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7 Attorneys for Plaintiff(s),  
8 RAMONA SILVA-HEREDIA, and all others similarly situated  
(Additional attorneys for Plaintiff(s) on following page)

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**  
12 **(UNLIMITED JURISDICTION)**

13 RAMONA SILVA-HEREDIA, on behalf of  
14 herself, all others similarly situated, the general  
15 public, and as an “aggrieved employee” on  
16 behalf of other “aggrieved employees” under the  
Labor Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 TACOS LOS DESVELADOS, a California  
20 corporation; TACOS LOS DESVELADOS  
GLENDALE, INC., a California corporation;  
21 TACOS LOS DESVELADOS WEST COVINA,  
INC., a California corporation; TACOS LOS  
22 DESVELADOS WHITTIER, INC., a California  
23 corporation; ADOLFO VALENZUELA, an  
individual; and DOES 1–50, inclusive,

24 *Defendant(s).*

Case No. 21STCV11103

**DECLARATION OF DAVID G.  
SPIVAK IN SUPPORT OF PLAINTIFF  
RAMONA SILVA-HEREDIA’S  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Hearing Date: May 15, 2023  
Hearing Time: 9:00 am  
Hearing Dept.: 17, The Honorable  
Maren E. Nelson

Action filed: March 19, 2021



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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 Plaintiff Ramona Silva-Heredia (“Plaintiff”) in her lawsuit against  
6 Defendants Tacos Los Desvelados, Tacos Los Desvelados Glendale, Inc., Tacos Los Desvelados  
7 West Covina, Inc., Tacos Los Desvelados Whittier, Inc., and Adolfo Valenzuela (collectively  
8 “Defendants”). Plaintiff 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 Class Action and PAGA Settlement Agreement and Class Notice (the  
12 “Settlement” or the “Settlement Agreement”) is attached hereto as **Exhibit 1**.

13                    ***Factual and Procedural Background***

14                    4.        The Defendants are owners and operators of restaurants. Defendants employed  
15 Plaintiff as an hourly, non-exempt cook from about March of 2016 until March 21, 2020.

16                    5.        On March 8, 2021, Plaintiff notified Defendants and the California Labor and  
17 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys  
18 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor  
19 Code violations committed by Defendants. A true and correct copy of the letter to the LWDA  
20 dated March 8, 2021 is attached hereto as **Exhibit 2**.

21                    6.        On March 19, 2021, Plaintiff filed a Class Action Complaint in the Los Angeles  
22 County Superior Court, Case No. 21STCV11103, against Defendants on behalf of herself and  
23 others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay  
24 All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure  
25 to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab.  
26 Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage  
27 Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§  
28 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On June 18, 2021,  
Plaintiff filed her First Amended Complaint adding a claim under the Labor Code Private  
Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On January 7, 2022,  
Defendants filed an answer to Plaintiff’s First Amended Complaint. Defendants deny all of



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1 Plaintiff's allegations and strongly contend that their wage and hour policies, practices and  
2 procedures are fully compliant with all applicable laws. A true and correct copy of the complaint  
3 is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff's First Amended Complaint  
4 is attached hereto as **Exhibit 4**. A true and correct copy of Defendants' Answer is attached hereto  
as **Exhibit 5**.

5 7. On January 20, 2022, the Parties participated in a mediation session presided over  
6 by Mediator Steve Cerveris, an experienced class action mediator. During the session, the Parties  
7 had a full day of negotiations but did not reach a settlement at mediation. The Parties thereafter  
8 engaged in a voluntary exchange of information in the context of privileged settlement  
9 discussions to facilitate reaching a class settlement. Defendants produced copies of their relevant  
10 company written policies, financial reports, time-keeping records, and paycheck data and records  
11 for the putative class, and more detailed time and payroll data for a random sample of putative  
class members specifically selected by Plaintiff's counsel.

12 8. Following the settlement discussions, the Parties ultimately agreed to settle the  
13 Action and all other matters covered by this Agreement pursuant to the terms and conditions of  
14 this Agreement.

15 9. At the mediation, it became clear that that Defendants had insufficient resources  
16 to cover the full extent of liability. As part of the settlement negotiations, Defendants disclosed  
17 copies of their tax returns for the last three years, the owner's personal tax returns for the last 3  
18 years, and bank statements for all three locations for the past three months. Plaintiff's Counsel  
19 has reviewed the financial records with the aid of a forensic economist. The information provided  
20 was sufficient to demonstrate the financial condition of the company and its owners. Based on  
21 such records, Plaintiff, on her own behalf and on behalf of the Class Members, has agreed to  
settle the lawsuit on the terms set forth in the Settlement.

#### ***Ascertainable and Numerous Class***

22 10. A class is ascertainable when it may be readily identified without unreasonable  
23 expense or time by reference to official records. Here, Plaintiff maintains that the above-defined  
24 Class is ascertainable because its members may be identified by reference to Defendants' records  
25 and Defendants have agreed to share the relevant information from their records to facilitate the  
26 settlement process. Therefore, the Settlement Class is ascertainable.



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1 periods. Because Plaintiff contends that she was subject to the same general course of conduct as  
2 absent Class Members, resolving the common questions as they apply to Plaintiff will determine  
3 Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could  
4 potentially be subject to the same primary affirmative defenses as those of absent Class Members.  
5 Accordingly, Plaintiff's claims are typical of the Class.

#### 6 ***Adequacy***

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

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

#### 23 ***Background of Class counsel***

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

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



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1           18. My law practice has always focused on representation of private and public  
2 employees with claims of unpaid wages, wrongful termination, harassment, family and medical  
3 leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites,  
4 FightWrongfulTermination.com, provides a further description of my practice.

5           19. I have tried many cases before California and federal courts, government agencies  
6 and neutral arbitrators. I am a member of the California Employment Lawyers Association  
7 (CELA).

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

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

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

26           c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton  
27 (the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights  
28 claims and wrongful termination claims against employer in a month-long jury trial. The jury  
awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His  
Job" by Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to



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1 Fired Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's  
2 Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

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

9 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board  
10 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated  
Customs Agent, followed by an award of Attorneys' fees and costs.

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

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

23 21. Since 2007, I have prosecuted several traditional wage & hour class actions as the  
24 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*  
*v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*  
*Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.  
25 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in  
26 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the



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1 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with  
2 an hourly rate of \$525.00 for my services.

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

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

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

10 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-  
11 000382146 (appointed Class Counsel and granted final approval of class action settlement by the  
court on behalf of nonexempt employees).

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

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

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

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

23 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.  
24 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class  
25 action settlement on behalf of medical devices employees).



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

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

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

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

13 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-  
14 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement  
15 on behalf of dairy and agricultural laborers).

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

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

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

28 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).



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

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

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

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

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

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

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

24                     ***Class Action Treatment Is Superior***

25          24.    A class action is also superior to other means adjudicating the issues in this action.  
26 The predominance of common legal and factual questions shows that this Court could fairly  
27 adjudicate the claims of Class Members through a single class action. In view of the *theoretical*  
28 alternatives that proposed class members could potentially utilize—representative PAGA action  
(where there is less relief available), individual civil lawsuits or wage claims through the Division  
of Labor Standards Enforcement (where there would be relatively little money at stake, but the  
claims would be time-consuming to litigate)—a class action is plainly superior to all of them.



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1 Thus, this consideration supports conditional class action treatment for purposes of this  
2 Settlement only.

3 ***The Settlement is Presumptively Fair***

4 25. The class settlement here satisfies all of the *Kullar* factors. The Settlement  
5 resulted from thorough, arms' length, negotiations between experienced counsel with the  
6 assistance of a respected mediator after sufficient discovery was exchanged to assess the relative  
7 strengths and weaknesses of their respective cases and Defendants' estimated exposure. Both  
8 defense counsel and I are particularly experienced in employment law and wage and hour class  
9 actions. We are experienced and qualified to evaluate the class claims, the viability of the  
10 defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have  
11 negotiated many wage and hour class settlements, including many involving the same issues  
12 presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable  
13 settlement in light of the complexities of the case and uncertainties of class certification and  
14 litigation, and a fair result for the Class Members.

15 ***Exposure & Risk Analysis***

16 26. At issue in this class and PAGA action is a restaurant employer's liability to its  
17 non-exempt hourly employees for its failures to (1) pay all overtime at time-and-a-half or double  
18 time, as applicable; (2) pay regular and overtime pay for all hours worked; (3) provide timely,  
19 uninterrupted, duty-free 30-minute meal periods or pay premium wages in lieu thereof; (4)  
20 provide timely, uninterrupted, duty-free 10-minute rest period or pay premium wages in lieu  
21 thereof, and (5) reimburse all necessary business expenses, including, without limitation, mileage  
22 reimbursement for errands required by Defendants. Plaintiff prepared "damages" estimates in  
23 advance of the mediation. Ex. 6. In advance of the mediation, Plaintiff determined Defendants'  
24 maximum exposure for restitution and penalties to be approximately \$1,922,002.17 (consisting  
25 of \$19,136.15 in unpaid wages, \$104,379.00 in missed meal period premium wages, \$104,379.00  
26 in missed rest break premium wages, \$1842,10.00 for wage statement penalties, \$265,650.00 for  
27 waiting time penalties, and \$1,689,860.00 for civil penalties). True and correct copies of the  
28 spreadsheets I prepared for mediation of this Action are collectively attached to this declaration  
as **Exhibit 6**. The estimates are in essence "home run" projections that omit data points that will  
undoubtedly reduce the maximum possible damages award and do not factor in any of the risks  
involved in litigating this Action. Plaintiff calculated the damages based on the number of



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workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample data. *Id.* Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Plaintiff's Counsel applied discounts to the maximum exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendants would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 10.41% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.<sup>1</sup>

27. 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 \$200,000.00 is fair and reasonable.

28. **Risks Associated with the Arbitration Agreements.** The arbitration agreements entered into between Defendants on the one hand, and the Class Members, on the other, present a significant risk to the success of Plaintiff's class action litigation. According to Defendants, the majority of the Class entered into arbitration agreements with Defendants. As the arbitration agreements in question restrict potential litigants from bringing class and PAGA actions against Defendants, Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. Thus, there is a significant risk the Court could determine that those Class Members who have not entered into arbitration agreements with Defendants do not constitute a sufficiently numerous class to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements would pose danger to any class certification

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<sup>1</sup> 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 motion brought by Plaintiff. Because different defenses would apply to some Class Members and  
2 not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court  
3 could determine that Plaintiff’s claims present too many individualized inquiries to justify class  
4 certification.

5 29. **Risks Associated with Defendants’ Financial Condition.** Defendants’ financial  
6 condition was the key factor in reaching this Settlement. At the mediation, it became clear that  
7 that Defendants had insufficient resources to cover the full extent of liability. As part of the  
8 settlement negotiations, Defendants disclosed copies of their tax returns for the last three years,  
9 the owner’s personal tax returns for the last 3 years, and bank statements for all three locations  
10 for the past three months. Plaintiff’s Counsel has reviewed the financial records with the aid of a  
11 forensic economist. The information provided was sufficient to demonstrate the financial  
12 condition of the company and its owners. Based on such records, Plaintiff, on her own behalf and  
13 on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth in the  
14 Settlement. Due to Defendants’ financial condition, even if Plaintiff prevailed on all claims at  
15 trial, she may never recover the damages due to the risk of insolvency. A very large class action  
16 judgment would almost certainly put the company out of business and/or would interfere with  
17 the Defendants’ ability to carry out their contractual obligations.

18 30. **Risks Associated with Holding Defendant Adolfo Valenzuela Liable.**  
19 Plaintiff’s counsel concluded that it would be difficult to establish personal liability of Defendant  
20 Adolfo Valenzuela under Labor Code § 558.1 because the proof that he was responsible for the  
21 Labor Code violations, many of which he was not physically present to observe, is inconclusive.

22 31. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff’s  
23 recovery for unpaid wages would be extremely limited at best, largely because Defendants’  
24 written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock  
25 claims are difficult where a defendant requires in its written policies that all work must take place  
26 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer  
27 must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment  
28 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)



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1 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a  
2 *de minimis* defense even if compensable. (Stating that “We do not decide whether there are  
3 circumstances where compensable time is so minute or irregular that it is unreasonable to expect  
4 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine  
5 may apply here because the time spent off the clock were minute and insignificant. Accordingly,  
6 a large award of penalties seems unlikely with respect to this claim.

7 The difficulty inherent in proving that off-the-clock work occurred poses a significant  
8 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.  
9 Generally, a court will not certify a class unless it can determine an appropriate classwide  
10 methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here, Plaintiff  
11 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given  
12 the lack of records indicating when such off-the-clock work may have taken place. Individualized  
13 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual  
14 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant  
15 risk that the Court would consider this evidentiary showing insufficient as a classwide  
16 methodology. There are also risks that Plaintiff will not recover an award for her unpaid wages  
17 claim based on the withheld premium pay for overtime hours. The unpaid wage claim arose  
18 primarily from Plaintiff’s claim that Defendants failed to pay premium overtime wages of at least  
19 one and half times their hourly rates for all hours in excess of forty (40) in a week, all hours in  
20 excess of eight (8) in a day, and all hours on the seventh (7<sup>th</sup>) day worked in a workweek.  
21 Defendants deny all of Plaintiff’s allegations and strongly contend that their wage and hour  
22 policies, practices and procedures fully complied with all applicable laws. Defendants contend  
23 that Plaintiff and the Class Members did not work any overtime hours, but if so, it did not occur  
24 very often and any judgement against them would be worthless because Defendants would file  
25 for bankruptcy protection. This claim could also be susceptible to a *de minimis* defense.  
26 Accordingly, a large award of penalties seems unlikely with respect to this claim.

27 32. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s  
28 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a  
29 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.  
30 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free  
31 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is



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1 performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,  
2 or prohibited the employee from taking a proper break, or otherwise failed to release the  
3 employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the  
4 reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*  
*Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

5 33. Defendants contend they did not impede or discourage Plaintiff, or any other  
6 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees  
7 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time  
8 of their meal breaks each day on their time records. The time records that comprise the random  
9 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were  
10 taken a large part of the time. Of the time records that show a late, short or no lunch,  
11 individualized evidence may be necessary to determine whether they occurred due to conduct of  
12 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that  
the value of Plaintiff’s meal period claim would be substantially reduced at trial.

13 34. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest  
14 period claim. Employers are not required to record rest periods and such periods are paid.  
15 Defendants contend they provided non-exempt employees the opportunity to take rest periods in  
16 accordance with California law. Further, Defendants’ written policies on meal and rest periods  
17 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records  
18 showing whether an employee clocked out or not, there is no such evidence to prove a missed  
19 rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims  
20 at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and  
21 surveys to prove the claims. While a victory with such evidence is certainly possible, relevant  
22 caselaw makes such claims risky from a trial management and due process perspective. *See*  
23 *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common  
24 questions exist to support class certification, it may be possible to manage individual issues  
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.

25 35. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the  
26 Court may consider Plaintiff’s claims as to Defendants’ alleged failure to indemnify for business  
27 expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that



1 Defendants required Plaintiff and the Class Members to run business errands and failed to  
2 indemnify them with mileage reimbursement. Defendants presented evidence that they have  
3 reimbursed Plaintiff for mileage expenses and had an expense reimbursement policy. As such,  
4 there is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit  
for class wide resolution.

5 36. **Risks Associated with the Statutory "Wage Statement" Penalty Claims.**

6 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA  
7 penalties. Under Labor Code section 226, wage statements must include various information,  
8 including the applicable rates of pay, corresponding hours worked, and gross pay. Here,  
9 Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is  
10 derivative of them. On their face, the wage statements issued by Defendants comply with the  
requirements of Labor Code section 226.

11 37. **Risks Associated with The Waiting Time Penalties Claim.**

12 Plaintiff's claim for  
13 untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor  
Code sec. 226, Plaintiff must establish that the late payments were willful. The evidence of good  
14 faith Defendants put forth will defeat this claim.

15 38. **Risks Associated With the PAGA Claim.**

16 Regarding PAGA, a court has  
discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman*  
17 *v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA  
award). As set forth above, Defendants have posed valid defenses to the Labor Code claims  
18 underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant  
uncertainty. There is a risk that the Court would consider the maximum civil penalty available to  
19 be confiscatory. Moreover, the current COVID-19 pandemic could motivate the Court to further  
20 reduce the penalty award to avoid what it may consider a confiscatory taking.

21  
22 39. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and  
required a significant discount for settlement purposes. For mediation purposes, Plaintiff's  
23 counsel estimated a maximum exposure of approximately \$1,689,860.00 in civil penalties. This  
24 estimate did not take into account any of the risks discussed above and assumed a violation for  
every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay  
25 period for the same alleged violations of different Labor Code provisions and derivative  
26 violations. Although two federal district court decisions held that "stacking" PAGA penalties in  
27  
28



1 this fashion may be appropriate to determine the amount in controversy for purposes of removal  
2 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs  
3 multiple PAGA penalties for the same violation for the same pay period under different Labor  
4 Code provisions. This may be because the PAGA does not provide for what many employers  
5 characterize as claim splitting and not merely stacking.

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

9 41. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a  
10 prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only  
11 \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828.  
12 Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal

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13 <sup>2</sup> In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded  
14 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from  
15 plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of  
16 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*  
17 suffered a particularly sizeable injury – the court found that the defendant's policies caused  
18 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in  
19 *Bernstein*, who the court noted had received “millions of dollars from the state of California” to  
20 train their flight attendants, engaged in glaring violations of the labor code, such as failing to  
21 compensate its flight attendants for work performed outside of “block time” (time during which  
22 the aircraft is moving), including time spent participating in pre-flight briefings, boarding  
23 passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,  
24 1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved  
25 on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019)  
26 U.S. Dist. LEXIS 13253.

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

23 <sup>3</sup> In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number  
24 BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and  
25 correct copy of the complaint is attached as **Exhibit 7**. The plaintiff sought in excess of \$9  
26 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M.  
27 Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct  
28 copy of the statement of decision is attached as **Exhibit 8**, 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 affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the  
2 defendant's meal period violations. A similar result could occur here.

3 42. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the  
4 right to settle a putative class member's disputed wage claims individually, without the consent  
5 or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4<sup>th</sup> 796  
6 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue  
7 individual release agreements from the Class Members, thereby potentially narrowing the size of  
8 the Settlement Class – 127 members - until it is no longer numerous enough for class certification.  
9 *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a  
10 significant reduction of claim value in settlement negotiations.

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

### 24 ***Allocation of the PAGA Payment***

25 44. The settlement of PAGA penalties in the sum of \$4,000.00, of which 75%  
26 (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) 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***

45. I intend to request Class counsel Attorneys' Fees of \$66,666.00 (one-third of the GSA) and Class counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$12,028.52 and will be no more than \$15,000.00 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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1 CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern  
2 District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National*  
3 *Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund);  
4 *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No.  
5 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/*  
6 *Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No.  
7 EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los  
8 Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern*  
9 *California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of  
10 fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third  
11 of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-  
12 282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior  
13 Court, Case No. CIVDS1500146 (one-third of fund).

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

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

#### 28 ***Class Representative Service Payment***

48. The Settlement provides that Plaintiff may seek a Class Representative Service  
Payment of \$5,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action  
and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours



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

#### ***Individual Class Payment***

10 49. The Individual Class Payment will be paid to each Class Member based on his or  
11 her eligible Work Weeks compared to the total Work Weeks. Settlement § 3.2.4. Because this  
12 method compensates Class Members based on the extent of their potential injuries, in that Class  
13 Members who worked for Defendants longer would have been subject to more alleged violations,  
14 it is fair, adequate, and reasonable.

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

15 50. The Settlement requires distribution of the Notice by First Class U.S. mail only.  
16 Settlement, § 4.4.1. Although there are current employee Class Members, it is uncertain whether  
17 Defendants' records of their contact information include email addresses and Class Members,  
18 who perform all of their work away from a desk, are not in a position to check their emails. As  
19 such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as  
20 Exhibits 1 and 2 to the Settlement) provides Class Members with all pertinent information that  
21 they need to fully evaluate their options and exercise their rights under the Settlement.  
22 Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is  
23 about; (2) who is a Settlement Class Member; (3) how Class counsel will be paid; (4) how to  
24 submit an exclusion request not to be bound by the Settlement; (5) how to object to the  
25 Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will  
26 be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement  
27 Payment for each Class Member. Additionally, the Notice will include the number of Eligible  
28 Workweeks a Class Member had during the Class Period. Accordingly, the Notice should be



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

### 6 *Settlement Administration Duties*

7 51. The duties of the Settlement Administrator are spelled out in section 8 of the  
8 Settlement and in the bid provided by Administrator, a true and correct copy of which is attached  
9 hereto as **Exhibit 9**.

### 10 *Settlement Administration Costs*

11 52. With regard to the settlement administration costs provision (Settlement § 3.2.3),  
12 it is reasonable. Before agreeing to Administrator CPT Group, Inc. the Parties sought and  
13 reviewed bids from other reputable third-party administrators: (A) CACAI = \$550.00; and (B)  
14 Phoenix = \$493.58. A true and correct copy of the bid from CACAI is attached hereto as **Exhibit**  
15 **10**. A true and correct copy of the bid from Phoenix is attached hereto as **Exhibit 11**. The bid  
16 provided by CPT Group, Inc. was comparable. Thus, settlement administration costs provision  
17 should be given preliminary approval.

### 18 *Notice of Settlement to the LWDA*

19 53. Pursuant to Labor Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement  
20 with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiff's  
21 Motion is being filed with the Court. A true and correct copy of Plaintiff's submission with the  
22 LWDA and a confirmation email is attached hereto as **Exhibit 12**.

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

25 Executed on Thursday, January 19, 2023 at Los Angeles, California.

26 

27 

---

DAVID G. SPIVAK,  
28 Declarant



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# **EXHIBIT 1**

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7 Attorneys for Plaintiff(s),  
8 RAMONA SILVA-HEREDIA, and all others similarly situated  
(Additional attorneys for parties on following page)

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**  
12 **(UNLIMITED JURISDICTION)**

13 RAMONA SILVA-HEREDIA, on behalf of  
14 herself and all others similarly situated, and as an  
"aggrieved employee" on behalf of other  
15 "aggrieved employees" under the Labor Code  
Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.  
18

19 TACOS LOS DESVELADOS, a California  
corporation; TACOS LOS DESVELADOS  
20 GLENDALE, INC., a California corporation;  
TACOS LOS DESVELADOS WEST COVINA,  
21 INC., a California corporation; TACOS LOS  
DESVELADOS WHITTIER, INC., a California  
22 corporation; ADOLFO VALENZUELA; and  
DOES 1–50, inclusive,  
23

24 *Defendant(s).*

Case No. 21STCV11103

**CLASS ACTION AND PAGA  
SETTLEMENT AGREEMENT AND  
CLASS NOTICE**

Action filed: March 19, 2021  
Dept: 17, The Honorable Maren E.  
Nelson

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**ATTORNEYS FOR DEFENDANT(S)**

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Attorneys for Defendant(s),  
TACOS LOS DESVELADOS, TACOS LOS  
DESVELADOS GLENDALE, INC., TACOS  
LOS DESVELADOS WEST COVINA, INC.,  
TACOS LOS DESVELADOS WHITTIER, INC.,  
AND ADOLFO VALENZUELA

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and  
2 between plaintiff Ramona Silva-Heredia (“Plaintiff”) and defendants Tacos Los Desvelados,  
3 Tacos Los Desvelados Glendale, Inc., Tacos Los Desvelados West Covina, Inc., Tacos Los  
4 Desvelados Whittier, Inc., and Adolfo Valenzuela (collectively “Defendants”). The Agreement  
5 refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

6 **1. DEFINITIONS.**

7 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against  
8 Tacos Los Desvelados, Tacos Los Desvelados Glendale, Inc., Tacos Los Desvelados West  
9 Covina, Inc., Tacos Los Desvelados Whittier, Inc., and Adolfo Valenzuela captioned “Ramona  
10 Silva-Heredia, on behalf of herself, and all others similarly situated, and as an ‘aggrieved  
11 employee’ on behalf of other ‘aggrieved employees’ under the Labor Code Private Attorneys  
12 General Act of 2004, *Plaintiff(s)*, vs. defendants Tacos Los Desvelados, Tacos Los Desvelados  
13 Glendale, Inc., Tacos Los Desvelados West Covina, Inc., Tacos Los Desvelados Whittier, Inc.,  
14 and Adolfo Valenzuela; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No.  
15 21STCV11103 initiated on March 19, 2021 and pending in Superior Court of the State of  
16 California, County of Los Angeles.

17 1.2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed  
18 to appoint to administer the Settlement.

19 1.3. “Administration Expenses Payment” means the amount the Administrator will be  
20 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in  
21 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection  
22 with Preliminary Approval of the Settlement.

23 1.4. “Aggrieved Employee” means a person employed by Defendants in California and  
24 classified as an hourly, non-exempt employee who worked for Defendants during the PAGA  
25 Period.

26 1.5. “Class” means all persons employed by Defendants in California and classified as  
27 hourly, non-exempt who worked for Defendants during the Class Period.

28 1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”  
mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and

1 expenses, respectively, incurred to prosecute the Action.

2 1.8. “Class Data” means Class Member identifying information in Defendants’  
3 possession including the Class Member’s name, last-known mailing address, Social Security  
4 number, and number of Class Period Workweeks and PAGA Pay Periods.

5 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as  
6 either a Participating Class Member or Non-Participating Class Member (including a Non-  
Participating Class Member who qualifies as an Aggrieved Employee).

7 1.10. “Class Member Address Search” means the Administrator’s investigation and  
8 search for current Class Member mailing addresses using all reasonably available sources,  
9 methods and means including, but not limited to, the National Change of Address database, skip  
10 traces, and direct contact by the Administrator with Class Members.

11 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION  
12 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to  
13 Class Members in English with a Spanish translation in the form, without material variation,  
attached as Exhibit A and incorporated by reference into this Agreement.

14 1.12. “Class Period” means the period from March 19, 2017 to May 31, 2022.

15 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the  
16 Action seeking Court approval to serve as a Class Representative.

17 1.14. “Class Representative Service Payment” means the payment to the Class  
Representative for initiating the Action and providing services in support of the Action.

18 1.15. “Court” means the Superior Court of California, County of Los Angeles.

19 1.16. “Defendants” means named defendants Tacos Los Desvelados, Tacos Los  
20 Desvelados Glendale, Inc., Tacos Los Desvelados West Covina, Inc., Tacos Los Desvelados  
21 Whittier, Inc., and Adolfo Valenzuela.

22 1.17. “Defense Counsel” means Roxana E. Verano of Landegger Verano & Davis, ALC.

23 1.18. “Effective Date” means the date by when both of the following have occurred: (a)  
24 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the  
25 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no  
26 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if  
27 one or more Participating Class Members objects to the Settlement, the day after the deadline for  
filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the

1 day after the appellate court affirms the Judgment and issues a remittitur.

2 1.19. “Final Approval” means the Court’s order granting final approval of the  
3 Settlement.

4 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final  
5 Approval of the Settlement.

6 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final  
7 Approval of the Settlement.

8 1.22. “Gross Settlement Amount” means \$200,000.00 which is the total amount  
9 Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross  
10 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,  
11 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative  
12 Service Payment and the Administrator’s Expenses. Defendants shall pay the Gross Settlement  
13 Amount in three instalments as follows: (1) \$66,666.00 due within 60 days of the Court’s order  
14 giving final approval of the Settlement or the Effective Date, whichever comes later, (2)  
15 \$66,667.00 due within one year of the Court’s order giving final approval of the Settlement or the  
16 Effective Date, whichever comes later, and (3) \$66,667 due within 2 years of the Court’s order  
17 giving final approval of the Settlement or the Effective Date, whichever comes later. There will  
18 be a distribution within 60 days of each installment payment.

19 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata  
20 share of the Net Settlement Amount calculated according to the number of Workweeks worked  
21 during the Class Period.

22 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of  
23 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the  
24 PAGA Period.

25 1.25. “Judgment” means the judgment entered by the Court based upon the Final  
26 Approval.

27 1.26. “LWDA” means the California Labor and Workforce Development Agency, the  
28 agency entitled, under Labor Code section 2699, subd. (i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the  
LWDA under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following

1 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA  
2 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel  
3 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be  
4 paid to Participating Class Members as Individual Class Payments.

5 1.29. “Non-Participating Class Member” means any Class Member who opts out of the  
6 Settlement by sending the Administrator a valid and timely Request for Exclusion.

7 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee  
8 worked for Defendants for at least one day during the PAGA Period.

9 1.31. “PAGA Period” means the period from March 08, 2020 to May 31, 2022.

10 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

11 1.33. “PAGA Notice” means Plaintiff’s March 08, 2021 letter to Defendants and the  
12 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

13 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from  
14 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,000) and the 75%  
15 to LWDA (\$3,000) in settlement of PAGA claims.

16 1.35. “Participating Class Member” means a Class Member who does not submit a valid  
17 and timely Request for Exclusion from the Settlement.

18 1.36. “Plaintiff” means Ramona Silva-Heredia, the named plaintiff in the Action.

19 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval  
20 of the Settlement.

21 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary  
22 Approval and Approval of PAGA Settlement.

23 1.39. “Released Class Claims” means the claims being released as described in  
24 Paragraph 6.2 below.

25 1.40. “Released PAGA Claims” means the claims being released as described in  
26 Paragraph 6.2 below.

27 1.41. “Released Parties” means: Defendants and each of their former and present  
28 directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,  
assigns subsidiaries, and affiliates.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request  
to be excluded from the Class Settlement signed by the Class Member.

1 1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class  
2 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)  
3 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or  
4 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having  
5 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond  
6 the Response Deadline has expired.

7 1.44. “Settlement” means the disposition of the Action effected by this Agreement and  
8 the Judgment.

9 1.45. “Workweek” means any week during which a Class Member worked for  
10 Defendants for at least one day, during the Class Period.

## 11 **2. RECITALS.**

12 2.1. On March 19, 2021, Plaintiff commenced this Action by filing a Complaint  
13 alleging causes of action against Defendants Tacos Los Desvelados, Tacos Los Desvelados  
14 Glendale, Inc., Tacos Los Desvelados West Covina, Inc., and Tacos Los Desvelados Whittier,  
15 Inc. for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest  
16 periods, failure to indemnify for business expenses, failure to issue proper wage statements,  
17 failure to timely pay wages, failure to maintain required payroll records, and related claims. On  
18 June 18, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against  
19 Defendants Tacos Los Desvelados, Tacos Los Desvelados Glendale, Inc., Tacos Los Desvelados  
20 West Covina, Inc., and Tacos Los Desvelados Whittier, Inc. for failure to pay wages, failure to  
21 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for  
22 business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to  
23 maintain required payroll records, and related allegations, and for recovery of civil penalties  
24 pursuant to Labor Code section 2698, *et seq.* On October 26, 2022, Plaintiff filed a Second  
25 Amended Complaint naming Adolfo Valenzuela as an individual defendant. The Second  
26 Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”)  
27 Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the  
28 laws identified in in the Operative Complaint and deny any and all liability for the causes of action  
alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written

notice to Defendants and the LWDA by sending the PAGA Notice.

2.3. On January 20, 2022, the Parties participated in an all-day mediation presided over by Steve Cerveris which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of comparable employees, the number of workweeks, the number of pay periods, average rates of pay, sample time records, sample payroll records, written policies, financial records, and related information. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### **3. MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$200,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants shall pay the Gross Settlement Amount in three instalments as follows: (1) \$66,666.00 due within 60 days of the Court's order giving final approval of the Settlement or the Effective Date, whichever comes later, (2) \$66,667.00 due within one year of the Court's order giving final approval of the Settlement or the Effective Date, whichever comes later, and (3) \$66,667 due within 2 years of the Court's order giving final approval of the Settlement or the Effective Date, whichever comes later. There will be a distribution within 60 days of each installment payment. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by

the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member or Aggrieved Employee). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$66,666.00 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendants will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$12,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$12,500.00, the

1 Administrator will retain the remainder in the Net Settlement Amount.

2 3.2.4. To Each Participating Class Member: An Individual Class Payment  
3 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked  
4 by all Participating Class Members during the Class Period and (b) multiplying the result by each  
5 Participating Class Member's Workweeks.

6 3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each  
7 Participating Class Member's Individual Class Payment will be allocated to settlement of wage  
8 claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be  
9 reported on an IRS W-2 Form. 90% of each Participating Class Member's Individual Class  
10 Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage  
11 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on  
12 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any  
13 employee taxes owed on their Individual Class Payment.

14 3.2.4.2. Effect of Non-Participating Class Members on Calculation  
15 of Individual Class Payments. Non-Participating Class Members will not receive any Individual  
16 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments  
17 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

18 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the  
19 amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000) allocated  
20 to the LWDA PAGA Payment and 25% (\$1,000) allocated to the Individual PAGA Payments.

21 3.2.5.1. The Administrator will calculate each Individual PAGA Payment  
22 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000  
23 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA  
24 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.  
25 Aggrieved Employees assume full responsibility and liability for any taxes owed on their  
26 Individual PAGA Payment.

27 3.2.5.2. If the Court approves PAGA Penalties of less than the amount  
28 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The  
Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of  
3 its records to date, Defendants estimate there are 140 Class Members who collectively worked a  
4 total of 6,451 Workweeks, and 90 Aggrieved Employees who worked a total 2,694 of PAGA Pay  
5 Periods.

6 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval  
7 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in  
8 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the  
9 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes  
10 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator  
11 employees who need access to the Class Data to effect and perform under this Agreement.  
12 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the  
13 Class Data omitted class member identifying information and to provide corrected or updated  
14 Class Data as soon as reasonably feasible. Without any extension of the deadline by which  
15 Defendants must send the Class Data to the Administrator, the Parties and their counsel will  
16 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related  
17 to missing or omitted Class Data.

18 4.3. Funding of Gross Settlement Amount. Defendants shall fund the Gross  
19 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll  
20 taxes, in three installments by transmitting the funds to the Administrator as follows: (1)  
21 \$66,666.00 due within 60 days of the Court's order giving final approval of the Settlement or the  
22 Effective Date, whichever comes later, (2) \$66,667.00 due within one year of the Court's order  
23 giving final approval of the Settlement or the Effective Date, whichever comes later, and (3)  
24 \$66,667 due within 2 years of the Court's order giving final approval of the Settlement or the  
25 Effective Date, whichever comes later. If Defendants fail to timely make an installment payment  
26 as set forth in this Agreement, Defendants shall have fourteen (14) calendar days from the last  
27 day the payment is due to cure the untimely installment payment. Defendants shall make any  
28 payment under this provision pursuant to the Settlement Administrator's electronic transfer  
instructions. Defendants' payment obligations with respect to the Gross Settlement Amount,  
Defendants' share of payroll taxes, and to any cure shall be met upon initiating the electronic  
transfer of funds to the Administrator, pursuant to the Administrator's instructions. In the event

1 of an unsuccessful electronic transfer of funds, the Parties agree to cooperate in good faith to  
2 resolve the issues.

3 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants  
4 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class  
5 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration  
6 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses  
7 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees  
8 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service  
9 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA  
Payments.

10 4.4.1. The Administrator will issue checks for the Individual Class Payments  
11 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,  
12 postage prepaid. The face of each check shall prominently state the date (not less than 180 days  
13 after the date of mailing) when the check will be voided. The Administrator will cancel all checks  
14 not cashed by the void date. The Administrator will send checks for Individual Settlement  
15 Payments to all Participating Class Members (including those for whom Class Notice was  
16 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all  
17 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved  
18 Employees (including those for whom Class Notice was returned undelivered). The  
19 Administrator may send Participating Class Members a single check combining the Individual  
Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator  
must update the recipients' mailing addresses using the National Change of Address Database.

20 4.4.2. The Administrator must conduct a Class Member Address Search for all  
21 other Class Members whose checks are returned undelivered without USPS forwarding address.  
22 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS  
23 forwarding address provided or to an address ascertained through the Class Member Address  
24 Search. The Administrator need not take further steps to deliver checks to Class Members whose  
25 re-mailed checks are returned as undelivered. The Administrator shall promptly send a  
26 replacement check to any Class Member whose original check was lost or misplaced, requested  
by the Class Member prior to the void date.

27 4.4.3. For any Class Member whose Individual Class Payment check or

1 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator  
2 shall transmit the funds represented by such checks to the California Controller's Unclaimed  
3 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to  
4 the requirements of California Code of Civil Procedure Section 384, subd. (b).

5 4.4.4. The payment of Individual Class Payments and Individual PAGA  
6 Payments shall not obligate Defendants to confer any additional benefits or make any additional  
7 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in  
8 this Agreement.

9 **5. [OMITTED]**

10 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire  
11 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the  
12 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims  
13 against all Released Parties as follows:

14 6.1 Plaintiff's Release. In addition to the Released Class Claims and Released PAGA  
15 Claims described below, Plaintiff and her respective former and present spouses, representatives,  
16 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge  
17 Released Parties from all claims, demands, rights, liabilities and causes of action of every nature  
18 and description whatsoever, whether known or unknown, asserted or that might have been  
19 asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or  
20 regulation arising out of, relating to, or in connection with any act or omission of the Released  
21 Parties through the date of full execution of this Settlement Agreement in connection with his or  
22 her employment or the termination thereof. ("Plaintiff's Release.") Plaintiff's Release does not  
23 extend to any claims or actions to enforce this Agreement, or to those rights that as a matter of  
24 law cannot be waived, including, but not limited to any claims for vested benefits, unemployment  
25 benefits, disability benefits, social security benefits, or workers' compensation benefits that arose  
26 at any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in  
27 addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless,  
28 that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different  
or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For  
purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,

1 and benefits, if any, of section 1542 of the California Civil Code, which reads:

2  
3 **A general release does not extend to claims that the creditor or releasing party does**  
4 **not know or suspect to exist in his or her favor at the time of executing the release,**  
5 **and that if known by him or her would have materially affected his or her settlement**  
6 **with the debtor or Released Party.**

7 6.2 Release Class Claims by Participating Class Members: All Participating Class  
8 Members, on behalf of themselves and their respective former and present representatives, agents,  
9 attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims  
10 that were alleged, or reasonably could have been alleged, in the Operative Complaint, and  
11 ascertained in the course of the Action, that arose during the Class Period including with respect  
12 to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay minimum  
13 wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods;  
14 (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods;  
15 (e) failure to issue accurate, itemized wage statements and maintain payroll records; (f) failure to  
16 pay all wages due upon separation of employment; (g) failure to reimburse for necessary business  
17 expenses; (h) all claims under California Business & Professions Code § 17200 for unfair  
18 business practices that could have been premised on the facts, claims, causes of action or legal  
19 theories described above; (i) violation of or claims under the following sections of the California  
20 Labor Code sections 201, 202, 203, 204, 206, 218.6, 226, 226.3, 226.7, 510, 512, 1174, 1182.12,  
21 1194, 1194.2, 1197, 1197.1, 1198, 2802; and (j) violation of the California Industrial Wage  
22 Orders that could have been premised on the facts, claims, causes of action or legal theories  
23 described above, as well as any potential penalties, interest or attorneys' fees associated with all  
24 of such causes of action under California law. ("Released Class Claims"). Except as set forth in  
25 Section 6.3 of this Agreement, Participating Class Members do not release any other claims,  
26 including claims for vested benefits, wrongful termination, violation of the Fair Employment and  
27 Housing Act, unemployment insurance, disability, social security, workers' compensation, or  
28 claims based on facts occurring outside the Class Period.

26 6.3 Release PAGA Claims by Aggrieved Employees: All Class Members who are  
27 Aggrieved Employees, regardless of whether they are Participating Class Members or Non-

1 Participating Class Members, are deemed to release, on behalf of themselves and their respective  
2 former and present representatives, agents, attorneys, heirs, administrators, successors, and  
3 assigns, the Released Parties from all claims demands, rights, liabilities and causes of action under  
4 the California Labor Code Private Attorneys General Act that were alleged, or reasonably could  
5 have been alleged, based on the claims asserted in the Operative Complaint, the PAGA Notice  
6 and ascertained in the course of the Action arising during or with respect to the PAGA Period.  
7 (“Released PAGA Claims”). The foregoing release shall be binding on Plaintiff, the Aggrieved  
8 Employees, and the State of California, and shall bar by res judicata any claim under the PAGA  
9 brought by any person, including the Aggrieved Employees, on behalf of the State of California,  
10 as to any claims predicated on the Released PAGA Claims.

11 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and  
12 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with  
13 the Court’s current checklist for Preliminary Approvals.

14 7.1 Defendants’ Declaration in Support of Preliminary Approval. Within 20\_ days  
15 of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a  
16 signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any  
17 actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their  
18 Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other  
19 pending matter or action asserting claims that will be extinguished or adversely affected by the  
20 Settlement.

21 7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel  
22 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,  
23 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis  
24 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under  
25 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval  
26 and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration  
27 from the Administrator attaching its “not to exceed” bid for administering the Settlement and  
28 attesting to its willingness to serve; competency; operative procedures for protecting the security  
of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other  
misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;

1 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense  
2 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve  
3 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,  
4 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its  
5 competency to represent the Class Members; its timely transmission to the LWDA of all necessary  
6 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative  
7 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,  
8 subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to  
9 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or  
10 potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient.  
11 In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware  
12 of any other pending matter or action asserting claims that will be extinguished or adversely  
13 affected by the Settlement.

14 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly  
15 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later  
16 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the  
17 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion  
18 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary  
19 Approval to the Administrator.

20 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion  
21 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and  
22 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person  
23 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant  
24 Preliminary Approval or conditions Preliminary Approval on any material change to this  
25 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of  
26 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and  
27 otherwise satisfy the Court's concerns.

## 28 **8. SETTLEMENT ADMINISTRATION.**

29 8.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to  
30 serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc.

1 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this  
2 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel  
3 represent that they have no interest or relationship, financial or otherwise, with the Administrator  
4 other than a professional relationship arising out of prior experiences administering settlements.

5 8.2 Employer Identification Number. The Administrator shall have and use its own  
6 Employer Identification Number for purposes of calculating payroll tax withholdings and  
7 providing reports state and federal tax authorities.

8 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund  
9 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury  
10 Regulation section 468B-1.

11 8.4 Notice to Class Members.

12 8.4.1 No later than three (3) business days after receipt of the Class Data, the  
13 Administrator shall notify Class Counsel that the list has been received and state the number of  
14 Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

15 8.4.2 Using best efforts to perform as soon as possible, and in no event later than  
16 14 days after receiving the Class Data, the Administrator will send to all Class Members identified  
17 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice  
18 with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The  
19 first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class  
20 Payment and/or Individual PAGA Payment payable to the Class Member, and the number of  
21 Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing  
22 Class Notices, the Administrator shall update Class Member addresses using the National Change  
23 of Address database.

24 8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class  
25 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice  
26 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding  
27 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class  
28 Notice to the most current address obtained. The Administrator has no obligation to make further  
attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the  
USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, challenges to

1 Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14  
2 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose  
3 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline  
4 with the re-mailed Class Notice.

5 8.4.5 If the Administrator, any of the Defendants, Defense Counsel or Class  
6 Counsel is contacted by or otherwise discovers any persons who believe they should have been  
7 included in the Class Data and should have received Class Notice, the Parties will expeditiously  
8 meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to  
9 include them as Class Members. If the Parties agree, such persons will be Class Members entitled  
10 to the same rights as other Class Members, and the Administrator will send, via email or overnight  
11 delivery, a Class Notice requiring them to exercise options under this Agreement not later than  
12 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are  
13 later.

#### 14 8.5 Requests for Exclusion (Opt-Outs).

15 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class  
16 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for  
17 Exclusion no later than 60 days after the Administrator mails the Class Notice (plus an additional  
18 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter  
19 from a Class Member or his/her representative that reasonably communicates the Class Member's  
20 election to be excluded from the Settlement and includes the Class Member's name, address and  
21 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,  
22 emailed, or postmarked by the Response Deadline.

23 8.5.2 The Administrator may not reject a Request for Exclusion as invalid  
24 because it fails to contain all the information specified in the Class Notice. The Administrator  
25 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the  
26 identity of the person as a Class Member and the Class Member's desire to be excluded. The  
27 Administrator's determination shall be final and not appealable or otherwise susceptible to  
28 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,  
the Administrator may demand additional proof of the Class Member's identity. The  
Administrator's determination of authenticity shall be final and not appealable or otherwise  
susceptible to challenge.

1           8.5.3 Every Class Member who does not submit a timely and valid Request for  
2 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all  
3 benefits and bound by all terms and conditions of the Settlement, including the Participating Class  
4 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the  
5 Participating Class Member actually receives the Class Notice or objects to the Settlement.

6           8.5.4 Every Class Member who submits a valid and timely Request for  
7 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment  
8 or have the right to object to the class action components of the Settlement. Because future PAGA  
9 claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class  
10 Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph  
11 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

12           8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days  
13 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members  
14 whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay  
15 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may  
16 challenge the allocation by communicating with the Administrator via fax, email or mail. The  
17 Administrator must encourage the challenging Class Member to submit supporting  
18 documentation. In the absence of any contrary documentation, the Administrator is entitled to  
19 presume that the Workweeks contained in the Class Notice are correct so long as they are  
20 consistent with the Class Data. The Administrator's determination of each Class Member's  
21 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise  
22 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to  
23 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the  
24 Administrator's determination of the challenges.

25           8.7 Objections to Settlement.

26           8.7.1 Only Participating Class Members may object to the class action  
27 components of the Settlement and/or this Agreement, including contesting the fairness of the  
28 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel  
Litigation Expenses Payment and/or Class Representative Service Payment.

          8.7.2 Participating Class Members may send written objections to the  
Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear

1 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval  
2 Hearing. A Participating Class Member who elects to send a written objection to the  
3 Administrator must do so not later than 60 days after the Administrator's mailing of the Class  
4 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

5 8.7.3 Non-Participating Class Members have no right to object to any of the class  
6 action components of the Settlement.

7 8.8 Administrator Duties. The Administrator has a duty to perform or observe all  
8 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

9 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will  
10 establish and maintain and use an internet website to post information of interest to Class  
11 Members including the date, time and location for the Final Approval Hearing and copies of the  
12 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class  
13 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class  
14 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final  
15 Approval and the Judgment. The Administrator will also maintain and monitor an email address  
16 and a toll-free telephone number to receive Class Member calls, faxes and emails.

17 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator  
18 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not  
19 later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion,  
20 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the  
21 names and other identifying information of Class Members who have timely submitted valid  
22 Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of  
23 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for  
24 Exclusion from Settlement submitted (whether valid or invalid).

25 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide  
26 written reports to Class Counsel and Defense Counsel that, among other things, tally the number  
27 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for  
28 Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks  
and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments  
and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide  
the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all

1 Requests for Exclusion and objections received.

2 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the  
3 authority to address and make final decisions consistent with the terms of this Agreement on all  
4 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The  
5 Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

6 8.8.5 Administrator's Declaration. Not later than 14 days before the date by  
7 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the  
8 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable  
9 for filing in Court attesting to its due diligence and compliance with all of its obligations under  
10 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices  
11 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the  
12 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the  
13 number of written objections and attach the Exclusion List. The Administrator will supplement  
14 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible  
15 for filing the Administrator's declaration(s) in Court.

16 8.8.6 Final Report by Administrator. Within 10 days after the Administrator  
17 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel  
18 and Defense Counsel with a final report detailing its disbursements by employee identification  
19 number only of all payments made under this Agreement. At least 15 days before any deadline  
20 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense  
21 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all  
22 payments required under this Agreement. Class Counsel is responsible for filing the  
23 Administrator's declaration in Court.

24 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,  
25 Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 140 Class  
26 Members and 6,451 Total Workweeks during the Class period and (2) there were 90 Aggrieved  
27 Employees who worked 2,637 Pay Periods during the PAGA Period. If the number of Workweeks  
28 as of the date the Court approves the settlement exceeds the referenced 6,451 Workweeks by more  
than 15%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class  
Representative Payment, and the LWDA payment, will increase proportionally according to the

1 number of additional Workweeks above the 15% increase. .

2  
3 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for  
4 Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members,  
5 Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties  
6 agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect  
7 whatsoever, and that neither Party will have any further obligation to perform under this  
8 Agreement; provided, however, Defendants will remain responsible for paying all Settlement  
9 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the  
10 Court of its election to withdraw not later than seven (7) days after the Administrator sends the  
11 final Exclusion List to Defense Counsel; late elections will have no effect.

12 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared  
13 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement  
14 that includes a request for approval of the PAGA settlement under Labor Code section 2699,  
15 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for  
16 Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later  
17 than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense  
18 Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve  
19 any disagreements concerning the Motion for Final Approval.

20 **11.1 Response to Objections.** Each Party retains the right to respond to any objection  
21 raised by a Participating Class Member, including the right to file responsive documents in Court  
22 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or  
23 accepted by the Court.

24 **11.2 Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final  
25 Approval on any material change to the Settlement (including, but not limited to, the scope of  
26 release to be granted by Class Members), the Parties will expeditiously work together in good  
27 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final  
28 Approval. The Court's decision to award less than the amounts requested for the Class  
Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation  
Expenses Payment and/or Administrator Expenses Payment shall not constitute a material

1 modification to the Agreement within the meaning of this paragraph.

2 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of  
3 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for  
4 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement  
administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

5 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms  
6 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and  
7 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their  
8 respective counsel, and all Participating Class Members who did not object to the Settlement as  
9 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to  
10 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions  
11 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver  
12 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the  
13 Parties' obligations to perform under this Agreement will be suspended until such time as the  
14 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect  
the amount of the Net Settlement Amount.

15 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If  
16 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a  
17 material modification of this Agreement (including, but not limited to, the scope of release to be  
18 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless  
19 expeditiously work together in good faith to address the appellate court's concerns and to obtain  
20 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration  
21 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify  
22 the Court's award of the Class Representative Service Payment or any payments to Class Counsel  
23 shall not constitute a material modification of the Judgment within the meaning of this paragraph,  
as long as the Gross Settlement Amount remains unchanged.

24 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil  
25 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed  
26 amended judgment.

1 **13. ADDITIONAL PROVISIONS.**

2 13.1 No Admission of Liability, Class Certification or Representative Manageability  
3 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed  
4 claims. Nothing in this Agreement is intended or should be construed as an admission by  
5 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants  
6 have any liability for any claims asserted; nor should it be intended or construed as an admission  
7 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class  
8 certification and representative treatment is for purposes of this Settlement only. If, for any reason  
9 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants  
10 reserve the right to contest certification of any class for any reasons, and Defendants reserve all  
11 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class  
12 certification on any grounds available and to contest Defendants' defenses. The Settlement, this  
13 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be  
admissible in connection with, any litigation (except for proceedings to enforce or effectuate the  
Settlement and this Agreement).

14 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,  
15 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval  
16 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or  
17 cause or permit another person to disclose, disseminate or publicize, any of the terms of the  
18 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,  
19 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,  
20 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;  
21 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a  
22 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal  
government agency.

23 Each Party agrees to immediately notify each other Party of any judicial or agency  
24 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and  
25 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other  
26 communication, before the filing of the Motion for Preliminary Approval, any with third party  
27 regarding this Agreement or the matters giving rise to this Agreement except to respond only that  
"the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's

1 communications with Class Members in accordance with Class Counsel's ethical obligations  
2 owed to Class Members.

3 13.3 No Solicitation. The Parties separately agree that they and their respective  
4 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,  
5 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class  
6 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical  
obligations owed to Class Members.

7 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this  
8 Agreement together with its attached exhibits shall constitute the entire agreement between the  
9 Parties relating to the Settlement, superseding any and all oral representations, warranties,  
covenants, or inducements made to or by any Party.

10 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant  
11 and represent that they are authorized by Plaintiff 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 reasonably required to effectuate the  
14 terms of this Agreement including any amendments to this Agreement.

15 13.6 Cooperation. The Parties and their counsel will cooperate with each other and  
16 use their best efforts, in good faith, to implement the Settlement by, among other things,  
17 modifying the Settlement Agreement, submitting supplemental evidence and supplementing  
18 points and authorities as requested by the Court. In the event the Parties are unable to agree upon  
19 the form or content of any document necessary to implement the Settlement, or on any  
20 modification of the Agreement that may become necessary to implement the Settlement, the  
Parties will seek the assistance of a mediator and/or the Court for resolution.

21 13.7 No Prior Assignments. The Parties separately represent and warrant that they  
22 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,  
23 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
action, or right released and discharged by the Party in this Settlement.

24 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense  
25 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this  
26 Settlement be relied upon as such within the meaning of United States Treasury Department  
27 Circular 230 (31 CFR Part 10, as amended) or otherwise.

1           13.9    Modification of Agreement. This Agreement, and all parts of it, may be  
2 amended, modified, changed, or waived only by an express written instrument signed by all  
3 Parties or their representatives, and approved by the Court.

4           13.10 Agreement Binding on Successors. This Agreement will be binding upon, and  
5 inure to the benefit of, the successors of each of the Parties.

6           13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will  
7 be governed by and interpreted according to the internal laws of the state of California, without  
8 regard to conflict of law principles.

9           13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and  
10 preparation of this Agreement. This Agreement will not be construed against any Party on the  
11 basis that the Party was the drafter or participated in the drafting.

12           13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders  
13 entered during Action and in this Agreement relating to the confidentiality of information shall  
14 survive the execution of this Agreement.

15           13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant  
16 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class  
17 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in  
18 connection with the Settlement, may be used only with respect to this Settlement, and no other  
19 purpose, and may not be used in any way that violates any existing contractual agreement, statute,  
20 or rule of court. Not later than 90 days after the date when the Court discharges the  
21 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement  
22 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from  
23 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants  
24 make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

25           13.15 Headings. The descriptive heading of any section or paragraph of this Agreement  
26 is inserted for convenience of reference only and does not constitute a part of this Agreement.

27           13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement  
28 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a  
weekend or federal legal holiday, such date or deadline shall be on the first business day  
thereafter.

          13.17 Notice. All notices, demands or other communications between the Parties in

1 connection with this Agreement will be in writing and deemed to have been duly given as of the  
2 third business day after mailing by United States mail, or the day sent by email or messenger,  
3 addressed as follows:

4 To Plaintiff:  
5 David G. Spivak, Esq.  
6 The Spivak Law Firm  
7 8605 Santa Monica Bl  
8 PMB 42554  
9 West Hollywood, CA 90069  
10 david@spivaklaw.com

11 To Defendants:  
12 Roxana E. Verano, Esq.  
13 Landegger Verano & Davis, ALC  
14 15760 Ventura Blvd.  
15 Ste 1200  
16 Encino, CA 91436  
17 roxana@landeggeresq.com

18 13.18 Execution in Counterparts. This Agreement may be executed in one or more  
19 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this  
20 Agreement shall be accepted as an original. All executed counterparts and each of them will be  
21 deemed to be one and the same instrument if counsel for the Parties will exchange between  
22 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove  
23 the existence and contents of this Agreement.

24 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement  
25 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further  
26 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the  
27 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement  
28 process.

29 Dated: 10 / 29 / 2022

By:



RAMONA SILVA-HEREDIA

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Dated:

By: \_\_\_\_\_  
Adolfo Valenzuela  
for himself and for  
Tacos Los Desvelados, Tacos Los  
Desvelados Glendale, Inc., Tacos Los  
Desvelados West Covina, Inc., and  
Tacos Los Desvelados Whittier, Inc.

THE SPIVAK LAW FIRM

Dated: 10 / 28 / 2022

By:  \_\_\_\_\_  
DAVID G. SPIVAK, Attorneys for  
Plaintiff, RAMONA SILVA-  
HEREDIA, and all others similarly  
situated

LANDEGGER VERANO & DAVIS, ALC

Dated:

By: \_\_\_\_\_  
ROXANA E. VERANO, Attorneys for  
Defendants, Tacos Los Desvelados,  
Tacos Los Desvelados Glendale, Inc.,  
Tacos Los Desvelados West Covina,  
Inc., Tacos Los Desvelados Whittier,  
Inc., and Adolfo Valenzuela

1 Dated: November 4, 2022

By: Adolfo Valenzuela  
Adolfo Valenzuela  
for himself and for  
Tacos Los Desvelados, Tacos Los  
Desvelados Glendale, Inc., Tacos Los  
Desvelados West Covina, Inc., and  
Tacos Los Desvelados Whittier, Inc.

6 THE SPIVAK LAW FIRM

8 Dated:

By: DAVID G. SPIVAK, Attorneys for  
Plaintiff, RAMONA SILVA-  
HEREDIA, and all others similarly  
situated

14 LANDEGGER VERANO & DAVIS, ALC

16 Dated: November 7, 2022

By: Roxana E. Verano  
ROXANA E. VERANO, Attorneys for  
Defendants, Tacos Los Desvelados,  
Tacos Los Desvelados Glendale, Inc.,  
Tacos Los Desvelados West Covina,  
Inc., Tacos Los Desvelados Whittier,  
Inc., and Adolfo Valenzuela

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# EXHIBIT A

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

3     *Ramona Silva-Heredia v. Tacos Los Desvelados, et al., Case No. 21STCV11103*

4     ***The Superior Court for the State of California authorized this Notice. Read it carefully!***  
5     ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

6     **You may be eligible to receive money** from an employee class action lawsuit (“Action”) against Tacos Los Desvelados, Tacos Los Desvelados Glendale, Inc., Tacos Los Desvelados West Covina, Inc., Tacos Los Desvelados Whittier, Inc., and Adolfo Valenzuela (collectively “Defendants”) for alleged wage and hour violations. The Action was filed by former Defendants’ employee Ramona Silva-Heredia (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Defendants in California during the Class Period (March 19, 2017 to May 31, 2022); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly, non-exempt employees who worked for Defendants in California during the PAGA Period (March 08, 2020 to May 31, 2022) (“Aggrieved Employees”).

12     The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

15     Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$\_\_\_ (less withholding) and your Individual PAGA Payment is estimated to be \$\_\_\_**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

19     The above estimates are based on Defendants’ records showing that **you worked \_\_\_ Workweeks** during the Class Period and **you worked \_\_\_ Pay Periods** during the PAGA Period. If you believe that you worked more Workweeks or Pay Periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

22     The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

**Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.**

#### SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

|                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don't Have to Do Anything to Participate in the Settlement</b>                                                                                        | If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b><br><br><b>The Opt-out Deadline is</b><br>—                                        | <p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).</p> |
| <b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b><br><br><b>Written Objections Must be Submitted by</b><br>— | All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.       |

|                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>You Can Participate in the ____ Final Approval Hearing</b></p>                                                                       | <p>The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section <b>8</b> of this Notice.</p>                                                                                                        |
| <p><b>You Can Challenge the Calculation of Your Work Week / Pay Periods</b></p> <p><b>Written Challenges Must be Submitted by ____</b></p> | <p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Work Weeks and number of PAGA Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section <b>4</b> of this Notice.</p> |

**1. WHAT IS THE ACTION ABOUT?**

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

**2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and

(2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

**3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

1. Defendants Will Pay \$200,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. Defendants shall pay the Gross Settlement Amount in three instalments as follows: (1) \$66,666.00 due within 60 days of the Court's order giving final approval of the Settlement or the Effective Date, whichever comes later, (2) \$66,667.00 due within one year of the Court's order giving final approval of the Settlement or the Effective Date, whichever comes later, and (3) \$66,667 due within 2 years of the Court's order giving final approval of the Settlement or the Effective Date, which ever is later. There will be a distribution within 60 days of each installment payment. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants will fund the first installment of the Gross Settlement within 60 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to \$66,666.00 (33.33%) of the Gross Settlement to Class Counsel for attorneys' fees and up to \$15,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$5,000.00 as a Class Representative Award for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

C. Up to \$12,500.00 to the Administrator for services administering the Settlement.

D. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

1  
2 If the number of Workweeks as of the date the Court approves the settlement exceeds the  
3 referenced 6,451 Workweeks by more than 15%, the Gross Settlement Amount, including the  
4 Class Counsel Fees Payment, the Class Representative Payment, and the LWDA payment, will  
increase proportionally according to the number of additional Workweeks above the 15%  
increase.

5 3. Net Settlement Distributed to Class Members. After making the above deductions  
6 in amounts approved by the Court, the Administrator will distribute the rest of the Gross  
7 Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class  
Members based on their Class Period Workweeks.

8 4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking  
9 the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages  
10 (“Wage Portion”) and 90% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is  
11 subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay  
12 employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are  
counted as penalties rather than wages for tax purposes. The Administrator will report the  
Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS  
1099 Forms.

13 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving  
14 you any advice on whether your Payments are taxable or how much you might owe in taxes. You  
15 are responsible for paying all taxes (including penalties and interest on back taxes) on any  
16 Payments received from the proposed Settlement. You should consult a tax advisor if you have  
any questions about the tax consequences of the proposed Settlement.

17 5. Need to Promptly Cash Payment Checks. The front of every check issued for  
18 Individual Class Payments and Individual PAGA Payments will show the date when the check  
19 expires (the void date). If you don’t cash it by the void date, your check will be automatically  
cancelled, and the monies  
will be deposited with the California Controller’s Unclaimed Property Fund in your name.

20 If the monies represented by your check is sent to the Controller’s Unclaimed Property,  
21 you should consult the rules of the Fund for instructions on how to retrieve your money.

22 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated  
23 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the  
24 Administrator in writing, not later than \_\_\_, that you wish to opt-out. The easiest way to notify  
25 the Administrator is to send a written and signed Request for Exclusion by the \_\_\_ Response  
26 Deadline. The Request for Exclusion should be a letter from a Class Member or his/her  
representative setting forth a Class Member’s name, present address, telephone number, and a  
simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e.,  
Non-Participating Class Members) will not receive Individual Class Payments, but will preserve  
their rights to personally pursue wage and hour claims against Defendants.

1 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude  
2 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for  
3 Individual PAGA Payments and are required to give up their right to assert PAGA claims against  
4 Defendants based on the PAGA Period facts alleged in the Action.

5 7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is  
6 possible the Court will decline to grant Final Approval of the Settlement or decline enter a  
7 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs  
8 and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not  
9 pay any money and Class Members will not release any claims against Defendants.

10 8. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the  
11 “Administrator”) to send this Notice, calculate and make payments, and process Class Members’  
12 Requests for Exclusion. The Administrator will also decide Class Member Challenges over  
13 Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary  
14 to administer the Settlement. The Administrator’s contact information is contained in Section 9  
15 of this Notice.

16 9. Participating Class Members’ Release. After the Judgment is final and Defendants  
17 have fully funded the Gross Settlement (and separately paid all employer payroll taxes),  
18 Participating Class Members will be legally barred from asserting any of the Released Class  
19 Claims released under the Settlement. This means that unless you opted out by validly excluding  
20 yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit  
21 against Defendants or related entities for wages based on the Class Period facts and PAGA  
22 penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

23 The Participating Class Members will be bound by the release of the following Released  
24 Class Claims:

25 All Participating Class Members, on behalf of themselves and their respective former and  
26 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,  
27 release Released Parties from all claims that were alleged, or reasonably could have been  
28 alleged, in the Operative Complaint that arose during the Class Period including with  
29 respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to  
30 pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-  
31 compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay  
32 for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements and  
33 maintain payroll records; (f) failure to pay all wages due upon separation of employment;  
34 (g) failure to reimburse for necessary business expenses; (h) all claims under California  
35 Business & Professions Code § 17200 for unfair business practices that could have been  
36 premised on the facts, claims, causes of action or legal theories described above; (i)  
37 violation of or claims under the following sections of the California Labor Code sections  
38 201, 202, 203, 204, 206, 218.6, 226, 226.3, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2,  
39 1197, 1197.1, 1198, 2802; and (j) violation of the California Industrial Wage Orders that  
40 could have been premised on the facts, claims, causes of action or legal theories described  
41 above, as well as any potential penalties, interest or attorneys’ fees associated with all of

1 such causes of action under California law. Except for the release of the Released PAGA  
2 Claims by Aggrieved Employees (see below), Participating Class Members do not release  
3 any other claims, including claims for vested benefits, wrongful termination, violation of  
4 the Fair Employment and Housing Act, unemployment insurance, disability, social  
security, workers' compensation, or claims based on facts occurring outside the Class  
Period.

5 10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and  
6 Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes),  
7 all Aggrieved Employees will be barred from asserting any of the Released PAGA Claims  
8 against Defendants, whether or not they exclude themselves from the Settlement. This means that  
9 all Aggrieved Employees, including those who are Participating Class Members and those who  
opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA  
claim against Defendants or their related entities based on the PAGA Period facts alleged in the  
Action and resolved by this Settlement.

10 The Aggrieved Employees' will be bound by the release of the following "Released  
11 PAGA Claims":

12 All Class Members who are Aggrieved Employees, regardless of whether they are  
13 Participating Class Members or Non-Participating Class Members, are deemed to release, on  
14 behalf of themselves and their respective former and present representatives, agents, attorneys,  
15 heirs, administrators, successors, and assigns, the Released Parties from all claims, demands,  
16 rights, liabilities and causes of action under the California Labor Code Private Attorneys General  
17 Act that were alleged, or reasonably could have been alleged, based on the claims asserted in the  
18 Operative Complaint, the PAGA Notice and ascertained in the course of the Action, arising during  
or with respect to the PAGA Period. The foregoing release shall be binding on Plaintiff, the  
Aggrieved Employees, and the State of California, and shall bar by res judicata any claim under  
the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of  
California, as to any claims predicated on the Released PAGA Claims.

#### 19 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

20 1. Individual Class Payments. The Administrator will calculate Individual Class  
21 Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked  
22 by all Participating Class Members, and (b) multiplying the result by the number of Workweeks  
worked by each individual Participating Class Member.

23 2. Individual PAGA Payments. The Administrator will calculate Individual PAGA  
24 Payments by (a) dividing \$1,000 by the total number of PAGA Pay Periods worked by all  
25 Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked  
by each individual Aggrieved Employee.

26 3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked  
27 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA  
Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have

1 until \_\_\_\_ to challenge the number of Workweeks and/or Pay Periods credited to you. You can  
2 submit your challenge by signing and sending a letter to the Administrator via mail, email or fax.  
Section 9 of this Notice has the Administrator's contact information.

3 You need to support your challenge by sending copies of pay stubs or other records. The  
4 Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on  
5 Defendants' records as accurate unless you send copies of records containing contrary  
6 information. You should send copies rather than originals because the documents will not be  
7 returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based  
on your submission and on input from Class Counsel (who will advocate on behalf of  
Participating Class Members) and Defendants' Counsel. The Administrator's decision is final.  
You can't appeal or otherwise challenge its final decision.

## 8 **5. HOW WILL I GET PAID?**

9  
10 1. Participating Class Members. The Administrator will send, by U.S. mail, a single  
check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)  
11 including those who also qualify as Aggrieved Employees. The single check will combine the  
Individual Class Payment and the Individual PAGA Payment.

12 2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a  
13 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class  
Settlement (i.e., every Non-Participating Class Member).

14  
15 **Your check will be sent to the same address as this Notice. If you change your**  
16 **address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has**  
**the Administrator's contact information.**

## 17 **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

18 Submit a written and signed letter with your name, present address, telephone number,  
19 and a simple statement that you do not want to participate in the Settlement. The Administrator  
will exclude you based on any writing communicating your request be excluded. Be sure to  
20 personally sign your request, identify the Action as *Ramona Silva-Heredia vs. Tacos Los*  
*Desvelados, et al.*, Case No. 21STCV11103, and include your identifying information (full name,  
21 address, telephone number, approximate dates of employment, and social security number for  
verification purposes). You must make the request yourself. If someone else makes the request  
22 for you, it will not be valid. **The Administrator must be sent your request to be excluded by**  
23 **\_\_\_\_, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## 24 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

25 Only Participating Class Members have the right to object to the Settlement. Before deciding  
26 whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to  
approve. At least \_\_\_\_ days before the \_\_\_\_ Final Approval Hearing, Class Counsel and/or Plaintiff  
27 will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons

1 why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service  
2 Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation  
3 expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award.  
4 Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice)  
will send you copies of these documents at no cost to you. You can also view them on the  
Administrator's Website ([url](#)) or the Court's website ([url](#)).

5 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for  
6 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to  
7 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class  
8 Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the  
Administrator is \_\_\_\_.** Be sure to tell the Administrator what you object to, why you object, and  
9 any facts that support your objection. Make sure you identify the Action, *Ramona Silva-Heredia*  
10 *vs. Tacos Los Desvelados*, case no. 21STCV11103, and include your name, current address,  
11 telephone number, and approximate dates of employment for Defendants and sign the objection.  
12 Section 9 of this Notice has the Administrator's contact information.

13 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at  
14 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready  
15 to tell the Court what you object to, why you object, and any facts that support your objection.  
16 See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval  
17 Hearing.

## 18 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

19 You can, but don't have to, attend the Final Approval Hearing on \_\_\_\_ at (**time**) in Department 17  
20 of the Los Angeles Superior Court, located at Spring Street Courthouse, 312 North Spring Street,  
21 Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval  
22 of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff,  
23 and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense  
24 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally  
25 or virtually via \_\_\_\_ ([https://www. \\_\\_\\_\\_](https://www. ____)). Check the Court's website for the most current  
26 information.

27 It's possible the Court will reschedule the Final Approval Hearing. You should check the  
28 Administrator's website \_\_\_\_ beforehand or contact Class Counsel to verify the date and time of  
the Final Approval Hearing.

## 29 **9. HOW CAN I GET MORE INFORMATION?**

30 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the  
31 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other  
32 Settlement documents is to go to (**specify entity**)'s website at (**url**). You can also telephone or send  
33 an email to Class Counsel or the Administrator using the contact information listed below, or  
34 consult the Superior Court website by going to ([http://www. \\_\\_\\_\\_ .aspx](http://www. ____ .aspx)) and entering the Case  
35 Number for the Action, Case No. 21STCV11103. You can also make an appointment to

1 personally review court documents in the Clerk's Office at the Spring Street Courthouse by calling  
2 \_\_\_\_.

3 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION**  
4 **ABOUT THE SETTLEMENT.**

5 Class Counsel:

6 Name of Attorney: David G. Spivak  
7 Email Address: david@spivaklaw.com  
8 Name of Firm: The Spivak Law Firm  
9 Mailing Address: 8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
Telephone: (213) 725-9094

10 Administrator:

11 Name of Company: CPT Group, Inc.  
12 Email Address: \_\_\_\_  
13 Mailing Address: \_\_\_\_  
14 Telephone: \_\_\_\_  
Fax Number: \_\_\_\_

15 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

16 If you lose or misplace your settlement check before cashing it, the Administrator will replace it  
17 as long as you request a replacement before the void date on the face of the original check. If  
18 your check is already void  
you should consult the Unclaimed Property Fund \_\_\_\_ for instructions on how to retrieve the funds

19 **11. WHAT IF I CHANGE MY ADDRESS?**

20 To receive your check, you should immediately notify the Administrator if you move or otherwise  
21 change your mailing address.  
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# **EXHIBIT 2**



SPIVAK LAW

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

March 8, 2021

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

Re: *Ramona Silva-Heredia/Tacos Los Desvelados*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Ramona Silva-Heredia (hereafter “Silva”) provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to cooks, and persons in similar positions (hereafter “Aggrieved Employees”), by Tacos Los Desvelados, a California corporation, Tacos Los Desvelados Glendale, Inc, a California corporation, Tacos Los Desvelados West Covina, Inc, a California corporation, Tacos Los Desvelados Whittier, Inc., a California corporation, and Target Bros., Inc., a California corporation (hereafter collectively referred to as “TLD”), of alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802.

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

subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

### **Statement of Facts**

In approximately March 2016, Silva began working for TLD at its restaurant located at 5306 Atlantic Boulevard, Maywood, California as an hourly cook. TLD employed her continuously from that date until on or about March 21, 2020, when she was temporarily laid-off due to the Covid-19 pandemic. In approximately April 2020, TLD requested that Silva come back to work for one day due to low-staffing levels. Silva last performed her duties for TLD in approximately April 2020.

At all relevant times, TLD issued wages to Silva and the other Aggrieved Employees on a weekly basis and paid them at an hourly rate of pay. At all relevant times, TLD classified Silva and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

TLD failed to compensate Silva and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Silva and the Aggrieved Employees often worked seven (7) days in a workweek, and between eight (8) and sixteen (16) hours per workday. At all relevant times, Silva and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek. TLD, however, failed to pay Silva and the Aggrieved Employees overtime wages at least one and a half 1½ times their hourly rates of pay for all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and all hours on the seventh (7<sup>th</sup>) day worked in a workweek. Additionally, TLD failed to pay Silva and the Aggrieved Employees at least twice their hourly rates of pay when they worked over twelve (12) hours in a workday or for hours in excess of eight (8) on the seventh (7<sup>th</sup>) workday of the workweek.

At all relevant times, TLD required Silva and the Aggrieved Employees to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, TLD often requested that Silva and the Aggrieved Employees return to work after they had

clocked-out and left the restaurant. TLD instructed Silva and the Aggrieved Employees to work off-the-clock for approximately one hour after they had already completed their shifts, this occurred two to three times during a work week. TLD failed to compensate Silva and the Aggrieved Employees for this work performed off-the-clock.

At all relevant times, TLD failed to provide Silva and the Aggrieved Employees with all timely meal periods. Due to the workload and failure to hire sufficient staff members, TLD denied Silva and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. TLD also denied meal periods to Silva and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods. On those seldom occasions when Silva and the Aggrieved Employees did attempt to take their 30-minute meal period, TLD's management often interrupted them with demands for help in serving customers, cleaning, or other related job duties.

Moreover, TLD failed to authorize and permit Silva and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, TLD failed to authorize and permit Silva and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. TLD did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement.

TLD failed to hire sufficient staff members to cover and support Silva and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Furthermore, TLD failed to pay premium wages for days on which it failed to provide Silva and the other Aggrieved Employees with timely meal periods. TLD also failed to pay premium wages for days on which it failed to provide Silva and the other Aggrieved Employees with timely rest periods.

At all relevant times, TLD required Silva and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. On several occasions, TLD required Silva and the Aggrieved Employees to go to the grocery store to buy restaurant items when TLD ran out of those items. Silva and the

Aggrieved Employees purchased products such as milk, tomato sauce, eggs, and lemons, among others. TLD often did not reimburse Silva and the Aggrieved Employees for such expenses, nor did it reimburse them for mileage.

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

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

- (a) TLD failed to pay Silva and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay;
- (b) TLD failed to provide Silva and the Aggrieved Employees all meal periods and rest periods in compliance with California law;
- (c) TLD failed to compensate Silva and the Aggrieved Employees at one hour's pay for each day in which TLD failed to provide them with their rest breaks as required by law;
- (d) TLD failed to compensate Silva and the Aggrieved at one hour's pay for each day in which it failed to provide them with their meal periods as required by law;
- (e) TLD failed to indemnify Silva and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (f) TLD failed to provide Silva and the other Aggrieved Employees with accurate wage statements; and

- (g) TLD failed to timely pay Silva and the other Aggrieved Employees all earned and unpaid wages during their employment with TLD.

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

### **The Wage Order**

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).) At all relevant times during the applicable limitations period, TLD operated restaurants. Accordingly, Silva and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

### **Failure To Pay Wages For All Hours Worked At The Correct**

#### **Rates of Pay**

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

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

In relevant part, section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of

this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

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

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

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

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

excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek; and

- (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.

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

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

At all relevant times during the applicable limitations period, TLD failed to compensate Silva and the Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay, including overtime wages for the hours worked on the seventh (7<sup>th</sup>) consecutive day, and double their hourly rates of pay for all hours worked in excess of twelve (12) hours in a workday. TLD also failed to compensate Silva and the Aggrieved Employees for all off-the-clock hours they worked at the correct rates of pay.

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

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);

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

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

In relevant part, section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

At all relevant times, TLD failed to provide Silva and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure to hire sufficient staff members, TLD denied Silva and the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. TLD also denied meal periods to Silva and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods. Furthermore, TLD failed to pay premium wages for days on which it failed to provide Silva and the other Aggrieved Employees with timely meal periods. Also, when Silva and the Aggrieved Employees did take their 30-minute meal period, they were often interrupted by staff or management with demands for help in serving customers, cleaning or other related job duties.

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

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

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

**Failure to Authorize and Permit Rest Periods**  
**(Lab. Code §§ 226.7 & 1198)**

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

Section 12 of the Wage Order provides, in relevant part:

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 ½) 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 addition, Labor Code section 226.7 states:

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

Due to high workload and low staffing levels, TLD failed to authorize and permit Silva and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. TLD did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Moreover, TLD failed to pay Silva and the Aggrieved Employees premium wages on workdays it failed to

provide them with 10-minute rest periods every four hours worked or major fraction thereof.

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

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

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

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

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

As described above, during the applicable limitations period, TLD required Silva and the Aggrieved Employees to buy restaurant items when TLD ran out of those items. Silva and the Aggrieved Employees purchased products such as milk, tomato sauce, eggs, and lemons, among others. TLD did not reimburse Silva and the Aggrieved Employees for such expenses, nor did they reimburse them for mileage expenses. Accordingly, Silva seeks civil penalties for these Labor Code violations that TLD has committed against her and the Aggrieved Employees as follows:

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

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

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 Employer may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other

than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, TLD violated California Labor Code section 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. TLD failed to state in the wage statements it issued to Silva and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above).

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

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

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

TLD failed to pay Silva and the other Aggrieved Employees for all earned minimum wages and work performed after they clocked-out. TLD failed to provide Silva and the Aggrieved Employees with all meal and rest periods in compliance with California laws. TLD also failed to provide Silva and the Aggrieved Employees with all premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, TLD failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Silva now seeks civil penalties for the Labor Code violations that TLD has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each Aggrieved Employee (penalties set by Labor Code section 210).

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 7 of 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 section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

TLD failed to pay Silva and the other Aggrieved Employees for all earned minimum wages and for work performed before after they clocked-out. TLD failed to provide Silva and the Aggrieved Employees with all meal and rest periods in compliance with California laws. TLD also failed to provide Silva and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. TLD did not record the hours worked off the clock. As a result, TLD has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Silva and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

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

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

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

### **Conclusion**

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

[David@spivaklaw.com](mailto:David@spivaklaw.com)

cc: Ramona Silva Heredia

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c/o Johnny Diaz  
Agent for Service of Process  
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Pico Rivera, CA 90660

Tacos Los Desvelados Glendale, Inc  
c/o Adolfo Valenzuela  
Agent for Service of Process  
1828 W. Burbank  
Burbank, CA 91506

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Tacos Los Desvelados West Covina, Inc  
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Tacos Los Desvelados Whittier, Inc.  
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Target Bros., Inc.  
c/o Ali Chahine  
Agent for Service of Process  
6044 Atlantic Blvd  
Maywood, California 90270

# **EXHIBIT 3**

COPY

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Superior Court of California  
County of Los Angeles

MAR 19 2021

Sherril R. Carter, Executive Officer/Clerk of Court  
By: Tanya Herrera, Deputy

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9 RAMONA SILVA-HEREDIA, and all others similarly situated

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12 (UNLIMITED JURISDICTION)

13 RAMONA SILVA-HEREDIA, on behalf of  
14 herself, all others similarly situated, and the  
15 general public,

16 *Plaintiff,*

17 vs.

18 TACOS LOS DESVELADOS, a California  
19 corporation; TACOS LOS DESVELADOS  
20 GLENDALE, INC., a California corporation;  
21 TACOS LOS DESVELADOS WEST  
22 COVINA, INC., a California corporation;  
23 TACOS LOS DESVELADOS WHITTIER,  
24 INC., a California corporation; TARGET  
25 BROS., INC., a California corporation; and  
26 DOES 1-50, inclusive,

27 *Defendants.*

Case No.: **21STCV11103**

**CLASS ACTION**

**COMPLAINT FOR:**

1. Failure to Provide Meal and Rest Period (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 201.3, 202, and 203);
6. Failure to Maintain Accurate Employment Records (Lab. Code §§ 1174, 1174.5, and 1998); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.).

**JURY TRIAL DEMANDED**

BY FAX



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1 Plaintiff, RAMONA SILVA-HEREDIA (hereafter “Plaintiff”), on behalf of herself and  
2 all others similarly situated, complains and alleges as follows:

### 3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant TACOS LOS DESVELADOS,  
5 a California corporation, TACOS LOS DESVELADOS GLENDALE, INC., a California  
6 corporation, TACOS LOS DESVELADOS WEST COVINA, INC., a California corporation,  
7 TACOS LOS DESVELADOS WHITTIER, INC., a California corporation, TARGET BROS.,  
8 INC., a California corporation, and DOES 1–50, inclusive (collectively “Defendants”) for alleged  
9 violations of the California Labor Code, Industrial Welfare Commission Order No. 5–2001  
(hereafter “the Wage Order”), and the Business and Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her  
11 and other similarly situated current and former employees in California for unpaid wages and  
12 other related relief. These claims are based on Defendants’ alleged failures to: (1) Provide all  
13 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours  
14 worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for  
15 reasonable expenses incurred while performing their duties, (4) Provide accurate and complete  
16 itemized written wage statements, (5) Timely pay all final wages upon termination of  
17 employment, (6) Maintain accurate employment records, and (7) Fairly compete. Accordingly,  
18 Plaintiff now seeks to recover unpaid wages and related relief through this class action.

### 19 **JURISDICTION AND VENUE**

20 3. This court has subject matter jurisdiction because the aggregate claims of  
21 Plaintiff, 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 that solely arise under California law, rather than federal  
24 law.

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

26 6. Venue is proper in Los Angeles County pursuant to California Code of Civil  
27 Procedure § 395(a) and § 395.5 in that liability arose in Los Angeles 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 RAMONA SILVA-HEREDIA is a resident of California.

8. Defendant TACOS LOS DESVELADOS is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

9. Defendant TACOS LOS DESVELADOS GLENDALE, INC., is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

10. Defendant TACOS LOS DESVELADOS WEST COVINA, INC., is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

11. Defendant TACOS LOS DESVELADOS WHITTIER, INC., is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

12. Defendant TARGET BROS., INC., is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

13. 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.

14. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/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.

15. 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/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.



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

### **CLASS ALLEGATIONS**

17. 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.

18. **Class Definition:** The Class is defined as follows: All individuals currently and formerly employed in California as non-exempt, hourly employees by Defendants, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

19. **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.

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

21. **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 Members with all meal and rest periods in compliance with California law;

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

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

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

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

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

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

11 22. **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 and/or  
13 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor  
14 Code, the Wage Order, and the Business and Professions Code.

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

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

24 25. **Superiority:** A class action is vastly superior to other available means for fair and  
25 efficient adjudication of Class Members' claims and would be beneficial to the parties and the  
26 Court. Class action treatment will allow a number of similarly situated persons to simultaneously  
27 and efficiently prosecute their common claims in a single forum without the unnecessary  
28 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



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Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

### **STATEMENT OF FACTS**

26. In approximately March 2016, Plaintiff began working for Defendants at their restaurant located at 5306 Atlantic Boulevard, in Maywood, California, as an hourly cook. Defendants employed her continuously from that date until on or about March 21, 2020, when she was temporarily laid-off due to the Covid-19 pandemic. In approximately April 2020, Defendants requested that Plaintiff come back to work for one day due to low-staffing levels. Plaintiff last performed her duties for Defendants in approximately April 2020.

27. At all relevant times, Defendants issued wages to Plaintiff and the Class Members on a weekly basis, and paid them at an hourly rate of pay. At all relevant times, Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

28. Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay, including overtime. Plaintiff and the Class Members often worked seven (7) days in a workweek, and between eight (8) and sixteen (16) hours per workday. At all relevant times, Plaintiff and the Class Members worked over eight (8) hours in one workday and over forty (40) hours in one workweek. Defendants, however, failed to pay Plaintiff and the Class Members overtime wages at least one and a half times their hourly rates of pay for all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and all hours on the seventh (7<sup>th</sup>) day worked in a workweek. Additionally, Defendants failed to pay Plaintiff and the Class Members at least twice their hourly rates of pay when they worked over twelve (12) hours in a workday or for hours in excess of eight (8) on the seventh (7<sup>th</sup>) workday of the workweek.

29. At all relevant times, Defendants required Plaintiff and the Class Members to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, Defendants often requested that Plaintiff and the Class Members return to work after they had clocked-out and left the restaurant. Defendants instructed Plaintiff and the Class Members to work off-the-clock for approximately one hour after they had already completed their shifts. This occurred two to three times during a workweek. Defendants failed to compensate Plaintiff and the Class Members for this work performed off-the-clock.

30. At all relevant times, Defendants failed to provide Plaintiff and the Class Members



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1 with all timely meal periods. Due to the workload and failure to hire sufficient staff members,  
2 Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal period within  
3 the first five hours of work. Defendants also denied meal periods to Plaintiff and the Class  
4 Members because there were insufficient employees to cover for them during rest breaks and  
5 meal period. On those seldom occasions when Plaintiff and the Class Members did attempt to  
6 take their 30-minute meal period, Defendants' management often interrupted them with demands  
7 for help in serving customers, cleaning, or other related job duties.

8 31. Moreover, Defendants failed to authorize and permit Plaintiff and the Class  
9 Members with rest periods in violation of California law. Due to high workload and low staffing  
10 levels, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-  
11 minute, paid, duty-free rest breaks every four hours or major fraction thereof. Defendants did not  
12 seek an exemption from the rest period protections of the Wage Order from the California  
13 Division of Labor Standards Enforcement.

14 32. Defendants failed to hire sufficient staff members to cover and support Plaintiff  
15 and the Class Members so they could take duty-free, ten-minute rest periods and duty-free, 30-  
16 minute meal periods. Furthermore, Defendants failed to pay premium wages for days on which  
17 they failed to provide Plaintiff and the Class Members with timely rest periods and/or meal  
18 periods.

19 33. At all relevant times, Defendants required Plaintiff and the Class Members to incur  
20 certain business expenses in the course of performing their duties. On several occasions,  
21 Defendants required Plaintiff and the Class Members to buy restaurant items from a grocery store  
22 when Defendants ran out of those items. Plaintiff and the Class Members purchased with their  
23 personal funds, products such as milk, tomato sauce, eggs, and lemons, among others. Defendants  
24 often did not reimburse Plaintiff and the Class Members for such expenses, nor did they reimburse  
25 them for the mileage expenses related to these purchases.

26 34. Defendants failed to issue to Plaintiff and the Class Members complete and  
27 accurate wage statements as a result of their failure to state all hours worked at the correct rates  
28 of pay, and all wages earned including rest period and meal period premium wages. Defendants  
also failed to timely pay Plaintiff and the Class Members all earned wages described above during  
and at the conclusion of employment. Moreover, Defendants failed to maintain accurate employee  
records of Plaintiff and the Class Members.



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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)**

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

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

37. 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.

38. 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.

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

**Rest Periods**

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



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1 whose total daily work time is less than three and one-half (3 1/2)  
2 hours. Authorized rest period time shall be counted as hours  
worked for which there shall be no deduction from wages.”

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

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

8 **Meal Periods**

9 (A) “No employer shall employ any person for a work period  
10 of more than five (5) hours without a meal period of not less than  
11 30 minutes, except that when a work period of not more than six  
12 (6) hours will complete the day’s work the meal period may be  
13 waived by mutual consent of the employee and the employer.  
14 Unless the employee is relieved of all duty during a 30-minute  
15 meal period, the meal period shall be considered an ‘on duty’ meal  
16 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.”

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

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

22 (b) An employer shall not require an employee to work during  
23 a meal or rest period mandated pursuant to an applicable statute,  
24 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.

25 (c) If an employer fails to provide an employee a meal period  
26 or rest period in accordance with a state law, including, but not  
27 limited to, an applicable statute or applicable regulation, standard,  
28 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.

42. 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.

43. 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.

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

45. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely 30-minute duty-free meal periods within the first five hours of work. Defendants also failed to authorize and permit Plaintiff and the Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely meal and rest periods.

46. 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.

47. 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 additional wages owed for all meal periods and rest breaks not provided to them.

48. By reason of the above, pursuant to California Labor Code § 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.

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1 at least the minimum wage set forth therein for all hours worked, which consists of all hours that  
2 an employer has actual or constructive knowledge that employees are working.

3 54. Labor Code § 510 states:

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

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

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

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

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

27 59. At all relevant times during the applicable limitations period, Defendants failed to  
28 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to  
overtime wages for all overtime hours they worked at the correct rates of pay, including overtime  
wages for the hours worked on the seventh (7<sup>th</sup>) consecutive day, and twice their hourly rates of  
pay for all hours worked in excess of twelve (12) hours in a workday. Defendants also failed to  
compensated Plaintiff and the Class Members for all off-the-clock hours they worked at the  
correct rates of pay.

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

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

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

### 12 **THIRD CAUSE OF ACTION**

#### 13 **FAILURE TO INDEMNIFY**

14 **(Lab. Code §§ 1198 & 2802)**

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

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

17 64. 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 Code  
19 §§ 1198 and 2802 and the Wage Order.

20 65. 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 66. California Labor Code § 1198 prohibits employers from employing their  
25 employees under conditions prohibited by the Wage Order.

26 67. At all relevant times during the applicable limitations period, Defendants required  
27 Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify  
28 them for both during and after their employment ended. At all relevant times, Defendants  
required Plaintiff and the Class Members to buy restaurant items when Defendants ran out of  
such items, and failed to reimburse them for such expenses and for mileages expenses related to  
these purchases.



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1           68. 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 indemnify Plaintiff and the Class Members for the reasonable expenses they incurred  
4 during the course of performing their duties.

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

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

#### 12                                   **FOURTH CAUSE OF ACTION**

#### 13                   **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

#### 14                                   **(Lab. Code § 226)**

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

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

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

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

23                   (1) Gross wages earned,

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

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

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

                  (5) Net wages earned,



(6) The inclusive dates of the period for which the employee is paid,  
(7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

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

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

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

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

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

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

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

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

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



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1 to other documents or information.

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

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

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

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

27 81. Accordingly, with respect to this cause of action, on behalf of herself and the other  
28



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1 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs  
2 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to  
3 proof.

4 **FIFTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(Lab. Code §§ 201, 201.3, 202, and 203)**

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

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

9 83. At all relevant times during the applicable limitations period, Plaintiff and the  
10 Class have been non-exempt employees of Defendants and entitled to the benefits and  
11 protections of California Labor Code §§ 201–203, and the Wage Order.

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

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

18 86. Labor Code § 201.3 requires temporary services employers to pay the employee's  
19 wages on a weekly basis. Defendants paid Plaintiff and the Class Members on a bi-weekly basis.

20 87. By failing to pay earned minimum and premium wages to Plaintiff and the Class,  
21 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code  
22 § 201 or § 202.

23 88. Plaintiff is informed and believes that Defendants' failures to timely pay all final  
24 wages to him and the Class Members have been willful in that Defendants have the ability to  
25 pay final wages in accordance with Labor Code §§ 201, 201.3, and 202 but have intentionally  
26 adopted policies or practice that are incompatible with those requirements.

27 89. Labor Code § 203 provides that the wages of an employee continue on a daily  
28 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and  
unpaid wages to the employee in accordance with Labor Code § 201, 201.3, or § 202.

90. Defendants failed to pay Plaintiff and the Class Members whose employment  
ended all of the earned, but unpaid wages described above by the conclusion of their employment.



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

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

### SIXTH CAUSE OF ACTION

## FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

**(Lab. Code §§ 1174, 1174.5, 1198)**

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

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

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

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

Every person employing labor in this state shall:

...

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

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

96. 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



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1 to allow any member of the commission or employees of the  
2 division to inspect records pursuant to subdivision (b) of  
3 Section 1174, shall be subject to a civil penalty of five hundred  
4 dollars (\$500).

4 97. Section 7 of Wage Order states,

5 A. Every employer shall keep accurate information with respect  
6 to each employee including the following:

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

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

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

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

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

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

21 B. Every employer shall semimonthly or at the time of each payment of  
22 wages furnish each employee, either as a detachable part of the check,  
23 draft, or voucher paying the employee's wages, or separately, an  
24 itemized statement in writing showing: (1) all deductions; (2) the  
25 inclusive dates of the period for which the employee is paid; (3) the  
26 name of the employee or the employee's social security number; and  
27 (4) the name of the employer, provided all deductions made on written  
28 orders of the employee may be aggregated and shown as one item.

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



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employee's records shall be available for inspection by the employee upon reasonable request.

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

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

99. Defendants have failed to maintain the records required by the Labor Code and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Class Members.

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

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

## **SEVENTH CAUSE OF ACTION**

### **UNFAIR COMPETITION**

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

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

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

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

104. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et



1 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have  
2 unfairly gained a competitive advantage over other comparable companies doing business in  
3 California that comply with their legal obligations to, among other things, pay their employees  
4 premium wages for workdays in which they did not provide employees with one or more meal  
5 and rest periods, reimburse their employees for reasonable expenses incurred during the course  
6 of performing their duties, and pay them all earned wages for all regular and overtime hours  
7 worked.

8 105. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the  
9 other Class Members have suffered injuries in fact and lost money or property. Defendants  
10 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and  
11 premium wages and reimbursement for expenses that Plaintiff and the other Class Members  
12 incurred during the course of performing their duties.

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

17 107. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in  
18 connection with their unfair competition claims pursuant to California Code of Civil Procedure  
19 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

### 20 **PRAYER FOR RELIEF**

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

- 23 A. An order that the action be certified as a class action;
- 24 B. An order that Plaintiff be appointed class representative;
- 25 C. An order that counsel for Plaintiff be appointed class counsel;
- 26 D. Unpaid Wages;
- 27 E. Actual Damages;
- 28 F. Statutory Damages;
- G. Liquidated Damages;
- H. Restitution;
- I. Declaratory and injunctive relief;



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- J. Equitable relief;  
K. Pre-judgment interest;  
L. Statutory penalties;  
M. Costs of suit;  
N. Interest;  
O. Reasonable attorneys' fees; and  
P. Such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 15, 2021

By



DAVID SPIVAK,  
CARL KAPLAM,  
MAYA CHEAITANI, Attorneys for Plaintiff,  
RAMONA SILVA-HEREDIA, and all others  
similarly situated



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# **EXHIBIT 4**

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County of Los Angeles

JUN 18 2021

Sherri R. Carter, Executive Officer/Clerk of Court

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Attorneys for Plaintiff,  
RAMONA SILVA-HEREDIA, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES  
(UNLIMITED JURISDICTION)**

RAMONA SILVA-HEREDIA, on behalf of  
herself, all others similarly situated, and as an  
"aggrieved employee" on behalf of other  
"aggrieved employees" under the Labor Code  
Private Attorneys General Act of 2004,

*Plaintiff(s),*

vs.

TACOS LOS DESVELADOS, a California  
corporation; TACOS LOS DESVELADOS  
GLENDALE, INC., a California corporation;  
TACOS LOS DESVELADOS WEST  
COVINA, INC., a California corporation;  
TACOS LOS DESVELADOS WHITTIER,  
INC., a California corporation; and DOES 1-50,  
inclusive,

*Defendants.*

Case No.: 21STCV11103

**CLASS ACTION**

**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 Earned 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. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 201.3, 202, and 203);
6. Failure to Maintain Accurate Employment Records (Lab. Code §§ 1174, 1174.5, and 1998); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); And
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

**JURY TRIAL DEMANDED**

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1 Plaintiff, RAMONA SILVA-HEREDIA (hereafter “Plaintiff”), on behalf of herself and  
2 all others similarly situated, complains and alleges as follows:

### 3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant TACOS LOS DESVELADOS,  
5 a California corporation, TACOS LOS DESVELADOS GLENDALE, INC., a California  
6 corporation, TACOS LOS DESVELADOS WEST COVINA, INC., a California corporation,  
7 TACOS LOS DESVELADOS WHITTIER, INC., a California corporation, and DOES 1–50,  
8 inclusive (collectively “Defendants”) for alleged violations of the California Labor Code,  
9 Industrial Welfare Commission Order No. 5–2001 (hereafter “the Wage Order”), and the Business  
and Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her  
11 and other similarly situated current and former employees in California for unpaid wages and  
12 other related relief. These claims are based on Defendants’ alleged failures to: (1) Provide all  
13 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours  
14 worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for  
15 reasonable expenses incurred while performing their duties, (4) Provide accurate and complete  
16 itemized written wage statements, (5) Timely pay all final wages upon termination of  
17 employment, (6) Maintain accurate employment records, and (7) Fairly compete. Accordingly,  
18 Plaintiff now seeks to recover unpaid wages, penalties, and related relief through this class action.

### 19 **JURISDICTION AND VENUE**

20 3. This court has subject matter jurisdiction because the aggregate claims of  
21 Plaintiff, 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 that solely arise under California law, rather than federal  
24 law.

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

26 6. Venue is proper in Los Angeles County pursuant to California Code of Civil  
27 Procedure § 395(a) and § 395.5 in that liability arose in Los Angeles 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 RAMONA SILVA-HEREDIA is a resident of California. 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).

8. Defendant TACOS LOS DESVELADOS is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

9. Defendant TACOS LOS DESVELADOS GLENDALE, INC., is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

10. Defendant TACOS LOS DESVELADOS WEST COVINA, INC., is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

11. Defendant TACOS LOS DESVELADOS WHITTIER, INC., is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

12. 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.

13. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/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.

14. 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/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.



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

## CLASS ALLEGATIONS

16. 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.

17. **Class Definition:** The Class is defined as follows: All individuals currently and formerly employed in California as non-exempt, hourly employees by Defendants, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

18. **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.

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

20. **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 Members with all meal and rest periods in compliance with California law;

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

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



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

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

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

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

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

11 21. **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 and/or  
13 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor  
14 Code, the Wage Order, and the Business and Professions Code.

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

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

24 24. **Superiority:** A class action is vastly superior to other available means for fair and  
25 efficient adjudication of Class Members' claims and would be beneficial to the parties and the  
26 Court. Class action treatment will allow a number of similarly situated persons to simultaneously  
27 and efficiently prosecute their common claims in a single forum without the unnecessary  
28 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



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Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

### **STATEMENT OF FACTS**

25. In approximately March 2016, Plaintiff began working for Defendants at their restaurant located at 5306 Atlantic Boulevard, in Maywood, California, as an hourly cook. Defendants employed her continuously from that date until on or about March 21, 2020, when she was temporarily laid-off due to the Covid-19 pandemic. In approximately April 2020, Defendants requested that Plaintiff come back to work for one day due to low-staffing levels. Plaintiff last performed her duties for Defendants in approximately April 2020.

26. At all relevant times, Defendants issued wages to Plaintiff and the Class Members on a weekly basis, and paid them at an hourly rate of pay. At all relevant times, Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

27. Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay, including overtime. Plaintiff and the Class Members often worked seven (7) days in a workweek, and between eight (8) and sixteen (16) hours per workday. At all relevant times, Plaintiff and the Class Members worked over eight (8) hours in one workday and over forty (40) hours in one workweek. Defendants, however, failed to pay Plaintiff and the Class Members overtime wages at least one and a half times their hourly rates of pay for all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and all hours on the seventh (7<sup>th</sup>) day worked in a workweek. Additionally, Defendants failed to pay Plaintiff and the Class Members at least twice their hourly rates of pay when they worked over twelve (12) hours in a workday or for hours in excess of eight (8) on the seventh (7<sup>th</sup>) workday of the workweek.

28. At all relevant times, Defendants required Plaintiff and the Class Members to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, Defendants often requested that Plaintiff and the Class Members return to work after they had clocked-out and left the restaurant. Defendants instructed Plaintiff and the Class Members to work off-the-clock for approximately one hour after they had already completed their shifts. This occurred two to three times during a workweek. Defendants failed to compensate Plaintiff and the Class Members for this work performed off-the-clock.

29. At all relevant times, Defendants failed to provide Plaintiff and the Class Members



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1 with all timely meal periods. Due to the workload and failure to hire sufficient staff members,  
2 Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal period within  
3 the first five hours of work. Defendants also denied meal periods to Plaintiff and the Class  
4 Members because there were insufficient employees to cover for them during rest breaks and  
5 meal period. On those seldom occasions when Plaintiff and the Class Members did attempt to  
6 take their 30-minute meal period, Defendants' management often interrupted them with demands  
7 for help in serving customers, cleaning, or other related job duties.

8 30. Moreover, Defendants failed to authorize and permit Plaintiff and the Class  
9 Members with rest periods in violation of California law. Due to high workload and low staffing  
10 levels, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-  
11 minute, paid, duty-free rest breaks every four hours or major fraction thereof. Defendants did not  
12 seek an exemption from the rest period protections of the Wage Order from the California  
13 Division of Labor Standards Enforcement.

14 31. Defendants failed to hire sufficient staff members to cover and support Plaintiff  
15 and the Class Members so they could take duty-free, ten-minute rest periods and duty-free, 30-  
16 minute meal periods. Furthermore, Defendants failed to pay premium wages for days on which  
17 they failed to provide Plaintiff and the Class Members with timely rest periods and/or meal  
18 periods.

19 32. At all relevant times, Defendants required Plaintiff and the Class Members to incur  
20 certain business expenses in the course of performing their duties. On several occasions,  
21 Defendants required Plaintiff and the Class Members to buy restaurant items from a grocery store  
22 when Defendants ran out of those items. Plaintiff and the Class Members purchased with their  
23 personal funds, products such as milk, tomato sauce, eggs, and lemons, among others. Defendants  
24 often did not reimburse Plaintiff and the Class Members for such expenses, nor did they reimburse  
25 them for the mileage expenses related to these purchases.

26 33. Defendants failed to issue to Plaintiff and the Class Members complete and  
27 accurate wage statements as a result of their failure to state all hours worked at the correct rates  
28 of pay, and all wages earned including rest period and meal period premium wages. Defendants  
also failed to timely pay Plaintiff and the Class Members all earned wages described above during  
and at the conclusion of employment. Moreover, Defendants failed to maintain accurate employee  
records of Plaintiff and the Class Members.



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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)**

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

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

36. 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.

37. 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.

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

**Rest Periods**

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



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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.”

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

**Meal Periods**

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

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

40. 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.

41. 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.

42. 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.

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

44. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely 30-minute duty-free meal periods within the first five hours of work. Defendants also failed to authorize and permit Plaintiff and the Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely meal and rest periods.

45. 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.

46. 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 additional wages owed for all meal periods and rest breaks not provided to them.

47. By reason of the above, pursuant to California Labor Code § 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.



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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

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

4 **(By Plaintiff and the Class against Defendants)**

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

6 49. At all relevant times, Plaintiff and the other Class Members have been non-exempt  
7 employees of Defendants and entitled to the benefits and protections of California Labor Code  
8 §§ 510, 1194, 1197, and 1198 and the Wage Order.

9 50. § 2 of the Wage Order defines “hours worked” as “the time during which an  
10 employee is subject to the control of an employer, and includes all the time the employee is  
11 suffered or permitted to work, whether or not required to do so.”

12 51. § 3 of the Wage Order states:

13 (A) Daily Overtime - General Provisions

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

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

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

(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.

52. Section 4 of the Wage Order requires an employer to pay non-exempt employees



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1 at least the minimum wage set forth therein for all hours worked, which consists of all hours that  
2 an employer has actual or constructive knowledge that employees are working.

3 53. Labor Code § 510 states:

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

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

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

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

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

27 58. At all relevant times during the applicable limitations period, Defendants failed to  
28 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to  
overtime wages for all overtime hours they worked at the correct rates of pay, including overtime  
wages for the hours worked on the seventh (7<sup>th</sup>) consecutive day, and twice their hourly rates of  
pay for all hours worked in excess of twelve (12) hours in a workday. Defendants also failed to  
compensated Plaintiff and the Class Members for all off-the-clock hours they worked at the  
correct rates of pay.

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



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

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

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

### 12 **THIRD CAUSE OF ACTION**

#### 13 **FAILURE TO INDEMNIFY**

14 **(Lab. Code §§ 1198 & 2802)**

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

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

17 63. 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 Code  
19 §§ 1198 and 2802 and the Wage Order.

20 64. 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 65. California Labor Code § 1198 prohibits employers from employing their  
25 employees under conditions prohibited by the Wage Order.

26 66. At all relevant times during the applicable limitations period, Defendants required  
27 Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify  
28 them for both during and after their employment ended. At all relevant times, Defendants  
required Plaintiff and the Class Members to buy restaurant items when Defendants ran out of  
such items, and failed to reimburse them for such expenses and for mileages expenses related to  
these purchases.



1           67. 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 indemnify Plaintiff and the Class Members for the reasonable expenses they incurred  
4 during the course of performing their duties.

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

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

12                           **FOURTH CAUSE OF ACTION**

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

14                           **(Lab. Code § 226)**

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

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

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

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

23                   (1) Gross wages earned,

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

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

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

                  (5) Net wages earned,



(6) The inclusive dates of the period for which the employee is paid,  
(7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

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

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

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

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

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

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

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

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

75. "Promptly and easily determine," as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without



reference to other documents or information.

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

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

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

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

80. Accordingly, with respect to this cause of action, on behalf of herself and the other



1 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs  
2 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to  
3 proof.

4 **FIFTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(Lab. Code §§ 201, 201.3, 202, and 203)**

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

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

9 82. At all relevant times during the applicable limitations period, Plaintiff and the  
10 Class have been non-exempt employees of Defendants and entitled to the benefits and  
11 protections of California Labor Code §§ 201–203, and the Wage Order.

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

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

18 85. Labor Code § 201.3 requires temporary services employers to pay the employee's  
19 wages on a weekly basis. Defendants paid Plaintiff and the Class Members on a bi-weekly basis.

20 86. By failing to pay earned minimum and premium wages to Plaintiff and the Class,  
21 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code  
22 § 201 or § 202.

23 87. Plaintiff is informed and believes that Defendants' failures to timely pay all final  
24 wages to him and the Class Members have been willful in that Defendants have the ability to  
25 pay final wages in accordance with Labor Code §§ 201, 201.3, and 202 but have intentionally  
26 adopted policies or practice that are incompatible with those requirements.

27 88. Labor Code § 203 provides that the wages of an employee continue on a daily  
28 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and  
unpaid wages to the employee in accordance with Labor Code § 201, 201.3, or § 202.

89. Defendants failed to pay Plaintiff and the Class Members whose employment  
ended all of the earned, but unpaid wages described above by the conclusion of their employment.



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

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

### **SIXTH CAUSE OF ACTION**

## FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

**(Lab. Code §§ 1174, 1174.5, 1198)**

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

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

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

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

Every person employing labor in this state shall:

...

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

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

95. 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



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1 to allow any member of the commission or employees of the  
2 division to inspect records pursuant to subdivision (b) of  
3 Section 1174, shall be subject to a civil penalty of five hundred  
4 dollars (\$500).

4 96. Section 7 of Wage Order states,

5 A. Every employer shall keep accurate information with respect  
6 to each employee including the following:

- 6 1) Full name, home address, occupation and social security  
7 number.
- 8 2) Birth date, if under 18 years, and designation as a minor.
- 9 3) Time records showing when the employee begins and ends  
10 each work period. Meal periods, split shift intervals and  
11 total daily hours worked shall also be recorded. Meal  
12 periods during which operations cease and authorized rest  
13 periods need not be recorded.
- 14 4) Total wages paid each payroll period, including value of  
15 board, lodging, or other compensation actually furnished to  
16 the employee.
- 17 5) Total hours worked in the payroll period and applicable  
18 rates of pay. This information shall be made readily  
19 available to the employee upon reasonable request.
- 20 6) When a piece rate or incentive plan is in operation, piece  
21 rates or an explanation of the incentive plan formula shall  
22 be provided to employees. An accurate production record  
23 shall be maintained by the employer.

21 B. Every employer shall semimonthly or at the time of each payment of  
22 wages furnish each employee, either as a detachable part of the check,  
23 draft, or voucher paying the employee's wages, or separately, an  
24 itemized statement in writing showing: (1) all deductions; (2) the  
25 inclusive dates of the period for which the employee is paid; (3) the  
26 name of the employee or the employee's social security number; and  
27 (4) the name of the employer, provided all deductions made on written  
28 orders of the employee may be aggregated and shown as one item.

26 C. All required records shall be in the English language and in ink or other  
27 indelible form, properly dated, showing month, day and year, and shall  
28 be kept on file by the employer for at least three years at the place of  
employment or at a central location within the State of California. An



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employee's records shall be available for inspection by the employee upon reasonable request.

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

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

98. Defendants have failed to maintain the records required by the Labor Code and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Class Members.

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

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

### **SEVENTH CAUSE OF ACTION**

#### **UNFAIR COMPETITION**

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

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

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

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

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103. 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 as 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.

104. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and premium wages and reimbursement for expenses that Plaintiff and the other Class Members incurred during the course of performing their duties.

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

106. Plaintiff and the other Class Members 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.

### **EIGHTH CAUSE OF ACTION**

#### **CIVIL PENALTIES**

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

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

108. 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



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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.

109. 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.

110. During the applicable time period, Defendants violated California Labor Code §§ 201, 201.3, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

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

A. For violations of California Labor Code §204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully



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1 withheld from each aggrieved employee for each subsequent, willful or intentional violation  
2 (penalty amounts established by California Labor Code § 210).

3 B. For violations of California Labor Code § 226(a), two hundred fifty dollars  
4 (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00)  
5 for each aggrieved employee for each subsequent violation (penalty amounts established by  
6 California Labor Code § 226.3).

7 C. For violations of California Labor Code §§ 510 and 512, fifty dollars  
8 (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for  
9 each aggrieved employee for each subsequent violation, per pay period in addition to an amount  
10 sufficient to recover underpaid wages (penalty amounts established by California Labor Code §  
11 558).

12 D. For violations of California Labor Code § 1197, one hundred dollars  
13 (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred  
14 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period  
15 (regardless of whether the initial violations were intentionally committed), in addition to an  
16 amount sufficient to recover unpaid wages (penalty amounts established by California Labor  
17 Code § 1197.1).

18 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
19 1197, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period  
20 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay  
21 period for each subsequent violation (penalty amounts established by California Labor Code §  
22 2699(f)(2)).

23 F. For violations of California Labor Code § 1174, five hundred dollars  
24 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by  
25 California Labor Code § 1174.5).

26 113. Plaintiff has complied with the procedures for bringing suit specified in California  
27 Labor Code § 2699.3. By letter dated March 8, 2021, Plaintiff filed written notice online with the  
28 Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail  
to Defendants of the specific provisions of the California Labor Code alleged to have been  
violated, including the facts and theories to support the alleged violations. A true and correct copy  
of Plaintiff’s letter to the LWDA dated March 8, 2021, is attached hereto as **Exhibit A**. Plaintiff



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

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

8 **PRAYER FOR RELIEF**

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

- 11 A. An order that the action be certified as a class action;
- 12 B. An order that Plaintiff be appointed class representative;
- 13 C. An order that counsel for Plaintiff be appointed class counsel;
- 14 D. Unpaid Wages;
- 15 E. Actual Damages;
- 16 F. Statutory Damages;
- 17 G. Civil Penalties;
- 18 H. Liquidated Damages;
- 19 I. Restitution;
- 20 J. Declaratory and injunctive relief;
- 21 K. Equitable relief;
- 22 L. Pre-judgment interest;
- 23 M. Statutory penalties;
- 24 N. Costs of suit;
- 25 O. Interest;
- 26 P. Reasonable attorneys' fees; and
- 27 Q. Such other relief as the Court deems just and proper.

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**DEMAND FOR JURY TRIAL**

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: June 18, 2021

By   
\_\_\_\_\_  
DAVID SPIVAK,  
MICHELLE S. GRIMBERG  
Attorneys for Plaintiff, RAMONA SILVA-  
HEREDIA, and all others similarly situated



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# EXHIBIT A



SPIVAK LAW

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

March 8, 2021

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

Re: *Ramona Silva-Heredia/Tacos Los Desvelados*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Ramona Silva-Heredia (hereafter “Silva”) provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to cooks, and persons in similar positions (hereafter “Aggrieved Employees”), by Tacos Los Desvelados, a California corporation, Tacos Los Desvelados Glendale, Inc, a California corporation, Tacos Los Desvelados West Covina, Inc, a California corporation, Tacos Los Desvelados Whittier, Inc., a California corporation, and Target Bros., Inc., a California corporation (hereafter collectively referred to as “TLD”), of alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802.

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

subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

### **Statement of Facts**

In approximately March 2016, Silva began working for TLD at its restaurant located at 5306 Atlantic Boulevard, Maywood, California as an hourly cook. TLD employed her continuously from that date until on or about March 21, 2020, when she was temporarily laid-off due to the Covid-19 pandemic. In approximately April 2020, TLD requested that Silva come back to work for one day due to low-staffing levels. Silva last performed her duties for TLD in approximately April 2020.

At all relevant times, TLD issued wages to Silva and the other Aggrieved Employees on a weekly basis and paid them at an hourly rate of pay. At all relevant times, TLD classified Silva and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

TLD failed to compensate Silva and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Silva and the Aggrieved Employees often worked seven (7) days in a workweek, and between eight (8) and sixteen (16) hours per workday. At all relevant times, Silva and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek. TLD, however, failed to pay Silva and the Aggrieved Employees overtime wages at least one and a half 1½ times their hourly rates of pay for all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and all hours on the seventh (7<sup>th</sup>) day worked in a workweek. Additionally, TLD failed to pay Silva and the Aggrieved Employees at least twice their hourly rates of pay when they worked over twelve (12) hours in a workday or for hours in excess of eight (8) on the seventh (7<sup>th</sup>) workday of the workweek.

At all relevant times, TLD required Silva and the Aggrieved Employees to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, TLD often requested that Silva and the Aggrieved Employees return to work after they had

clocked-out and left the restaurant. TLD instructed Silva and the Aggrieved Employees to work off-the-clock for approximately one hour after they had already completed their shifts, this occurred two to three times during a work week. TLD failed to compensate Silva and the Aggrieved Employees for this work performed off-the-clock.

At all relevant times, TLD failed to provide Silva and the Aggrieved Employees with all timely meal periods. Due to the workload and failure to hire sufficient staff members, TLD denied Silva and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. TLD also denied meal periods to Silva and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods. On those seldom occasions when Silva and the Aggrieved Employees did attempt to take their 30-minute meal period, TLD's management often interrupted them with demands for help in serving customers, cleaning, or other related job duties.

Moreover, TLD failed to authorize and permit Silva and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, TLD failed to authorize and permit Silva and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. TLD did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement.

TLD failed to hire sufficient staff members to cover and support Silva and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Furthermore, TLD failed to pay premium wages for days on which it failed to provide Silva and the other Aggrieved Employees with timely meal periods. TLD also failed to pay premium wages for days on which it failed to provide Silva and the other Aggrieved Employees with timely rest periods.

At all relevant times, TLD required Silva and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. On several occasions, TLD required Silva and the Aggrieved Employees to go to the grocery store to buy restaurant items when TLD ran out of those items. Silva and the

Aggrieved Employees purchased products such as milk, tomato sauce, eggs, and lemons, among others. TLD often did not reimburse Silva and the Aggrieved Employees for such expenses, nor did it reimburse them for mileage.

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

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

- (a) TLD failed to pay Silva and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay;
- (b) TLD failed to provide Silva and the Aggrieved Employees all meal periods and rest periods in compliance with California law;
- (c) TLD failed to compensate Silva and the Aggrieved Employees at one hour's pay for each day in which TLD failed to provide them with their rest breaks as required by law;
- (d) TLD failed to compensate Silva and the Aggrieved at one hour's pay for each day in which it failed to provide them with their meal periods as required by law;
- (e) TLD failed to indemnify Silva and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (f) TLD failed to provide Silva and the other Aggrieved Employees with accurate wage statements; and

- (g) TLD failed to timely pay Silva and the other Aggrieved Employees all earned and unpaid wages during their employment with TLD.

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

### **The Wage Order**

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).) At all relevant times during the applicable limitations period, TLD operated restaurants. Accordingly, Silva and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

### **Failure To Pay Wages For All Hours Worked At The Correct**

#### **Rates of Pay**

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

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

In relevant part, section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of

this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

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

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

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

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

excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek; and

- (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.

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

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

At all relevant times during the applicable limitations period, TLD failed to compensate Silva and the Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay, including overtime wages for the hours worked on the seventh (7<sup>th</sup>) consecutive day, and double their hourly rates of pay for all hours worked in excess of twelve (12) hours in a workday. TLD also failed to compensate Silva and the Aggrieved Employees for all off-the-clock hours they worked at the correct rates of pay.

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

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);

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

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

In relevant part, section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

At all relevant times, TLD failed to provide Silva and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure to hire sufficient staff members, TLD denied Silva and the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. TLD also denied meal periods to Silva and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods. Furthermore, TLD failed to pay premium wages for days on which it failed to provide Silva and the other Aggrieved Employees with timely meal periods. Also, when Silva and the Aggrieved Employees did take their 30-minute meal period, they were often interrupted by staff or management with demands for help in serving customers, cleaning or other related job duties.

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

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

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

**Failure to Authorize and Permit Rest Periods**  
**(Lab. Code §§ 226.7 & 1198)**

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

Section 12 of the Wage Order provides, in relevant part:

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 ½) 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 addition, Labor Code section 226.7 states:

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

Due to high workload and low staffing levels, TLD failed to authorize and permit Silva and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. TLD did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Moreover, TLD failed to pay Silva and the Aggrieved Employees premium wages on workdays it failed to

provide them with 10-minute rest periods every four hours worked or major fraction thereof.

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

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

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

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

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

As described above, during the applicable limitations period, TLD required Silva and the Aggrieved Employees to buy restaurant items when TLD ran out of those items. Silva and the Aggrieved Employees purchased products such as milk, tomato sauce, eggs, and lemons, among others. TLD did not reimburse Silva and the Aggrieved Employees for such expenses, nor did they reimburse them for mileage expenses. Accordingly, Silva seeks civil penalties for these Labor Code violations that TLD has committed against her and the Aggrieved Employees as follows:

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

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

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 Employer may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other

than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, TLD violated California Labor Code section 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. TLD failed to state in the wage statements it issued to Silva and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above).

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

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

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

TLD failed to pay Silva and the other Aggrieved Employees for all earned minimum wages and work performed after they clocked-out. TLD failed to provide Silva and the Aggrieved Employees with all meal and rest periods in compliance with California laws. TLD also failed to provide Silva and the Aggrieved Employees with all premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, TLD failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Silva now seeks civil penalties for the Labor Code violations that TLD has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each Aggrieved Employee (penalties set by Labor Code section 210).

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 7 of 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 section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

TLD failed to pay Silva and the other Aggrieved Employees for all earned minimum wages and for work performed before after they clocked-out. TLD failed to provide Silva and the Aggrieved Employees with all meal and rest periods in compliance with California laws. TLD also failed to provide Silva and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. TLD did not record the hours worked off the clock. As a result, TLD has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Silva and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

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

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

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

### Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

[David@spivaklaw.com](mailto:David@spivaklaw.com)

cc: Ramona Silva Heredia

Tacos Los Desvelados  
c/o Johnny Diaz  
Agent for Service of Process  
8819 Whittier Blvd, Ste 105  
Pico Rivera, CA 90660

Tacos Los Desvelados Glendale, Inc  
c/o Adolfo Valenzuela  
Agent for Service of Process  
1828 W. Burbank  
Burbank, CA 91506

///  
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Tacos Los Desvelados West Covina, Inc  
c/o Adolfo Valenzuela  
Agent for Service of Process  
1828 W. Burbank  
Burbank, CA 91506

Tacos Los Desvelados Whittier, Inc.  
c/o Ramona Guadalupe Gonzalez Zazueta  
Agent for Service of Process  
1828 W. Burbank  
Burbank, CA 91506

Target Bros., Inc.  
c/o Ali Chahine  
Agent for Service of Process  
6044 Atlantic Blvd  
Maywood, California 90270

1 **PROOF OF SERVICE**

2  
3 State of California,  
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County  
6 of Los Angeles, State of California. I am over the age of 18 years, and not a  
party to the within action. My business address is 16530 Ventura Blvd., Suite  
203, Encino, California 91436.

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

10 On Friday, June 18, 2021, I caused to have electronically served the  
11 following document described as **PLAINTIFF'S FIRST AMENDED COMPLAINT** with the  
third-party cloud service listed below. In doing so, notifications of such  
12 filings were electronically mailed to the interested parties which appear on  
the third-party cloud service's service list in this action as follows:

13 **Roxana E. Verano, Esq.**  
14 **Landegger Verano & Davis, ALC**  
15 **15760 Ventura Blvd., Suite 1200**  
**Encino, California 91436**  
[roxana@landeggeresq.com](mailto:roxana@landeggeresq.com)

16 **XXXX (BY ELECTRONIC SERVICE)** I caused the documents to be sent to the persons  
17 at the electronic service addresses listed above via third-party cloud  
service **CASE ANYWHERE**.

18 EXECUTED on Friday, June 18, 2021, at Riverside, California.

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

21 

22 \_\_\_\_\_  
23 ELIZABETH CONTRERAS  
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# **EXHIBIT 5**

Roxana E. Verano, Esq. -- State Bar No. 186837  
[roxana@landeggeresq.com](mailto:roxana@landeggeresq.com)  
Alysha R. Zapata, Esq. -- State Bar No. 325364  
[alysha@landeggeresq.com](mailto:alysha@landeggeresq.com)  
LANDEGGER VERANO & DAVIS, ALC  
15760 Ventura Boulevard, Suite 1200  
Encino, California 91436  
Telephone: (818) 986-7561  
Facsimile: (818) 986-5147

Attorneys for Defendant,  
TACOS LOS DESVELADOS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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

Plaintiff(s),

v.

TACOS LOS DESVELADOS, a California  
corporation; TACOS LOS DESVELADOS  
GLENDALE, INC.; a California corporation;  
TACOS LOS DESVELADOS WEST COVINA,  
INC., a California corporation; TACOS LOS  
DESVELADOS WHITTIER, INC., a California  
corporation; and DOES 1-50, inclusive,

Defendants.

CASE NO. 21STCV11103

**CLASS ACTION**

ASSIGNED FOR ALL PURPOSES TO  
JUDGE MAREN NELSON, DEPT. 17

**DEFENDANT TACOS LOS  
DESVELADOS’ ANSWER TO  
PLAINTIFF’S UNVERIFIED FIRST  
AMENDED CLASS ACTION AND PAGA  
REPRESENTATIVE ACTION  
COMPLAINT**

DISCOVERY CUT-OFF: None  
MOTION CUT-OFF: None  
TRIAL DATE: None

**CASE FILED: March 19, 2021**

Defendant TACOS LOS DESVELADOS (hereinafter referred to as “DEFENDANT”) hereby answers, pleads and otherwise responds to the claims in the unverified First Amended Class Action and PAGA Representative Action Complaint (“FAC”) of Plaintiff, Ramona Silva-Heredia (hereinafter referred to as “PLAINTIFF”) as follows:

1. Pursuant to §431.30(d) of the Code of Civil Procedure, DEFENDANT denies, generally and specifically, each and every allegation in PLAINTIFF’S FAC.

1           2.       DEFENDANT further denies, generally and specifically, that PLAINTIFF is  
2 entitled to the relief requested, or that PLAINTIFF has been, or will be, damaged in any amount, or  
3 at all, by reason of any act or omission on the part of DEFENDANT, or any of their agents or  
4 employees. DEFENDANT also pleads the following separate and affirmative defenses to the FAC:

5                           **FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

6                                           (Failure to State a Cause of Action)

7           3.       The FAC, and each purported cause of action contained therein, fails to state facts  
8 sufficient to constitute a cause of action against these answering DEFENDANT.

9                           **SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

10                                           (No Violation)

11           4.       The FAC, and each purported cause of action contained therein, fails to state  
12 sufficient facts, because DEFENDANT did not violate, or caused to be violated, the California  
13 Labor Code or applicable Wage Orders issued by the Industrial Welfare Commission.

14                           **THIRD SEPARATE AND AFFIRMATIVE DEFENSE**

15                                           (Good Faith)

16           5.       The FAC, and each purported cause of action therein, fails to state sufficient facts,  
17 because any violation of the California Labor Code or applicable Wage Orders, if any, was an act  
18 of omission made in good faith, and DEFENDANT had reasonable grounds for believing that its  
19 payment, overtime, meal and rest period practices complied with applicable laws and that such act  
20 of omission was not a violation of the California Labor Code or any applicable Wage Order, such  
21 that PLAINTIFF, any alleged putative class member, and/or any alleged aggrieved employee is not  
22 entitled to any damages or penalties.

23                           **FOURTH SEPARATE AND AFFIRMATIVE DEFENSE**

24                                           (Bona Fide Dispute)

25           6.       DEFENDANT alleges there exists a bona fide dispute as to whether any additional  
26 compensation is actually due to PLAINTIFF, any alleged putative class member, and/or to any  
27 alleged aggrieved employee, and if so, the amount thereof.

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1                                   **FIFTH SEPARATE AND AFFIRMATIVE DEFENSE**

2                                   (Not Suffered or Permitted to Work)

3               7.       The FAC, and each purported cause of action therein, fails to state sufficient facts,  
4 because PLAINTIFF was not suffered or permitted to work during any time for which she was not  
5 paid the appropriate wage rate, including the proper minimum wage and overtime rates.

6                                   **SIXTH SEPARATE AND AFFIRMATIVE DEFENSE**

7                                   (Avoidable Consequences)

8               8.       PLAINTIFF’S claims are barred, in whole or in part, or any recovery should be  
9 reduced, pursuant to the avoidable consequences doctrine, because DEFENDANT took reasonable  
10 steps to prevent and correct alleged violations of wage and hour laws; PLAINTIFF unreasonably  
11 failed to use the preventative and corrective opportunities provided by DEFENDANT;  
12 DEFENDANT communicated those procedures to PLAINTIFF during her employment;  
13 PLAINTIFF was aware of such procedures; and reasonable use of DEFENDANT’S procedures  
14 would have prevented at least some of the harm that PLAINTIFF allegedly suffered.

15                                   **SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE**

16                                   (No Standing)

17               9.       The FAC, and each purported cause of action therein, is barred to the extent that  
18 PLAINTIFF lack standing.

19                                   **EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE**

20                                   (Unclean Hands)

21               10.      The FAC, and each purported cause of action contained therein, is barred by the  
22 doctrine of unclean hands.

23                                   **NINTH SEPARATE AND AFFIRMATIVE DEFENSE**

24                                   (Laches)

25               11.      The FAC, and each purported cause of action contained therein, is barred by the  
26 doctrine of laches.

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1                                   **TENTH SEPARATE AND AFFIRMATIVE DEFENSE**

2                                   (Waiver)

3           12.     PLAINTIFF has waived her right, if any, to pursue the FAC and each purported  
4 cause of action contained therein, by reason of her own actions and course of conduct.

5                                   **ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE**

6                                   (Estoppel)

7           13.     PLAINTIFF is estopped from pursuing the FAC, and each purported cause of action  
8 contained therein, by reason of her own actions and course of conduct.

9                                   **TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE**

10                                  (Not a Proper Class Action)

11           14.     PLAINTIFF is barred from pursuing the FAC, and each purported cause of action  
12 contained therein, as a class action because: there is no existence of an ascertainable class; there is  
13 no well-defined community of interest among the class members; substantial difficulties are likely  
14 to be encountered in that there exist no predominant questions of law or fact; the class  
15 representative has differing claims or facts not typical of a particular class; substantial difficulties  
16 are likely to be encountered in the management of this action as a class action as the interest of  
17 each class member and the whole differ; the class is not large enough to make individual actions  
18 unmanageable; the class mechanism is not the superior method of resolving the claims; and the  
19 class representative cannot adequately represent the class.

20                                  **THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**

21                                  (Business Justification)

22           15.     The FAC, and each purported cause of action contained therein, fails to state facts  
23 sufficient to constitute a cause of action because DEFENDANT would have made the same  
24 decisions with respect to PLAINTIFF'S claims pursuant to valid business justification.

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1                   **TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE**

2                                   (Unfair Competition Claim)

3           26.     The Cause of Action for Unfair Competition (Business and Professions Code  
4 §17200) fails to state facts sufficient to constitute a cause of action because PLAINTIFF cannot  
5 identify any unlawful, unfair or fraudulent business act or practice or any unfair, deceptive, untrue  
6 or misleading act.

7                   **TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE**

8                                   (No Entitlement to Waiting Time Penalties)

9           27.     PLAINTIFF’S request, if any, for waiting time penalties pursuant to California  
10 Labor Code §203 is barred, as there was no willful failure to pay PLAINTIFF any wages due, if  
11 any are owing, by DEFENDANT.

12                   **TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE**

13                                   (Actions Permitted by Law)

14           28.     The FAC, and each purported cause of action contained therein, is barred because  
15 any action taken by DEFENDANT against PLAINTIFF was permitted by law.

16                   **TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE**

17                                   (Third Person Intervention)

18           29.     The FAC, and each purported cause of action contained therein, is barred because  
19 any injuries, losses or damages which PLAINTIFF has alleged in her FAC, if any have occurred,  
20 which this answering DEFENDANT denies, such injuries, losses or damages were caused solely or  
21 in part by persons, firms, corporations or entities other than this answering DEFENDANT.

22                   **TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE**

23                                   (No Rest and Meal Period Violations)

24           30.     The FAC, and each purported cause of action therein, fails to state facts sufficient to  
25 entitle PLAINTIFF to an award of damages for missed meal and rest periods as PLAINTIFF was  
26 not entitled to meal and/or rest periods, and if PLAINTIFF was entitled to meal  
27 and/or rest periods, PLAINTIFF actually did take the meal and/or rest periods, and/or was  
28 permitted and authorized to take the meal and/or rest periods pursuant to company policy.

1 **TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE**

2 (Failure to Exhaust Administrative Remedies)

3 31. The FAC, and each purported cause of action contained therein, is barred because  
4 PLAINTIFF has failed to timely exhaust her administrative remedies, including but not limited to  
5 those under under PAGA, and PLAINTIFF has failed, *inter alia*, to specify all facts and theories to  
6 support the alleged violation(s) as required under California Labor Code §2699.3(a)(1).

7 **THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE**

8 (No Overtime Work)

9 32. The FAC, and each purported cause of action contained therein, concerning the  
10 alleged failure to pay overtime wages due and payable is barred because PLAINTIFF did not work  
11 overtime for DEFENDANT, or not in the amount alleged, if any.

12 **THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

13 (No Entitlement to Overtime)

14 33. The FAC, and each purported cause of action contained therein, concerning the  
15 alleged failure to pay overtime wages due and payable is barred because PLAINTIFF was not  
16 entitled to any overtime wages from DEFENDANT.

17 **THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

18 (Overtime Unauthorized)

19 34. To the extent PLAINTIFF, any alleged putative class member, or any alleged  
20 aggrieved employee performed any uncompensated overtime work not exempt from the overtime  
21 wage requirements, any recovery on PLAINTIFF'S claims for uncompensated overtime work is  
22 barred in whole or in part because such work was not authorized, suffered, or permitted by  
23 DEFENDANT and was performed without DEFENDANT'S knowledge and/or control.

24 **THIRTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE**

25 (PLAINTIFF Properly Exempt)

26 35. The FAC, and each purported cause of action contained therein, is barred because  
27 during some or all of the time periods alleged in the FAC, PLAINTIFF was exempt from the  
28 overtime wage requirements and other wage and hour requirements under the provisions of the

1 applicable Wage Order of the California Industrial Welfare Commission of the Division of Labor  
2 Standards Enforcement and/or the applicable Wage Order was otherwise inapplicable.

3 **THIRTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE**

4 (Mistake, Fraud, Duress or Undue Influence)

5 36. The FAC, and each purported cause of action therein, is barred by the concept of  
6 mistake, fraud, duress or undue influence.

7 **THIRTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE**

8 (Consent)

9 37. The FAC, and each purported cause of action therein, is barred in that PLAINTIFF  
10 consented to, waived, and was an active participant in the actions forming the basis of her FAC, to  
11 the extent that such conduct occurred.

12 **THIRTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE**

13 (Good Cause)

14 38. The FAC, and each purported cause of action contained therein, fails to state facts  
15 sufficient to constitute a cause of action, because any decisions made by DEFENDANT with  
16 respect to PLAINTIFF'S employment were based upon good cause.

17 **THIRTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE**

18 (DEFENDANT Not PLAINTIFF'S Employer)

19 39. The FAC, and each purported cause of action contained therein, is barred because  
20 DEFENDANT was not PLAINTIFF'S employer, and is therefore not liable to PLAINTIFF for any  
21 alleged failure to pay wages, or any other employment-related claims.

22 **THIRTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE**

23 (No Reimbursable Expenses)

24 40. The FAC, and each purported cause of action contained therein, fails to state facts  
25 sufficient to entitle PLAINTIFF to an award of damages for failure to reimburse expenses, as  
26 PLAINTIFF did not incur such expenses and/or was properly reimbursed for any and all business  
27 expenses as an employee of DEFENDANT.

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1                   **THIRTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE**

2                                   (Not “Aggrieved Employee”)

3           41.     PLAINTIFF is barred from pursuing the FAC, and each purported cause of action  
4 contained therein, as a representative action, as PLAINTIFF is not an “aggrieved employee” as  
5 defined by the provisions of California Labor Code §2699.

6                   **FORTIETH SEPARATE AND AFFIRMATIVE DEFENSE**

7                                   (Not a Proper Representative Action – Management)

8           42.     PLAINTIFF is barred from pursuing the FAC, and each purported cause of action  
9 contained therein, as a representative action, as substantial difficulties are likely to be encountered  
10 in the management of this action as a representative action as the interest of each aggrieved  
11 employee and the whole differ.

12                   **FORTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

13                                   (Failure to Comply with PAGA Requirements)

14           43.     PLAINTIFF is barred from pursuing this FAC, and each purported cause of action  
15 contained therein, as a collective/representative action, as PLAINTIFF has failed to identify any  
16 other allegedly “aggrieved employees” or the alleged violations with specificity, as required by  
17 PAGA.

18                   **FORTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

19                                   (Initial Violation Limitation)

20           44.     DEFENDANT alleges that any civil penalties awarded to PLAINTIFF or the alleged  
21 “aggrieved employees”, if any are awarded, must be limited to those penalties applicable to an  
22 initial violation.

23                   **FORTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE**

24                                   (Any Potential Violations Were Cured)

25           45.     PLAINTIFF is barred from pursuing this FAC, and each purported cause of action  
26 contained therein, as a collective/representative action, as DEFENDANT has “cured” any  
27 violations in accordance with the provisions of California Labor Code §2699.3 (c).

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**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**  
CASE NAME: *Silva-Heredia, et al. v. Tacos Los Desvelados, et al.*  
Case No.: 21STCV11103

*I declare as follows:*

I am employed in the County of Los Angeles, California. I am over the age of 18 years, and not a party to the within action; my business address is 15760 Ventura Boulevard, Suite 1200, Encino, California 91436. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

On January 7, 2022, I served a true and correct copy, with all exhibits, of the following documents described as:

**DEFENDANT TACOS LOS DESVELADOS' ANSWER TO PLAINTIFF'S UNVERIFIED FIRST AMENDED CLASS ACTION AND PAGA REPRESENTATIVE ACTION COMPLAINT**

- ☐ on the party or parties named below, by personally delivering a true copy thereof on \_\_\_\_\_ at approximately \_\_\_\_ at \_\_\_\_\_, California. Accepted by: \_\_\_\_\_ **(Personal service)**
- ☐ on the party or parties named below, by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope or package, for collection and mailing with the United States Postal Service, where it would be deposited for first class delivery, postage fully prepaid, in the United States Postal Service, that same day in the ordinary course of business, addressed as set forth below. **(Regular office deposit)**
- ☐ on the party or parties named below by placing a true and correct copy thereof in a sealed envelope or package provided by an overnight delivery carrier. I deposited the envelope or package for collection and overnight delivery at the local office or regularly utilized drop box of the overnight delivery carrier; ☐ United States Postal Service Express Mail delivery; ☐ Federal Express; ☐ other located at 15760 Ventura Boulevard, Encino, California 91436, with delivery fees fully paid. (Code of Civil Procedure §1013(c).) **(Overnight delivery service)** Tracking # \_\_\_\_\_
- X on the party or parties named below including the name or names of parties represented, and the electronic service address of each person served. **(Electronic service)**

David G. Spivak, Esq. [david@spivaklaw.com](mailto:david@spivaklaw.com)  
Elizabeth Contreras [elizabeth@spivaklaw.com](mailto:elizabeth@spivaklaw.com)  
Breck Oyama [boyama@spivaklaw.com](mailto:boyama@spivaklaw.com)  
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Nora Greer [nora@spivaklaw.com](mailto:nora@spivaklaw.com)  
Maya Cheaitani [maya@spivaklaw.com](mailto:maya@spivaklaw.com)  
Lori Fueva [lori@spivaklaw.com](mailto:lori@spivaklaw.com)  
The Spivak Law Firm  
16530 Ventura Blvd., Suite 203  
Encino, CA 91436  
*Attorneys for Plaintiff*

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 7, 2022, at Encino, California.

By: \_\_\_\_\_ /s/\_\_\_\_\_  
Signature of Declarant

By: Ida Mamedova  
Type or Print Name of Declarant

# **EXHIBIT 6**

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

|               |                                              |
|---------------|----------------------------------------------|
| Case title:   | Ramona Silva-Heredia v. Tacos Los Desvelados |
| Case no.:     | 21STCV11103                                  |
| Court:        | Los Angeles                                  |
| Judge:        | Maren E. Nelson, Dept. SSC017                |
| Page subject: | <b>Data</b>                                  |

#### Important Dates

|                                                               |                            |
|---------------------------------------------------------------|----------------------------|
| Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins: | Monday, March 20, 2017     |
| Lab.Code § 203 (waiting time penalties) period begins:        | Tuesday, March 20, 2018    |
| Lab.Code § 2699 (civil penalties) period begins:              | Sunday, March 8, 2020      |
| Lab.Code § 226 (pay stub penalties) period begins:            | Thursday, March 19, 2020   |
| LWDA Notice:                                                  | Monday, March 8, 2021      |
| Lawsuit:                                                      | Friday, March 19, 2021     |
| Sample begin:                                                 | Tuesday, January 1, 2019   |
| Sample end:                                                   | Tuesday, April 30, 2019    |
| Sample calendar days:                                         | 119                        |
| Mediation:                                                    | Thursday, January 20, 2022 |
| Anticipated Settlement Period end date:                       | Friday, May 20, 2022       |
| Settlement Period to Sample Period:                           | 1585.71%                   |

#### Classes / Groups sizes

|                                       |        |
|---------------------------------------|--------|
| UCL Class Members:                    | 140    |
| UCL Workweeks:                        | 6,326  |
| UCL Wage Statements:                  | 6,326  |
| UCL Workdays:                         | 18,978 |
| UCL Calendar days:                    | 1,767  |
| UCL Months:                           | 58.09  |
| Waiting Time Penalties Class Members: | 115    |
| PAGA Aggrieved Employees:             | 50     |
| PAGA Wage Statements:                 | 2,480  |
| Wage Statement Class Members:         | 50     |
| Wage Statement Class Wage Statements: | 2,450  |

#### Averages

|                                |    |        |
|--------------------------------|----|--------|
| Average Hourly Rate:           | \$ | 11.00  |
| Average Overtime Rate:         | \$ | 16.50  |
| Average Doubletime Rate:       | \$ | 22.00  |
| Average Work Hours Per Day:    |    | 7.00   |
| Average Work Hours Per Week:   |    | 21.00  |
| Average Workdays Per Week:     |    | 3.00   |
| Workdays to Calendar Days (%): |    | 42.86% |
| Paycycle:                      |    |        |
| Paychecks Per Year:            |    |        |

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|               |                                              |
|---------------|----------------------------------------------|
| Case title:   | Ramona Silva-Heredia v. Tacos Los Desvelados |
| Case no.:     | 21STCV11103                                  |
| Court:        | Los Angeles                                  |
| Judge:        | Maren E. Nelson, Dept. SSC017                |
| Page subject: | <b>Unpaid wages</b>                          |
| Authority:    | Lab.Code §§ 510, 1194, 1194.2, and 1198      |

|                           |          |
|---------------------------|----------|
| Underpaid overtime        |          |
| Average Hourly Rate:      | \$ 11.00 |
| OT Rate                   | 0.50     |
| DT Rate                   | 1.00     |
| Unpaid OT hours per week: | 0.50     |
| Unpaid DT hours per week  | -        |
| Actionable workweeks:     | 6,326    |
| Interest:                 | 10%      |

|                  |              |
|------------------|--------------|
| Unpaid OT wages: | \$ 19,136.15 |
| Unpaid DT wages: | \$ -         |

|                                  |                     |
|----------------------------------|---------------------|
| <u>Underpaid Minimum wages:</u>  |                     |
| Hourly Rate Paid:                | \$ 11.00            |
| Minimum wage:                    | \$ 13.00            |
| Average Work Hours Per Week:     | 40.00               |
| UCL Workweeks:                   | 6,326               |
| Interest:                        | 10%                 |
| Unpaid Minimum wages w/ interest | \$ -                |
| Liquidated damages:              | \$ -                |
| <b>UNAPID WAGES TOTAL:</b>       | <b>\$ 19,136.15</b> |

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|                                           |                                              |
|-------------------------------------------|----------------------------------------------|
| Case title:                               | Ramona Silva-Heredia v. Tacos Los Desvelados |
| Case no.:                                 | 21STCV11103                                  |
| Court:                                    | Los Angeles                                  |
| Judge:                                    | Maren E. Nelson, Dept. SSC017                |
| Page subject:                             | <b>Unprovided Meal Periods</b>               |
| Authority:                                | Lab.Code §§ 226.7, 512, and 1198             |
| Average Hourly Rate:                      | \$ 11.00                                     |
| Actionable workdays:                      | 18,978                                       |
| >>Percentage qualifying for meal periods: | 100%                                         |
| Violation rate (%)                        | 50%                                          |
| <hr/>                                     |                                              |
| Meal period premium wages:                | \$ 104,379.00                                |

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|                                           |                                              |
|-------------------------------------------|----------------------------------------------|
| Case title:                               | Ramona Silva-Heredia v. Tacos Los Desvelados |
| Case no.:                                 | 21STCV11103                                  |
| Court:                                    | Los Angeles                                  |
| Judge:                                    | Maren E. Nelson, Dept. SSC017                |
| Page subject:                             | <b>Unprovided Rest Periods</b>               |
| Authority:                                | Lab.Code §§ 226.7 and 1198                   |
| Average Hourly Rate:                      | \$ 11.00                                     |
| Actionable workdays:                      | 18,978                                       |
| >>Percentage qualifying for rest periods: | 100%                                         |
| Violation rate (%)                        | 50%                                          |
| Rest period premium wages:                | \$ 104,379.00                                |

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|               |                                              |
|---------------|----------------------------------------------|
| Case title:   | Ramona Silva-Heredia v. Tacos Los Desvelados |
| Case no.:     | 21STCV11103                                  |
| Court:        | Los Angeles                                  |
| Judge:        | Maren E. Nelson, Dept. SSC017                |
| Page subject: | <b>Unreimbursed expenses</b>                 |
| Authority:    | Lab.Code § 2802                              |

**Mileage**

|                      |    |          |
|----------------------|----|----------|
| IRS Mileage Rate:    | \$ | 0.570    |
| Miles Per Workweek:  |    | 10.00    |
| UCL Workweeks:       |    | 6,326    |
| Interest rate:       |    | 10%      |
| Violation rate:      |    | 10.71%   |
| Unreimbursed mileage | \$ | 4,248.02 |

|                        |    |          |
|------------------------|----|----------|
| Unreimbursed expenses: | \$ | 4,248.02 |
|------------------------|----|----------|

\*Confidential Settlement Communication\*

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|               |                                              |
|---------------|----------------------------------------------|
| Case title:   | Ramona Silva-Heredia v. Tacos Los Desvelados |
| Case no.:     | 21STCV11103                                  |
| Court:        | Los Angeles                                  |
| Judge:        | Maren E. Nelson, Dept. SSC017                |
| Page subject: | <b>Itemized Wage Statements</b>              |
| Authority:    | Lab.Code § 226                               |

|                                       |                          |            |
|---------------------------------------|--------------------------|------------|
| Wage Statement Class Members:         |                          | 50         |
| Wage Statement Class Wage Statements: |                          | 2,450      |
| Initial penalty:                      | \$                       | 50.00      |
| Subsequent penalty:                   | \$                       | 100.00     |
| Statutory wage statement penalties:   | \$                       | 184,210.00 |
|                                       | (\$4,000.00 cap applied) |            |

\*Confidential Settlement Communication\*

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|               |                                              |
|---------------|----------------------------------------------|
| Case title:   | Ramona Silva-Heredia v. Tacos Los Desvelados |
| Case no.:     | 21STCV11103                                  |
| Court:        | Los Angeles                                  |
| Judge:        | Maren E. Nelson, Dept. SSC017                |
| Page subject: | <b>Waiting Time / Final Wages</b>            |
| Authority:    | Lab.Code § 203                               |

|                                       |    |            |
|---------------------------------------|----|------------|
| Waiting Time Penalties Class Members: |    | 115        |
| Days waiting:                         |    | 30         |
| Average Hourly Rate:                  | \$ | 11.00      |
| Average Overtime Rate:                | \$ | 16.50      |
| Average Doubletime Rate:              | \$ | 22.00      |
| Average Work Hours Per Day:           |    | 7.00       |
| Regular Hours Per Day:                |    | 7.00       |
| Overtime Hours Per Day:               |    | -          |
| Doubletime Hours Per Day:             |    | -          |
| Waiting time penalties:               | \$ | 265,650.00 |

\*Confidential Settlement Communication\*

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Case title:

Ramona Silva-Heredia v. Tacos Los Desvelados

Case no.:

21STCV11103

Court:

Los Angeles

Judge:

Maren E. Nelson, Dept. SSC017

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       | \$ 100.00  | -     |             |                     |
| Overtime wages (Lab.Code § 510):      | Lab.Code § 558   | \$ 50.00        | \$ 50.00   | 2,480 | \$          | 124,000.00          |
| Meal periods Lab.Code § 512):         | Lab.Code § 558   | \$ 50.00        | \$ 50.00   | 2,480 | \$          | 124,000.00          |
| Rest periods (Lab.Code § 1198):       | Lab.Code § 2699  | \$ 100.00       | \$ 100.00  | 2,480 | \$          | 248,000.00          |
| Business expenses (Lab.Code § 2802):  | Lab.Code § 2699  | \$ 100.00       | \$ 100.00  | 2,480 | \$          | 248,000.00          |
| Improper pay stubs (Lab.Code § 226):  | Lab.Code § 226.3 | \$ 100.00       | \$ 100.00  | 2,480 | \$          | 248,000.00          |
| Untimely wages (Lab.Code §§ 201-204): | Lab.Code § 2699  | \$ 100.00       | \$ 100.00  | 2,480 | \$          | 248,000.00          |
| <b>Total:</b>                         |                  |                 |            |       | <b>\$</b>   | <b>1,240,000.00</b> |

\*Confidential Settlement Communication\*

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:  
Case no.:  
Court:  
Judge:  
Page subject:  
Authority:

Ramona Silva-Heredia v. Tacos Los Desvelados  
21STCV11103  
Los Angeles  
Maren E. Nelson, Dept. SSC017  
**Totals**  
Various

| Restitution                                           |                        | Reduction to |           | Demand            |
|-------------------------------------------------------|------------------------|--------------|-----------|-------------------|
| Unpaid OT wages:                                      | \$ 19,136.15           | 100%         | \$        | 19,136.15         |
| Unpaid DT wages:                                      | \$ -                   | 100%         | \$        | -                 |
| Meal period premium wages:                            | \$ 104,379.00          | 100%         | \$        | 104,379.00        |
| Rest period premium wages:                            | \$ 104,379.00          | 100%         | \$        | 104,379.00        |
| Unreimbursed expenses:                                | \$ 4,248.02            | 100%         | \$        | 4,248.02          |
| Forfeited vacation pay:                               |                        |              |           |                   |
| Restitution subtotal:                                 | \$ 232,142.17          |              | \$        | 232,142.17        |
| Penalties                                             |                        |              |           |                   |
| Statutory wage statement penalties:                   | \$ 184,210.00          | 100%         | \$        | 184,210.00        |
| Waiting time penalties:                               | \$ 265,650.00          | 100%         | \$        | 265,650.00        |
| Minimum wages (Lab.Code § 1197):civil penalties:      |                        |              | \$        | -                 |
| Overtime wages (Lab.Code § 510):civil penalties:      | \$ 124,000.00          | 25%          | \$        | 31,000.00         |
| Meal periods Lab.Code § 512):civil penalties:         | \$ 124,000.00          | 25%          | \$        | 31,000.00         |
| Rest periods (Lab.Code § 1198):civil penalties:       | \$ 248,000.00          | 25%          | \$        | 62,000.00         |
| Business expenses (Lab.Code § 2802):civil penalties:  | \$ 248,000.00          | 25%          | \$        | 62,000.00         |
| Improper pay stubs (Lab.Code § 226):civil penalties:  | \$ 248,000.00          | 25%          | \$        | 62,000.00         |
| Untimely wages (Lab.Code §§ 201-204):civil penalties: | \$ 248,000.00          | 25%          | \$        | 62,000.00         |
| Penalties subtotal:                                   | \$ 1,689,860.00        |              | \$        | 759,860.00        |
| <b>Grand total:</b>                                   | <b>\$ 1,922,002.17</b> |              | <b>\$</b> | <b>992,002.17</b> |

# **EXHIBIT 7**

1 DAVID G. SPIVAK, State Bar # 179684  
2 THE SPIVAK LAW FIRM  
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CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court  
FEB 24 2010

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

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

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

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

Case No.: BC430633

**CLASS ACTION**

13 *Plaintiffs,*

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.



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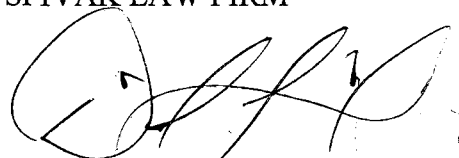
- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

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 8**

1 CASE NUMBER: BC430633  
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS  
3 RJ FINANCIAL, ET AL.,  
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012  
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE  
6 APPEARANCES: (SEE TITLE PAGE.)  
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659  
8 TIME: A.M. SESSION  
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
11 OPEN COURT:)

12  
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING  
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS  
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE  
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN  
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.  
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.  
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE  
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW  
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND  
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO  
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I  
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION  
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL  
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,  
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE  
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND  
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT  
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT  
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE  
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE  
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL  
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT  
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,  
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT  
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,  
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS  
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA  
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS  
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.  
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES  
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR  
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,  
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1     VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2     W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL  
3     K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --  
4     CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT  
5     THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,  
6     GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A  
7     WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO  
8     THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY  
9     WAS, AS I SAY, DECIDED IN 1991.

10                 IN 2010, EFFECTIVE JANUARY 1, 2010, THE  
11     CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG  
12     OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE  
13     3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION  
14     AND STATEMENT DECISION AND JUDGMENT.

15                 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590  
16     WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY  
17     BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO  
18     THE (C) SUBSECTION.

19                 IT READS NOW, (READING:)

20                 THE COURT IN ITS TENTATIVE DECISION MAY:  
21     STATE THAT IT IS THE COURT'S PROPOSED  
22     STATEMENT OF DECISION, SUBJECT TO A PARTY'S  
23     OBJECTION UNDER SUBSECTION (G);

24                 (2) INDICATE THAT THE COURT WILL PREPARE  
25     A STATEMENT OF DECISION;

26                 (3) ORDER A PARTY TO PREPARE A STATEMENT  
27     OF DECISION; OR

28                 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,  
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE  
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES  
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO  
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF  
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN  
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE  
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE  
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED  
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION  
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR  
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT  
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES  
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS  
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT  
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW  
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY  
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT  
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT  
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE  
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A  
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),  
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF  
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT  
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION  
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE  
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL  
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A  
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE  
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S  
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER  
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR  
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE  
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I  
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE  
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN  
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S  
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A  
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL  
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS  
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS  
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA  
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED  
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE  
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT  
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS  
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR  
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST  
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH  
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE  
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE  
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED  
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST  
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A  
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE  
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE  
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR  
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST  
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED  
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE  
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY  
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;  
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR  
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED  
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF  
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER  
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE  
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE  
8 ASSESSED AND COLLECTED BY THE LABOR AND  
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS  
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,  
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS  
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED  
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED  
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND  
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO  
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS  
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION  
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED  
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY  
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE  
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO  
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME  
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS  
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT  
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED  
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11  
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE  
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN  
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING  
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS  
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT  
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE  
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE  
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL  
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL  
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --  
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S  
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE  
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ  
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY  
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA  
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA  
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE  
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT  
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --  
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS  
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.  
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT  
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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

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

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

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

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

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES  
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS  
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED  
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE  
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR  
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE  
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND  
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY  
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY  
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,  
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND  
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS  
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING  
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME  
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN  
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).  
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER  
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT  
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE  
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS  
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION  
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S  
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)  
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS  
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT  
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,  
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND  
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE  
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412  
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS  
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE  
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE  
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.  
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A  
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,  
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES  
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY  
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD  
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH  
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL  
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON  
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE  
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION  
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE  
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN  
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER  
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE  
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN  
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE  
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE  
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND  
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF  
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM  
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE  
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED  
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE  
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER  
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558  
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS  
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE  
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE  
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE  
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU  
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S  
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S  
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE  
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO  
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING  
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY  
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE  
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS  
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY  
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN  
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A  
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES  
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE  
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,  
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I  
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT  
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN  
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,  
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D  
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD  
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR  
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH  
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE  
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH  
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX  
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS  
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH  
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,  
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT  
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME  
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;  
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,  
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY  
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS  
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM  
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE  
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS  
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS  
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE  
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT  
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE  
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS  
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST  
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY  
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES  
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS  
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT  
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN  
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK  
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE  
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS  
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE  
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE  
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS  
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515  
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL  
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT  
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER  
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE  
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO  
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE  
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO  
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER  
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED  
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF  
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO  
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE  
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR  
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --  
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN  
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT  
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL  
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA  
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE  
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE  
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE  
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY  
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR  
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT  
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE  
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT  
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF  
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG  
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE  
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO  
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS  
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S  
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY  
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS  
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT  
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR  
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR  
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE  
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT  
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED  
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --  
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION  
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW  
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR  
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR  
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION  
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART  
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE  
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED  
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE  
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,  
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST  
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS  
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25  
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS  
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE  
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE  
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,  
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND  
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR  
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL  
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT  
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE  
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512  
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE  
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE  
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT  
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE  
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS  
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE  
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512  
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S  
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S  
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198  
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH  
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218  
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS  
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,  
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF  
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR  
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST  
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE  
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT  
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF  
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED  
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT  
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR  
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS  
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY  
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF  
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM  
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND  
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION  
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE  
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER  
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER  
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD  
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE  
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT  
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF  
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY  
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I  
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A  
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.  
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A  
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE  
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH  
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS  
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN  
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS  
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S  
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS  
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS  
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY  
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A  
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS  
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON  
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN  
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED  
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL  
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT  
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I  
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH  
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE  
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I  
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT  
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I  
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN  
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I  
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.  
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED  
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE  
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE  
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE  
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE  
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE  
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE  
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL  
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS  
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR  
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE  
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,  
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET  
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE  
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED  
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED  
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE  
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND  
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,  
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --  
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY  
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF  
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS  
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO  
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE  
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE  
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT  
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS  
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE  
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY  
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD  
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60  
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS  
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A  
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,  
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD  
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE  
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER  
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT  
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT  
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS  
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN  
25 WHOLE.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. SABZEVAR: NO, YOUR HONOR.

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

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

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

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

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

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

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

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

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

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

6 THE COURT: FORTY-FIVE DAYS.

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

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

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

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

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

17 MR. SPIVAK: YES, YOUR HONOR.

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

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

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

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

1       FOUR WEEKS.  HERE'S OUR SITUATION.

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

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

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

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

1                   ALL RIGHT.   THANK YOU ALL VERY MUCH.

2                   MR. SPIVAK:   THANK YOU, YOUR HONOR.

3                   MR. SABZEVAR:   THANK YOU, YOUR HONOR.

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

5 THE CASE.

6                   (PROCEEDINGS CONCLUDED.)

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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 9**



[www.cptgroup.com](http://www.cptgroup.com)

**Contact Name:** Timothy N. Phillips, Jr.  
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**Corporate Headquarters**  
 50 Corporate Park, Irvine CA 92606  
[Tim@cptgroup.com](mailto:Tim@cptgroup.com)  
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**February 4, 2022**

Lizzett Cortez  
 The Spivak Law Firm  
 16530 Ventura Blvd. Ste 203  
 Encino CA 91436  
 (818) 582-3197  
[lizzett@spivaklaw.com](mailto:lizzett@spivaklaw.com)

**Class Members:** 140  
**RUM Handling:** 10%  
**Skip Trace / Address Search:** 86%  
**Remailed:** 75%  
**Estimated Filing Rate:** 1%

## Case Name: Silva-Heredia v. Tacos Los Desvelados - Belaire Mailing

### Description of Mailing

| Administrative Tasks:                                                                  | Unit Price | Class Members/Units | Total             |
|----------------------------------------------------------------------------------------|------------|---------------------|-------------------|
| <b>CASE SETUP</b>                                                                      |            |                     |                   |
| System Programming / Data Base Setup                                                   | \$150.00   | 1                   | \$150.00          |
| Spanish Translation                                                                    | \$250.00   | 1                   | \$250.00          |
| Project Manager                                                                        | \$95.00    | 2                   | \$190.00          |
| <b>NOTIFICATION PROCEDURES</b>                                                         |            |                     |                   |
| National Change of Address (NCOA)                                                      | \$150.00   | 1                   | \$150.00          |
| 2-Page Generic Notice & Return Postcard ( <i>Eng. &amp; Spanish</i> )                  | \$0.35     | 140                 | \$49.00           |
| 1st Class Postage (up to 1 oz.)                                                        | \$0.58     | 140                 | \$81.20           |
| <b>PROCESS RETURNED MAIL</b>                                                           |            |                     |                   |
| Tracking Returned Mail                                                                 | \$40.00    | 1                   | \$40.00           |
| Update Undeliverable Mail                                                              | \$0.50     | 14                  | \$7.00            |
| Skip Traces                                                                            | \$1.25     | 12                  | \$15.00           |
| Remailed Notice Packets                                                                | \$0.35     | 9                   | \$3.15            |
| 1st Class Postage (up to 1 oz.)                                                        | \$0.58     | 9                   | \$5.22            |
| <b>DATA ENTRY</b>                                                                      |            |                     |                   |
| Clerical Staff                                                                         | \$60.00    | 1                   | \$60.00           |
| Dedicated Case Email Address                                                           | \$150.00   | 1                   | \$150.00          |
| Capture and Reporting of Responses<br>( <i>e.g. reports of opt-in's or opt-out's</i> ) | \$2.00     | 1                   | \$2.00            |
| <b>Subtotal:</b>                                                                       |            |                     | <b>\$1,152.57</b> |

# TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 (“CPT”).

## 1. Definitions.

- a) **“Affiliate”** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **“Approved Bank”** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **“Case”** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **“Claims Administrator”** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **“Client”** means collectively Plaintiff Counsel and Defense Counsel.
- f) **“Client Content”** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **“Client Data”** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **“Class Member”** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **“Confidential Information”** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked “confidential” or “proprietary” or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient’s prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **“Court Order”** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **“Defendant”** means the named party and/or parties in the Case against whom action is brought.
- l) **“Defense Counsel”** means the attorney of record for the defendant(s) in the Case.
- m) **“Intellectual Property Right”** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **“Order”** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **“Parties”** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **“Plaintiff”** means the named party and/or parties in the Case who are bringing the action.
- q) **“Plaintiff Counsel”** means the attorney of record for plaintiff Class Members in the Case.
- r) **“Products”** means any and all CPT Services, and work product resulting from Services.
- s) **“Qualified Settlement Fund”** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **“Service”** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
  - u) **“Software”** means any and all of CPT’s proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
  - v) **“Settlement”** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
  - w) **“Settlement Agreement”** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
  - x) **“Term”** means the term of the Agreement, as set forth in the Order.
  - y) **“Transmission Methods”** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
  - z) **“Wire Information”** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or 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 two (2) 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.
9. 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 10**



Lizzett Cortez &lt;lizzett@spivaklaw.com&gt;

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**Re: Silva-Heredia/Tacos Los Desvelados re Belaire-West Mailing Bid**

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**Karin Peternel** <karin@classactionclaimsadmin.net>

Mon, Feb 7, 2022 at 7:10 AM

To: Lizzett Cortez &lt;lizzett@spivaklaw.com&gt;

Cc: Breck Oyama &lt;boyama@spivaklaw.com&gt;, "silvaherediatacoslosdesveladosz8744973@projects.filevine.com" &lt;silvaherediatacoslosdesveladosZ8744973@projects.filevine.com&gt;

Ms. Cortez,

We can provide these services for \$550.

*Belaire-West* mailing to approximately 140 potential class members

Notice in English and Spanish; (b/w double sided 2 pages)

Exclusion postcard (no postage)

Email address provided for opt-out submissions

Mailing will be sent to last known address and search will be conducted for those returned.

Please contact me if you have any questions.

Sincerely,

Karin

---

**From:** Lizzett Cortez <lizzett@spivaklaw.com>**Sent:** Thursday, February 3, 2022 4:37 PM**To:** Karin Peternel <karin@classactionclaimsadmin.net>**Cc:** Breck Oyama <boyama@spivaklaw.com>; silvaherediatacoslosdesveladosz8744973@projects.filevine.com <silvaherediatacoslosdesveladosZ8744973@projects.filevine.com>**Subject:** Silva-Heredia/Tacos Los Desvelados re Belaire-West Mailing Bid

Ms. Peternel,

Please provide a bid for a *Belaire-West* mailing to approximately 140 potential class members consisting of a Notice form in English and Spanish (1 black and white double sided page) and an Exclusion Form (1 postcard – no need to have prepaid postage unless required). The class members should also have the option to email the administrator to opt-out. Please do not hesitate to call if you have any questions. We would like the bid as soon as possible. Thank you.

Please promptly and carefully review this email message and any documents or other files attached to it. Please promptly contact me if you have any questions or concerns about the message or the attachments.

**\*\*In response to the corona virus pandemic, the entire staff of the Spivak Law Firm works remotely. As such, we will not be regularly checking our U.S. mail, Fedex, UPS, and other deliveries to the office address below. We urge you to email any and all written communications you expect us to receive, especially if it is time sensitive. Thank you for your patience.\*\***

**LIZZETT CORTEZ** | Paralegal | Employee Rights

THE SPIVAK LAW FIRM | FightWrongfulTermination.com

(818) 582-3197 Direct | (213) 634-2485 Fax  
16530 Ventura Blvd. Ste 203 Encino CA 91436



SPIVAK LAW

This communication (including attachments, if any) constitutes an electronic communication within the meaning of the electronic Communications Privacy Act, 18 U.S.C. § 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This communication may contain confidential and privileged material for the sole use of the intended recipient and receipt by anyone other than the intended recipient does not constitute a loss of the confidential or privileged nature of the communication. Nothing contained herein should be construed as creating or intending to create an attorney-client relationship. Any and all communications are undertaken in an effort to evaluate potential claims and determine whether we are interested in representing you. Unless and until a formal attorney-client contract / retainer agreement is signed by both the client and the firm, we will not take any action to protect your rights.

# **EXHIBIT 11**



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## CASE ASSUMPTIONS

|                    |     |
|--------------------|-----|
| Class Members      | 140 |
| Response Rate      | 10% |
| Undeliverable Rate | 15% |
| Skip Trace/NCOA    | Yes |
| Remail Packets     | Yes |
| Translation        | Yes |
| Call Center        | No  |

**Value Pricing Total \$493.58**

**For 140 Class Members**

Pricing Good for Scope of Estimate Only

February 7, 2022

## Case: Silva/ Herdia v. Tacos Los Desvelados, Privacy Mailing

Phoenix Contact: Michael E. Moore  
Contact Number: 949.331.0131  
Email: mike@phoenixclassaction.com

Requesting Attorney: Lizzett Cortez  
Firm: The Spivak Law Firm  
Contact Number: (818) 582-3197  
Email: lizzett@spivaklaw.com

### Case Setup / Notification & Postage / Return Postcard & Postage / Spanish Translation

| Project Action:                                                                      | Rate     | Hours/Units | Line Estimate   |
|--------------------------------------------------------------------------------------|----------|-------------|-----------------|
| System Programming / Database Setup                                                  | \$85.00  | 1           | Included        |
| National Change of Address (NCOA)                                                    | \$35.00  | 1           | \$35.00         |
| Spanish Translation                                                                  | \$200.00 | 1           | \$200.00        |
| Privacy Notice (English & Spanish) &<br>Return Postcard (English & Spanish) Included | \$1.00   | 140         | \$140.00        |
| Privacy Notice Postage (up to 2 oz.)                                                 | \$0.73   | 140         | \$102.20        |
| Reporting During Notice Period                                                       | \$50.00  | 1           | Included        |
| Remail Notice Packets (Skip Tracing included)                                        | \$0.78   | 21          | \$16.38         |
| <b>Estimate Total</b>                                                                |          |             | <b>\$493.58</b> |



## **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 provision for any services or class members/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 out in English only unless specified otherwise. Additional costs will apply if translation for an additional language(s) are required. **Pricing is good for 90 days.**

**Mailing and Data Conversion:** The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for preparation of 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 if a National Change of Address update is requested.

**Payment Terms:** All postage charges and 50% of the final administration charges are due at the start 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 Counsel/Client. In the event settlement terms provide that PSA is to be paid out of the Settlement Fund, PSA will request that Counsel 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/Plaintiff, or no later than the time of disbursement.

**Inclusion:** 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 shall not be responsible for any issues caused by the U.S.P.S. PSA shall not make payments to any claimants without verified valid Social Security Numbers. All responses are held in strict confidentiality.

# **EXHIBIT 12**