtime and double time rates for work performed after the eight hour and twelfth hour in a workday, respectively. As a result, Sayeh failed to pay the Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work they performed off-the-clock during meal periods and overtime and double time wages at the correct rates of pay.

As a result, Sayeh failed to pay the Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Sayeh has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Gordon seeks civil penalties on behalf of the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (a) 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 the Wage Order states:

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

Sayeh failed to maintain for Gordon and the Aggrieved Employees accurate records of time worked and all wages earned, including overtime and double time wages paid at the incorrect rates, unpaid wages for work performed off the clock during meal periods, and unpaid meal and rest period premium wages as described above. As a result, Sayeh has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Gordon and the Aggrieved Employees. Accordingly, Gordon seeks civil penalties from Sayeh on behalf of himself and other 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)).

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 § 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 §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Jonathon Gordon
Walter Haines, Esq.

Stephen Cusick, Esq.
steve@cusicklaw.com
100 Smith Ranch Road, Suite 350
San Rafael, CA 94903

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Green Planet Gas, Inc.
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Hadad Enterprise, Inc.
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Hadad Petroleum, Inc.
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///

Bay Area Auto Care, Inc.
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Houtan Petroleum, Inc.
c/o Stephen Cusick, Esq.
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Ali Bozorghadad (Ed Hadad)
c/o Stephen Cusick, Esq.
100 Smith Ranch Road, Suite 350
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steve@cusicklaw.com

EXHIBIT 8

FILED
Superior Court of California
County of San Francisco

JUL 28 2022

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069
5 Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiffs,
8 CHARLES MIKICH, JONATHON GORDON, and all others similarly situated
(Additional Attorneys for Parties on Next Page)

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

12 CHARLES MIKICH, on behalf of himself and all
13 others similarly situated, and as an "aggrieved
14 employee" on behalf of other "aggrieved
15 employees" under the Labor Code Private
Attorneys General Act of 2004, --

16 *Plaintiff(s),*

17 vs.

18 SAYEH PETROLEUM, INC., a California
19 corporation; HEDIA PETROLEUM, INC., a
20 California corporation; HADAD ENTERPRISE,
21 INC., a California corporation; HADAD
22 PETROLEUM, INC., a California corporation;
23 BAY AREA AUTO CARE, INC., a California
24 corporation; HOUTAN PETROLEUM, INC. a
25 California corporation; GREEN PLANET GAS,
INC., a California corporation; ALI
BOZORGHADAD (also known as ED
BOZORGHADAD, also known as ED HADAD),
an individual; and DOES 8-50, inclusive,

26 *Defendant(s).*

27 JONATHON GORDON on behalf of himself and
28 all others similarly situated, and as an "aggrieved
employee" on behalf of other "aggrieved

Case No. CGC-20-582385 to be
consolidated with CGC-21-594289

**JOINT STIPULATION AND
[PROPOSED] ORDER TO
CONSOLIDATE MATTERS FOR
SETTLEMENT PURPOSES**

Action filed: 01/22/2020
Dept.: 610, Hon. Garrett L.
Wong

JUL 22 2022



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Sherman Oaks, CA 91403

1 employees" under the Labor Code Private Attorney
2 General Act of 2004,

3 *Plaintiff(s),*

4 vs.

5 SAYEH PETROLEUM, INC., a California
6 corporation; HEDIA PETROLEUM, INC., a
7 California corporation; HADAD ENTERPRISE,
8 INC., a California corporation; HADAD
9 PETROLEUM, INC., a California corporation;
10 BAY AREA AUTO CARE, INC., a California
11 corporation; HOUTAN PETROLEUM, INC. a
12 California corporation; GREEN PLANET GAS,
13 INC., a California corporation; ALI
14 BOZORGHADAD (also known as ED
15 BOZORGHADAD also known as ED HADAD), an
16 individual; and DOES 1-50, inclusive,

17 *Defendant(s).*

Case No.: CGC-21-594289

Action Filed: 08/04/2021
Dept: 610, Hon. Garrett L.
Wong



26 SPIRAK LAW

27 Employee Rights Attorneys

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1 Plaintiff CHARLES MIKICH (the plaintiff in *Charles Mikich v. Sayeh Petroleum, Inc.*,
2 (Case No. CGC-20-582385) and referred to as "Plaintiff Mikich"), and Plaintiff JONATHON
3 GORDON (the plaintiff in *Gordon v. Sayeh Petroleum, Inc* (Case No. CGC-21-594289) and
4 referred to as "Plaintiff Gordon") and Defendants SAYEH PETROLEUM, INC., HEDIA
5 PETROLEUM, INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY
6 AREA AUTO CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC.,
7 and ALI BOZORGHADAD (the defendants in both matters and referred to collectively as
8 "Defendants")¹ by and through their attorneys, do hereby stipulate and agree as follows:

9
10 1. WHEREAS, the matter entitled *Charles Mikich v. Sayeh Petroleum, Inc.*, San
11 Francisco County Superior Court, Case No. CGC-20-582385 ("*Mikich Matter*") was filed on
12 January 22, 2020, and is assigned to Honorable Judge Garret L. Wong in Department 610 of the
13 above-entitled Court for all purposes;

14 2. WHEREAS, the *Mikich Matter* Class Action Complaint presented the following
15 causes of action: (1) Failure to pay all wages earned at the correct rates of pay, (2) Failure to
16 provide meal periods and rest breaks, (3) Failure to reimburse for expenses, (4) Wage statement
17 penalties, (5) Waiting time penalties, and (6) Unfair Competition;

18 3. WHEREAS, on May 11, 2020, Plaintiff Mikich filed his First Amended Complaint
19 adding a Seventh Cause of Action for Civil Penalties under the Private Attorneys General Act
20 ("PAGA");

21 4. WHEREAS, on May 6, 2021, Plaintiff Mikich, through a fictitious name
22 amendment, and having discovered the true names of the Doe Defendants, added the remaining
23 Defendants to his lawsuit in place of the first seven Doe Defendants (HEDIA PETROLEUM,
24 INC., HADAD ENTERPRISE, INC., HADAD PETROLEUM, INC., BAY AREA AUTO
25 CARE, INC., HOUTAN PETROLEUM, INC., GREEN PLANET GAS, INC., and ALI
26 BOZORGHADAD);

27 5. WHEREAS, the matter entitled *Jonathon Gordon v. Sayeh Petroleum, Inc.*, San

28
¹ Plaintiffs and Defendants are collectively referred to as the "Parties".



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1 Francisco County Superior Court, Case No. CGC-21-594289 ("*Gordon Matter*") was filed on
2 August 4, 2021, and is also assigned to Honorable Judge Garret L. Wong in Department 610 of
3 the above-entitled Court for all purposes;

4 6. WHEREAS, the *Gordon Matter* Class Action Complaint alleges the same
5 violations against the same Defendants, and presents the same causes of actions presented in the
6 *Mikich Matter*: (1) Failure to pay all wages earned at the correct rates of pay, (2) Failure to provide
7 meal periods and rest breaks, (3) Failure to reimburse for expenses, (4) Wage statement penalties,
8 (5) Waiting time penalties, (6) Unfair Competition, and (7) Civil Penalties under PAGA;

9 7. WHEREAS, on January 31, 2022 and May 6, 2022, Plaintiffs Mikich and Gordon
10 participated in mediation with Defendants before mediator Michael J. Loeb Esq. regarding the
11 claims made in the two class actions;

12 8. WHEREAS, the parties to the Actions have reached a class and PAGA
13 representative action settlement ("*Settlement*"), subject to Court approval, which is intended to
14 be a full and final resolution of Plaintiffs' claims as well as all Released Claims;

15 9. WHEREAS, the allegations of the *Mikich Matter* and the *Gordon Matter* arise out
16 of the same or similar transactions or occurrences, involve the same putative class members,
17 involve the same Defendants, involved the same witnesses, and involve the same allegations of
18 systemic wage and hour practices;

19 10. WHEREAS, in light of the foregoing, the Parties wish for the actions to be
20 consolidated, in order to file jointly for approval of the Settlement, as it is a global settlement, and
21 have agreed that consolidation of the two cases for settlement purposes would promote
22 convenience to the Parties and conserve judicial resources by avoiding unnecessary costs, delays,
23 and duplication;

24 11. THEREFORE, accordingly, in consideration of the foregoing, the Parties, by and
25 through their counsel respectfully request that the Court:

26 1) Consolidate the *Mikich* and *Gordon* Matters for settlement purposes; and

27 ///

28 ///



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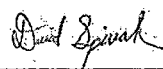
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2) Designate the *Mikich* Matter (Case No. CGC-20-582385) as the lead case
because it was filed first and is the lowest numbered case.

IT IS SO STIPULATED.

THE SPIVAK LAW FIRM

Dated: June 23, 2022

By: 
DAVID G. SPIVAK,
Attorney for Plaintiffs

LAWSON & LAWSON, LLP

Dated: June 23, 2022

By: _____
LISA LAWSON,
Attorney for Defendants



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2) Designate the *Mikich* Matter (Case No. CGC-20-582385) as the lead case
because it was filed first and is the lowest numbered case.

IT IS SO STIPULATED.

THE SPIVAK LAW FIRM

Dated: June 23, 2022

By: _____
DAVID G. SPIVAK,
Attorney for Plaintiffs

LAWSON & LAWSON, LLP

Dated: June 23, 2022

By:  _____
LISA LAWSON,
Attorney for Defendants



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~~PROPOSED~~ ORDER

In light of the foregoing Stipulation of the Parties, and for good cause show, it is
HEREBY ORDERED that

- 1) *Charles Mikich v. Sayeh Petroleum, Inc.*, San Francisco County Superior Court, Case No. CGC-20-582385 and *Gordon v. Sayeh Petroleum, Inc.*, San Francisco County Superior Court, Case No. CGC-21-594289 be consolidated for settlement purposes; and
- 2) *Charles Mikich v. Sayeh Petroleum, Inc.*, San Francisco County Superior Court, Case No. CGC-20-582385 is designated as the lead case. All further filings will be in the lead case only.

IT IS SO ORDERED.

Dated: 7/28/22

LL
 Honorable Richard Ulmer
Judge of the Superior Court



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Mikich v. Sayeh Petroleum, Inc., et al..

Joint Stipulation and [Proposed] Order to
Consolidate Matters for Settlement Purposes

EXHIBIT 9

Station	Corporation	Shifts / Day	Employees / Shift	Employees / Day
19th Valero	Green Planet Gas, Inc.	3	3.45	10.35
Arco at 646 Williams Road	Hadad Petroleum, Inc.	3	3.45	10.35
Capitola Coast	Houtan Petroleum, Inc.	3	3.45	10.35
De Anza Valero	Bay Area Auto Care, Inc.	3	3.45	10.35
Fairfield Valero	Green Planet Gas, Inc.	3	3.45	10.35
Lincoln 76	Sayeh Petroleum, Inc.	3	3.45	10.35
Marsh Shell	Green Planet Gas, Inc.	3	3.45	10.35
Mayfair Gas	Hedia Petroleum, Inc.	3	3.45	10.35
Mountain View Alliance	Houtan Petroleum, Inc.	3	3.45	10.35
Mountain View Arco	Hadad Petroleum, Inc.	3	3.45	10.35
Palo Alto Arco	Hadad Petroleum, Inc.	3	3.45	10.35
Stevens Creek Gas	Bay Area Auto Care, Inc.	3	3.45	10.35
Sunnyvale Alliance	Bay Area Auto Care, Inc.	3	3.45	10.35
Union 76	Sayeh Petroleum, Inc.	3	3.45	10.35
Winfield Valero	Bay Area Auto Care, Inc.	3	3.45	10.35
Almaden AM/PM	Hadad Enterprise, Inc.	2	3.45	6.9
Campbell 7/11	Hedia Petroleum, Inc.	2	3.45	6.9
Capitol AM/PM	Hadad Enterprise, Inc.	2	3.45	6.9
Paco AM/PM	Houtan Petroleum, Inc.	2	3.45	6.9
Salinas AM/PM	Sayeh Petroleum, Inc.	2	3.45	6.9
Sunnyvale Chevron	Hadad Enterprise, Inc.	2	3.45	6.9
Tully AM/PM	Hedia Petroleum, Inc.	2	3.45	6.9
		59	75.9	203.55

[illegible]

Months	Pay periods / year	Pay Periods		
		/ UCL Period	/ PAGA Period	/ Wage Statement Class Period
329.73	26	714.41	714.41	714.41
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
329.73	26	714.41	714.41	714.41
748.94	26	1,622.71	819.10	814.67
329.73	26	714.41	714.41	646.58
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
748.94	26	1,622.71	819.10	814.67
499.30	26	1,081.81	546.06	543.12
499.30	26	1,081.81	546.06	543.12
499.30	26	1,081.81	546.06	543.12
499.30	26	1,081.81	546.06	543.12
499.30	26	1,081.81	546.06	543.12
499.30	26	1,081.81	546.06	543.12
499.30	26	1,081.81	546.06	543.12
13,471.56		29,188.38	15,794.82	15,653.26

Confidential Settlement Communication

Case title: By continuing to review this document, you agree to use this document for purposes other than settlement discussions.
Case no.: Data from Sample Charles Mikich v. Sayen Petroleum, Inc.
Court: Data from Defendant CGC-20-582385
Judge: Data from Extrapolation By Plaintiffs San Francisco
Page subject: Data from Extrapolation by Defendants Garrett L. Wong, Dept. 610
Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Saturday, January 23, 2016
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, January 22, 2017
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, January 16, 2019
Lab.Code § 226 (pay stub penalties) period begins:	Tuesday, January 22, 2019
LWDA Notice:	Thursday, January 16, 2020
Lawsuit:	Wednesday, January 22, 2020
Sample begin:	Friday, February 12, 2016
Sample end:	Sunday, October 25, 2020
Sample calendar days:	1,717
Mediation:	Friday, May 6, 2022
Anticipated Settlement Period end date:	Saturday, September 3, 2022
Settlement Period to Sample Period:	140.65%
	79.40

Classes / Groups sizes

UCL Class Members:	1,002
UCL Workweeks:	26,064
UCL Wage Statements:	29,307
UCL Workdays:	105,756
UCL Calendar days:	2,295
UCL Months:	13,471.56

Waiting Time Penalties Class Members:	823
---------------------------------------	-----

PAGA Aggrieved Employees:	100
PAGA Wage Statements:	7,320

Wage Statement Class Members:	100
Wage Statement Class Wage Statements:	7,320

Averages

Average Hourly Rate:	\$	14.24
Average Overtime Rate:	\$	21.36
Average Doubletime Rate:	\$	28.48

Average Work Hours Per Day:	7.44
Average Work Hours Per Week:	30.02
Average Workdays Per Week:	4.06
Workdays to Calendar Days (%):	58.00%
Paycycle:	Biweekly
Paychecks Per Year:	26

Confidential Settlement Communication

Case title: By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions
Case no.: Charles Mikich v. Sayen Petroleum, Inc. CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **Unpaid wages**
Authority: Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	14.24
Unpaid hours per pay week:		0.36
Actionable workweeks:		26,064
Interest:		10%

Unpaid wages:	\$	146,975.94
Liquidated damages:	\$	146,975.94

Confidential Settlement Communication

Case title: By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions
Case no.: Charles Mikich v. Sayen Petroleum, Inc. CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **Unprovided Meal Periods**
Authority: Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	\$	14.24
Actionable workdays:		105,756
>>Percentage qualifying for meal periods:		93.95%
Violation rate (%)		64.33%
Meal period premium wages:	\$	910,175.92

Confidential Settlement Communication

Case title: By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions
Case no.: Charles Mikich v. Sayen Petroleum, Inc. CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **Unprovided Rest Periods**
Authority: Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	14.24
Actionable workdays:		105,756
>>Percentage qualifying for rest periods:		97.97%
Violation rate (%)		100.00%
Rest period premium wages:	\$	1,475,394.34

Confidential Settlement Communication

Case title: By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions.
Case no.: Charles Mikich v. Sayen Petroleum, Inc. CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **Unreimbursed expenses**
Authority: Lab.Code § 2802

Mileage

IRS Mileage Rate:	\$	0.560
Miles Per Workweek:		5.00
UCL Workweeks:		26,064
Interest rate:		10%
Unreimbursed mileage	\$	80,277.12

Telecom

Plaintiff's Telecom provider:		Metro PCS
UCL Months:		13,472
Average Monthly Telecom bill:	\$	60.00
Percentage attributable to work:		75%
Interest rate:		10%
Unreimbursed Telecom costs:	\$	607,573.43

Unreimbursed expenses:	\$	687,850.55
------------------------	----	------------

Confidential Settlement Communication

Case title: By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions.
Case no.: CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **Itemized Wage Statements**
Authority: Lab.Code § 226

Wage Statement Class Members:		200
Wage Statement Class Wage Statements:		7,320
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	722,000.00

Confidential Settlement Communication

Case title: By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions.
Case no.: CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **Waiting Time / Final Wages**
Authority: Lab.Code § 203

Waiting Time Penalties Class Members:		823
Days waiting:		30
Average Hourly Rate:	\$	14.24
Average Overtime Rate:	\$	21.36
Average Doubletime Rate:	\$	28.48
Average Work Hours Per Day:		7.44
Regular Hours Per Day:		7.44
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	2,615,796.86

Confidential Settlement Communication

Case title: By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions.
Case no.: Charles Mikich v. Sayen Petroleum, Inc. CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil		Subsequent		Pay periods		Total
	Penalty Statute	Initial penalty	penalty				
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00		7,320	\$	732,000.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00		7,320	\$	366,000.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00		7,320	\$	732,000.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00		7,320	\$	732,000.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 2699	\$ 100.00	\$ 200.00		7,320	\$	732,000.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00		7,320	\$	732,000.00
Total:						\$	4,026,000.00

Confidential Settlement Communication

Case title: By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions.
Case no.: CGC-20-582385
Court: San Francisco
Judge: Garrett L. Wong, Dept. 610
Page subject: **Totals**
Authority: Various

Restitution			Demand
Unpaid wages:	\$ 146,975.94	75%	\$ 110,231.95
Liquidated damages:	\$ 146,975.94	75%	\$ 110,231.95
Meal period premium wages:	\$ 910,175.92	95%	\$ 864,667.12
Rest period premium wages:	\$ 1,475,394.34	95%	\$ 1,401,624.62
Unreimbursed expenses:	\$ 687,850.55	40%	\$ 275,140.22
Restitution subtotal:	\$ 3,367,372.69		\$ 2,761,895.88
Penalties			
Statutory wage statement penalties:	\$ 722,000.00	75%	\$ 541,500.00
Waiting time penalties:	\$ 2,615,796.86	75%	\$ 1,961,847.65
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 732,000.00	40%	\$ 292,800.00
Meal periods (Lab.Code § 512):civil penalties:	\$ 366,000.00	40%	\$ 146,400.00
Rest periods (Lab.Code § 1198):civil penalties:	\$ 732,000.00	40%	\$ 292,800.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 732,000.00	30%	\$ 219,600.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 732,000.00	75%	\$ 549,000.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 732,000.00	75%	\$ 549,000.00
Penalties subtotal:	\$ 7,363,796.86		\$ 4,552,947.65
Grand total:	\$ 10,731,169.55		\$ 7,314,843.52

EXHIBIT 10

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
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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,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

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

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

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.

23. California Labor Code § 510(a) also requires employers to compensate employees at two times their regular rates of pay for:

A. All hours worked in excess of twelve hours in one day; and,

B. All hours worked in excess of eight hours on a seventh consecutive workday during a workweek.

24. During the applicable limitations period, Plaintiffs have worked more than eight hours in one workday, more than forty hours in one workweek, and eight or more hours on a seventh consecutive workday without being paid for all of those hours at the rates required under California Labor Code § 510(a).

25. Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating him and the other members of the **Wages Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating the other members of the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code § 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked hours in excess of eight hours on a seventh consecutive workday.

26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable attorney's fees pursuant to California Labor Code § 1194(a).

SECOND CLAIM FOR RELIEF

FAILURE TO PROVIDE REST AND MEAL PERIODS

(By Plaintiffs, the Rest Period Class, and the Meal Period Class)

27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully alleged herein.

28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and **Meal Period Class** have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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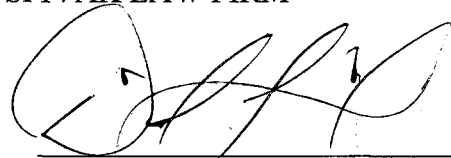
- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



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

EXHIBIT 11

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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

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

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

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

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. SABZEVAR: NO, YOUR HONOR.

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

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

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

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

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

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

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

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

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

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

6 THE COURT: FORTY-FIVE DAYS.

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

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

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

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

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

17 MR. SPIVAK: YES, YOUR HONOR.

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

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

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

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

1 FOUR WEEKS. HERE'S OUR SITUATION.

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

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

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

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

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

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

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

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

EXHIBIT 12



www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.
Randi Martz

Corporate Headquarters
50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Mikich v Sayeh Petroleum, Inc

Date: **May 13, 2022**

All-In Settlement

Requesting Attorney: **David Spivak**

* Class Members: **1,200**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **The Spivak Law Firm**

Opt-Outs Received: **18**

Telephone: **(818) 582-3086**

Postage Total: **\$2,097.84**

Email: david@spivaklaw.com

Grand Total: **\$23,424.44**

***** DISCOUNTED FLAT FEE: \$16,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 18 opt-out's filed. Any additional opt-out's filed above 18 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Static Website / Spanish Translation

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	7	\$665.00
System Programming/Data Base Setup	\$150.00	7	\$1,050.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Static Website	\$500.00	1	\$500.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Total			\$3,715.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice, Dispute Form & Opt-Out Form in English & Spanish / Postage (up to 2 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.50	1,200	\$600.00
Mailing of Notice Pack	\$1.50	1,200	\$1,800.00
Estimated Postage (up to 2 oz.)*	\$0.78	1,200	\$936.00
Total			\$3,676.00

*Additional charges will apply if the postage exceeds 2 oz. The final rate will be determined at the time of mailing.

Returned Mail

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

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	120	\$60.00
Skip Traces	\$1.25	103	\$128.75
Remail Packs	\$2.00	90	\$180.00
Estimated Postage (up to 2 oz.)	\$0.78	90	\$70.20
Clerical Staff	\$60.00	2	\$120.00
Total			\$558.95

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$10.00	18	\$180.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.58	1	\$0.58
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	240	\$720.00
		Total	\$1,675.58

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	1,182	\$236.40
		Total	\$671.40

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2 / Check Reminder Postcard			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	4	\$600.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	1,182	\$2,955.00
Estimated Postage (up to 1 oz.)	\$0.58	1,182	\$685.56
Check Reminder Postcard	\$0.30	780	\$234.00
Postage for Reminder Postcard	\$0.40	780	\$312.00
		Total	\$6,326.56

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	12	\$60.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	95	\$118.75
Remail Undeliverable Checks	\$2.50	95	\$237.50
Estimated Postage (up to 1 oz.)	\$0.58	107	\$62.06
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
		Total	\$4,528.31

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

Escheat Processing

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
UPEnterprise Reporting Services	\$0.15	248	\$37.20
Project Manager - Fall Reporting	\$95.00	2	\$190.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues - Winter/Spring QTR	\$5.00	25	\$124.00
Estimated Postage (up to 1 oz.) for Reissue	\$0.58	25	\$14.38
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	\$2,272.64
		Grand Total:	\$23,424.44

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 (“CPT”).

1. Definitions.

- a) **“Affiliate”** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **“Approved Bank”** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **“Case”** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **“Claims Administrator”** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **“Client”** means collectively Plaintiff Counsel and Defense Counsel.
- f) **“Client Content”** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **“Client Data”** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **“Class Member”** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **“Confidential Information”** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked “confidential” or “proprietary” or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient’s prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **“Court Order”** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **“Defendant”** means the named party and/or parties in the Case against whom action is brought.
- l) **“Defense Counsel”** means the attorney of record for the defendant(s) in the Case.
- m) **“Intellectual Property Right”** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **“Order”** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **“Parties”** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **“Plaintiff”** means the named party and/or parties in the Case who are bringing the action.
- q) **“Plaintiff Counsel”** means the attorney of record for plaintiff Class Members in the Case.
- r) **“Products”** means any and all CPT Services, and work product resulting from Services.
- s) **“Qualified Settlement Fund”** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **“Service”** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- u) **“Software”** means any and all of CPT’s proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- v) **“Settlement”** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
- w) **“Settlement Agreement”** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
- x) **“Term”** means the term of the Agreement, as set forth in the Order.
- y) **“Transmission Methods”** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
- z) **“Wire Information”** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

- 2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

- 3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.

- 4. **CPT Obligations.** Provided that Client complies with all provisions of Section “Client Obligations”, CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.

5. Mutual Obligations.

- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
 - a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
 - b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
 - e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
 - a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
 - a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 13

Case Name: Mikich v. Sayeh Petroleum, Inc.

Monday, May 9, 2022

Requesting Law Firm
Contact
E-Mail
ILYM Contact
E-Mail
Contact Number

The Spivak Law Firm
David Spivak
david@spivaklaw.com
Sean Hartranft
Sean@ilymgroupclassaction.com
949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	1,200
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
One-Page Notice Posted to ILYM Group Website	Yes
Certified Spanish Translations	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	4	\$600.00
Programming of Class Database	Hourly	\$175.00	4	\$700.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$1,300.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	12	\$1,440.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	3	\$210.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	7	\$490.00
NCOA	Per Piece	\$250.00	1	\$250.00
Toll-Free Call Center	Flat Fee	\$450.00	1	\$450.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$4,910.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING

Fulfillment Notice, English & Spanish	Per Piece	\$1.50	1,200	\$1,800.00
USPS First Class Postage	Per Piece	\$0.55	1,200	\$660.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	240	\$480.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$3,240.00

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	12	\$1,800.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	12	\$1,500.00
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	\$1.25	1,200	\$1,500.00
USPS First Class Postage	Per Piece	\$0.55	1,200	\$660.00
Check, Print & Mail (Including W2/1099 Stub & Release)	Per Check	\$1.25	1,200	\$1,500.00
USPS First Class Postage	Per Piece	\$0.55	1,200	\$660.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	240	\$480.00
Reminder Postcard, Includes Postage	Per Piece	\$1.00	360	\$360.00
Preparation of Taxes	Hourly	\$120.00	24	\$2,880.00
Annual Filing of Tax Return	Per Year	\$1,250.00	2	\$2,500.00

***Additional Bank fees may apply*

Subtotal \$13,840.00

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	10	\$1,000.00
Project Manager Final Reporting	Hourly	\$120.00	10	\$1,200.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	6	\$750.00

Subtotal \$3,700.00

Total Case Estimate: \$26,990.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 14



May 9, 2022

CASE ASSUMPTIONS

Class Members	1,200
Opt Out Rate	1%
Opt Outs Received	12
Total Class Claimants	1,188
Subtotal Admin Only	\$18,121.03

Not-to-Exceed Total \$15,000.00
For 1,200 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Two Disbursements & Two Check Runs

Case: Mikich v. Sayeh Petroleum, Inc., Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: David Spivak

Firm: The Spivak Law Firm

Contact Number: (310) 499-4730

Email: david@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 **1,200** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$150.00	1	\$150.00
Call Center & Long Distance	\$2.00	208	\$416.00
NCOA (USPS)	\$300.00	1	\$300.00
Total			\$1,266.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Spanish Translation	\$800.00	1	\$800.00
Data Merge & Duplication Scrub	\$0.10	1,200	\$120.00
Notice Packet & Opt-Out Form	\$1.30	1,200	\$1,560.00
Estimated Postage (up to 2 oz.)*	\$0.73	1,200	\$876.00
Static Website	\$100.00	1	Included
Check Cashing Reminder Postcard	\$0.60	249	\$149.69
Postage Included			
Total			\$3,705.69

* 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	6		\$330.00
Skip Tracing Undeliverables	\$0.85	300		\$255.00
Remail Notice Packets	\$0.75	297		\$222.75
Estimated Postage	\$0.73	297		\$216.81
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$1,074.56

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	5		\$275.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	18		\$180.00
Case Manager	\$85.00	4		\$340.00
			Total	\$1,295.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	8		\$1,080.00
Mail Class Checks * (x 2)	\$1.00	2,376		\$2,376.00
Estimated Postage (x 2)	\$0.53	2,376		\$1,259.28
			Total	\$5,445.28

* 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	6		\$690.00
Remail Checks & Tax Forms (Postage Included)	\$1.50	603		\$904.50
Case Associate	\$55.00	6		\$330.00
Reconcile Uncashed Checks	\$85.00	10		\$850.00
Conclusion Reports	\$115.00	4		\$460.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
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				\$5,334.50

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$18,121.03



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. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 15